

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCIANO MEDINA (ALIAS MARIANO MEDINA, ALIAS ALEJANDRO DOLA), DEFENDANT AND APPELLANT.

G.R. No. 38417. December 16, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

The accused was charged in the Court of First Instance of Rizal with "the crime of trespass to dwelling, with frustrated homicide, and physical injuries", committed as follows:

"That on or about the 7th day of August, 1932, in the municipality of Parañaque, Province of Rizal, Philippine Islands, and within the jurisdiction of this court, the said accused, Marciano Medina alias Mariano Medina alias Alejandro Dola, being a private individual, at night time, did then and there wilfully, unlawfully and feloniously enter the dwelling of Capt. J. H. Davidson against the latter's will, by forcing his way through a window protected by wire screens, an opening not intended for entrance, and once inside the house, when his presence therein was detected by the inmates thereof who tried to put him under arrest, the said Marciano Medina in resisting arrest and thus be able to escape, with intent to kill Joseph Davidson, son of Capt. Davidson, did then and there willfully, unlawfully and feloniously, assault, attack and stab with an open knife said Joseph Davidson on the upper left chest, thus inflicting upon him a mortal wound penetrating the lung, which would have produced his death as a consequence, thus performing all the acts of execution which would produce the death of said Joseph Davidson by reason of causes independent of the will of the accused, that is, because of the timely, able and efficacious medical aid given to the victim by Dr. Alexander Mileau. In his efforts to escape, the accused Marciano Medina further criminally, unlawfully and feloniously attacked and assaulted Captain Davidson, Mrs. Davidson and their daughter Mary Davidson, with an open knife, thus inflicting upon Captain Davidson several wounds, one on the right hand, one on the right sterno-clavicular articulation and one on the upper right arm; Mrs. Davidson sustained a lacerated wound on the palmar surface left ring finger and on the middle finger severing the tendons; and Mary Davidson, the daughter, sustained a wound on the left occipito-parietal region on the scalp. These wounds sustained by Mr. and Mrs. Captain Davidson and their daughter required medical attendance for a period of time longer than 10 days but less than 30 days and incapacitated all of them from performing their customary labor for an equal period of time.

"That in the commission of the acts herein complained of, the following aggravating circumstances existed: (1) that the crime was committed at night time which the accused purposely sought to insure success in the commission of the offense herein complained of; (2) in disregard of the sex due to two of the offended, parties, Mrs. Davidson and her daughter Mary Davidson; (3) through an unlawful entry, that is, by passing through a window; (4) that as a means to the commission of the offense, the window was broken and (5) that the accused has previously been punished four times of the crimes of theft and for other violations of the law, to which lighter penalties were attached, by virtue of final judgments handed down by competent courts."

The accused was represented by an attorney de oficio. After the information had been read to him, the court asked the accused if he understood it, and when he answered in the affirmative the court asked him if he pleaded guilty or not guilty, and the accused answered "guilty" The accused was then permitted to testify.

Upon the termination of the hearing, Judge Francisco Zandueta, in view of the plea of guilty interposed by the defendant, found him guilty of the crimes of "allanamiento de morada mediante fuerza", "homicidio frustrado", and "lesiones menos graves", as alleged in the information, with the presence of four aggravating circumstances, while there was only one mitigating circumstance consisting of the defendant's plea of "guilty", and sentenced him to suffer the following penalties:

- For the crime of trespass to dwelling by means of violence, four years, nine months, and eleven days of prison correccional;
- For the crime of frustrated homicide, ten years and one day of prison mayor;
- For the crime of less serious physical injuries, four months and one day of arresto mayor.

The defendant was further sentenced to suffer the accessory penalties provided by law, and to pay the costs.

Defendant's attorney de oficio now alleges that the lower court erred in convicting the appellant of three different crimes on the facts alleged in the information, to wit: trespass to dwelling, frustrated homicide, and less serious physical injuries; and in imposing upon the appellant the total penalty of fifteen years, one month, and thirteen days of imprisonment.

Appellant's attorney de oficio in this court, Jose M. Casal, has submitted a brief of twenty pages on behalf of the appellant, and maintains that the appellant was deprived of a fair trial and that the case should be remanded to the lower court for a new trial, the fiscal to choose the charge he wishes to rely on or to file a separate information for each crime with which he desires to charge the accused; that the only crime of which the defendant can be convicted in this case is less serious physical injuries.

Although we commend the zeal with which appellant's attorney de oficio has studied the case, we cannot agree with his conclusions.

The information in question apparently does not comply with section 11 of the Code of Criminal Procedure, which provides that a complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various allied offenses, but the attorney for the accused did not demur to the information, and the trial judge was justified in finding the defendant guilty of the several crimes with which he was charged and in imposing upon him the corresponding penalties. That is the established doctrine of this court.

"When the defendant in a criminal cause goes to trial under a complaint or information which contains a description of more than one offense, he thereby waives the objection, and may be found guilty of, and should be sentenced for, as many offenses as are charged in the complaint and proved during the trial. A failure to object for multifariousness in a complaint is a waiver, and that objection cannot be raised for the first time on an appeal." (People vs. Miana, 50 Phil., 771.)

As to the nature of the plea of "guilty" and its sufficiency to sustain a conviction, this court in the case of United States vs. Jamad (37 Phil., 305), said:

"The essence of the plea of guilty in a criminal trial is that the accused, on arraignment, admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged in the complaint or information; such a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense charged in the information, even a capital offense, without the introduction of further evidence, the defendant himself having supplied the necessary proof."

Appellant's attorney contends that there is no article in the Revised Penal Code corresponding to article 87 of the Penal Code, and that it is therefore not proper to impose upon the accused the several penalties corresponding to the three crimes with which he was charged, but only that corresponding to the gravest of them in accordance with article 48 of the Revised Penal Code. There is no merit in this contention, as article 70 of the Revised Penal Code provides that when the culprit has to serve two or more penalties, he should serve them simultaneously if the nature of the penalties will so permit; otherwise, said penalties shall be executed successively, following the order of their respective severity. Article 48 of the Revised Penal Code relates to complex crimes, that is, when a single act constitutes two or more crimes, or when an offense is a necessary means for committing the other (or when one of them is a necessary means for committing the other), and has no application to the case at bar.

Appellant's present attorney severely criticizes the conduct of defendant's attorney in the lower court, but it does not necessarily follow that the defendant was prejudiced by the failure of his attorney to demur to the information.

The lower court found that four aggravating circumstances were present in the commission of the crime and that the accused was entitled to the mitigating circumstance of having pleaded guilty. The lower court did not specify the four aggravating circumstances taken into account. Although the unlawful entry, that is, the passing of the accused through a window, and the breaking of the window could not properly be regarded as aggravating circumstances in the crime of trespass to dwelling, nevertheless the other aggravating circumstances were sufficient to justify the imposition of the maximum degree of the corresponding penalties.

The decision of the lower court sentencing the defendant to suffer four months and one day of *arresto mayor* for *lesiones menos graves* is affirmed.

In accordance with articles 280 and 249 of the Revised Penal Code and Act No. 4103, the appellant is condemned to suffer the following indeterminate sentences:

- For the crime of trespass to dwelling by means of violence, not more than four years, nine months, and eleven days of *prision correccional*, and a fine of P200 or the corresponding subsidiary imprisonment in case of insolvency, and not less than two years of *prision correccional*;
- For the crime of frustrated homicide, not more than ten years and one day of *prision mayor*, and not less than five years of *prision correccional*.

As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C. J., Street, Abad Santos, and Butte, JJ., concur.

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