

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PRIMITIVO GAMILLA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5491. March 12, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendants were convicted in the Court of First Instance of the Province of Oriental Negros of the crime of allanamiento de morada and condemned each one to two years four months and one day of prision correccional, to a fine of 325 pesetas, with subsidiary imprisonment in case of insolvency, and to pay one-third of the costs of the trial. They appealed. During the pendency of the case on appeal the defendant Lucio Hermenegildo withdrew his appeal.

It appears that on the 3d day of May, 1908, Ling Aling, Awi Cuan, and Co-boy Cuan were conducting a store in Bais, Oriental Negros. The building used as a store was occupied by them also as living quarters. About 7 o'clock of the morning of that day the defendant Santiago Villanueva went to the store and sought to buy a pair of shoes on credit. He was refused. Nevertheless he wrote a promissory note and leaving it on a table in the store went out. At about 10 of the same morning he returned to the store and asked credit for a shirt and a pair of pantaloons. On being again refused credit he asked for a piece of paper, saying that he would send to his house for the money. He then left. At about 1 of the same day he went again to the store, this time, however, accompanied by the other two defendants. Having entered he paid the proprietors for the shirt and pantaloons, whereupon the defendant Gamilla seized Aling by the hand and struck at him with his fist, failing, however, to reach him. At this the defendant Hermenegildo struck Co-boy with a stick and the defendant Villanueva, seizing a piece of iron, struck Awi Cuan in the temple with such force that he fell to the floor. The defendants then went out, and after their departure, the Chinamen closed the store and locked the doors. Soon the defendants returned. They forced the door open, breaking the lock and fastenings, and again entered the store. The defendant Gamilla assaulted Aling with a stick, wounding him in the face, breaking his nose and causing injuries which required more than thirty days for their cure.

These facts are fully established and proved by the testimony of the Chinamen assaulted and by that of Vivencio Baldado, Eusebio Buso, Jose Maria Montenegro, Bais Emilio Tevez, and Eladio de Guia.

Testimony tending to contradict that of the prosecution as to the forcible entry was given by the defendants. The court below, however, found in favor of the Government. A careful examination of the evidence leads us to the conclusion that his finding was correct. Moreover, in any view that may be taken of it, we meet the decision of this court in the case of *United States vs. Arceo* (3 Phil. Rep., 381), in which the court, speaking by Mr. Justice Johnson, says, at page 383, interpreting article 491 of the Penal Code:

"We are not of the opinion that the statute relates simply to the method by which one may pass the threshold of the residence of another without his consent. We think it relates also to the conduct, immediately after entrance, of him who enters the house of another without his consent. He who being armed with deadly weapons enters the residence of another in the nighttime, without consent, and immediately commits acts of

violence and intimidation, is guilty of entering the house of another with violence and intimidation and is punishable under subsection 2 of article 491 of the Penal Code. (See Viada, vol. 3, p. 303; Gazette of Spain of the 28th of March, 1883; Viada, vol. 6, p. 363; Gazette of Spain of the 19th of May, 1892, p. 165.)"

The court, however, erred in the imposition of the penalty. The penalty provided for by law is that of prison correccional in its medium and maximum degree, from two years four months and one day to six years, with the accessories provided by law, and a fine of from 325 to 3,250 pesetas, with subsidiary imprisonment in case of insolvency. There being present in the commission of the crime neither aggravating nor extenuating circumstances, the penalty imposed should have been in the medium degree.

The judgment of the court below is hereby modified and the defendants are sentenced each one to three years six months and twenty-one days of prison correccional, to the accessories provided by law, to a fine of 1,000 pesetas, to subsidiary imprisonment as provided by law, and to pay one-third of the costs. Thus modified, the judgment of the court below is affirmed, with costs against the appellants, equally. So ordered.

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

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