

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. OLIMPIO DE PERALTA, DEFENDANT AND APPELLANT.

G. R. No. 17332. August 18, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

About the month of October, 1919, and for sometime previously Cecilio Toledo held the position of president of the "Philippine Marine Union," and in such capacity, he had the privilege of occupying, as his dwelling, a room of house No. 507 of Jaboneros Street of this city, which was rented to said association. About the middle of said month of October, Toledo was discharged from the position of president and was succeeded by Olimpio de Peralta. The latter, for the purpose of looking for a desk glass which he believed was the property of the union, entered the room in question in the morning of the 16th of the same month. This gave rise to the information for trespass to dwelling against Peralta, in which it is alleged that he entered the room of Toledo against the will of the occupant. Trial was had and the accused was sentenced to suffer two months and one day of *arresto mayor*, to pay a fine of 400 pesetas, and costs. From this judgment the present appeal was taken.

Two witnesses for the prosecution, Lucia Matias and Daniel Alvarado, testify as to how the accused entered the room on the day in question. The former stated that she was inside the room, the door of which was closed, when the accused pushed the door; and that she, upon seeing him already inside, asked him: "Why did you enter without permission?" to which the accused answered: "I need something in this room," and Lucia Matias told him not to take away the glass because Toledo was absent. The second witness, Daniel Alvarado, states that he was inside the room cleaning a phonograph when the accused struck the door and he heard a strong blow which he believes was a kick against the door given by the accused.

On the other hand, two witnesses for the defense, Bernardo Bildad and Bonifacio Vilorio testify similarly that the accused on the day in question, between half past ten and eleven in the morning, entered the room of Toledo looking for the desk glass in question, accompanied by Lucia Matias whom he found outside.

After a careful study of the testimony given in the case, we are of the opinion that the accused, after calling at or near the door, pushed it and without the permission of the occupants entered the room with the object of taking away the desk glass. There is no evidence that Toledo had expressed his will in the sense of prohibiting the accused Peralta from entering his room, and the mere fact that the latter entered it, without the permission of the occupant, does not constitute the offense of trespass to dwelling provided for and penalized in article 491 of the Penal Code. In order that this crime may exist it is necessary that the entrance should be against the express or presumed prohibition of the occupant, and the lack of permission should not be confused with prohibition. In the decisions of the courts of Spain, as well as in those of this jurisdiction, it has been held uniformly that this crime is committed when a person enters another's dwelling against the will of the occupant, but not when the entrance is effected without his knowledge or opposition.

As Groizard says in his commentaries on article 504 of the Penal Code of Spain, corresponding to article 491 of that of the Philippines: "It is not necessary, in the ordinary life of men, in order to call at the door of a house or enter it, to obtain previous permission from the owner who lives in it. With the utmost good faith may a person, to whom entrance has not been denied beforehand, suppose that the owner of the room has no objection to receiving him in it." And in the present case it is to be supposed that the members of the "Philippine Marine Union," among them the accused, had some familiarity which warrants entrance into the room occupied by the president of the association, particularly when we consider the hour at which the act in question happened (between half past ten and eleven in the morning), the fact that the door of the room was not barricaded or locked with a key, and the circumstance that the room in question was part of the house rented to said association.

For the reasons above stated, the judgment appealed from is reversed, and the accused Olimpio de Peralta is acquitted, with costs of both instances de oficio. So ordered.

Johnson, Araullo, Street, and Avancena JJ., concur.

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