

[G.R. No. 18988. December 29, 1922]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
PAULO ALCALA, DEFENDANT AND APPELLANT.**

D E C I S I O N

ROMUALDEZ, J.:

The appellant in this case was charged with the crime of murder and tried separately in the Court of First Instance of Mindoro which sentenced him to twenty years *cadena temporal*, with the accessories provided by law, and to indemnify the heirs of the deceased in the sum of P1,000, with costs, crediting him with one-half the time of his preventive imprisonment.

The appellant assigns three errors to the judgment appealed from, to wit: (a) The act of finding him guilty, despite his proof of alibi; (b) the finding that the crime committed was murder and not homicide; (c) the finding that nocturnity was present as an aggravating circumstance.

The evidence of the prosecution establishes the following facts: On the evening of June 13, 1921, the deceased Eugenio Rubion was in his house in company with his wife and children. The deceased's mother-in-law, Agripina Robinita, with her husband, Ciriaco Aguinaldo, was also there. After having taken their supper, the deceased and Ciriaco Aguinaldo drank some wine, and afterwards all retired to sleep. The deceased went to the hand-rail of the door and rested there. About midnight, his wife, Emeteria Eje, who was sleeping within the house, was awaked by the noise produced by a blow. She got up, looked out, and saw the accused Valentin Alcala upon Eugenio Rubion, holding the latter by the neck, while the appellant, Paulo Alcala, who had a club in his hand, held the knees of the deceased. Upon seeing this, Emeteria Eje exclaimed: "Jesus Christ! What have you done with my husband?" The accused warned her to keep quiet, and she ran within the house, stepping the hand of her mother who woke up and called her husband, who said: "Eugenio, what is that? Eugenio, light," to which Emeteria answered: "They are Valentin and his brother." Ciriaco Aguinaldo went

downstairs and found Eugenio Rubion at the base of the staircase with his face downward and between the two accused, one of whom, Valentin, who had a leather scabbard on his waist, said, "take care not to say anything of what has happened."

Then, Valentin and the herein appellant, brought the corpse of Eugenio Rubion to the house, placed the body with his face downward over a pillow, within the mosquito net, where Emeteria Eje had slept, whom Valentin Alcala abused after all the other persons who were there had run away. Finally, Valentin left, after threatening Emeteria Eje, saying, "If you report all that has happened, I will kill you; and if you are obliged to testify, you must testify against Tranquilino and Catalino, tenants of Kalaw."

Emeteria Eje remained in the house watching over the corpse of her husband until the following morning, when she looked for the lieutenant of the barrio. The day next following the corpse was taken to the town. The sanitary inspector, who examined the body of the deceased, found a contusion on the lower lip, an ecchymosis in the hypogastrical region extending to the last rib of the left side and another ecchymosis on the abdomen which caused internal hemorrhage. He found the nose bleeding. According to him, all of these contusions were mortal.

During the first days following the event, Emeteria Eje gave the authorities different versions of the affair. She says having done so for fear of the threats of Valentin Alcala who had just extinguished a sentence of conviction in Bilibid Prison about a few months ago, having left the same in December, 1920. Indeed, after she learned that the accused were already arrested, she testified to the facts above stated.

The testimony of Gervasio San Juan, who lived in the neighborhood, tends to corroborate the fact of the presence of the accused in the place of the event on the night in question.

The defense of the accused was an alibi, which the appellant and his brother Marcelo Alcala have tried to establish. Such a defense, however, can in no way be held to have been proven.

This action is against Paulo Alcala only who was tried separately from his brother Valentin.

The Attorney-General recommends that the crime be classified as homicide and not murder, no qualifying circumstance of the latter crime having been sufficiently proven. Some members of this court are of the opinion that the commission of the crime was attended by the circumstance of treachery. The majority, however, do not think so because the evidence

does not show how the aggression was begun. It is true that the evidence shows that the deceased had gone to the *hand-rail* of the door to rest (we underscore "hand-rail," which is the word used and not sufficiently explained in the record), and that he had drunk some wine, and it is very probable that he fell asleep there. But there appears no proof whatever tending to show that he was still asleep when he was attacked by the accused. It was not clearly established that the place where the deceased was found in the hands of the accused was the same place where he had gone to rest. The record does not specifically show where said door was situated, but it can be presumed that it was the door of the house. Emeteria Eje had to *look out* in order to see the deceased assaulted by the accused, and Ciriaco Aguinaldo had to go *downstairs* in order to find him and said accused at the foot of the staircase. These circumstances, in our opinion' exclude the probability that the place where the deceased was resting was the same place where he was attacked, that is to say, it does not appear sufficiently proven that he was asleep or unprepared when he was attacked. The evidence not being clear on the point, it cannot be held that the aggression was committed with treachery.

And there is not, under the facts of the case, any other qualifying circumstance of murder. Wherefore, we find the conclusion of the Attorney-General to be correct, that the crime in question is homicide only.

We find, however, the presence of the aggravating circumstances of nocturnity and of the crime having been committed in the dwelling of the offended party.

While it does not positively appear that the accused sought the nighttime for the perpetration of the crime, the fact is that they at least took advantage of it, for they approached the house at an early time, and yet they did not commit the crime until late in the night. This is sufficient in order that the aggravating circumstance of nocturnity may be held to exist. (U. S. vs. Billedo, 32 Phil., 574.)

As to whether the crime must be held to have been committed in the dwelling of the offended party, we take it that, although the accused were found with the deceased at the foot of the staircase of the house, that place must be regarded as an integral part of the dwelling of that family. The porch of a house, not common to different neighbors, is a part of the dwelling. (Decision of the supreme court of Spain of January 8, 1884.)

We, therefore, hold that the crime proven in this case is homicide with two aggravating circumstances, to wit, nocturnity and that of the act having been committed in the dwelling

of the offended party, and we find the herein appellant guilty of such a crime, his other assignments of error having no merit.

Wherefore, the judgment appealed from is modified, and the appellant is found guilty of the crime of homicide with two aggravating circumstances, and sentenced to twenty years of *reclusion temporal*, with the accessories provided by article 59 of the Penal Code, to indemnify the heirs of the deceased in the sum of one thousand pesos, crediting the appellant with one-half the time of imprisonment suffered by him, as provided by Act No. 2557. The costs shall be taxed against the appellant. So ordered.

Araullo, C. J., Street, Malcolm, and Avancena, JJ., concur.

VILLAMOR, J., with whom concur OSTRAND, and JOHNS, JJ., dissenting:

In my opinion the crime proven in the record must be classified as murder, with the aggravating circumstance of the same having been committed in the dwelling of the offended party, said circumstance being counterbalanced by the mitigating circumstance of article 11 of the Penal Code, as amended by Act No. 2142. The accused must be sentenced to *cadena perpetua*.

Judgment modified.
