

4 Phil. 123

[G.R. No. 1314. January 12, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE SAMSON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

Three witnesses testified affirmatively as to the reality of the housebreaking with which the appellant is charged. The act was executed at midnight by five men armed with two guns and a revolver, and among those five men the appellant was identified by one of the said witnesses.

This witness could not be mistaken in identifying the appellant, for the latter took her out of the house immediately after the entrance thereto was forced, and she was at once taken to the house of the said appellant, who retained her in the same during the period of three or four days.

The authors of the offense exercised violence upon the persons inhabiting the house, first by compelling the latter to come down and tying them afterwards in order that two of the former might be able to go upstairs and freely go about the house, while the other three remained downstairs to watch the occupants. Evidently they did this because they knew that the owners of the house would not consent to their entering the same on account of the lateness of the hour and because the defendant and his companions were unknown to them and above all knowing their object, which was to rape one of the daughters of the owners of the house.

The Court of First Instance, in view of the merits of the case,

considered the fact as constituent of the crime of housebreaking as provided for in paragraph 2 of article' 491 of the Penal Code, with the aggravating circumstance that the offense was committed *en cuadrilla* and at night, and sentenced the defendant to four years nine months and eleven days of *prision correctional*, and to pay a fine of two thousand three hundred pesetas and the costs.

We find the judgment of the court below in accordance and consistent with the law, not only as regards the legal appreciation of the facts in the case but also as to the penalty imposed upon the defendant.

Therefore, we affirm the sentence in all its parts, with the costs of this instance charged against the defendant. So ordered.

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