

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LAZARO ALBAR, DEFENDANT AND APPELLANT.***G.R. No. L-3024. April 01, 1950*

Ponente: MONTEMAYOR, J.

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Lazaro Albar was, In the Court of First Instance of Camarines Sur, convicted of homicide with the aggravating circumstance of nocturnity and was sentenced to an indeterminate penalty of not less than ten (10) years and one day of prison mayor and not more than seventeen (17) years, four (4) months and one day of reclusion temporal with the accessory penalties provided by law, to indemnify the heirs of the deceased Juan Valenzuela in the sum of P2,000 and to pay one-half of the costs, Lazaro appealed the case to the Court of Appeals which court after reviewing the record was of the opinion that the crime committed by the appellant was that of murder qualified by treachery with the aggravating circumstance of night time, and because of the penalty imposable on such a grave offense, said Court of Appeals found itself without jurisdiction to take cognizance of the case and certified it to this Court.

After a careful review of the record we find the following facts to have been fully established. In and prior to the month of August, 1943, Juan Valenzuela was living in his house in barrio Sto, Niño, Iriga, Camarines Sur, with his wife Luciana de la Cruz, a daughter named Alfreda Valenzuela, a son named Cipriano Valenzuela and the latter's wife Milagros Albar, daughter of appellant Lazaro Albar. About 9 o'clock in the evening of August 5th of that year 1943, about ten men, three of whom were armed with guns, among them the appellant Lazaro and one supposed guerrilla lieutenant Resendo Romero, arrived at the yard of Juan Valenzuela, Lazaro and Rosendo Romero called out the greetings "good evening" to the inmates of the house. One of the women folk Alfreda Valenzuela returned the greetings and then went to the window to see who were the night visitors. She recognized the appellant and saw that some of his companions were armed. Cipriano also peeped thru the window, recognized the appellant, and seeing that some of Lazaro's companions were armed he was possessed with fear, returned to his room and lay down face downward, Lieutenant Romero, inquired from Alfreda if her father Juan was in. Although he was inside the house, Alfreda not liking the look of things, and fearful for the safety of her father, especially because of the presence of armed men among the group, answered that her father was not at home. Lt. Romero, however, who it seems had previously been assured by someone of the presence of Juan Valenzuela in his house, told Alfreda that her father was there and he ordered the inmates of the house to let or make him go down because someone had something to talk about with him. Because the men below observed no measures or steps taken by the inmates to comply with the order, Rosendo followed by appellant Lazaro went up the stairs of the house and tried to force his way in. He was however, blocked in his efforts because Alfreda and her father Juan leaned against or pushed against the door to prevent it from being pushed open from without. In trying to force open the door, the same was momentarily opened a little and thru the opening Alfreda could see and recognize Lieutenant Romero with appellant standing behind him, presumably because of a lighted lamp inside the house. Foiled in their attempt to enter the house and gels Juan, after a while appellant Lazaro was heard by Alfreda and her brother Cipriano to say or order in a loud voice: "If he does not come out, shoot him inside the

house."

Acting upon this suggestion or order Lieutenant Romero descended the stairs, walked to a corner of the house and then inserted the barrel of his gun through a siding or wall of the house and, presumably, aiming in the direction of the door, he fired twice. At the second shot Juan Valenzuela crumpled to the floor dead or in a dying condition because of a bullet wound in the back, the bullet finding an exit in the right chest. The members of the family of Juan burst into cries of sorrow and affliction over the death of Juan. Lieutenant Romero again ascended the stairs, entered the door which by then was no longer guarded or blocked and threatened the inmates of the house with death if they did not stop crying out and creating a scandal. Thereafter, Romero, the appellant, and their companions left. Juan was buried the day following.

Appellant Lazaro and Rosendo Romero were originally jointly charged with murder before the Justice of the Peace Court. Inasmuch as Romero was still at large, he was dropped from the complaint, and criminal proceedings were continued only against Lazaro, resulting in his conviction.

The appellant interposed the defense of alibi, claiming that in the afternoon of August 5, 1943, he was working at the sugar mill of Juan Berina located in the barrio of San Luis, Polangui, Albay, about fifteen kilometers from the barrio of Sto. Niño where the house of Juan Valenzuela was situated; that that afternoon a group of guerrillas came to the mill and ordered him (Lazaro) to accompany them to the house of Juan Valenzuela but he refused to go with them, saying that he was very busy with his work; that although the guerrillas punched, slapped and kicked him, he refused to comply with their order; that all that night he was peacefully sleeping in the place of his employer Juan Berina,

The lower court rightly refused to seriously consider, much less, accept this defense of the appellant for several reasons, among them that the appellant was a well-to-do farmer and could not, as he claimed, have been working as a common laborer at the sugar mill of Berina. The trial court also found material contradictions in the testimony of appellant and those whom he introduced to support his theory of alibi, aside from the inability of appellant to remember dates and incidents more recent than August 5, 1943, and of more interest to him, this, apart from the positive identification made by witnesses for the prosecution of the appellant having been present at or around the house of the deceased that night in question.

