

MARIETA O. SOTERO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENTS.

Ponente: CRUZ, R.A., J.

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CRUZ, R.A., J.:

THE CASE

This is a Petition for Review under Rule 42 of the 1997 Rules on Civil Procedure seeking to annul and/or set aside the Decision dated January 14, 2011 and the Order dated June 13, 2011, both issued by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Criminal Case No. 10-CR-8072, the dispositive portion of which read as follows:

(a) Decision[1] dated January 14, 2011

x x x

"WHEREFORE, having found no reversible error committed by the trial court, the decision appealed from is hereby affirmed in toto; and the appeal is hereby dismissed.

"SO ORDERED."

x x x

(b) Order[2] dated June 13, 2011

x x x

"WHEREFORE, the Motion for Reconsideration is hereby denied for lack of merit.

"SO ORDERED."

x x x

THE ANTECEDENTS

Marieta Sotero, together with Joseph Tongtongdan and several John Does, were charged with the crime of Qualified Trespass to Dwelling, defined and penalized under Article 280 of the Revised Penal Code, through an Information alleging as follows:

x x x

"That on or about the 14th day of February 2011, at Kamog, Municipality of Sablan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, without justifiable cause or lawful authority, did then and there willfully, unlawfully, feloniously and by means of force, violence and intimidation enter the dwelling of AGNES ARBISO, against the will and consent of the occupant RIBINO ARBISO, to his great damage, prejudice and mental anguish.

"CONTRARY TO LAW."[3]

x x x

A. BEFORE THE MCTC

On August 22, 2007 and November 7, 2007, Accused Maria Sotero and Joseph Tongtongdan were arraigned, respectively, and each entered a plea of "not guilty" to the offense charged in the Information.

During the pre-trial,[4] the accused admitted the following stipulation of facts by the prosecution, to wit:

- The complaining witness, Agnes Arbiso, is a resident of Kamog, Sablan, Benguet;
- Private complainant has a two (2) storey residential house located at Kamog, Sablan, Benguet;
- Private complainant has an outstanding debt to the accused, Marieta Sotero;
- On February 14, 2001[5], both accused were at the residence of Agnes Arbiso;
- On the said date, Agnes Arbiso and her husband were not at the house; and
- On said date that both accused went to the house of Agnes Arbiso, only the children, namely Arlyn, Evelyn and Ribino Arbiso, were present.

The private complainant, on the other hand, admitted that she was adjudged by the MCTC to pay her loan to Accused Marieta Sotero covered by Civil Case No. 224, with a counter-stipulation that the case is pending appeal.[6]

Prior to the initial presentation of prosecution's evidence on February 14, 2008, the public prosecutor moved for the amendment of the Information specifically as to the date of the commission thereof from February 14, 2000 to February 14, 2001 which was granted by the MCTC.

The prosecution presented its evidence consisting of the testimonies of its witnesses: Agnes Arbiso,[7] Arlyn Arbiso,[8] Laura Ciano[9] and Ribino Arbiso.[10] The testimony of Delfina Camarillo was also stipulated upon.[11]

Based on the evidence adduced by the prosecution, it was shown that prior to February 14, 2001, or in May 1998, private complainant secured a loan from Accused Marieta Sotero in the amount of P100,000.00 with an agreed interest of 7% per month. To pay for her indebtedness, private complainant sought employment abroad. She was able to get a two-year contract as a caregiver in Taiwan with a monthly salary of 15,840 Taiwan Dollars. She left for Taiwan on May 19, 2000.

At around 11:30 in the morning of February 14, 2001, while private complainant was in Taiwan, a brown-colored van stopped in front of her house at Kamog, Sablan, Benguet. At that time, her children, Ribino, Arlyn and Evelyn, all surnamed Abiso, were the ones staying therein. The three of them went down to the first floor of the house to see who was in the van. When Ribino tried to open the door of the house, it was forcefully pushed open by several men, among them Accused Joseph Tongtongdan, who went inside their house. They identified themselves as policemen and members of the National Bureau of Investigation (NBI). They told private complainant's children that they will lock the house because of the unpaid loan of their mother with Accused Marieta Sotero and ordered them to get their things, otherwise they will be apprehended for the non-payment of the debt of their mother.

When Ribino asked them their purpose in ordering them to get their things, Accused Joseph Tongtongdan pulled

back the hair of Ribino. The twins Arlyn and Evelyn began to cry and started to get their clothes. They were able to bring out the Shellane gas, some boxes and their clothes. When they were outside, Ribino talked with Accused Marieta Sotero who informed him that they will close the house because their mother has not been paying her loan. He asked permission from the accused that he be allowed to go to Baguio City to get some money to pay for the loan of their mother but Accused Marieta Sotero got angry and accused him that he will get a firearm to finish them all. Accused threatened Ribino that he could not kill them because the men were members of the Philippine National Police, Cordillera People's Liberation Army (CPLA), Ombudsman and Sheriff.

Because of the commotion, some of the neighbors of private complainant called for the officials in their barangay. Councilmen Sonny Tad-o, Rimando Wakat and Laura Ciano arrived. Accused Marieta Sotero asked them why the barangay captain was not around but she was informed that he was not around.

