

SALVADOR MARZALADO, JR., PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 152997. November 10, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails the Decision[1] dated November 9, 2001 of the Court of Appeals, in CA-G.R. CR No. 22645, which affirmed the Decision[2] dated November 5, 1998 of the Regional Trial Court (RTC) of Quezon City, Branch 79, in Criminal Case No. Q-98-74695. The RTC upheld the Metropolitan Trial Court (MeTC) of Quezon City, Branch 35, convicting herein petitioner Salvador Marzalado, Jr., for violation of Article 280[3] of the Revised Penal Code on Qualified Trespass to Dwelling, and sentencing him to suffer the penalty of two (2) months and one (1) day of arresto mayor and to pay a fine of P500 and to pay the costs.[4] This petition likewise assails the Resolution[5] dated April 23, 2002, of the Court of Appeals, denying the petitioner's Motion for Reconsideration.

The antecedent facts are as follows:

Cristina N. Albano was the lessee of a unit in the house owned by Luz Marzalado, the mother of herein petitioner, Salvador Marzalado, Jr. Sometime in February 1993, Luz Marzalado filed an ejectment case against Albano. Judgment was rendered against Albano, who was ordered to vacate the leased premises and to pay the unpaid rentals. Albano appealed to the RTC.

In September 1993, during the pendency of the appeal, the electricity supply of the unit was cut off due to non-payment of bills. As a result, Albano transferred her children to her father's house, four houses away, leaving a maid to sleep in the unit.

Albano claims that on November 2, 1993, at around 1:00 p.m., she went to her unit. She noticed that the lead pipe she used to hang clothes to dry was missing. When she returned at about 8:00 a.m. the following day, November 3, 1993, she discovered the padlock of the main door changed, preventing her from entering the premises. She went to see petitioner but he was not around.

On November 4, 1993, Albano again returned to her unit. She peeked through the window jalousies and saw that the place was already empty. She immediately reported the matter to the barangay officials, who in turn, advised her to go to the police. Thereafter, she filed a complaint for grave coercion, qualified trespass to dwelling and theft against petitioner.

On November 14, 1993, Albano tried to see the accused, but again failed. This time she noticed that the roofing of her unit had been removed and the main door locked from the inside. She was informed that on November 1, 1993, Marzalado, Jr., and his female companion took her lead pipe and on November 2, 1993, Marzalado, Jr., took her personal belongings and brought them inside his house.

Accordingly, Albano filed a suit for trespass to dwelling with the MeTC of Quezon City against Marzalado, Jr.,

thus:

The undersigned accuses SALVADOR MAR[Z]ALADO, JR., of the crime of Trespass to Dwelling, committed as follows:

That on or about the 2[nd] day of November, 1993, in Quezon City, Philippines, the above-named accused without any justifiable cause, did then and there, wilfully, unlawfully and feloniously enter the dwelling place of CRISTINA N. ALBANO located at No. 241 Road 1, Pag-Asa, this City, against the latter's will and without her consent or any members of the household, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.

Quezon City, Philippines, March 16, 1994.[6]

On May 12, 1994, the accused was arraigned and pleaded not guilty to the charge. A summary hearing followed, with Albano and her witness, Narciso Raniedo, testifying for the prosecution.

Raniedo, the owner of the house fronting Albano's unit, testified that at around 5:00 p.m., on November 1, 1993, he was about to enter his house, when he glanced at the unit leased by Albano. He saw Marzalado, Jr., take a lead pipe and hand it to a woman waiting at the terrace of Marzalado, Jr.'s house. Raniedo further said that on November 2, 1993, sometime between 4:30 p.m. and 5:00 p.m. he was relaxing in front of his house, when he heard noises coming from Albano's apartment. There he saw Marzalado, Jr., forcibly open the door of the unit, bring out the belongings of Albano, and take these to his own house.

For his defense, Marzalado, Jr., testified that after the MeTC ruled against Albano in the MeTC ejectment case filed by his mother and because of the disconnection of the electricity, Albano already vacated the leased unit and moved to her father's place. According to petitioner, on November 3, 1993, he was on his way home when he saw water in a continuous stream flowing out of Albano's unit. He then searched for Albano but to no avail. He reported the matter to the barangay officers and asked for two barangay tanods to accompany him to the vacated unit. They went inside the unit where they found an open faucet, with water flooding the floor. He accused Albano of deliberately leaving the faucet open. He claimed Albano filed the criminal case of trespass to dwelling to harass him and to retaliate against him and his family.

On October 28, 1997, the MeTC handed down the following judgment:

WHEREFORE, the Court finds accused Salvador Mar[z]alado, Jr. "GUILTY" beyond reasonable doubt of Qualified Trespass To Dwelling under Article 280 of the Revised Penal Code and he is hereby sentenced the penalty of TWO (2) MONTHS and ONE (1) DAY of Arresto Mayor and to pay a fine of P 500.00 and to pay the costs.