The motive for the killing is clearly shown by the evidence. It appears that long before August 5, 1943, Juan Valenzuela and the appellant were not on speaking terms, this in spite of the fact that Juan's son, Cipriano was married to Lazaro's daughter Milagros. Juan and appellant Lazaro had previously bought a parcel of land jointly but because of the refusal of one of them to divide the land, there developed a serious trouble between them as to the joint cultivation thereof and the partition of the products, the disagreement becoming so grave that it almost ended in a mortal combat—the two men fighting each other with bolos.

Another reason behind the misunderstanding or trouble between the two men was that after the marriage of his daughter Milagros, appellant Lazaro wanted the couple to live in his house and help him cultivate his extensive landed properties but because Cipriano Valenzuela was an only son and a minor at that, his father insisted that Cipriano and his wife Milagros live with him (Juan), which they did. This further aroused the ire of the appellant. Then, about the year 1942, appellant Lazaro who seems to have been in the good graces of the guerrillas, principally those headed by Felix Sabinorio called as the "Sabinorio Group," because he had been giving money for their support, accompanied some guerrillas to the house of Juan and had the latter and his son Cipriano arrested and tied up, taken to his house and there tied to a post while the guerrillas ate their meal. From there, father and son were taken to the guerrilla camp at Maligbog mountain where they were kept for about six days and were released only after the wife and daughter of Juan Valenzuela had paid P50 to Sabinorio. At one time

appellant was heard to have made the remark or threat: "that he would not stop in his efforts to take revenge on Juan until the latter was dead."

To show the spirit of revenge or persecution that animated the appellant where the family of the deceased was concerned, it was also established by the testimony of Alfreda Valenzuela that not long after the killing, he the defendant had Alfreda arrested by the guerrillas and taken to their camp where he tried to convince Guerrilla Captain Asuc that her father was a Japanese spy, and he wanted her to subscribe an affidavit to that effect. After due investigation, Captain Asuc found the charge baseless and untrue, released Alfreda and in turn sternly reprehended the appellant and warned him not to make any more false charges.

We entertain no doubt whatsoever about the presence of the appellant at or near the house of the deceased that night of August 5, 1943. He was clearly identified by Alfreda and Cipriano who upon hearing the evening greetings when the group arrived at their yard, went to the window and looked down to see. Alfreda again saw him through the door as it was forced partly open by Lieutenant Romero, and when Lazaro gave the order to Lt. Romero to shoot Juan Valenzuela in his house if he did not come out, his voice was recognized by Alfreda and by Cipriano, his son-in-law. Finally, Ciriaco Praxedes who was with the group that evening, identified the appellant. According to this witness, about 9 o'clock that evening Lieutenant Romero and the appellant and several other men passed by the road where he (Ciriaco), Melecio Valenzuela, and Jose Aguila were chatting; that Romero took Jose Aguila to one side and conversed with him, and that thereafter Romero ordered Ciriaco, Melecio and Jose Aguila to follow them which they did; that once in the yard of Juan Valenzuela, Ciriaco Praxedes saw the appellant go up the stairs of the house behind Lieutenant Romero and later heard him give the order to shoot Juan Valenzuela if he did not come out.

The appellant is clearly guilty as principal. Whether we consider him as having conspired with Lt. Romero to apprehend or kill Juan Valenzuela that night as shown by their act of going together to the house of the deceased and ordering him to come down and upon his refusal their trying to force their way in and when prevented, the shooting of the victim following the order of the appellant, or whether the appellant be regarded as principal by induction because he induced and ordered the actual killer to shoot the victim, the responsibility of the appellant for the death of Juan Valenzuela is clear.

We are convinced that the qualifying circumstance of treachery attended the killing. At the time he was shot the deceased was leaning or pushing against his door to prevent Romero and the appellant from entering the house. He evidently did not know or expect that Romero would stealthily go down the stairs and fire at him from behind. This case is similar to the shooting in the case of *U. S. vs. Baluyot*, (40 Phil. 385), where the victim after being fired at twice, fled and took refuge in a closet whose door he closed and leaned against in order to prevent the entrance of his assailant and pursuer who tried to open said door. In the meantime, he shouted for help. The assailant judging the position of his victim's head from the direction of the voice and shout for help, fired his revolver in said direction and hit the victim in the head, killing him. This Court declared in that case that the attack was treacherous. (See also *People vs. Bautista*, 45 Off. Gaz., 2084.)[1]

We cannot agree with the trial court and the Court of Appeals that the aggravating circumstance of accuturnity should be considered in this case for the reason that said circumstance is generally included in and absorbed by treachery (alevosia). There is however, the aggravating circumstance of dwelling. Although the attack was made not from inside the house but from below It, nevertheless, this aggravating circumstance may be considered as attending the shooting. (*People vs. Bautista*, supra.)

The penalty for murder is reclusion temporal to death. Because of the presence of the aggravating circumstance of dwelling, the penalty may well be imposed in its maximum degree, namely death. However, for lack of votes

necessary to impose said penalty, the same is hereby commuted to reclusion perpetua. Furthermore, the amount of indemnity to be paid to the heirs of the deceased is hereby increased to six thousand pesos (P6,000). With these modifications, the decision of the trial court is affirmed, with costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Paras and Feria, JJ., no part.

[1] 79 Phil., p. 842.

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