Laura Ciano, who was called by Jane Compala to see what was happening at the house of private complainant, arrived thereat to see the twin daughters of private complainant embracing their clothes outside their house and crying. There were also other belongings outside such as their stove and their LPG gas tank. Seeing their situation, she scolded Accused Marieta Sotero and asked why she was doing this. Accused answered that she will get the house and close the same as it was already her house. Laura Ciano begged that Accused Marieta Sotero not do this to the children because their mother was not around. Prevailed upon, accused did not lock the house and instead left the place.

After the incident, the children of private complainant called her up in Taiwan and informed her of the incident. Immediately, private complainant left her work and came home to check on her children. She arrived in the country on February 28, 2001 and proceeded to Naguilian, La Union where her children were then staying. They hid there for two weeks for fear that the accused will push through with their threats. On March 14, 2001, they went back to Kamog, Sablan, Benguet in order to check on their house and to appear before the barangay in relation to the case filed against her by Accused Marieta Sotero regarding her loan. Accused Marieta Sotero and private complainant came to an agreement before the barangay that the latter will pay accused the amount of P300,000.00, for which she was able to pay, through Accused Joseph Tongtongdan, the amount of \$2,100 out of her salaries earned in Taiwan. Despite the incident on February 14, 2001, they never reported the same to the barangay captain because they thought they could endure the threats made to them by the accused.

As a result of the incident, private complainant lost her job because she failed to go back to Taiwan after promising her employer that she will come back after a week. The children of private complainant were traumatized and were afraid that they will be imprisoned for the non-payment of the debt of their mother. Ribino stopped going to school because there was no longer any source of income to support his schooling after his mother lost her job.

It took them almost five years after the incident to report the same and file a case against the accused because they were afraid of the threats of accused and were even often threatened by Accused Marieta Sotero even if there was already a settlement in the barangay.

For their part, the defense presented the testimonies of both accused.

Accused Joseph Tongtongdan averred^[12] that on February 14, 2001, he, together with Accused Marieta Sotero and another companion, a certain Bolislis, went to the house of private complainant to collect the loan she had with Accused Marieta Sotero. When they arrived at the house of private complainant, they knocked on the window of the house and private complainant's son Ribino went out. They asked him if private complainant was around and was told that private complainant was abroad. As private complainant was not present, they reminded Ribino of the loan of his mother. Thereafter, they left the premises.

It was only during the barangay hearing of March 14, 2001 that he again saw private complainant and Ribino where Marieta Sotero and private complainant entered into an agreement regarding the loan of the latter. Neither private complainant nor anyone from her family filed any complaint against them before the barangay regarding the alleged incident on February 14, 2001. It was only in 2007 that this present case was filed. He also admitted that sometime in 2001, private complainant went to his house to pay the amount of P100,000.00 which is a partial payment for the loan of the latter with Accused Marieta Sotero.

Accused Marieta Sotero testified[13] that in 1997, private complainant loaned from her the amount of P100,000.00. On February 14, 2001, she together with Accused Joseph Tongtongdan and their driver, Bolislis Pilay, went to the house of private complainant to collect her debt. When they arrived at the house, the private complainant's children went out to meet them. She asked where private complainant was and she was informed by Ribino that she was abroad. After about a minute, a barangay official, Laura Ciano, arrived and asked that the children be given some consideration because they did not know about the loan and that they should wait for private complainant to arrive. Thereafter, they left the place. She denied having entered the house of private complainant.

On March 14, 2001, Accused Marieta Sotero went back to Kamog, Sablan, Benguet, in connection with the hearing of the complaint she filed before the barangay. She and private complainant came to an agreement whereby the latter will pay her the amount of P300,000.00 in installments. During the barangay hearing, private complainant was accompanied by her family but they never raised any complaint regarding the incident on February 14, 2001.

Because of the failure of private complainant to comply with her obligations, Accused Marieta Sotero filed a civil case against private complainant before the MCTC docketed as Civil Case No. 224. The case was eventually decided in her favor. The appeal filed by private complainant before the RTC was also dismissed. She alleged that the present case was only filed after the dismissal of the civil case against private complainant.

On presentation of rebuttal evidence, the prosecution presented Rimando Wakat who testified[14] that on February 14, 2001, he was a Barangay Kagawad at Barangay Kamog, Sablan, Benguet when he was called by his elder sister to go to the house of private complainant because something was happening in the said house. When he arrived at the house of private complainant, he saw clothes packed in bags and the gasul tank placed outside the house. He also saw Laura Ciano talking with four (4) men while Accused Marieta Sotero and Bolislis Pilay were inside the van. He was informed that the house of private complainant will be locked. He pleaded with the men not to nail the door of the house shut because the children of private complainant will not have a place to stay. Thereafter, the men refrained from nailing the door shut and then left the place.

