

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOAQUIN SILVANO, DEFENDANT AND APPELLANT.

G. R. No. 10331. September 28, 1915

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal from the judgment of July 27, 1914, whereby the Honorable Jose C. Abreu, judge, sentenced defendant to the penalty of six months of *arresto mayor*, to the payment of a fine of 3,250 pesetas and, in case of insolvency, to subsidiary imprisonment not to exceed one-third of the principal penalty, and to pay the costs of the trial.

It was duly proven at the trial that Francisca Fabian and her husband lived at No. 739 Calle T. Alonso, in a house which belonged to Simon de los Reyes; that they occupied a room therein next to the sala, which latter room was rented and occupied by Joaquin Silvano, in company with two married couples; that early in the morning of July 8, 1913,. while the woman Fabian, an old lady named Marciana de los Santos and a little girl named Eusebia Juan were asleep in the said room, Fabian's husband having left for Cebu on the previous (Jay, Joaquin Silvano, taking advantage of this circumstance, entered the room by cutting a ribbon with which the door latch was fastened; that Francisca Fabian was awakened by the noise made by defendant's entry and turned up the light of a lamp which stood on a table, whereupon she saw and recognized the defendant, who was already inside the room; that the defendant said to her: "If you're not willing, I'll kill you," to which she replied by asking him why he had entered her room; that defendant was carrying a pocket knife in his hand; that she became afraid and took refuge beside the old lady Marciana de los Santos; and that at this moment defendant put out the light and precipitately left the room. It was afterwards discovered that the ribbon with which the girl Eusebia Juan had fastened the room door had been cut in two, and this ribbon was presented in evidence as Exhibit A.

The facts aforesaid, duly proven in the present cause, classify the crime as forcible entry of a dwelling, inasmuch as it was committed by means of violence upon the door of the dwelling room of the off ended party, and by intimidation, since defendant, who was carrying a pocket knife, threatened the prosecuting witness with death. This crime is provided for and punished by article 491, paragraph 2, of the Penal Code. It is undeniable that Francisca Fabian, because of her husband's absence, had the old lady Marciana de los Santos and the girl Eusebia Juan keep her company in her bed room on the night of the occurrence, and that before going to bed she ordered the girl to fasten the bedroom door with a ribbon, as Eusebia did do and so testified; and that early the following morning the offended party was awakened by a noise at the said door, whereupon she immediately arose and turned up the light that stood on a table.

Then she saw defendant inside the room and at the same time he said to her: "If you're not willing, Til kill you," to which she replied by asking him why he had entered her room, and, on seeing that defendant was carrying a pocket knife, she became afraid and took refuge beside the old lady Marciana. Thereupon defendant put out the light, left the room, went to his bed in the adjoining room and lay down. Narcisa de los Reyes, who was in the latter room, saw him at this moment and also heard the offended party say: "Why did you enter this room and

what did you want to do in here?" The ribbon, Exhibit A, which had been used to fasten Francisca Fabian's door, was afterwards found to have been cut. Although defendant was a boarder in the said house (according to the testimony of the proprietor thereof, Simon Reyes) and slept in the sala next to the room of the offended party, he had no right to enter the living room rented and occupied by Francisca Fabian and her husband.

Defendant did not testify at the trial. He merely denied the charge preferred against him and pleaded not guilty.

It cannot be doubted that Joaquin Silvano had no authority to enter the said room without the permission and consent of its inmates. Notwithstanding this, early in the morning of the affair, taking advantage of the absence of Francisca Fabian's husband and of Francisca's being asleep with her companions, he cut the ribbon which fastened the door and, on being discovered, threatened her with death. All these details aggravate and Qualify the forcible entry. The circumstance of defendant's being a boarder in the same house does not alter the nature of the crime nor the responsibility of the perpetrator thereof. Neither can the circumstance of the door being fastened by a weak and inadequate ribbon support the claim that there was no breaking in, since before going to sleep the prosecuting witness closed and fastened her door, thereby giving it to be understood that she did not wish anyone to enter without her express consent.

Defendant did not prove that early in the morning of the crime he entered the room with the permission of the offended party, and in the absence of proof of such consent it is to be presumed that he entered it against her will, as shown by the reproaches she addressed to him on seeing him inside the room and also by the complaint which she immediately made to the owner or proprietor of the house, who, in consequence, forthwith investigated the occurrence.

The contradictory testimony of the girl Eusebia does not shake the proof of the criminal act, inasmuch as the statements she made in confirmation of the act during the investigation by the fiscal were retracted by her after she left the service of the offended party, induced, perhaps, by the defendant or by his relatives or friends. Aside from that, testimony the record discloses satisfactory and convincing proof of the defendant's guilt as the proved perpetrator of the crime of forcible entry of a dwelling, committed with violence or intimidation, against the tacit will of the offended inmate of the room. In the commission of the crime there is no extenuating or aggravating circumstance to be considered. Therefore, the penalty prescribed by the code must be imposed upon the defendant in its medium degree.

For the foregoing reasons the judgment appealed from should be reversed and Joaquin Silvano should be sentenced, as he is hereby, to the penalty of three years, six months and twenty-one days of prision correccional, to the accessory penalties, to the payment of a fine of 1,000 pesetas and, in case of insolvency, to the corresponding subsidiary imprisonment; and to pay the costs of both instances. So ordered.

Arellano, C. J., Johnson, Carson, Trent, and Araullo, JJ., concur.

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