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[G.R. No. L-6730. October 15, 1954]

PEDRO GABRIEL AND AVELINO NATIVIDAD, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS (FIRST DIVISION), RESPONDENTS.

D E C I S I O N

REYES, A., J.:

This is an appeal from a judgment of the Court of Appeals, convicting the appellants Pedro Gabriel and Avelino Natividad of simple trespass to dwelling on facts found by said court to be as follows:

> "* * * Sherman Jones and his wife, Josefina Jones, were occupying the house No. 9-B, M. H. del Pilar St., Malabon, Rizal, having as neighbor their comadre Mariquita Beltran. The electric meter of the premises was installed on a wall in the balcony, and visible from the porch of the house (Exhibit 1). At about 7:00 o'clock in the evening of April 19, 1949, accused Pedro Gabriel, Avelino Natividad and Miguel Evangelista arrived at the house, presented themselves as Meralco light inspectors to Mrs. Jones who was then on the stairs of the house with Mariquita and inquired from the ladies for Sherman Jones. Mrs. Jones told them to wait on the porch; she entered the living room, closed the door behind her and went to the family bedroom where Sherman was then in the act of changing his clothes. While Mrs. Jones was inside the bedroom and informing her husband of the presence of the Meralco inspectors, accused Gabriel inspected the electric meter and then shouted to his co-accused Natividad: "Naty, atras ang contador." Natividad rushed into the living room and then entered the bedroom where Sherman and his wife were talking. Natividad pushed the door of the bedroom with such force that the said door brushed aside

> Mrs. Jones who was then leaving behind it. Accused Gabriel followed Natividad to the bedroom and, with the help of flashlights, both searched for a gadget which they suspected Sherman used in order to steal electric fluid. Notwithstanding Sherman's protest of their intrusion, the two accused continued their search. Finding that Sherman meant business, the intruders left the bedroom hastily, boarded their jeep and went away with the other accused Evangelista to Sangandaan Street where they met policeman Pablo Malosido of Caloocan. The trio requested the policeman accompany them to Sherman's house in order to explain to him that they had. no intention to do him any harm. The policeman accompanied them, but upon noticing the presence of several Americans in the house, they left. They noticed later that a truck commonly known as 6×6 started from Sherman's house and followed them. They were able to hide and later went to the municipal building of Caloocan, at which Sherman and his companions subsequently arrived to complain. Sherman's complaint, however, was referred to the police authorities of Malabon who had jurisdiction over the case."

In asking for the reversal of the judgment below counsel for appellants argue that inasmuch as the original entry was with the permission of the occupant of the house and therefore lawful, nothing that happened afterwards could "convert the original lawful entry into an unlawful one." The argument assumes that appellants entered a dwelling with the consent of the householder. But the assumption is gratuitous and unwarranted, the Court of Appeals having found "that the entry was against the will of the spouses." That will was, we think, clearly manifested by the lady of the house when she told appellants to wait on the porch and closed the door behind her as she entered the drawing room. She did not, it is true, in so many words tell the appellants not to enter. But when she made them wait outside and shut the door to the interior of the house, her action spoke louder than words. The porch is an open part of the house, and being allowed to wait there under the circumstances mentioned can in no sense be taken as entry to a dwelling with the consent of the dweller.

Counsel cite the cases of U. S. vs. Dionisio and Del Rosario, 12

Phil., 283; U. S. vs. Flemister, 1 Phil., 354; and People vs. De Peralta, 42 Phil., 69. But those cases were decided upon facts different from those of the present case.

