

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TORIBIO ABANTO, DEFENDANT AND APPELLANT.

G.R. No. 5266. February 16, 1910

Ponente: TORRES, J.

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TORRES, J.:

At about 11 p. m. on the 15th of October, 1908, Macario Labitoria, asleep in his house situated in the barrio of Dumuit, town of Tayabas, in the province of the same name, was awakened by some one on the outside calling him by name; he got up and opened the window to see who it was, and saw standing in front of his house two individuals who asked him to allow them to pass the night in the house; he thereupon struck a light and opened the door at the top of the staircase, and inquired who they were, to which one of the men answered that his name was Miguel. At this moment, as the owner of the house, the lieutenant of the barrio, sought to recognize the stranger, another man, who was already upstairs alongside the staircase, struck Labitoria on the forehead with a wooden stick; as a result of the attack, the latter fell backward over a bench inside the house, and the aggressor, who turned out to be Toribio Abanto, passed through the door and threw himself upon Labitoria, seizing him by the throat; at this, Urbano Quiambao, who was staying in the house that night, seeing what was taking place, caught up a stick of palma brava which he used for carrying his stock of drygoods, and struck the aggressor with it. As a result of the struggle that ensued between the three, Toribio Abanto fell wounded to the ground, and after some time he was picked up by order of the justice of the peace, to whom Marcos Labitoria reported the affair, and the wounded aggressor was carried in a hammock to the town.

For these reasons the provincial fiscal filed a complaint on the 11th of February, 1909, with the Court of First Instance of Lucena, charging Toribio Abanto with the crime of forcible entry of a dwelling. Proceedings were instituted, and the trial judge entered judgment on the same date, sentencing the defendant to the penalty of five years of prision correccional, to the accessory penalties, to pay a fine of 1,000 pesetas, with subsidiary imprisonment in case of insolvency, and costs. From the said judgment the defendant has appealed.

Article 491 of the Penal Code reads :

"Any private individual who shall enter another's dwelling against the will of the tenant thereof shall be punished with arresto mayor and a fine of from 325 to 3,250 pesetas.

"If the deed were committed with violence or intimidation, the penalties shall be prision correccional in its medium and maximum degree and a fine of from 325 to 3,250 pesetas."

The facts related and fully proven in the present case constitute the crime of forcible entry of a dwelling, defined and punished by paragraph 2 of the foregoing article, inasmuch, as on the night in question the defendant forcibly entered the house of Macario Labitoria; taking advantage of the fact that the house owner opened the door and put his head outside to ascertain who were the two persons that were asking shelter, Abanto suddenly, and without reason, struck Labitoria a heavy blow on the forehead with a stick (garrote) and when the assaulted man fell over a bench inside his house, the aggressor passed through the open door and repeated the assault, grasping the latter,

who had fallen over said bench, by the neck. Thanks to the assistance rendered by the guest, Urbano Quiambao, Labitoria fared no worse, nor was the accused Abanto, as prearranged with his two companions who remained outside the house, able to accomplish his ulterior purpose. It is probable that the latter did not dare enter the house upon hearing or observing the effective defense offered by the owner of the house and his guest, Quiambao.

The circumstance that the door of the house was already open and that there was no previous express opposition or prohibition on the part of the owner thereof to the entry of the defendant is no bar to the qualification of the crime; in order that the crime of forcible entry of a dwelling may be considered as having been perpetrated, it is not an essential requisite that the door of the house should be closed; even if it were open, so long as the entry of a person is opposed or prohibited by the tenant, the crime is committed if said individual introduces himself therein against the express will of its tenant.

Paragraph 2 of the above-cited article is applicable in this case, it having been fully proven that the defendant Abanto entered the house of the injured party in a violent manner, and assaulted the latter from the door to the interior of his house, and in view of such behavior it is not necessary that express opposition or prohibition on the part of the tenant should have preceded the forcible entry. Even in a semicivilized country it must be supposed that a person entering a house with violence and maltreating the tenant, as stated herein before, would not obtain the tacit nor express consent of the latter.

The defendant pleaded not guilty, and, notwithstanding his allegations, not only unsupported by proof, but notoriously false and contrary to his own testimony in another case instituted against Mateo Lacuarin and Isaac de Ocampo, who accompanied him on the night in question, these proceedings furnish evidence conclusive beyond all reasonable doubt of his guilt as the sole principal of the crime herein prosecuted. In the proceedings alluded to, brought against said persons for attempted robbery, the defendant Abanto testified that by order of the latter, he called to the injured party from the street and asked him for lodging, and that when the door of the house was opened, he being near it, was at once maltreated by the inmates of the same, and not by reason of the gambling that was going on therein; his testimony in these proceedings is, therefore, false, being not only contrary to his former allegation, but contradicted by the injured party and his house companion.

In the commission of the crime herein the trial judge has rightly considered the aggravating circumstance of nocturnity, for the reason that it was perpetrated at a late hour and in the silence of night, without any mitigating circumstance to lessen its effects. The penalty of prision correccional in its medium and maximum degrees, as fixed by the code, should be imposed upon him in the maximum degree.

For the foregoing reasons, and as the judgment appealed from is in accordance with the law and the merits of the case, it is our opinion that the same should be and is hereby affirmed, with the costs against the appellant. So ordered,

Arellano, C. J., Mapa, Johnson, Carson, and Moreland, JJ., concur.

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