The MCTC rendered its Decision dated May 21, 2010, the dispositive portion of which reads as follows:

x x x

"WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crime of Qualified Trespass to Dwelling as provided for under Article 280 of the Revised Penal Code, MARIETA SOTERO y OSIAS and JOSEPH TONGTONGDAN y MANUEL are hereby found GUILTY thereof. There being no mitigating or aggravating circumstance in this case and applying the Indeterminate Sentence Law, they are hereby imposed the penalty of imprisonment of 6 months of Arresto Mayor as minimum to 4 years, 9 months and 10 days of Prision Correccional as maximum. They are also directed to each pay a fine of P1,000.00.

"Accused are also liable to pay jointly and severally the amount of Php50,000.00 as moral damages and Php50,000.00 as exemplary damages.

"SO ORDERED."

x x x

Answering the question whether there was entrance into the dwelling of private complainant, the MCTC ruled that:

x x x

"Clearly from the testimony of the prosecution witnesses, there was an entry into the house of private complainant. This entry into the house was by means of intimidation because they threatened the children that they will be imprisoned because of the non-payment of the loan of their mother to accused Marieta Sotero. There was even violence because accused Joseph Tongtongdan pulled on the hair of Ribino Arbiso to prevent him from further inquiring from them their purpose in entering their house."

x x x

Dismissing the claim of accused that the testimonies of private complainant's children were impelled by malicious motive, the MCTC stated that motive is material only when the evidence is circumstantial or inconclusive, which was not so in this case.

As to Accused Marieta Sotero's denial that she ever entered private complainant's house, the MCTC ruled that there is evidence to show that the Accused Marieta Sotero conspired with Accused Joseph Tongtongdan and other men to commit the crime charged and were able to commit the said crime.

The MCTC also deemed private complainant to be entitled to damages, thus:

x x x

"Is private complainant entitled to damages? The Court deems it so. Because of the fear instilled upon the private complainant and the children of the latter that they may be imprisoned because of the non-payment of the loan of private complainant against accused Marieta Sotero, they had to keep their mouths shut and cower in fear, thereby setting aside their right to fight for themselves. It was only upon the advice of a lawyer that private complainant and her children were given the hope that they could still face their fear and be rid of their demons. For these threats, they have been morally chagrined and must be reasonably awarded. The Court thus deems it only proper that they be awarded moral damages in the amount of Php50,000.00.

"By way of corrective damages, accused are also directed to indemnify the private complainant the amount of Php50,000.00."

x x x

Accused Marieta Sotero and Joseph Tongtongdan filed their Notice of Appeal,[15] which was given due course by the MCTC.

B. BEFORE THE RTC

In the Accused's Appeal Brief filed before the RTC of La Trinidad, Benguet, Branch 62, the accused made fifteen (15) assignments of error, to wit:

- 1) The lower court erred in not seeing doubt in the alleged commission of the crime from the private complainant's act of filing the instant case only after five (5) years and nine (9) months from its alleged commission;
- 2) The lower court erred in not seeing doubt in the alleged commission of the crime from the private complainant's act of not reporting the same to the police or the barangay immediately after her arrival from

Taiwan;

3) The lower court erred in not seeing doubt in the alleged commission of the crime from the private complainant's act of meeting the accused one month after its alleged commission, at the barangay hall to settle her debt to the latter;

4) The lower court erred in not seeing doubt in the alleged commission of the crime from private complainant's act of not complaining about the same to the barangay officials during the barangay meeting with the accused Sotero on March 14, 2001, if her claim of trespass to dwelling after five (5) years and nine (9) months later is true;

5) The lower court erred in not seeing doubt in the alleged commission of the crime from private complainant's act of even partially paying the barangay compromise settlement of her debt to accused Sotero in the amount of US\$2,100 through accused Tongtongdan on March 22, 2002, just barely a month after its alleged commission and a week after the settlement meeting at the barangay hall;

6) The lower court erred in failing to recognize the one motive of private complainant in filing the instant case is because of her failure to fully pay her debt to the accused Sotero;

7) The lower court erred in not seeing the other motive of the private complainant in filing the instant case, which is merely to get even at the accused after losing in the Civil Case No. 224 where she was ordered to pay P300,000.00 to Accused Sotero;

8) The lower court erred in not seeing doubt in the act of the son-witness of the private complainant admitting that he only testified in court because it was so advised by his mother-private complainant;

9) The lower court erred in not seeing doubt in the alleged commission of the crime from the act by private complainant's son, Ribino Arbiso, of not also reporting the same to the barangay or the police when it allegedly occurred and only executed his affidavit about it after more than five (5) years;

10) The lower court erred in not seeing doubt in the alleged commission of the crime from the act of private complainant's daughter, Arlyn Arbiso, of not also reporting the matter to the barangay or the police when it allegedly occurred and executed her affidavit only after more than five (5) years;

11) The lower court erred that the testimonies of the third-party witnesses, barangay officials Laura Ciano and Rimando Wakat were reliable evidence to convict the accused without the other testimonies of the private complainant's children which are filled with suspect of falsehood;

12) The lower court erred in not seeing doubt in the alleged commission of the crime from the act of accused Sotero of calling for the barangay captain during the incident;

13) The lower court erred in not seeing doubt in the alleged commission of the crime from the act by the barangay officials, Laura Ciano and Rimando Wakat of not having the incident be addressed by the barangay court or even just recorded in their blotter, if it were true;

14) The lower court erred in not applying the basic rule in criminal cases that a simple doubt in the prosecution's story is a ground for conviction; and

15) The lower court erred in declaring that there was conspiracy between the accused.

