

## **SECOND DIVISION**

**[ CA-G.R. CR NO. 34282, March 24, 2015 ]**

**MARIETA O. SOTERO, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENTS.**

### **D E C I S I O N**

**CRUZ, R.A., J.:**

#### **THE CASE**

This is a Petition for Review under Rule 42 of the 1997 Rules on Civil Procedure seeking to annul and/or set aside the Decision dated January 14, 2011 and the Order dated June 13, 2011, both issued by the Regional Trial Court, Branch 62, La Trinidad, Benguet in Criminal Case No. 10-CR-8072, the dispositive portion of which read as follows:

(a) Decision<sup>[1]</sup> dated January 14, 2011

X X X

"WHEREFORE, having found no reversible error committed by the trial court, the decision appealed from is hereby affirmed in toto; and the appeal is hereby dismissed.

"SO ORDERED."

X X X

(b) Order<sup>[2]</sup> dated June 13, 2011

X X X

"WHEREFORE, the Motion for Reconsideration is hereby denied for lack of merit.

"SO ORDERED."

X X X

#### **THE ANTECEDENTS**

Marieta Sotero, together with Joseph Tongtongdan and several John Does, were charged with the crime of Qualified Trespass to Dwelling, defined and penalized

under Article 280 of the Revised Penal Code, through an Information alleging as follows:

X X X

"That on or about the 14th day of February 2011, at Kamog, Municipality of Sablan, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, without justifiable cause or lawful authority, did then and there willfully, unlawfully, feloniously and by means of force, violence and intimidation enter the dwelling of AGNES ARBISO, against the will and consent of the occupant RIBINO ARBISO, to his great damage, prejudice and mental anguish.

"CONTRARY TO LAW."<sup>[3]</sup>

X X X

## **A. BEFORE THE MCTC**

On August 22, 2007 and November 7, 2007, Accused Maria Sotero and Joseph Tongtongdan were arraigned, respectively, and each entered a plea of "not guilty" to the offense charged in the Information.

During the pre-trial,<sup>[4]</sup> the accused admitted the following stipulation of facts by the prosecution, to wit:

1. The complaining witness, Agnes Arbiso, is a resident of Kamog, Sablan, Benguet;
2. Private complainant has a two (2) storey residential house located at Kamog, Sablan, Benguet;
3. Private complainant has an outstanding debt to the accused, Marieta Sotero;
4. On February 14, 2001<sup>[5]</sup>, both accused were at the residence of Agnes Arbiso;
5. On the said date, Agnes Arbiso and her husband were not at the house; and
6. On said date that both accused went to the house of Agnes Arbiso, only the children, namely Arlyn, Evelyn and Ribino Arbiso, were present.

The private complainant, on the other hand, admitted that she was adjudged by the MCTC to pay her loan to Accused Marieta Sotero covered by Civil Case No. 224, with a counter-stipulation that the case is pending appeal.<sup>[6]</sup>

Prior to the initial presentation of prosecution's evidence on February 14, 2008, the

public prosecutor moved for the amendment of the Information specifically as to the date of the commission thereof from February 14, 2000 to February 14, 2001 which was granted by the MCTC.

The prosecution presented its evidence consisting of the testimonies of its witnesses: Agnes Arbiso,<sup>[7]</sup> Arlyn Arbiso,<sup>[8]</sup> Laura Ciano<sup>[9]</sup> and Ribino Arbiso.<sup>[10]</sup> The testimony of Delfina Camarillo was also stipulated upon.<sup>[11]</sup>

Based on the evidence adduced by the prosecution, it was shown that prior to February 14, 2001, or in May 1998, private complainant secured a loan from Accused Marieta Sotero in the amount of P100,000.00 with an agreed interest of 7% per month. To pay for her indebtedness, private complainant sought employment abroad. She was able to get a two-year contract as a caregiver in Taiwan with a monthly salary of 15,840 Taiwan Dollars. She left for Taiwan on May 19, 2000.

At around 11:30 in the morning of February 14, 2001, while private complainant was in Taiwan, a brown-colored van stopped in front of her house at Kamog, Sablan, Benguet. At that time, her children, Ribino, Arlyn and Evelyn, all surnamed Abiso, were the ones staying therein. The three of them went down to the first floor of the house to see who was in the van. When Ribino tried to open the door of the house, it was forcefully pushed open by several men, among them Accused Joseph Tongtongdan, who went inside their house. They identified themselves as policemen and members of the National Bureau of Investigation (NBI). They told private complainant's children that they will lock the house because of the unpaid loan of their mother with Accused Marieta Sotero and ordered them to get their things, otherwise they will be apprehended for the non-payment of the debt of their mother.

When Ribino asked them their purpose in ordering them to get their things, Accused Joseph Tongtongdan pulled back the hair of Ribino. The twins Arlyn and Evelyn began to cry and started to get their clothes. They were able to bring out the Shellane gas, some boxes and their clothes. When they were outside, Ribino talked with Accused Marieta Sotero who informed him that they will close the house because their mother has not been paying her loan. He asked permission from the accused that he be allowed to go to Baguio City to get some money to pay for the loan of their mother but Accused Marieta Sotero got angry and accused him that he will get a firearm to finish them all. Accused threatened Ribino that he could not kill them because the men were members of the Philippine National Police, Cordillera People's Liberation Army (CPLA), Ombudsman and Sheriff.

Because of the commotion, some of the neighbors of private complainant called for the officials in their barangay. Councilmen Sonny Tad-o, Rimando Wakat and Laura Ciano arrived. Accused Marieta Sotero asked them why the barangay captain was not around but she was informed that he was not around.

