

[ G.R. No. 1536. January 14, 1905 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, ROMULO AGAS,  
DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

A complaint filed on January 5, 1903, by the provincial fiscal in the Court of First Instance of the Province of Cebu charged Romulo Agas with the crime of housebreaking. The complaint stated that at daybreak on the 1st day of January of that year the defendant entered the house occupied by Mariano Alburo and his family, on Blasco de Garay street of that city;<sup>[1]</sup> that the defendant made entrance through the window of the said house, without the consent and against the will of the owner and occupant thereof, and at a time when its doors and windows were closed.

The case having been set for trial, the defendant pleaded not guilty. The court below, however, found him guilty of the crime charged in the complaint, and on July 25, 1903, sentenced him to four months and one day of *arresto mayor* with the accessories thereof; to pay a fine of one thousand five hundred pesetas or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs. From this judgment the defendant appealed.

It has been fully proven by the evidence in this case that late at night on the 31st of December, 1902, and toward daybreak of the 1st of January, 1903, the defendant, Romulo Agas, who had illicit relations with the woman Concepcion Arrieta, then living at the house of Mariano Alburo, did at her request enter the said house; that to accomplish

this, the woman Concepcion opened the door of the house; that after the defendant entered the same he and the woman went to one of the rooms and there they laid together; that some of the occupants of the house found Agas and the woman lying together, and covered by the same sheet. In his testimony the defendant stated that Concha Arrieta was his mistress.

These facts are wanting in certain of the elements necessary to constitute the crime of housebreaking. The principal element determining the crime of housebreaking is that it be committed against the will of the occupant, and it has been seen that the defendant did not enter the house against the will of the occupants thereof.

Article 491 of the Penal Code says: "Any private individual who shall enter another's dwelling against the will of the tenant thereof shall be punished, etc."

The defendant Romulo Agas entered the house and slept with the woman Concepcion Arrieta, who was then living at the house, with her consent; therefore, the fact stated by the complaint that the defendant entered the house against the will of its occupant and owner has not been duly proven. On the contrary, it appears from the evidence that the defendant entered the house at the request of one of the occupants thereof.

The crime of housebreaking affects the inviolability of domicile, and is punished by the penal law. But it can not be said that the crime exists only because the entrance took place without the knowledge of the owner of the house; it must be made against his will; without this essential requisite the crime can not be conceived.

If the criminal intention of the accused determines the existence of the crime, once that intention is known not to be criminal, the crime can not exist. In this case the intention of the defendant can not be said to have been criminal; his purpose in entering the house was not to commit any crime, but simply to sleep with Concepcion Arrieta. The fact that the defendant was found lying on the same bed with that woman

is proof that he entered the house with her consent and with her help, not with the intention of breaking into the house. Mere presumption that the entrance into the house was made against the will of the owner is not sufficient; it must be proven that the owner was opposed to it in order to determine the existence of the crime. Such is the doctrine established by the courts in applying article 491 of the Penal Code, and thus it has been stated in the decisions of the supreme court of Spain of June 28 and September 28, 1876, and April 18, 1888.

Taking, then, into consideration that the facts in this case do not constitute the crime of housebreaking, we are of opinion that, with the reversal of the judgment below, the defendant, Romulo Agas, must be acquitted, with the costs *de officio*. Let the case be remanded to the court below with a certified copy of this decision and of the judgment that shall be entered in compliance herewith. So ordered.

*Johnson, J.*, concurs.

*Arellano, C. J., Mapa, and Carson, JJ.* concur.

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<sup>[1]</sup> Cebu.

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