

FIRST DIVISION

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

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

DECISION

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 **2nd 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