Laura Ciano, who was called by Jane Compala to see what was happening at the house of private complainant, arrived thereat to see the twin daughters of private complainant embracing their clothes outside their house and crying. There were also other belongings outside such as their stove and their LPG gas tank. Seeing their situation, she scolded Accused Marieta Sotero and asked why she was doing this. Accused answered that she will get the house and close the same as it was already her house. Laura Ciano begged that Accused Marieta Sotero not do this to the

children because their mother was not around. Prevailed upon, accused did not lock the house and instead left the place.

After the incident, the children of private complainant called her up in Taiwan and informed her of the incident. Immediately, private complainant left her work and came home to check on her children. She arrived in the country on February 28, 2001 and proceeded to Naguilian, La Union where her children were then staying. They hid there for two weeks for fear that the accused will push through with their threats. On March 14, 2001, they went back to Kamog, Sablan, Benguet in order to check on their house and to appear before the barangay in relation to the case filed against her by Accused Marieta Sotero regarding her loan. Accused Marieta Sotero and private complainant came to an agreement before the barangay that the latter will pay accused the amount of P300,000.00, for which she was able to pay, through Accused Joseph Tongtongdan, the amount of \$2,100 out of her salaries earned in Taiwan. Despite the incident on February 14, 2001, they never reported the same to the barangay captain because they thought they could endure the threats made to them by the accused.

As a result of the incident, private complainant lost her job because she failed to go back to Taiwan after promising her employer that she will come back after a week. The children of private complainant were traumatized and were afraid that they will be imprisoned for the non-payment of the debt of their mother. Ribino stopped going to school because there was no longer any source of income to support his schooling after his mother lost her job.

It took them almost five years after the incident to report the same and file a case against the accused because they were afraid of the threats of accused and were even often threatened by Accused Marieta Sotero even if there was already a settlement in the barangay.

For their part, the defense presented the testimonies of both accused.

Accused Joseph Tongtongdan averred<sup>[12]</sup> that on February 14, 2001, he, together with Accused Marieta Sotero and another companion, a certain Bolislis, went to the house of private complainant to collect the loan she had with Accused Marieta Sotero. When they arrived at the house of private complainant, they knocked on the window of the house and private complainant's son Ribino went out. They asked him if private complainant was around and was told that private complainant was abroad. As private complainant was not present, they reminded Ribino of the loan of his mother. Thereafter, they left the premises.

It was only during the barangay hearing of March 14, 2001 that he again saw private complainant and Ribino where Marieta Sotero and private complainant entered into an agreement regarding the loan of the latter. Neither private complainant nor anyone from her family filed any complaint against them before the barangay regarding the alleged incident on February 14, 2001. It was only in 2007 that this present case was filed. He also admitted that sometime in 2001, private complainant went to his house to pay the amount of P100,000.00 which is a partial payment for the loan of the latter with Accused Marieta Sotero.

Accused Marieta Sotero testified<sup>[13]</sup> that in 1997, private complainant loaned from

her the amount of P100,000.00. On February 14, 2001, she together with Accused Joseph Tongtongdan and their driver, Bolislis Pilay, went to the house of private complainant to collect her debt. When they arrived at the house, the private complainant's children went out to meet them. She asked where private complainant was and she was informed by Ribino that she was abroad. After about a minute, a barangay official, Laura Ciano, arrived and asked that the children be given some consideration because they did not know about the loan and that they should wait for private complainant to arrive. Thereafter, they left the place. She denied having entered the house of private complainant.

On March 14, 2001, Accused Marieta Sotero went back to Kamog, Sablan, Benguet, in connection with the hearing of the complaint she filed before the barangay. She and private complainant came to an agreement whereby the latter will pay her the amount of P300,000.00 in installments. During the barangay hearing, private complainant was accompanied by her family but they never raised any complaint regarding the incident on February 14, 2001.

Because of the failure of private complainant to comply with her obligations, Accused Marieta Sotero filed a civil case against private complainant before the MCTC docketed as Civil Case No. 224. The case was eventually decided in her favor. The appeal filed by private complainant before the RTC was also dismissed. She alleged that the present case was only filed after the dismissal of the civil case against private complainant.

On presentation of rebuttal evidence, the prosecution presented Rimando Wakat who testified<sup>[14]</sup> that on February 14, 2001, he was a Barangay Kagawad at Barangay Kamog, Sablan, Benguet when he was called by his elder sister to go to the house of private complainant because something was happening in the said house. When he arrived at the house of private complainant, he saw clothes packed in bags and the gasul tank placed outside the house. He also saw Laura Ciano talking with four (4) men while Accused Marieta Sotero and Bolislis Pilay were inside the van. He was informed that the house of private complainant will be locked. He pleaded with the men not to nail the door of the house shut because the children of private complainant will not have a place to stay. Thereafter, the men refrained from nailing the door shut and then left the place.

The MCTC rendered its Decision dated May 21, 2010, the dispositive portion of which reads as follows:

x x x

"WHEREFORE, from the foregoing, there being proof beyond reasonable doubt that accused committed the crime of Qualified Trespass to Dwelling as provided for under Article 280 of the Revised Penal Code, MARIETA SOTERO y OSIAS and JOSEPH TONGTONGDAN y MANUEL are hereby found GUILTY thereof. There being no mitigating or aggravating circumstance in this case and applying the Indeterminate Sentence Law, they are hereby imposed the penalty of imprisonment of 6 months of *Arresto Mayor* as minimum to 4 years, 9 months and 10 days of *Prision Correccional* as maximum. They are also directed to each pay a fine of P1,000.00.