

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN VELARDE, DEFENDANT AND APPELLANT.*G.R. No. 12766. October 12, 1917*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12766/>**MALCOLM, J.:**

Desiring to place his brother-in-law, Marcelo Baguio, under control, because the latter was suffering from an attack of insanity, Juan Velarde, the defendant and appellant, went to the lieutenant of the barrio and asked assistance for this purpose. The lieutenant thereupon ordered one Apolinar Olaa to help Velarde. Olaa and Velarde entered the house of Baguio, and after a struggle, during which all fell through the floor, they succeeded in tying Baguio to one of the posts under the house. While in this position, Olaa and the accused struck Baguio with stones and a club and otherwise so maltreated him as to cause his death. Velarde only appeals.

That the defendant is guilty of the crime charged or of some other included therein has been proved beyond a reasonable doubt. The only debatable question concerns the proper classification of the crime. The trial court, considering *alevosía* as a qualifying circumstance and the fact that the defendant is a brother-in-law of the deceased as an aggravating circumstance, compensating the latter with the mitigating circumstance of poor instruction, sentenced the defendant to *cadena perpetua*, to indemnify the heirs of the deceased in the sum of P1,000, and to pay one half of the costs.

Our first duty is to determine if *alevosía* has been proved. It is a general rule established by many decisions of this Court that when a person is killed while bound, thus preventing him from making any defense, this fact constitutes the circumstance of *alevosía* and raises the crime from homicide to murder. (*U. S. vs. De Leon* [1902], 1 Phil., 163.) But the facts herein would seem to be not included within the general rule for when the defendant went to the house of the deceased, apparently he had no intention to kill him but merely to hold him. While it is true that the deceased was tied when he received the blows which caused his death, yet the time which intervened between the struggle and the aggression on the part of the accused was so short that the two events may well be considered one and the same act. We agree with the Attorney-General that cannot properly be taken into consideration. (*U. S. vs. Balagtas and Jaime* [1911], 19 Phil., 164.)

The trial court also considered relationship as an aggravating circumstance while the Attorney-General would use relationship as a mitigating circumstance. Article 10, No. 1, of the Penal Code permits the courts to take relationship into consideration as aggravating or mitigating, "according to the nature and effects of the crime." Not stopping to discuss when relationship should be considered as in derogation of existing relationship and so aggravating, it is evident that where relationship was rather the cause of the interference on account of a desire to render service to a relative, although one later far exceeds the limits of his discretion in the heat of the struggle and assaults the deceased, yet keeping in mind the motive which actuated him, we should classify such facts as mitigating criminal liability. (See 1 Viada, *Código Penal*, pp. 247-249, Questions I and III.)

Having found that *alevosía* has not been proved, having no aggravating circumstance, and having one mitigating

circumstance, to which can be added the further mitigating circumstance that the offender had no intention to commit so grave a wrong as that perpetrated, and because of his poor education and mentality which the trial court considered to come under article 11 of the Penal Code as superseded by Act No. 2142, in accordance with the provision of Act No. 2298, the penalty to be imposed is that next lower to that prescribed by law, in this case deemed to be prision mayor in its minimum degree. The defendant and appellant is therefore sentenced to six years and one day of prision mayor, with the accessory penalties provided by law, to pay an indemnity of P500 to the heirs of the deceased, with one half of the costs of the first instance and all the costs of this instance. So ordered.

Arellano, C. J., Johnson, Araullo, and Street, JJ., concur.

CARSON, J., dissenting:

I do not think that this ignorant man should be held guilty of homicide and sentenced to imprisonment for a long term of years, it appearing that, without express malice and with no apparent motive for killing his brother-in-law, he adopted those measures which he believed to be necessary to reduce the maniac to subjection and thereby to protect his family, his friends, and even the maniac himself from injury. .At most he should be convicted of imprudencia temeraria (reckless negligence) and punished accordingly.

Of course, the accused should not have used force beyond what was necessary to reduce the maniac to such a degree of subjection as would secure his family, his neighbors and himself from injury; but it would be difficult to lay down a rule as to the precise limits of force which may properly be employed in dealing with a dangerous lunatic. And however this may be, I do not believe that in the case at bar it has been proved beyond a reasonable doubt that the death of the maniac resulted from the use of excessive and unnecessary violence by the accused, and not from the necessary force and violence incident to the struggle to reduce him to subjection, and to prevent him from laying violent hands upon himself or others. It should not be forgotten that the accused was compelled to take such measures as he deemed necessary for the safety of all concerned, without the aid or advice of a physician, trained attendants, police officers or skilled assistance of any kind.

Judgment modified; penalty reduced.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.