

5 Phil. 215

[ G.R. No. 2089. November 07, 1905 ]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ENRIQUE RIJANO,  
DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

Enrique Rijano was charged by the provincial fiscal of Occidental Negros with forcible entry of a dwelling and *lesiones leves*, committed as follows: At 8 o'clock on the night of March 19, 1904, the accused, armed with a *talibon*, went to the house of Lamberta Balcaba in the barrio of Granada, municipality of Bacolod, and called to all the men who might be in the house to come down. None doing so, there being only women in the house, he went upstairs and, cutting the fastening which secured the door, entered the house, saying to the occupants that they were going to die at his hands. Dolores Ganat stated that they had not done anything wrong, and the accused struck her across the shoulders with the back of his bolo. He then caught the head of a child 2 years of age, the son of Fausta Martinez, and was about to cut its throat when Lamberta interfered. The accused thereupon struck her a blow with his bolo, injuring her slightly at the base of the thumb on her left hand. This wound was with medical assistance cured in seven days. The accused then left the house in search of Fausta Martinez, who had run away with her son, for the purpose of killing her. The defendant was, however, met in the street by Pedro Toledo, who took him to his home; all in violation of law.

Judgment was rendered June 1, 1904, sentencing the accused to three years six months and twenty-one days imprisonment (*prision correccional*), to a fine of 1,301 pesetas with accessories, and in case of insolvency

to the corresponding subsidiary imprisonment, the latter not to exceed one-third of the period of the principal penalty, and in no case to be more than one year, and to pay the costs, the accused being allowed one-half of the time he spent as a detention prisoner, running from March 23, 1904, until the entry of final judgment. From this sentence the defendant appealed.

The evidence shows that about midnight on the 19th of March, 1904, the accused approached the house in which Fausta Martinez, Lamberta Balcaba, and Dolores Ganat resided, and ordered all of the men to come down; that, no men being there, the accused after thrusting his bolo through the wall of the house, the latter being of nipa, went up the steps and, finding the door closed, cut the fastening that held it; that against the inmates' opposition he entered the house; that he struck Dolores Ganat across the shoulders with his bolo and then, catching one of Martinez's children, was about to cut its throat, but owing to its cries and the intervention of Lamberta Balcaba, desisted; that he then struck Lamberta with his bolo, inflicting a slight wound on the thumb of the left hand, whereupon Fausta Martinez caught her two children and jumped from the house, hiding herself along the banks of the Idianganan River. The foregoing is corroborated by said Martinez and Ganat, they adding that they were acquainted with the accused, but that he was not in the habit of visiting their house and that they had had no quarrel with him. They also stated that after the assault he left the house and was met in the street by Pedro Toledo, who, at the request of the mother of the accused, Joaquina Toreja, took him home.

The facts set forth constitute the crime of *allanamiento de morada* (forcible entry of a dwelling) committed with intimidation and violence, as defined in article 491, paragraph 2, of the Penal Code. The defendant after ordering all the men who might be in the house in question to come down, an order which is usually given by such people when they intend to forcibly enter a house, seeing that there were no men, thrust his bolo through the walls of the house, went upstairs, and, cutting the fastening which secured the door, entered the house against the opposition of the occupants and threatened the latter. There is no question therefore but that the crime of forcible entry of

a dwelling with intimidation and violence has been committed in this case.

From the fact that an individual enters a house and threatens the occupant with death and compels him to flee, it is to be inferred without the slightest doubt that the entry was against the will of the occupant, and therefore constitutes the crime of forcible entry of a dwelling, with intimidation. Such is the doctrine laid down by the supreme court of Spain in judgments dated December 19, 1872, and December 1, 1882.

The accused pleaded not guilty, but notwithstanding his denial the evidence shows conclusively his guilt as the author of the crime. He confessed that he was on the ground floor of the house, which tends to prove the truth of the accusation that against the will of the occupants, two of whom he abused without any reason therefor, he forced an entry into the house in question.

In view of the foregoing and taking into consideration the extenuating and aggravating circumstances, the judgment of the trial court should be affirmed. The circumstance of drunkenness contended for by the defense can not be considered present, it not having been proven either that the accused was intoxicated on the night of the occurrence or that drunkenness was not habitual with him.

The judgment appealed from is hereby affirmed with costs of this instance. Let the cause be returned to the trial court with a certified copy of this decision and of the judgment to be entered therein, for execution. So ordered.

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

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