

3 Phil. 381

[ G.R. No. 1491. March 05, 1904 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LORENZO ARCEO ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**JOHNSON, J.:**

The defendants were charged with entering the house of one Alejo Tiongson on the night of February 20, 1903, armed with deadly weapons, against the will of the said Alejo Tiongson.

The evidence shows that Alejo Tiongson lived in his house in company with his wife, Alexandra San Andres, and his wife's sister, Marcela San Andres. On the night of the 20th of February, 1903, between 8 and 9 o'clock at night, the accused, one of whom was armed with a gun and the other two each with a bolo, entered the house of the said Alejo Tiongson without first obtaining the permission of any person. It appears from the proof that there was a light burning in the house at the time the accused entered, which was immediately put out by one of the accused; that Alejo and his wife had retired for the night; that Marcela was still sitting up sewing; that as soon as Marcela had discovered the accused in the house she awoke Alejo and his wife; that immediately after the accused were in the house, one of them wounded, by means of a bolo, Alejo Tiongson, the owner of the house; that the accused appropriated to their own use a certain quantity of money; that the accused took and carried away out of the said house toward the fields the said Marcela San Andres and ill treated her.

The evidence on the part of the defense tended to prove an *alibi*.

The court below found that this testimony was not to be believed. We find no occasion, from the proof, to change this finding of fact

The court below found that the defendants were each guilty of the crime of entering the house of another, with violence and intimidation, which crime is punishable under subsection 2 of article 491 of the Penal Code, and sentenced each of them to be imprisoned for the term of three years six months and twenty-one days of *prision correccional*, and also imposed upon each a fine of 271 pesos and costs. In reaching this conclusion the court took into consideration the aggravating circumstance of nighttime and the extenuating circumstance provided for in article 11 of the Penal Code.

Article 491 of the Penal Code provides that—

“He who shall enter the residence (dwelling house) of another against the will of the tenant thereof shall be punished with the penalty of *arresto mayor* and a fine of from 325 to 3,250 pesetas.”

Subsection 2 provides that—

“If the act shall be executed with violence or intimidation the penalty shall be *prision correccional* in the medium and maximum grade, and a fine of from 325 to 3,250 pesetas.”

Under the facts presented in this case, was the trial court justified in finding that the accused were guilty of the crime of entering the residence of another against his will and with violence or intimidation? We think that it was. 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, 189B, p. 165.*)

The inviolability of the home is one of the most fundamental of all the individual rights declared and recognized in the political codes of civilized nations. No one can enter into the home of another without the consent of its owners or occupants.

The privacy of the home—the place of abode, the place where a man with his family may dwell in peace and enjoy the companionship of his wife and children unmolested by anyone, even the king, except in rare cases—has always been regarded by civilized nations as one of the most sacred personal rights to which men are entitled. Both the common and the civil law guaranteed to man the right of absolute protection to the privacy of his home. The king was powerful; he was clothed with majesty; his will was the law, but, with few exceptions, the humblest citizen or subject might shut the door of his humble cottage in the face of the monarch and defend his intrusion into that privacy which was regarded as sacred as any of the kingly prerogatives. The poorest and most humble citizen or subject may, in his cottage, no matter how frail or humble it is, bid defiance to all the powers of the state; the wind, the storm and the sunshine alike may enter through its weather-beaten parts, but the king may not enter against its owner's will; none of his forces dare to cross the thresh old of even the humblest tenement without its owner's consent.

"A man's house is his castle," has become a maxim among the civilized peoples of the earth. His protection therein has become a matter of constitutional protection in England, America, and Spain, as well as in other countries.

However, under the police power of the state the authorities may compel entrance to dwelling houses against the will of the owners for

sanitary purposes. The government has this right upon grounds of public policy. It has a right to protect the health and lives of all its people. A man can not insist upon the privacy of his home when a question of the health and life of himself, his family, and that of the community is involved. This private right must be subject to the public welfare.

It may be argued that one who enters the dwelling house of another is not liable unless he has been forbidden—i. e., the phrase “against the will of the owner” means that there must have been an express prohibition to enter. In other words, if one enters the dwelling house of another without the knowledge of the owner he has not entered against his will. This construction is certainly not tenable, because entrance is forbidden generally under the spirit of the law unless permission to enter is expressly given. To allow this construction would destroy the very spirit of the law. Under the law no one has the right to enter the home of another without the other’s express consent. Therefore, to say that when one enters the home of another without his knowledge he does not enter against the will of the owner, is to say that one’s home is open for the entrance of all who are not expressly forbidden. This is not the rule. The statute must not be given that construction, No one can enter the dwelling house of another, in these Islands, without rendering himself liable under the law, unless he has the express consent of the owner and unless the one seeking entrance comes within some of the exceptions dictated by the law or by a sound public policy.

So jealously did the people of England regard this right to enjoy, unmolested, the privacy of their houses, that they might even take the life of the unlawful intruder, if it be nighttime. This was also the sentiment of the Romans expressed by Tully: *“Quid enim sanctius quid omni religione munitius, quam domus uniuscu jusque civium.”*

It may be argued that the offense punishable under article 491 of the Penal Code corresponds to the crime of burglary at the common law. It is true that the offense of entering the house of another without the latter’s consent and the common-law crime of burglary are both

offenses against the habitation of individuals. But these crimes are distinctively different. The punishment for burglary is “to prevent the breaking and entering of a dwelling house of another in the nighttime for the purpose of committing a felony therein,” while the object of article 491 is to prevent entrance into the dwelling house of another at any time, either by day or by night, for any purpose, against the will of its owner.

In burglary there must have existed an intent to enter for the purpose of committing a felony, while under article 491 of the Penal Code entrance against the will, simply, of the owner is punishable. Under the provisions of the Penal Code entrance in the nighttime can only be regarded as an aggravation of the offense of entering.

We are of the opinion, under all of the facts in the case, that the extenuating circumstance provided for in article 11 of the Penal Code should not be considered in favor of these defendants.

We find that the defendants are guilty of the crime of entering the house of another with violence and intimidation, without the consent of the owner, with the aggravating circumstance of nocturnity, and hereby impose the maximum degree of *prision correccional*, and the fine provided for in subsection 2 of article 491 of the Penal Code should be imposed.

The sentence of the court below is therefore modified, and each of the said defendants is hereby sentenced to be imprisoned for the term of six years of *prision correccional*, and each to pay a fine of 271 pesos and the costs of this suit or in default thereof to suffer subsidiary imprisonment.

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

*Cooper and McDonough, JJ.*, dissent.