The RTC did not find merit in the appeal. It agreed with the findings of fact of the MCTC and concluded that:

x x x

“The court assiduously examined the record of the case in the light of the foregoing assignments of error made by the appellants but found no sufficient reason or justification to amend the decision appealed from, much less

to reverse the same.”

x x x

The accused filed their Motion for Reconsideration[16] thereto, which was denied by the RTC through its assailed Order dated June 13, 2011. Only Accused Marieta Sotero filed this present petition.

THE ISSUES BEFORE US

Accused Marieta Sotero, as Our Petitioner, raised the following issues, to wit:

I

WHETHER OR NOT THE PETITIONER WAS PROPERLY INFORMED OF THE NATURE AND THE CAUSE OF THE ACCUSATION AGAINST HER;

II

WHETHER OR NOT THE LOWER COURTS ERRED IN CONVICTING THE PETITIONER OF THE CRIME OF QUALIFIED TRESPASS TO DWELLING CONSIDERING THAT THERE WAS NO EVIDENCE PRESENTED THAT SHE ACTUALLY ENTERED THE HOUSE OF THE PRIVATE COMPLAINANT;

III

WHETHER OR NOT THE LOWER COURTS ERRED IN FINDING THAT THERE WAS CONSPIRACY BETWEEN THE PETITIONER AND ACCUSED JOSEPH TONGTONGDAN;

IV

WHETHER OR NOT THE LOWER COURTS ERRED IN NOT FINDING THAT THE PRIVATE COMPLAINANT WAS JUST MOTIVATED TO FILE A CRIMINAL COMPLAINT FOR QUALIFIED TRESPASS TO DWELLING AFTER SHE LOST IN THE COLLECTION OF SUM OF MONEY CASE THAT WAS FILED BY THE PETITIONER AGAINST HER;

V

WHETHER OR NOT THE LOWER COURTS ERRED IN FINDING THAT THE GUILT OF THE PETITIONER WAS PROVED BEYOND REASONABLE DOUBT.

Petitioner alleged that when she was arraigned on August 22, 2007, the Information read to her alleged February 14, 2000 as the date of the commission of the offense. During the pre-trial, the parties stipulated on February 14, 2000 as the date of the commission of the offense. However, on February 14, 2008, the trial prosecutor moved for the amendment of the commission of the offense from 2000 to 2001. It was granted by the MCTC, but the accused was not arraigned under the Amended Information. Petitioner now alleges that she was deprived of her constitutionally enshrined right to be informed of the nature and the cause of the accusation against her.

The Office of the Solicitor General (OSG), on behalf of the People of the Philippines, countered that it was the first time that this matter was raised, despite the fifteen (15) assignments of error that accused made in her appeal with the RTC. The OSG further alleged that even the counsel for petitioner, Atty. Ramon Bayan, believed that there was no violation of the constitutional right of his client because he did not object, much less make any comment, as to the amendment of the date in the subject Information in the stipulation of facts, and in the Pre-trial Order after the arraignment of petitioner. Petitioner also perfectly knew the date of the subject incident as evident from her testimony during the trial.

With respect to whether or not the elements of the crime of qualified trespass to dwelling were duly proven, petitioner maintained that the prosecution failed to prove that she entered the house of the private complainant.

The OSG, on the other hand, argued that the fact that four (4) male persons entered the house of the Arbiso family upon the orders of petitioner is evident from the testimony of Ribino Arbiso.

The OSG also alleged that petitioner assigning as one of the errors the fact of partial payment made by private complainant to petitioner, through Joseph Tongtongdan, impliedly admitted the authority she had given to her co-accused to enter the house of Agnes Arbiso and to intimidate her children so as to be able to get their house as payment of her debt to petitioner.

OUR RULING

Accused Marieta Sotero was not
deprived of her constitutional rights
when she was not re-arraigned
under the Amended Information.

When the Information was filed, the date of the commission of the offense was erroneously indicated as February 14, 2000, instead of the actual date of February 14, 2001. No one noticed the error until the time that the prosecution was about to present its evidence that the public prosecutor moved for the amendment of the date in the Information to reflect the true date, without any objection from the defense.

The pertinent provision is Section 14, Rule 110 of the Rules of Court, which states that:

x x x

"Section 14. Amendment or substitution. -- A complaint or information maybe amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

x x x"

x x x

Where the amendment is only as to form, there is no need for another preliminary investigation and the retaking of the plea of the accused.[17]

In a case,[18] it was held that an amendment sought by the prosecution merely to state the true and actual year of commission of the offense charged on March 2, 1964 rather than March 2, 1965 as inadvertently alleged through oversight in the information is a matter of form which does not prejudice or impair the rights of the accused.

