

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANDRES CABARABAN, DEFENDANT AND APPELLANT.

G.R. No. 11661. February 12, 1917

Ponente: TRENT, J.

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TRENT, J.:

This appeal brings up for review a judgment of the Court of First Instance of the Province of Misamis, condemning the defendant, Andres Cabaraban, to six months of arresto mayor, to pay a fine of P300, with subsidiary imprisonment in case of insolvency, and to the payment of the costs of the cause for a violation of the first paragraph of article 491 of the Penal Code.

Victorico Chaves and his wife, Getulia Neri, were living in September, 1915, in the municipality of Cagayan, Province of Misamis, in a house consisting of three bedrooms, a sala, kitchen, a servants' room below, and two other small rooms. On the night of September 5, 1915, Getulia Neri and her daughter Remedios, about 17 years of age, were sleeping in the same bed in one of the rooms of the house, which room was also occupied on that night by several other children of Getulia and some four servant girls. Another bedroom was occupied by another member of the family and a servant. The room below was occupied by a man and a boy. The husband Chaves was absent. About 12 o'clock on that night the defendant was discovered in the room occupied by Getulia and her children, hiding behind an "harigue." On being discovered the defendant ran down the steps and escaped through the room below, leaving his hat upstairs by one of the windows. A bamboo ladder was found on the outside, set up against the house under this window. The defendant admitted that he was in the house at the time indicated, but testified that he was there on the invitation and by the consent of Getulia Neri. And this is the principal question involved in this case.

In support of his defense to the effect that he was in the house on the invitation of Getulia Neri, the defendant testified that he had been having amorous relations with Getulia for some time; that he had frequently entered the house on Getulia's invitation prior to the night in question; and that these facts were known by other people. The defendant offered in evidence a photograph of Getulia Neri and two documents which he claimed were letters written by Getulia to him. The defendant's wife and brother-in-law testified that they had seen the defendant enter the house of Getulia late at night by passing through a window on three previous occasions. The brother-in-law was unable to recall the date of the first visit. He stated that it was during a month which he could not remember. He stated that the other visits were on December 19, 1914, and April 6, 1915. He testified that he told the defendant's wife of these visits. The wife testified that she saw her husband come out of Getulia's house on December 19 and April 6, and that she remembered these dates because she had made a note of them on the calendar. The wife made no disturbance whatever about this conduct of her husband. Getulia denied ever having any such relations with the defendant and testified that the two documents, which were neither dated nor signed, had not been written by her. Chaves, his wife Getulia, and his family resided in the barrio of Umalag, municipality of Tagoloan, which is some 10 or 15 kilometers from their home in Cagayan, during the months of April, May, June, and July, 1915. Getulia gave birth to a child in May, 1915.

The trial court sustained an objection to the admission of the photograph and the two documents, upon the ground that the photograph had just been turned over to the defendant by his sister-in-law on the day before the trial and because the two documents were neither signed, dated, nor addressed to anyone, and for the further reason that Getulia denied all knowledge of these documents, and the defendant failed to prove that they had been written by her. The trial judge made a thorough examination of the evidence and set forth in detail his reasons why he declined to believe the testimony of the defendant and his witnesses, overlooking no fact or circumstance and giving due weight to all of the evidence. The detailed findings of fact set forth in the decision of the trial court are fully supported by the record and leave no room for doubt as to the guilt of the defendant.

Counsel de officio for the defendant in this court asked that a new trial be granted because of the failure of the trial court to unite with the record the photograph and the two letters, thereby depriving this court of the opportunity of examining the handwriting of the two documents for the purpose of determining whether or not they were, as a matter of fact, written by Getulia Neri. While it is the better practice to unite with the record exhibits of this character which have been rejected, yet the failure to do so in the instant case cannot in any manner prejudice the rights of the defendant for the reason that it has been clearly established that the letters were not written by Getulia Neri. The trial court found that the letters were fabricated and that they, even if written by Getulia, contained no invitation to visit her or enter the house.

The judgment appealed from being strictly in accordance with the law and the merits of the case, the same is hereby affirmed, with costs against the appellant. So ordered.

Torres, Carson, Moreland, and Araullo, JJ., concur.

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