

THE UNITED STATES, PLAINTIFF, AND APPELLEE, VS. PEDRO DULFO, DEFENDANT AND APPELLANT.*G.R. No. 4133. August 10, 1908*

Ponente: CARSON, J.

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Pedro Dulfo, the appellant in this case, was convicted of the crime of *allanamiento de morada* (entering the house of another, against the will of the occupant) and sentenced to three months imprisonment in the provincial jail.

Dulfo admitted that he had entered the house of Dagohoy, the complaining witness, between the hours of 12 and 2 on the night of the 14th day of February, 1907, and that on that occasion the owner of the house was absent, having left it in charge of his daughters Maximina and Filomena; but he insisted that he had gone to the house at the invitation of the younger daughter Filomena, who opened the door and admitted him. Filomena absolutely denied having invited the accused to the house and she also denied having admitted him when he came there. Upon this point the evidence is conflicting, but we think that giving the accused the benefit of the doubt, we must hold that the statement of the accused is substantially true, and acquit him of the offense with which he is charged.

The trial judge also appears to have been of opinion that the denial of the girl Filomena could not be accepted as true, beyond a reasonable doubt, for he expressly declined to make any finding on this point and convicted the accused on the ground that the girl being between 12 and 13 years of age, her invitation, and the opening of the door by her, did not relieve the accused of criminal responsibility for entering the house without the consent of the owner.

This court; however, by a majority opinion in the case of the *United States vs. Agas* (4 Phil. Rep., 129), acquitted the accused of the crime of *allanamiento de morada* where it appeared from the evidence that the defendant entered the house at the request of one of the occupants thereof, and this doctrine is in accord with the doctrine laid down by the supreme court of Spain, decisions of June 28 and September .28, 1876.

It is an essential element of the offense under consideration, as defined and penalized in the Penal Code, that the entry must have been made without the consent or, more accurately speaking, against the, will of the occupant of the dwelling house, and it is therefore the duty of the prosecution to affirmatively establish this fact, before a conviction can be had upon a complaint charging its commission. We held in the case of the *United States vs. Arceo* (3 Phil. Rep., 381), that to establish this fact it.. is not necessary that there be proof of an express prohibition to enter, and, in the case of the *United States vs. Clauck* (6 Phil. Rep., 486), that the fact that the entry was without the consent of the occupant may be presumed from circumstances, as where one enters violently with force or intimidation. But the doctrine laid down in these cases in no wise relieves the. prosecution of the burden of affirmatively establishing that entry was made against the prohibition of the occupant, either express or implied.

The supreme court of Spain in its *sentencia* of the 28th of September, 1876, held that the *preposition contra* (against) which is used in the article of the Penal Code,; defining the crime of *allanamiento de morada*, signifies;

negativa, oposicion manifiesta a que se alguna cosa. It would seem, therefore, that where the owner of a house is not the sole occupant, it would be intolerable to hold that one is guilty of this offense who is invited to enter by one of the members of the household, unless it clearly, appeared that such member of the household was forbidden to extend such invitation and that the person entering was aware of that fact. All the members of a household must be presumed to have authority to extend an invitation to enter, for to hold otherwise would be contrary to an almost universal custom and would impose an unreasonable burden on the relations of outsiders with the various members of a household other than the legal head of the house. It will not, therefore, be presumed that an entry at the invitation of a member of the household was "against" (contra) the wish of the householder, merely because it afterwards develops that such entry was in fact without his consent, or, as in the case at bar, that he was absent and had no opportunity to give or to withhold his consent. A similar doctrine was laid down by the supreme¹ court of Spain in a case wherein the facts were almost precisely similar to the case at bar. (Judgment of June 28, 1876.)

It has been suggested that this doctrine should not be applied in the case at bar because the girl who admitted the accused appears to have been not quite 13 years of age. But while we do not undertake at this time to lay down any fixed rule whereby it can be determined that a member of a household is of such tender years that the foregoing doctrine can not be applied, we think we must hold that the girl Filomena (who was at least 12 years of age, and as appears from the evidence old enough to have carried on amorous relations with the accused prior to the night in question, and who together with her 18year old sister appears to have been left in charge of the house during the absence of her father), was old enough to justify the inference that when the accused entered the house at her invitation, such entry was not against the will of the occupant of the house, it appearing that her father was absent, and there being no proof of an express prohibition on his part;

The judgment and sentence of the trial court is reversed with the costs of both instances de oficio, and the accused is acquitted of the offense with which he is charged; if in detention, he will be set at liberty forthwith, or, if at liberty on bail, his sureties are hereby discharged. So ordered.

Arellano C. J., Torres, and Willard, JJ., concur.

Mapa and Tracey, JJ., dissent.

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