Similarly in this case, the amendment of the date of commission of the offense from February 14, 2000 to February 14, 2001 to reflect the correct date is merely a matter of form which did not prejudice or impair the rights of the accused. Counsel for the accused did not object to the amendment, viz.:

x x x

"Pros. Binayan : With the indulgence of this representative, Your Honor, we discovered that there is an error in the dates alleged by the complainant as to when the incident happened.

Court : On February 14, 2000, it's the anniversary today, 8 years.

Pros. Binayan : It should have been February 14, 2001, Your Honor. We are praying for the amendment of the information.

Court : Any comment?

Atty. Bayan : We have no objection, Your Honor.

Court : Alright, amend the date in the information without objection despite the arraignment of both accused."[19] (emphasis supplied)

x x x

The case cited by the petitioner[20] is not all fours with this case as it involved a change of date from 1964 to 1969, which disparity of time is so great as to defy approximation in the commission of one and the same offense. Whereas in this case, not only was the change in date only a matter of one year, the accused, through counsel, did not object to such amendment.

The test of whether the rights of an accused are prejudiced by the amendment of a complaint or information is whether a defense under the complaint or information, as it originally stood, would no longer be available after the amendment is made; and when any evidence the accused might have would be inapplicable to the complaint or information.[21]

All throughout the testimony of the petitioner, she considered February 14, 2001 as the date of the incident that is the subject matter of this case. There was absolutely no prejudice nor impairment of rights of the petitioner as her defenses remained the same before and after the amendment. Furthermore, the exact date of commission is not an essential element of the offense of trespass. It is sufficient that the Complaint or Information states that the crime has been committed at any time as near as possible to the date of its actual commission.[22]

The prosecution established the elements of the crime of qualified trespass to dwelling beyond reasonable doubt.

The crime of qualified trespass to dwelling is punishable under Article 280 of the Revised Penal Code, which provides:

x x x

"Article 280. Qualified trespass to dwelling.—Any private person who shall enter the dwelling of another against the latter's will, shall be punished by arresto mayor and a fine not exceeding 1,000 pesos.

"If the offense be committed by means of violence or intimidation, the penalty shall be prision correccional in its medium and maximum periods and a fine not exceeding 1,000 pesos.

"The provisions of this article shall not be applicable to any person who shall enter another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or a third person, nor shall it be applicable to any person who shall enter a dwelling for the purpose of rendering some service to humanity or justice, nor to anyone who shall enter cafes, taverns, inns, and other public houses, while the same are open."

x x x

The elements of trespass to dwelling are: (1) the offender is a private person; (2) that he enters the dwelling of another; and (3) such entrance is against the latter's will. A greater penalty is imposed if the offense is committed through violence or intimidation.

The fact that both the accused are private persons were undisputed. As to whether petitioner entered the dwelling of private complainant, she maintained that the prosecution witnesses were one in claiming that she did not enter the said dwelling, quoting their respective testimonies, viz.:

Testimony of Arlyn Arbiso

x x x

"Pros. Binayan

Q : Before we go to that Madam Witness, what did Ribino Arbiso do while they were searching your house?

A : He was talking to Marieta, sir.

Q : And where was Marieta when they were talking?

A : Outside, sir."

x x x

Testimony of Ribino Arbiso

x x x

"Pros. Binayan

Q : What happened next?

A : We went outside and I saw Marieta Sotero, Bolislis and other several men."

x x x

Testimony of Laura Ciano

x x x

"Atty. Bayan

Q : When you also arrived at the house, you initially did not see Marieta Sotero, am I correct?

A : Yes, sir.

Q : Actually, you only asked somebody to call for her when you were already at that place?

A : Yes, sir.

Q : So you agree with me, Madam Witness, that you never saw Marieta Sotero inside the house?

A : No, sir."

x x x

Testimony of Rimando Wakat

x x x

"Atty. Bayan

Q : And when you also arrived there you mentioned that the accused Marieta Sotero was inside the van, am I correct?

A : Yes, sir.

Q : And you agree with me that you never saw her inside the house of Agnes Arbiso?

A : Yes, sir."

x x x

While We agree that there was no testimony that petitioner ever stepped foot inside the house of private complainant, the Information alleged that she was in conspiracy with her co-accused Joseph Tongtongdan and the John Does who actually entered the house of private complainant with violence and intimidation.

We find sufficient evidence to establish that Joseph Tongtongdan and the other men entered the dwelling of private complainant, as clear from the testimony of Ribino Arbiso, to wit:

x x x

"Pros. Binayan

Q : Now, we will go to the incident that happened on February 14, 2001, Mr. Witness. Do you recall where you were at that time at around 11:30 o'clock on that day?

Ribino Arbiso

A : I was inside the house at the second floor together with my sisters Arlyn and Evelyn.

Q : This house that you are referring to is the same house located at Kamog, Sablan, Benguet?

A : Yes, sir.

Q : And while you were there what happened?

A : While I was inside our house I saw through the window an old model brown van park (sic) in front of our house.

Q : What did you do?

A : We went down to the first floor to ask the purpose of the person but to my surprise they pushed and barged the door (sic) of our house.

