

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BASILIO TICSON, DEFENDANT AND APPELLANT.

G.R. No. 8273. August 14, 1913

Ponente: TORRES, J.

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TORRES, J.:

Appeal by the defendant from the judgment of December 15, 1911, by the Honorable George N. Hurd, judge, sentencing him to the penalty of two months and one day of arresto mayor, to pay a fine of 325 pesetas, with subsidiary imprisonment not to exceed one-third of the principal penalty in case of insolvency, and the costs.

Early in the morning of October 6, 1911, and on an occasion when Braulio Calang, the husband of Epifania Cupo, was absent from home and she was asleep with her young child in her arms, the defendant entered their house, situated in Surigao, by cutting the fastenings of the door, approached the sleeping woman and raised her skirt; whereupon Epifania awoke, immediately resisted, arose, and raised a disturbance which awakened Sinforoso Dinulus, a brother-in-law of her husband, and who, at the latter's request, was sleeping in the house. Although Epifania and Sinforoso pursued the intruder, whom they knew to be the defendant, they did not succeed in catching him. Therefore, on the 11th of the same month, the said Braulio Calang, after being informed of the occurrence, reported the facts to the justice of the peace of Surigao.

The proper preliminary investigation was made and the provincial fiscal filed a complaint in the Court of First Instance of Surigao, charging Basilio Ticson with the crime of forcible entry of a dwelling. This case being thus initiated, the court, upon the evidence adduced, rendered the judgment aforementioned.

It was proved at trial that the defendant, Basilio Ticson, early in the morning of October 6, 1911, entered the house of Braulio Calang, situated in the barrio of Sison, of the pueblo of Surigao, by taking advantage of an occasion when the latter was away from home and his wife, Epifania Cupo, and brother-in-law, Sinforoso Dinulus, were asleep; that the latter, at the husband's request, had, since the previous evening, remained in the house to sleep there in order to accompany the offended party who was alone; that the defendant cut the fastenings which held the door closed, entered the room where the said Epifania was asleep, raised the skirt she was wearing, undoubtedly with the purpose of lying with her; that thereupon the woman awoke, immediately resisted the assault and called for help, for which reason the defendant left the house, through the same door by which he had entered, pursued by the offended party and her companion, Dinulus, who had been awakened by the noise; that both the latter recognized the defendant, for there was bright moonlight and they had known him previously, as he had visited at the house the night before; and that for these reasons the offended party recognized the defendant, although he was running, and even threw a piece of wood at him when he passed by the house near one of the windows.

On the fourth day after the assault, when the husband returned home and was informed of what had occurred, he immediately reported the matter to the justice of the peace, Eusebio Tiongko. This official testified that at the preliminary investigation the defendant confessed his guilt, and, in the presence of the justice, begged the

offended spouses pardon, but that the woman refused, saying that he might attempt to repeat the act.

The criminal purpose of the defendant was to lie with the offended party, a married woman, even though he had to use violence, yet, on account of her resistance, the crime did not exceed an attempt; but, in view of the fact that in the information he was only charged with the crime of forcible entry of a dwelling, for which he was afterwards tried and convicted, we must abide by that denomination of the crime.

So, on this theory, since the defendant, in entering the house of the offended parties, had to cut the fastenings which held its door closed, he undeniably committed the crime of forcible entry, with violence and against the will of the inmates of the dwelling, inasmuch as it was not proved that he entered the place at their invitation or with their consent, it being presumed that he did so against their will, for, to gain entry, he had to cut the fastenings that held the door of the house.

Since the inhabitants of the house, before retiring for the night, securely closed the doors and windows of their dwelling, it is unquestionable that by so doing they intimated that they did not wish anyone to enter the dwelling without their express consent; furthermore, it is incredible that the offended party consented to and permitted the defendant's entry into her house in order that he might, with complete safety, commit an attempt against her honor.

The crime of forcible entry having been committed with violence, against the will of the offended party, it naturally follows that the provisions of paragraph 2 of article 491 of the Penal Code are applicable thereto, which prescribe the penalty of prision correccional in its medium and maximum degrees and a fine.

The defendant pleaded not guilty, but notwithstanding his denial and unsupported defense, which was disproved by the prosecution, the record discloses conclusive proof which produces in the mind, beyond all doubt, full conviction of his guilt as the sole perpetrator by direct participation of the crime charged, in the commission of which concurred neither extenuating nor aggravating circumstances. Therefore the penalty prescribed by law must be imposed in its medium degree.

For the foregoing reasons, whereby the errors assigned to the findings of the trial court by the defendant's counsel are refuted, we hereby reverse the judgment appealed from and sentence Basilio Ticson to the penalty of three years six months and twenty-one days of prision correccional; to pay a fine of 1,000 pesetas with the corresponding subsidiary imprisonment in case of insolvency, and the costs of both instances.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

Carson, J., concurs in the result.

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