

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE VILLANUEVA, DEFENDANT AND APPELLANT.*G.R. No. 6246. January 04, 1911*

Ponente: TRENT, J.

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This is an appeal from a judgment of the Court of First Instance of the city of Manila, condemning the defendant, Vicente Villanueva, to six months arresto mayor and to pay a fine of P300 for the crime of housebreaking.

About 11 or 12 o'clock on the night of January 27, 1910, the defendant entered the dwelling of one Ramon R. Ortiz, situated on Calle Vergara, city of Manila. The only question to be determined is one of fact; that is, whether the defendant entered this house without the consent of the owner or any of the inmates. It is a well-settled rule that whoever enters the dwelling of another at a late hour of night, after the inmates have retired and closed their doors, does so against their will and in violation of the provisions of article 491 of the Penal Code. Under these circumstances an express prohibition is not necessary, as such prohibition is presumed.

The prosecution presented four witnesses to establish its case. The first, Ortiz, and the owner of the house, was not at home on that night and knew nothing about how the defendant gained entrance.

Paz Aspillera, an employee of the office of the prosecuting attorney, was called for the sole purpose of testifying to the correctness of the translation of a certain letter admitted in evidence.

The only direct testimony presented by the Government is that of Pilar Carreon, who was temporarily residing at this house on the night in question, and Nicolasa Concepcion, the wife of the owner. Pilar Carreon, a young girl 17 years of age, testified that she had been stopping at the house in question for about a week prior to the entrance of the defendant on the 27th of January, 1910, she having been left there by her mother; that she had known the defendant from childhood, he being her first cousin and they having both lived in the same town of Baliuag, Province of Bulacan; that the defendant had been making advances and courting her for upward of three years, but that she did not respond; that on the night of the 27th of January she was sleeping in one of the rooms in Ortiz's house with Fe Ortiz, a small girl; that about 12 o'clock on that night she felt someone hugging her and said: "Do not hug me," thinking at the time that it was the small girl with whom she was sleeping. At that time a voice said: "Be quiet, because I am Vicente Villanueva." On hearing this she screamed for the purpose of awaking Nicolasa, and upon crying out the accused caught her by the throat, put his hand over her mouth, and tried to raise her skirt; that then she placed herself face downward and began kicking the little girl to awaken her. About this time everybody in the house awoke and entered her room; that a policeman was called, but before the policeman could arrive the defendant had gone; and that when she retired on that evening the door to her room was closed, but on being awakened it was open,

Nicolasa Concepcion testified that about 12 o'clock on the night in question she was awakened by her little girl calling "Mamma;" that she arose, entered the room where Pilar and Fe were sleeping and saw the accused there; that she asked him what he was doing at that time of night and he answered: "Nothing; I just wished to have

intercourse with this girl;" that on sending for a policeman the defendant left the house; that he had lived with them for about a year in 1907; that he frequently visited their house, they being relatives; that when she went to sleep that night there was a light burning in the sala and also one burning in the room where the girls were sleeping; that she retired about 10 o'clock on that night and on retiring the door was closed and so fastened that it could not be opened from without.

The defendant, testifying in his own behalf, stated that he arrived in Manila from Baliuag about 8 o'clock on that night. After arrival he went direct to the house of Marcelo Valderrama for the purpose of spending the night there. On arriving at this house he was informed by Marcelo's wife that Marcelo was then at the fair going on at the San Sebastian Church. He then went to this fair, where he met Marcelo and one Tomas Trinidad. On meeting Marcelo he stated to him that he desired to spend the night with him which was satisfactory to Marcelo. After they had spent an hour or so at the fair some one of them suggested that they return to the house and retire. On leaving the fair grounds the defendant asked Marcelo and Tomas to pass along Calle Vergara as he desired to speak with his cousin Pilar; that they then proceeded along this street and on arriving in front of Ramon Ortiz's house he saw his cousin, Pilar, looking out of the window. He then said to her, "Buenas noches." Pilar replied by saying, "Who is that?" He answered, giving his name. Pilar then replied, "Didn't you know that I was here?" He answered by saying that he had just arrived on the last train and requested permission to enter the house for the purpose of talking with her. She replied "yes" and said that she would have the door opened. He then bid good night to his two friends and oh seeing that the door had been opened entered the house. On going up he met Nicolasa and she stated to him that he could not enter because little Pilar was there, having been left by her mother with instructions to not allow her to speak to him, and that he then left the building.