Q : Who were your companions who went down to the first floor?

A : My 2 sisters, sir.

Q : Who went first?

A : Me, sir.

Q : And did these persons enter the house?

A : They entered and they ordered that, 'Get your things and leave your house because we will close your house'.[23]" (emphasis supplied)

x x x

“Pros. Binayan

Q : And when they ordered you to get your things what did you do?

Ribino Arbiso

A : I asked them, "Why are you ordering us to get our things?", and the one man pulled my hair, like this, sir.

Ms. Annie S. Dulay:

Witness is holding his hair behind the right ear as if pulling on the hair.

Pros. Binayan

Q : Okay, when your hair was pulled what did you feel?

A : I was hurt and then the man said why you are (sic) boastful? Who are you (ikarkarit) bragging?

Q : What happened next?

A : And then the one man said that, "we are here because your mother had not paid her debt to our boss Marieta Sotero.

Q : Do you recognize this person who said that?

A : Yes, sir.

Q : And who is he?

A : I do not know, sir.

Q : How about the person who pulled your hair do you recognize him?

A : Yes, sir.

Q : Who is he?

A : Joseph Tongtongdan, sir.

Q : What happened next?

A : We went outside and I saw Marieta Sotero, Bolislis and other several men.

Q : Why did you get out from the house?

A : To see the others outside, sir.

Q : When you saw Ms. Marieta Sotero what did you do?

A : She told me that they will close our house because my mother had not been paying her debt, sir, and she said that, "you file a case against me if you can." [24]

x x x

The testimonies of the other prosecution witnesses supported the testimony of Ribino Arbiso, and showed that Joseph Tongtongdan and the other men acted under the orders of petitioner, to wit:

x x x

“Pros. Binayan

Q : At that time, did you see Marieta Sotero? Laura Ciano

A : None sir but they told me that she was there, sir.

Q : What happened next when they told you that she was there?

A : I called for her and they called her, sir.

Q : From where did they call her?

A : They called her in the van maybe because I did not see where they came from, sir.

Q : That was the first time that you saw her during that day?

A : Yes, on that day only sir.

Q : Upon seeing her, what did you do?

A : I scolded her, sir.

Q : What did you tell her?

A : The reason why I scolded her is that because I saw the children crying, sir.

Q : What did you tell her?

A : I told her that why are you doing this?

Q : And what was her reply, if any?

A : Yes, I am going to get this house. I am going to close it.

Q : What else did she tell you?

A : She said that this is my house already, sir.

Q : And what did you do?

A : Do not do that because why are you going to close it, their mother is not here.

Q : What happened next?

A : When I scolded her, she did not continue to close the door, sir.

Q : What door are you referring to?

A : Main door, sir."[25]

x x x

Pros. Binayan

Q : Upon arriving what did you do?

Rimando Wakat

A : When I arrived they said that they will nail the door so they will lock it but I said: "No do not nail that because the children are pitiful they have no place to stay."

Q : Who said that they will nail the door?

A : The men said that they will lock it.

Q : Do you know why were they planning to nail the door?

A : I do not know, sir, but when I said to them that they will not nail the door because the children have no place to stay, they left.

Q : When you arrived Mr. Witness, do you know what they were looking for?

A : When I arrived there because they said that something happened in that house so I just went there and I saw that they were looking for nail to use to lock the door.

Q : Why were they looking for a nail?

A : They will lock the door but they did not see any nail."[26]

x x x

As found by the MCTC and sustained by the RTC:

x x x

"Accused Marieta Sotero however avers that she cannot be charged of the crime of charged (sic) against them because she never entered the house of private complainant. However, there is evidence to show that accused conspired to commit the crime charged and were able to commit the said crime. x x x

"In this present case, it must be noted that accused Joseph Tongtongdan admitted during his testimony that he was an agent of accused Marieta Sotero. It must also be noted that the reason for the presence of accused Joseph Tongtongdan and several men inside the house of private complainant was to enforce the loan of private complainant against accused Marieta Sotero. This was the purpose they revealed to Robino Arbiso when he asked what was their purpose in entering the house and demanding that the same be locked. Were it not for this loan of private complainant, then accused Joseph Tongtongdan would have no purpose of being in

the house.

"Worthy of note again is the exchange of conversation between accused Marieta Sotero and Laura Ciano who informed the latter that she was locking the house of private complainant because it already belonged to her as it will be the payment for the loan of the private complainant against her.

"Clearly, there was conspiracy between accused Marieta Sotero and accused Joseph Tongtongdan as well as the other men to enter the house of private complainant and force the children to vacate the same as it will be locked because of the non-payment by their mother of the loan to accused Marieta Sotero.