In the case first cited, *U.S. vs. Dionisio and Del Rosario,* the defendants found the principal door of a house half-open. Entering without opposition from the occupant of the lower part of the house, who was present, they proceeded to the upper story, also without opposition, and there conversed with one of the inmates, who invited them to sit down and allowed them to stay for about two hours. Then trouble arose when defendants, posing as detectives, started doing something illegal. In declaring defendants not guilty of the crime of trespass to dwelling, this court there held that the facts and circumstances from which, in a given case, the opposition of the occupant may be inferred, must have been in existence prior to or at the time of the entry, and in no event can facts arising after an entry has been secured with the expenses or tacit consent of the occupant change the character of the entry from one with the assent of the occupant to one contrary thereto. That case is to be distinguished from the one before us in that there the defendants entered a half-opened door and went *inside* the house without opposition, express or implied, from any of the occupants. Here, on the other hand, the lady of the house clearly be it only impliedly manifested her opposition to appellants' entry by telling them to wait on the porch and closing the door behind her as she left them there.

In the second case, U. S. vs. Flemister, the defendant, an American, went to a ball uninvited, danced with somebody and then left. Returning a short time thereafter, he was met near the door by the host, who took him by the hand and asked him if he had come to dance and even invited him to be seated, but tried to prevent him from entering the *sala* where there was a guest, another American, with whom he had a quarrel pending. The defendant, however, rudely brushed the host aside, proceeded to the *sala* and quarreled with the other American. "It seems clear to us," said this Court in declaring the defendant not guilty of trespass to dwelling, "that the purpose of the owner of the house was to prohibit the defendant not from entering his house but

from entering the *sala* in order to avoid a quarrel between the two Americans. His taking the defendant by the hand, asking him if he came to dance, and requesting him to be seated, are inconsistent with the idea that he was attempting to' keep the defendant from entering the house." Again, unlike the appellants in the present case, the defendant in the case cited was not prohibited from entering the house; on the contrary, it would appear that he was welcomed into it.

In the third case, People *vs*. De Peralta, the accused, the new president of the Philippine Marine Union, called at the door of a room which his predecessor in office was allowed to occupy as his dwelling in a house rented by the union, pushed the said door and without the permission of the occupant entered the room to take away a desk glass which he believed was union property. There was no evidence that the occupant "had expressed his will in the sense of prohibiting (the accused) from entering his room," and it was to be supposed, this Court said, "that the members of the Philippine Marine Union, among them the accused, had some familiarity which warrants entrance into the room occupied by the president of the association, particularly when we consider the hour at which the act in question happened (between half past ten and eleven in the morning), the fact that the door of the room was not barricaded or locked with a key, and the circumstance that the room in question was part of the house rented to said association." Upon those facts, this Court acquitted the accused of the charge of trespass to dwelling, following the uniform doctrine here and in Spain that "this crime is committed when a person enters another's dwelling *against* the will of the occupant, but not when the entrance is effected without his knowledge or opposition." It is to be noted that the entry in that case was effected without express or implied opposition from the occupant of the room and under circumstances warranting an entrance without previous leave. In the present case, the entry was, as already noted, against the will of the lady of the house, who, by her action if not by direct words, made it plain to the appellants that they were not to enter her dwelling.

Lastly, counsel contend that appellants are exempt from criminal liability under the third paragraph of article 280 of the Revised Penal

Code, because “they rendered a service to justice” when, as Meralco line inspectors, they “followed Mrs. Sherman Jones to the bedroom” and there found her husband “hiding a transformer in an ‘aparador’ ” Here again, counsel assume something which was not believed by the Court of Appeals, that is, that appellants saw Jones in the act of hiding a transformer used by him “in stealing electricity,” this claim being characterized by the court as nothing but a “vain effort on the part of the appellants to fit the facts of the case to the provisions of the Revised Penal Code to the effect that a person who enters a dwelling for the purpose of rendering service to justice, is not guilty of trespass.” In other words, the Court of Appeals believed that appellants merely *suspected* that there was a transformer in the house. That alone did not give them the right to enter the house against the will of its owner, unarmed as they were with a search warrant.

It appearing that the judgment appealed from is in accordance with law and the facts as found by the Court of Appeals, the same is hereby affirmed, with costs against the appellants.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion, and *Reyes, J. B, L., JJ.,* concur.

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