

BENJAMIN DAVID, PETITIONER-APPELLANT, VS. PASCUAL MIRANDA, ET AL., RESPONDENTS-APPELLEES.

G.R. No. L-6215. September 28, 1954

Ponente: JUGO, J.

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JUGO, J.:

The petitioner-appellant, Benjamin David, was charged in the Justice of Peace Court of Bacolor, Pampanga, in Criminal Case No.99 of said court with the crime of unchaste abuses. He was also charged with the crime of trespass to the dwelling, in criminal Case No.100 of the same court. These two complaints read as follows:

Criminal Case No. 99

"The undersigned, on oath, accuses, Benjamin David of the crime of Act of Lasciviousness, committed as follows:

"That on or about the early hours of the 18th day of July, 1952, in the Municipality of Bacolor, Province of Pampanga, and within the jurisdiction of this Court, the said accused, did then and there wilfully, unlawfully and feloniously commit acts of lasciviousness upon the person of Agustina Tolentino-Miranda, complaining witness herein, by then and there embracing and kissing her, touching her breast and private parts, against the latter's will and by means of force and intimidation.

"That the commission of the crime is aggravated by the circumstance that it was committed in the dwelling of said Agustina Tolentino-Miranda and without the provocation of the latter."

Criminal Case No.100

"The undersigned, on oath accuses Benjamin David of the crime Trespass to Dwelling, committed as follows:

"That on our about the early hours of the 18th day of July, 1952, in the Municipality of Bacolor, Province of Pampanga, the saed accused, being a private person and without justifiable cause entered the dwelling of another, to wit: the house of Pascual Miranda, against the latter's will."

Inasmuch as the two alleged crimes were committed on the same occasion, the defendant filed a motion to quash with the justice of the peace court on the ground that they constitute only one complex crime of unchaste abuses by means on trespass to a dwelling. The court denied the motion.

The defendant filed with the Court of First Instance of Pampanga a petition for a writ of certiorari, alleging that the Justice of Peace abused his discretion in denying the certiorari on the ground that the two crimes of unchaste abuses and trespass to the dwelling were two separete and independent crimes, and di not constitute a complex one. From said decision the defendant has appealed to this court.

The Court of First Instance of Pampanga should have dismissed the petition for certiorari on the ground that the proper remedy was appeal in due time.

It is not necessary for us to consider the questions raised by certiorari, for the proper remedy of the defendant is to

appeal.

IN VIEW OF THE FOREGOING, we affirm the decision of the Court of First Instance of Pampanga dismissing the petition for certiorari, without prejudice to the right of the defendant to appeal in due time, without pronouncement as to costs.

OS ORDERED.

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

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