"Thus, even if accused Marieta Sotero did not enter the house, considering that there was conspiracy among them, she is still answerable as co-principal in this present case. x x x"

x x x

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. To determine conspiracy, there must be a common design to commit a felony.[27]

In this case, the common design of the accused was to enter the dwelling of the private complainant and lock the same as petitioner intended the house to be made payment for private complainant's unpaid debt to her. This was clear from her conversation with Laura Ciano, as well as the actuations of Joseph Tongtongdan and the other men in looking for a nail to shut the door of the house. It was also clear from the testimony of both the accused that it was Marieta Sotero who was calling the shots because it was to her that Laura Ciano pleaded to spare the house of the private complainant because the children would have no place to stay and their mother is not around. And it was after Marieta Sotero relented that the group left the house of the private complainant.

x x x

"Atty. Bayan

Q : When you realized that Agnes Arbiso was not there as mentioned to you by her son, what happened next?

Marieta Sotero

A : After a minute, one member of the Punong Barangay in that place named Laura Ciano came to talk to us together with Ribino Arbiso.

Q : And what happened when Laura Ciano came to talk to you?

A : She said that you have to give consideration for these children because they do not know about that and you have to wait for their mother to arrive first.”[28]

x x x

“Pros. Binayan

Q : Now, Mr. Witness, do you know the barangay official Laura Valles Ciano?

Joseph Tongtongdan

A : I do not know her personally but I came to know that she is there after we arrived.

Q : Yes, in fact, she was the one who talked to you and Marieta Sotero, isn't it?

A : Yes, sir.

Q : And she was pleading to you to leave the children alone and wait before Agnes Arbiso will arrive from abroad, isn't it?

A : Pardon, sir?

Q : She was pleading to you Mr. witness that you leave alone the children of Agnes Arbiso and leave that place. She advised you and Marieta Sotero to wait for Agnes Arbiso to arrive because she was then at that time abroad, isn't it?

A : Not to me, sir but to Marieta Sotero.

Q : Yes, and while she was pleading you were there and you heard that she was saying, isn't it?

A : Yes, sir."[29]

x x x

To establish the existence of conspiracy, direct proof is not essential. Conspiracy may be inferred from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[30] The series of overt acts as recounted by the prosecution witnesses show that petitioner and the other accused were in concert and shared a common interest to enter the dwelling of the private complainant and close it.

Petitioner wants Us to believe that her act of looking for a barangay official after the men entered private complainant's dwelling but before the barangay official confronted her showed that she did not ratify the act of her co-accused. This claim is however unsupported as there was no testimony that she manifested her objection to the acts of Joseph Tongtongan and the other men, and quite the contrary, all the testimonies tend to show her intent to have the house closed down.

Petitioner failed to sufficiently establish ill-motive on the part of the prosecution witnesses in testifying against her.

Petitioner tries to paint a picture of a vengeful debtor who fabricated charges against her to get back at her for losing in the civil case filed against her. Petitioner takes issue with the delay of five years from the date of the alleged incident to the filing of the criminal case against her as indicative of the untruthfulness of the private complainant's accusations.

Private complainant ascribed the delay to the lack of knowledge of her rights, as well as her fear that petitioner will push through with her threats against her and her children. On the other hand, petitioner argued that private complainant's act of going to the barangay hall to attend to the case filed against her by the petitioner accompanied only by a barangay kagawad proved that the private complainant is not really afraid of her.

We find the explanation of private complainant and her children as to the delay of their reporting of the said incident to the authorities, to wit:

x x x

“Pros. Binayan

Q : May I know why did it take you five years before you made a statement in relation to this case? Arlyn Arbiso

A : Because of what happened, we were always afraid and we lose the will to report this incident, sir.

Q : Now, you said that you were afraid. Afraid of what?

A : We were afraid because Marieta Sotero is an influential person, sir and our mother is indebted to her.

Q : Yes and you are afraid of what? Being Killed or what?

A : Yes, being killed or incarcerated because Marieta Sotero is influential, sir.

Q : Why are you afraid of being killed or incarcerated?

A : Sir, because of the debt.”[31]

x x x

“Pros. Binayan

Q : Madam Witness, this Barangay Case that was heard on March 14, 2001 is regarding your debt with Marieta Sotero, isn't it?

Agnes Arbiso

A : Yes sir regarding my loan.

Q : During that time during the Barangay conciliation proceedings do you know if you have also the right to file a case against Marieta Sotero?

A : Not yet, sir.

Q : Now, who told you that you have a right to file a case against Marieta Sotero involving the incident that happened on February 14, 2001?

A : My friend Jocelyn Wacnang, sir.

Q : And who further confirmed to you that you have really the right to file a case after Jocelyn Wacnang?

A : I went to inquire from a lawyer.

Q : And is that Atty. Balajadia?

A : Yes sir.

Q : When was that?

A : I cannot recall the month, sir.

Q : How about the year? Try to remember the year Madam Witness when you were informed that you can file a case regarding the incident that happened on February 14, 2001?