SO ORDERED.[7]

The trial court observed that the defense would have been "a good defense" had the alleged entry been made on November 2, 1993, the date stated in the Information, instead of November 3, 1993, the date the accused said he entered the premises because Albano deliberately left the faucet open.

Marzalado, Jr., appealed to the RTC, which ruled the matter in this wise:

WHEREFORE, finding no reversible error in the appealed decision dated October 28, 1997, the same is hereby affirmed in toto.

SO ORDERED.[8]

Undaunted, Marzalado, Jr., elevated the matter to the Court of Appeals in CA-G.R. CR No. 22645. The Court of

Appeals found no error in the challenged RTC decision and held:

WHEREFORE, premises considered, the lower court's decision is hereby AFFIRMED in toto and the instant petition is DISMISSED.

SO ORDERED.[9]

Hence, petitioner comes to this Court assigning as errors of the court a quo the following:

I

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISIONS OF THE METROPOLITAN TRIAL COURT AND THE REGIONAL TRIAL COURT, BOTH OF QUEZON CITY BECAUSE THE INCIDENT HAPPENED ON NOVEMBER 3, 1993, AND NOT NOVEMBER 2, 1993, AND THE PETITIONER'S ENTRY IN THE PREMISES IS FULLY JUSTIFIED BECAUSE HE WAS ASSISTED BY THEIR BARANGAY SECRETARY AND TWO BARANGAY TANOD[S] AND THE ENTRY IS FOR A VALID PURPOSE. HENCE, THERE IS NO TRESPASS TO DWELLING.

II

THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE INFORMATION THAT THE ALLEGED TRESPASS TO DWELLING HAPPENED ON NOVEMBER 2, 1993. THUS, WITH DUE RESPECT TO THE HONORABLE COURT OF APPEALS, THERE WAS A MISAPPREHENSION OF FACTS, AND IT SHOULD NOT HAVE ADOPTED THE FINDINGS OF FACTS OF THE METROPOLITAN TRIAL COURT AND REGIONAL TRIAL COURT.[10]

The foregoing may be reduced to one issue: Did the Court of Appeals err in sustaining the conviction of Marzalado, Jr., for qualified trespass to dwelling?

The petitioner argues that the Court of Appeals committed a reversible error in sustaining the lower court, since in the proceedings below, there was a grave misapprehension of facts by both the MeTC and RTC in finding that he committed trespass to dwelling despite the glaring proof that his entry was justifiable under paragraph 4, Article 11 of the Revised Penal Code[11] - to prevent an imminent danger to property. He stresses that while he did enter the unit, he did so with the aid of barangay officers and for the sole purpose of turning off the faucet that was causing the flooding of the unit. He adds that the Information filed against him should be considered fatally defective for having stated that his entry was on November 2, 1993, when in fact it was on November 3, 1993.

The Office of the Solicitor General (OSG) counters that petitioner's entry cannot be justified since the flooding of the floor was not a danger to life nor property. Rather, the OSG claims that the flooding of the unit could have been averted had the petitioner resorted to merely turning off the inlet valve of the water source. The OSG also stresses petitioner's failure to refute the charge that he entered the complainant's unit on November 2, 1993. Moreover, the OSG asserts that the exact time of the commission of the crime in the Information need not be so accurate to preclude other dates near the actual date. It is sufficient that the Information states a time as near to the actual date, more so, where the time is not an essential element of the offense, as in this case.

Anent the Information, the contention of petitioner that the Information is defective is untenable. Admittedly, there is a discrepancy on the precise date of the alleged trespass - the Information charges petitioner Marzalado, Jr., with trespass to dwelling allegedly committed on November 2, 1993, while petitioner's defense relate to an entry made the following day. The discrepancy however, does not make the information defective. Facts and circumstances necessary for inclusion in the information are determined by reference to the definition and elements of the specific crime.[12] In trespass to dwelling, the elements 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.

The exact date when the alleged trespass occurred 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.[13] Rule 110, Section 11 of the Rules of Court provides that it is not necessary to state in the complaint or information the precise time the offense was committed except when time is a material ingredient of the offense, but the act may be alleged to have been committed at any time as near to the actual date at which the offense was committed as the information or complaint will permit. A variance between the time set out in the indictment and that established by the evidence during trial does not constitute an error so serious as to warrant reversal of a conviction solely on that score.[14] Thus, the error invoked by the petitioner in the date of the alleged trespass in the Information is of no grave import, for it is far from being the decisive issue in this case.

