

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULINO VALDEZ AND BUENAVENTURA GAMIT, DEFENDANTS.
BUENAVENTURA GAMIT, APPELLANT.**

G.R. No. 15873, March 12, 1920

Ponente: AVANCEÑA, J.

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AVANCEÑA, J.:

On the 7th of April, 1919, a marriage feast was being celebrated in the house of Leocadio Valdez in the barrio of Bantug of the town of Victoria, Tarlac. The deceased Hilarion Allarde and the defendants Paulino Valdez and Buenaventura Gamit were among those present at the gathering. On that occasion Paulino Valdez told Hilarion that he was a fool because he had been a witness for his brother Evaristo Allarde, when the latter had a suit against Paulino concerning a piece of land. Hilarion Allarde paid no attention to this allusion. When Hilarion Allarde went down from the house in order to return to the town, he was followed by Paulino Valdez, Buenaventura Gamit and others; and on arriving at a certain place, Buenaventura Gamit held him fast from behind without saying a word and while in this position Paulino Valdez inflicted a wound in his abdomen with a knife. These facts appear not only from the dying declaration of the deceased Hilarion Allarde but also from the declarations of the two witnesses, Bernabe Mauricio and Evaristo Allarde, who saw when Buenaventura Gamit held the deceased fast from behind and, while in this condition, Paulino Valdez inflicted a wound in the abdomen with a knife. Bernabe Mauricio, who was some distance away, upon seeing Hilarion Allarde being assaulted, approached and, as Paulino Valdez attempted to continue attacking Hilarion Allarde, snatched from Paulino the knife he was carrying.

An information for the crime of homicide committed upon the person of Hilarion Allarde having been filed against Paulino Valdez and Buenaventura Gamit, the latter were found guilty and each one of them was sentenced to fourteen years eight months and one day of reclusion temporal with the corresponding accessories; to indemnify, jointly and severally, the heirs of the deceased in the sum of P1,000; and to pay each one-half the costs. From this judgment only Buenaventura Gamit appealed.

Appellant's counsel contends in this instance that the fact that the appellant held the deceased fast, when the latter was wounded by his coaccused Paulino Valdez, being the only suggestive evidence, does not prove beyond per adventure of doubt the guilt of the appellant. But this fact is not merely a suggestive evidence but, as the Attorney-General correctly says, is itself the fact determinative of the appellant's responsibility. It constituted an integral act and a direct participation in the commission of the crime.

The fact that the appellant held the deceased fast from behind and, while in this position Paulino Valdez wounded him constituted a form of aggression tending to insure its execution without risk to the aggressors, arising from any defense which the deceased might make. The crime must, therefore, be considered as having been committed with treachery. Although this circumstance qualifies the commission of the crime as murder, nevertheless as the information charges the crime of homicide, we can only consider such circumstance as aggravating.

Wherefore, the judgment appealed from is modified and the accused is hereby sentenced to seventeen years four months and one day of reclusion temporal, to indemnify the heirs of the deceased, jointly and severally with his coaccused Paulino Valdez, in the sum of P1,000, Philippine currency, and to pay the costs of this instance. So ordered.

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

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