

**FILEMON PEREZ, PETITIONER, VS. COURT OF APPEALS, ET AL.,
RESPONDENTS.***G. R. No. L-13719. March 31, 1965*

Ponente: REGALA, J.

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FILEMON PEREZ, PETITIONER, VS. COURT OF APPEALS, ET AL., RESPONDENTS. body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } st1:*(behavior:url(#ieooui) }

Originally, a complaint for slight physical injuries against the petitioner Filemon Perez was filed in the Municipal Court of Cebu City and the accused, having been found guilty, was thereby sentenced to ten days of arresto menor. The case was appealed to the Court of First Instance of that province, which court, considering the aggravating circumstance of treachery to be attendant to the crime, had raised the penalty to twenty one days of arresto menor plus indemnification in the sum of P25.00 for actual or compensatory damages, and P500 for moral and exemplary damages, with subsidiary imprisonment in case of insolvency not to exceed 1/3 of the principal penalty, plus costs. Upon further appeal to the Court of Appeals, that court affirmed the Court of First Instance decision in all aspects except for the moral and exemplary damages which it reduced to P100.

Finally, the accused, still unsatisfied, has brought his case here by a petition for certiorari to review the latter decision.

As found by the Court of Appeals, the evidence adduced by the parties show—

For the prosecution, "That at about 5:30 in the morning of January 15, 1949, complainant Isidro Macasero went to appellant's house to get his two mirrors which were deposited therein for safekeeping. He knocked at the door and when appellant opened it he greeted said appellant saying, 'Good Morning, Manoy Imon.' In answer to his greetings, appellant immediately struck him at the left eyebrow with a wooden rod. When he turned his back and ran towards his house, appellant ran after him and struck him again at the back of the head. Upon being overtaken, appellant, with the help of his carpenter Luis, held him and tried to drag him back to said appellant's house but they were unable to do so because he held fast to the trunk of a fallen acacia tree. He was brought to the Southern Islands Hospital where he was treated five times and examined by Dr. Espina. He was found to be suffering from lacerated wounds about one half inch long at the left supra orbital and occipital regions; multiple contusions at the cheek, left shoulder, right and left lumbar region, at the back and left forearm; and abrasions at the left forearm and left leg. As a result Of said injuries his face became swollen, his body ached, his head suffered pains, and he was unable to earn his livelihood as a barber of from P5 to P6 a day for one month. Thereafter, he resorted to home treatment as he was embarrassed to be seen around with a swollen face."

For the defense, "that about 4:30 in the morning of January 15, 1949, complainant went to appellant's house to

get his two mirrors. He forcibly opened the door by pushing- and kicking- it. Upon seeing appellant's wife downstairs complainant rushed at her and tried to choke her. She shouted to appellant who was sleeping' He woke up, rushed downstairs, and shouted at complainant asking the latter what he was doing to her. As complainant would not release her, appellant hit him with a rod at the back about the waist. It was only after appellant hit him again at the back of the head that complainant released her, whereupon said complainant faced and boxed appellant. It was then when said appellant hit complainant at the foot of the stairs. Thereupon, appellant caught and held complainant. Appellant told his wife to look for a policeman. Appellant then filed a complaint for trespass to dwelling against complainant but it was dismissed by the fiscal apparently for lack of merit."

The main issue that has been raised in the trial court as well as in the appeals court is one of credibility of the testimony of the opposing witnesses, which was settled by both courts in favor of the prosecution.

In giving credence to the evidence for the prosecution, the Court of Appeals took into account the personal circumstances of the parties as well as their relationship to each other the complainant being a barber, a younger cousin of the wife of the accused and also the encargado of the latter's properties in Cebu during the Japanese occupation. It has also been noted from the evidence that the accused, on the other hand, is intelligent, a-law graduate, a former secretary of ex-Senator Rodriguez, senate clerk and agent of the Bureau of Internal Revenue; that at the time of the incident he was chief of the treasury agents of the Department of Finance; that he seemed to have amassed considerable real estate properties; and that complainant looked upon him with respect.

Indeed, this Court, after going over the record, finds it difficult to believe the version of the accused. It is incredible that a person in complainant's position would forcibly gain entrance into the house of one whom he looks up to with respect and commit the acts imputed to him, unless he had been so seriously aggrieved. The evidence fails to show any such grievance that could have driven complainant to go beyond his bounds as a former employee and younger relative of the accused's wife. And if there truly was an assault upon the latter's wife, as he claims, it is quite strange why the said accused, who is supposed to know his law, did not file a criminal complaint for assault against the complainant.

Another reason for Us to disbelieve the version of the accused is his silence and indifference over the alleged actuations of the complainant that he had failed to account for some money entrusted to him and that also on certain occasions he went to the extent of knocking and kicking the door of the house of the accused, uttering bad words and hurling challenges at the latter's wife to the extent of threatening her with bodily harm. The failure of the accused to charge the complainant for these alleged acts militate against the veracity of his story.

We, therefore, agree with the Court of Appeals in its conclusion of fact "that appellant who has just fallen asleep and was awakened and annoyed by the constant knocking at the door at an early hour of the morning for such trivial matter as the mirrors and his patience having been exhausted what with similar incidents between his wife and complainant on previous occasions dealing with the same mirrors he lost control of himself and with a wooden rod struck complainant without much ado upon seeing him when he opened the door. And not contented, he ran after complainant and again struck him at the back of the head.

However, We disagree with the conclusion that the aggravating circumstance of treachery was attendant in the commission of the crime. Although the attack was sudden and unexpected, the fact that the accused had just been aroused from his sleep when he attacked the victim shows that he did not plan nor make any preparation to hurt the latter in such a manner as to insure the commission of the crime or to make it impossible or hard for him (the victim) to defend himself or retaliate. (See *People vs. Namit*, 38 Phil. 926.) It has been held that mere suddenness of an attack is not enough to constitute treachery when the mode adopted does not positively tend to prove that the assailant thereby knowingly intended to insure the accomplishment of his defense. (*People v. Delgado, et al.*, 77

Phil. 11) In the complaint seems to have been at the spur of the moment when the said accused was awakened by the complainant's constant knocking; at the door of his house at a very early hour.

With respect to the damages awarded, Article 2219(1) of the Civil Code provides that moral damages may be recovered in "a criminal offense resulting in physical injuries". On the other hand, Article 2230 of the same Code states that "In criminal offenses, exemplary damages as part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. x x x." Considering, as our findings show, that where there was no treachery nor any other aggravating circumstance in the commission of the crime, the accused should not be made to pay for both moral and exemplary damages, but only for moral damages, aside, of course, from the actual damages involved.

WHEREFORE, the decision appealed from is hereby modified in the sense that the penalty is reduced to eleven (11) days of arresto menor and that the accused shall pay P50 as moral damages. In all other respects, the decision is affirmed. Costs against the appellant.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Makalintal, Bengzon J.P. and Zaldivar JJ., concur.

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