

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BENITO BARNEDO ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 12697. September 10, 1917*

Ponente: MALCOLM, J.

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MALCOLM, J.:

The defendants and appellants desired to have carnal relation with a mother and her two daughters. With this purpose in view, about midnight of the 2d of June, 1916, they broke into the house in which the women lived and maltreated them. The accused, however, soon desisted from their original intention and left the house. These facts are clearly proved.

Appellants claim that the facts constitute, if anything, a crime distinct from that charged. In a way this contention is sound, and if the information was so worded, it might be possible to convict the accused of some other crime such as attempted rape. But while this may be true, it does not impeach in the slightest the basic point that with the object of violating these women, the accused committed a trespass to their dwelling with violence. All trespasses ordinarily have some motive, and although the motive herein was in itself criminal, it does not become so expanded as to override the offense which was charged and which without any doubt was perpetrated. Having in view the leading case of *U. S. vs. Arceo* ([1904], 3 Phil. Rep., 381), in which the offense of forcible entry is clearly analyzed by Justice Johnson, and the later case of *U. S. vs. Ticson* ([1913], 25 Phil. Rep., 67), in which Justice Torres on somewhat similar facts held the accused guilty of a violation of paragraph 2 of article 491 of the Penal Code (trespass to the dwelling), it results herein that the defendants and appellants are guilty of a violation of the same provision of the law.

There existing the aggravating circumstance of nocturnity, but there being no sufficient proof to show that the accused took advantage of superior strength, and there being no extenuating circumstances, the penalty to be imposed should be the minimum of the maximum of prision correccional. The judgment of the lower court is accordingly modified by sentencing each of the accused to four years nine months and eleven days of prision correccional, to pay a fine of two hundred pesos, or to suffer subsidiary imprisonment in case of insolvency, and to pay one-fourth of the costs of both instances. So ordered.

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

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