

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO LINDIO, DEFENDANT AND APPELLANT.

G.R. No. 4335. February 19, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is a prosecution for breaking into a dwelling (allanamiento de morada) with violence and intimidation. It appears that the accused made his entry by cutting a string fastening the door and that being inside he engaged in a quarrel with the inmates. The defense makes the point that the entrance not being forbidden can not be said to have been against the will of the occupant and that then¹ was no violence in the manner of entry. In both respects we think he is in error. The cutting of the fastenings of the door was an act of violence and the threats against the inmates, accompanied with the flourishing of his bolo, constituted intimidation. The case of the United States vs. Arceo (3 Phil. Rep., 581), in which this crime is analyzed and sufficiently expounded, is direct authority to the effect that no express prohibition of entry is required.

The defense of an alibi might merit serious consideration in this case did it not appear to be reenforced with too many suspicious details.

The judgment of the court below did not take into consideration the aggravating circumstance of nocturnity. For that reason the punishment should be increased to five years of prision correccional and the payment of a fine of 325 pesetas, with the accessories of article 61 [Penal Code]. So modified the judgment is affirmed. So ordered.

Arellano, C. J., Torres,. Mapa, Johnson, Carson, and Willard, JJ., concur.

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