However, still incumbent upon the prosecution is to establish the criminal intent and the guilt of the accused beyond reasonable doubt. Criminal cases rise and fall on the strength of the evidence of the prosecution and not the weakness of the evidence of the defense or the lack of it.[15] In the prosecution for trespass, the material fact or circumstance to be considered is the occurrence of the trespass. The gravamen of the crime is violation of possession[16] or the fact of having caused injury to the right of the possession.[17]

To prove trespass, the prosecution presented as witness Narciso Raniedo who testified that he saw petitioner enter the unit at around 4:30 p.m. to 5:00 p.m. on November 2 and take out Albano's belongings. No other eyewitness corroborated Raniedo's testimony. However, by her own account, Albano declared that she discovered the trespass in the evening of November 3,[18] the same day the barangay certified Marzalado, Jr.'s entry. This obviously does not discount the fact that although the exact date of entry varied as between petitioner and respondent, they both were referring to the same entry.

What remains now is the issue of whether the entry of petitioner Marzalado, Jr., was legally justified. We rule that it is, based on the circumstances of this case.

As certified by Barangay Lupon Secretary Romulo E. Ragaya, the unit rented by Albano was "forcibly opened by the owner because of the strong water pressure coming out of the faucet..."[19] As Albano herself admitted, she and her children already left the unit when the electricity supply was cut off in the month of September. Hence, nobody was left to attend to the unit, except during some nights when Albano's maid slept in the unit. Clearly, Marzalado, Jr., acted for the justified purpose of avoiding further flooding and damage to his mother's property caused by the open faucet. No criminal intent could be clearly imputed to petitioner for the remedial action he had taken. There was an exigency that had to be addressed to avoid damage to the leased unit. There is nothing culpable concerning Marzalado, Jr.'s judgment call to enter the unit and turn off the faucet instead of closing the inlet valve as suggested by the OSG.

Thus, we find the evidence on record insufficient to hold petitioner guilty of the offense charged. Palpable doubt exists in our mind as to the guilt of petitioner. In our view, the Court of Appeals erred in affirming the Decision of the Regional Trial Court and of the Metropolitan Trial Court when it found petitioner guilty of Qualified Trespass to Dwelling. In a situation of ambiguity, where the act of the accused permits of two possible signification, one culpable and another innocent, the ambiguity should be resolved in favor of the accused. The evidence in this case simply fails to convince us of his guilt beyond reasonable doubt.

WHEREFORE, the petition is GRANTED. The Decision dated November 9, 2001 of the Court of Appeals in CA-G.R. CR No. 22645, and its Resolution dated April 23, 2002 denying the Motion for Reconsideration, are REVERSED and SET ASIDE. Petitioner SALVADOR MARZALADO, JR., is hereby ACQUITTED of the charge against him for lack of evidence to sustain a conviction beyond reasonable doubt.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

* Also Spelled as “Marsalado” in some parts of the records.

[1] Rollo, pp. 51-59. Penned by Associate Justice Ramon A. Barcelona, with Associate Justices Bernardo P. Abesamis, and Perlita J. Tria Tirona concurring.

[2] Id. at 46-50.

[3] ART. 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, inn and other public houses, while the same are open.

[4] Rollo, p. 52.

[5] Id. at 60. Penned by Associate Justice Perlita J. Tria Tirona, with Associate Justices Bernardo P. Abesamis, and Rebecca de Guia-Salvador concurring.

[6] Id. at 61.

[7] Rollo, p. 45.

[8] Id. at 50.

[9] Id. at 58.

[10] Id. at 18.

[11] Art. 11. Justifying circumstances. – The following do not incur any criminal liability:

...

- Any person who, in order to avoid any evil or injury, does an act which causes damage to another, provided that the following requisites are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be not other practical and less harmful means of preventing it.

...

[12] Serapio v. Sandiganbayan, G.R. Nos. 148468, 148769 & 149116, 28 January 2003, 396 SCRA 443, 460.

[13] People v. Mauro, G.R. Nos. 140786-88, 14 March 2003, 399 SCRA 126 citing People v. Salalima G.R. Nos. 137969-71, 15 August 2001, 363 SCRA 192. See also Rule 110, Rules of Criminal Procedure, SEC. 11. Date of commission of the offense.– It is not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense. The offense may be alleged to have been

committed on a date as near as possible to the actual date of its commission.

[14] *People v. Alvero*, G.R. Nos. 134536-38, 5 April 2000, 329 SCRA 737, 748.

[15] *People v. Gomez*, G.R. No. 101817, 26 March 1997, 270 SCRA 432, 444.

[16] *Munsey v. Hanly* 67 A 217 (1907).

[17] *Austin v. Hallstrom* 86 A.2d 549 (1952).

[18] *Rollo*, pp. 19, 37.

[19] *Id* at 27.

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