

[G.R. No. 1320. September 14, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FLORENTINO LOZADA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On January 15, 1903, the provincial fiscal filed an information in the Court of First Instance of Capiz, charging Florentino Lozada with usurpation. The information alleged that while Doiia Damiana Bajada was undergoing exile in the Island of Mindanao, by order of the Spanish Government, from 1898 to the month of March, 1901, the defendant, Lozada, an inhabitant of the town of Panay, forcibly took possession of a certain piece of land situated in the barrio of Lisub, of said town, this land having been acquired from the defendant, Lozada, by the late husband of the complaining Avitness by purchase, subject to the right of redemption. The usurpation was effected by intimidating the daughters of Damiana Bajada, named Arsenia, Fulceda, and Bonifacia,

In the course of the trial these three sisters, by their sworn testimony, supported the allegations of the information. They further testified that the accused forcibly took from them, during the absence of their parents in the Island of Mindanao, to which they had been deported, the said land situated at Lisub on the bank of the Nipa Estero; and with this end in view the defendant went there one day with a revolver and with it intimidated the witnesses.

Several witnesses corroborated the testimony of the complainant's three daughters, stating that they were present at the time of this act of intimidation. However, two of these witnesses made contradictory statements, each of them affirming that, at the time of the intimidation, he was the only person in the house besides the three daughters of the complainant. The witness Domingo Balgos testified that on a certain occasion the defendant, Lozada, admitted to him that he had taken forcible possession of the land in question,

believing that the owners thereof, who had been deported, had been thrown overboard and would not return.

It is to be observed that the defendant, Florentino Lozada, was prosecuted before the justice of the peace at Pa nay for the same act of usurpation of this land, and that the justice, after trial, convicted Lozada and condemned him to pay a fine of \$137.50, to return 110 cavans of rice, or to pay therefor \$275 at the rate of \$2.50 a cavan, and to pay one Melecio Vasquez \$25 as damages, with the costs. The accused plead not guilty, and as a witness in his own behalf testified that he had sold the land in question to Pio Buenvenida for 113 cavans of rice, subject to the right of redemption, but that he had redeemed it in 1898 by paying 100 cavans to Ramon Barrios in satisfaction of an equal amount of rice which Buenvenida owed the latter, the remaining 13 cavans having, according to agreement, been applied as rent for the land for the year 1898, and during which the vendee, Buenvenida, had a crop on it. The witness stated that the necessary deed of reconveyance had been executed by Buenvenida in the presence of three witnesses, and introduced this document in evidence. He stated further that after the crop was gathered a man by the name of Gil, who was in charge of it, turned the land over to him by order of Simeon Vidal, who looked after the property of the complainant and her husband during their absence. The witness denied having taken forcible possession of this land during its occupation by the daughters of Damiana Bajada, as well as the allegation that lie had been in their house in May, 1899, for the purpose of intimidating them. He stated that at that time he was recovering from an illness and was absent on a sea voyage. The witness further stated that Domingo Balgos was an enemy of his, and that the woman Bajada on one occasion had asked him to make a slight increase in the price of the land he had redeemed, which he had refused to do.

Telesforo Viloso, one of the attesting witnesses who signed the deed of reconveyance (p. 29), identified his signature as appearing therein, and affirmed that the statements contained in the document were true and that the signature appearing therein purporting to be that of Pio Buenvenida was his genuine signature, the witness having been present when the said Buenvenida signed the document. He testified further that Jose Besana had drawn up the instrument. The other attesting witnesses, Gil Bereso and Bartolome Becares, did not testify in the case, the former being absent and his whereabouts unknown, and the latter having died. The witness Besana corroborated the statements of the defendant, and testified to having seen Buenvenida and the three attesting witnesses sign the document.

Ramon Barrios also corroborated the testimony of the defendant. He testified that by agreement with Pio Buenvenida, who owed him 100 cavans of rice, the accused, Lozada, on

an indorsement to him of a promissory note, delivered to witness the said 100 cavans of rice, making this delivery as a consideration for the redemption of a pieces of land at Nipa belonging to him, and which was in the possession of Buenvenida. The witnesses Justo Balgos, Cornelia Bacas, and Pedro Bersabal testified that the daughters of Buenvenida had never lived in the latter's house at Calitan, and that it had been occupied only by Gil Bereso, a son-in-law of the owner of the house, up to the time Balgos went and lived there under authority from Simeon Vidal. The witnesses testified that they knew these facts because they lived in neighboring houses.

The document introduced in evidence by the defendant was attacked by the prosecution as a forgery, and several expert witnesses were put on the stand. These witnesses made an examination of the handwriting and signature of Pio Buenvenida, comparing them with the writing on other authentic documents presented by the prosecution. Two of these witnesses testified that the handwriting and signatures were different and that they believed the signature of Buenvenida appearing on the deed of reconveyance in question to be a forgery. On the other hand, several graduates of the Normal School testified that both signatures were written by the same hand and that the differences to be observed therein were due to the fact that some of the writing was done by the writer while somewhat nervous and in an uncomfortable position, and that the characters in other documents, although written with a coarser pen and in a heavier hand, had the same form and inclination. Another expert testified that he did not believe the writing in these documents was done by the same person, unless on different occasions and with a considerable interval of time between each.

The court below, after trial, declared that the proceedings before the justice of the peace at Panay were null and void, and entered judgment against the defendant, ordering him to restore the land in litigation to the complaining witness and to pay her as damages 200 cavans of rice. In case of his failure to do so, the defendant was condemned to the payment of the sum of 500 Mexican pesos, with the costs of the suit. Against this decision the defendant appealed.

In order to sustain a conviction for the crime of usurpation, the evidence must show that the realty usurped belongs not to the occupant or usurper but to some third person, and that the possession of the usurper was obtained by means of intimidation or violence done to the person ousted from the possession of the property. (Art. 521, Penal Code.)

Analyzing the three essential requisites for the existence of this crime, and after a consideration of the evidence introduced by both parties, Ave reach the conclusion that

there has been no such act of violence and intimidation as charged to have been committed upon the persons of the three daughters of the complainant Damiana Bajada for the purpose of committing the crime of usurpation. The testimony of the witnesses who stated that this act of violence occurred is contradictory, and is furthermore overcome by the statements of other witnesses to the effect that the women alleged to have been intimidated never lived in the house in which the act, according to the information, occurred. In the second place, the evidence introduced for the purpose of showing that the document of reconveyance was a forgery is not sufficient to prove that it is not authentic, or to enable us to pronounce it a forgery, for in opposition to the evidence of these witnesses there is independent evidence that as a matter of fact the reconveyance took place and that a consideration was paid. Again, taking it for granted that the land was repurchased, it follows that the purchaser became its lawful owner, and therefore he can not be regarded as a mere usurper of the property of another.

For the reasons stated above, taking into consideration that a person charged with a crime is to be presumed innocent until the contrary is proven, and is entitled to acquittal in case of reasonable doubt, or when his guilt is not satisfactorily demonstrated, under section 57 of General Orders, No. 58, we are of the opinion that the judgment below should be reversed and FJorentino Lozada acquitted, with the costs *de officio* without prejudice, however, to any civil action which the complainant may be entitled to maintain with respect to the land in question.

So ordered.

Arellano, C. J., Cooper, Willard, Mapa, and McDonough, JJ., concur.