A : I am not sure if it was 2006 or 2005, sir.”[32]

X X X

Deference or reluctance in reporting a crime does not destroy the truth of the charge nor is it an indication of deceit. Delay in reporting a crime or an unusual incident in a rural area is well-known.[33] It is common for a witness to prefer momentary silence for fear of reprisal from the accused.[34]

Furthermore, petitioner failed to show any ill-motive from the prosecution witnesses Laura Ciano and Rimando Wakat in testifying against her and her co-accused. As the RTC declared:

X X X

"The court cannot entertain the suggestion implicit in the assignment of errors made by the accused-appellants in their appeal brief that the witness were just fabricating the incident they testified to. They were quite specific and positive on the events that transpired - the intrusion by accused Joseph Tongtongdan and his male cohorts in to the house of the Arbiso's, their demand of the Arbiso siblings to get their belongings and leave the house, the pulling of the hair of Ribino by one of the men, their threat to padlock the house because of the unpaid debt of Agnes Arbiso, the arrival of the neighbors, among them Laura Ciano and some barangay kagawads, etc. were all affirmed and confirmed by Arlyn and Ribino. Thereby, like the trial court, this court is unable to entertain doubt that the charge of trespassing actually happened."

X X X

As the MCTC observed:

X X X

"In this present case, the testimonies of the private complainant's children are positive to show that accused Joseph Tongtongdan, thru the instructions of accused Marieta Sotero, entered the house of private complainant to drive them away therefrom because it will serve as the payment for the loan of private complainant to accused Marieta Sotero. Their (sic) testimonies are suspect because it was allegedly made only upon the coercion of private complainant after the Court already rules against her in the civil case cannot be considered by the Court especially after the evidence to show that accused intimidated them by introducing themselves as members of the NBI, Ombudsman and even the CPLA and threatened the children with imprisonment for the non-payment of the loan by their mother.

"Even if these testimonies were to be expunged, there are still testimonies of the other witnesses, Laura Ciano and Rimando Wakat, who testified that they saw the children of private complainant outside their house with (sic) holding their clothes and several other household items brought outside. When asked from accused Marieta Sotero, Laura Ciano was informed by accused personally that she will get the house of private complainant and close the same as it was already her house. It was also learned by Rimando Wakat that the house of private complainant will be locked. It was only upon their pleadings that accused did not proceed with their plan to lock the house."

X X X

It is well-settled that factual findings of the trial court regarding the credibility of witnesses are accorded great weight and utmost respect given that trial courts have firsthand observation of the witnesses' demeanor while testifying in court. The trial judge is in the best position to determine the issue of credibility of witnesses.[35]

WHEREFORE, premises considered, the petition is DISMISSED. The Decision dated January 14, 2011 and the Order dated June 13, 2011, both issued by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Criminal Case No. 10-CR-8072 are AFFIRMED.

SO ORDERED.

Salazar-Fernando, R.A., Chairperson, and Gonzales-Sison, M., JJ., concur.

[1] Rollo, pp. 62-76.

[2] Id., p. 77.

[3] Id., p. 78.

[4] Pre-Trial Order dated November 21, 2007, at Rollo, pp. 116-119.

[5] As corrected from 2000.

[6] See note 4.

[7] Who testified on February 14, 2008.

[8] Who testified on March 6, 2008.

[9] Who testified on April 10, 2008.

[10] Who testified on August 7, 2008.

[11] TSN dated August 21, 2008, pp.2-4.

[12] On October 23, 2008.

[13] On February 5, 2009.

[14] On March 26, 2009.

[15] Rollo, p. 94.

[16] Id., pp. 106-115.

[17] Ssgt. Pacoy v. Cajigal, G.R. No. 157472, September 28, 2007, citing Teehankee v. Madayag, G.R. No. 103102, March 6, 1992.

[18] People v. Rivera, G.R. No. L-27825, June 30, 1970.

[19] TSN dated February 14, 2008, p. 2, at Rollo, p. 121.

[20] People of the Philippines v. Hon. Alfredo C. Reyes, et al., 108 SCRA 203, October 23, 1981.

[21] Ssgt. Pacoy v. Cajigal, supra., citing Poblete v. Sandoval, G.R. No. 150610, March 25, 2004, 426 SCRA 346, 356 citing People v. Montenegro, No. L-45772, March 25, 1988, 159 SCRA 236, 241.

[22] Marzalado, Jr. v. People, G.R. No. 152997, November 10, 2004, citing People v. Mauro, G.R. Nos. 140786-88, March 14, 2003.

[23] TSN dated August 7, 2008, pp. 5-6.

[24] Id., pp. 6-7.

[25] TSN dated April 10, 2008, pp. 8-9.

[26] TSN dated March 26, 2009, p. 6.

[27] *Rivera v. People*, G.R. No. 156577, 156587 & 156749, December 3, 2014, citing *People v. Morilla*, G.R. No. 189833, February 5, 2014.

[28] TSN dated February 5, 2009, p. 6.

[29] TSN dated October 23, 2008, p. 23.

[30] *People v. Gandawali y Gapas*, G.R. No. 193385, December 1, 2014, citing *People v. Alpapara*, G.R. No. 180421, October 30, 2009.

[31] TSN dated March 6, 2008, pp. 23-24..

[32] TSN dated February 18, 2008, pp. 26-27.

[33] *People v. Cabtalan*, G.R. No. 175980, February 15, 2012, citing *Gorope v. People*, 466 Phil. 206, 215 (2004).

[34] *Id.*

[35] *People v. Amora y Viscarra*, G.R. No. 190322, November 26, 2014.

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