Marcelo Valderrama and Tomas Trinidad testified that they were met by the defendant in the fair on that aright and on leaving for their homes they were asked by him to pass along Calle Vergara for the purpose of giving him an opportunity to speak with his cousin, Pilar; that on arriving in front of a certain house on that street they saw a girl looking out of the window and heard the conversation, as stated, between her and the defendant; and that the defendant bade them good night, saying that he would remain there for a short time.

The defendant is only 20 years of age and is a near relative of Ortiz and his family; he lived with this family about a year, in 1907; he visited them frequently since that time; he is a native of and lived in the same town with Pilar Carreon, and is likewise related to her. He was greatly in love with Pilar and had been for some time prior to this occurrence. His story that he arrived in Manila about 8 o'clock on the night of January 27, went to the house of his friend Marcelo, end from there to the fair where he met Marcelo and Tomas is very reasonable. The train arrives in Manila about thst hour and there was a fair at San Sebastian. Quite naturally on leaving that fair he would desire to see his cousin and sweetheart. It appears that Ortiz's house, was only a short distance from where this fair was being held. It is not at all uncommon or extraordinary for people to be in their windows at that hour of the night, especially when there is a fair in progress in the immediate neighborhood. There is nothing in the record whatever to show that Marcelo and Tomas testified falsely. They heard Pilar invite the defendant to enter the house and some one opened the door from within. According to the testimony of Nicolasa herself the defendant could not have opened the door from the outside. Nicolasa said that when she retired for the night there was a hanging lamp burning in the sala and also a lamp burning in the room where the two girls were sleeping. Pilar testified that the door leading to her room was closed when she retired. It is extremely difficult to see how it would have been possible for the defendant to have entered the house under these circumstances without disturbing some one of the inmates. In fact we believe it would have been impossible for him to do so. He would have had to pass through the sala where Nicolasa was sleeping in order to enter the room where the two girls were. He would have had to force his way into the building, necessarily making considerable noise, put out the two lights and open the closed door to the girls' room. This seems so inherently improbable that we are fully

satisfied that the entrance did not occur in the manner stated by the Government's witnesses.

The trial court said that if anything were needed to strengthen the Government's case or to show that the accused and his two witnesses did not tell the truth it was furnished by two letters introduced by the prosecution. The court further said that one of these letters in itself is sufficient to show that the accused entered the house in question against the will of the owner.

These letters are marked exhibits "A" and "B." Exhibit A was written by the defendant to Pilar some time in the month of November, 1909, which was several months previous to the occurrence at Ortiz's house. In this letter the defendant said:

"I did repent my daring feat upon that night. Why should I have entered your house? Otherwise they would not have been angry with you. Nevertheless wreak vengeance upon me. Let all your wrath descend upon me. Punish me, that you may be appeased. I will never do it again, what I have done. Never again. * * *"

From this letter it would appear that the night of the 27th of January was not the first time the defendant had entered the house where Pilar was. This letter strongly indicates that the defendant previous to this time entered the house where Pilar was staying, with her consent and without the knowledge of the other inmates of the house. This letter also indicates that these two young people had been caught in some compromising act and as a result the friends or family of the young girl had become very angry with her.

Rather than tending to establish the guilt of the defendant this letter has the contrary effect. If he had once entered the house with the aid and consent of Pilar, it is a strong circumstance to show that she aided and assisted him when he entered on the night in question.

A cursory examination of the other letter, which was written the very next day after the act complained of was committed, considering it alone, might lead one to believe that the defendant did admit in this letter that he forcibly entered Ortiz's house; but the defendant did not intend to make this admission in his letter. The whole letter shows the contrary to be true. That the defendant repented of his conduct in entering Ortiz's house at that time there can be no question; but this letter indicates that he only entered at the request and with the connivance of the young girl, and that while in there they were caught in some compromising position. This is why he felt so remorseful and also why he said in his letter: "I would feel remorseful for having entered your house as I did and thus offending your honor."

Taking into consideration these two letters, together with all the other testimony of record, and particularly that of Nicolasa, wherein she states that the door could not have been, opened from without, we think there can be no question about the innocence of the defendant.

For these reasons the judgment appealed from is reversed and the defendant acquitted, with costs de oficio. So ordered.

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

DISSENTING

TORRES, J.,

I think that the judgment should be affirmed with costs.

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