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[G.R. No. 532. August 21, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. MAURICIO RUBETA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

Between 1 and 2 o'clock in the afternoon on the 29th of April, 1900, Mauricio Rubeta went to the house of Jose Marcos, a resident of the colony of San Antonio of that district, and went up the stairs of the kitchen looking for the owner of the house. Salome Valderas, a little girl 10 years of age, who was in the kitchen, told him that Marcos was sleeping in his bedroom. The accused immediately went into the room and, approaching the sleeping man, inflicted upon him two wounds in the breast, from which he died in a few moments. The little girl, seeing that Rubeta was attacking her master, left the house and told Gervasio Fernandez what had occurred. Fernandez, with Justo Balais, went to the house of Marcos, where they found his dead body, showing two wounds inflicted by a sharp instrument, stretched on the ground near the stairway. The little girl Valderas stated that she believed the motive of the aggression was that Marcos had objected to one of his servants marrying a son of his slayer.

The facts stated constitute the crime of murder, defined and punished by article 403 of the Penal Code, inasmuch as the violent death of Marcos was the consequence of the mortal wounds which were inflicted upon him while he was in bed and asleep and from which he died in a few moments. This circumstance constitutes *alevosia*, because the aggressor, availing himself of the condition in which he found his victim, evidently employed means for the commission of the crime which directly and specially tended to insure its consummation without any risk to himself resulting from an attempt on the part of the injured party to defend himself, for, as the latter was asleep, it is unquestionable that Rubeta acted with the assurance of success in the realization of his criminal purpose.

The record demonstrates conclusively the guilt of the accused as author, by direct participation, of the crime prosecuted. The exculpatory allegation of the defendant that he was attacked by the deceased is not admissible, because not supported by the evidence, and because the witness for the prosecution, whom he called to prove this allegation, denied it absolutely. Furthermore, the drops of blood which were found by the two witnesses who went to the house shortly after the commission of the crime, together with other signs observed on the bed on which Jose Marcos was attacked, confirm unquestionably the testimony of the girl Salome Valderas, the only eyewitness to the aggression. The fact that the body of the deceased was found in another part of the house does not show that the accused was struck before the attack, as it is quite natural and by no means extraordinary that Marcos, aroused by the wounds received, should have gotten out of bed and attempted to walk until he fell dead.

In addition to the qualifying circumstance of *alevosia*, which carries with it an increase of punishment and makes the crime committed that of murder, we must also consider the concurrence of the twentieth aggravating circumstance of article 10 of the Code, because Marcos was attacked and mortally wounded in his own house, without provocation on his part. This circumstance, however, is compensated in its effects by article 11 of the Code as a mitigating circumstance to be applied, in view of the personal conditions of the defendant and the nature of the crime. Therefore the accused will be punished by the medium grade of the penalty assigned in article 403 of the Penal Code, and by virtue of articles 13,17,27, 81, and 122 of the Penal Code, rule 51 of the provisional law, section 50 of General Orders, No. 58, and Act No. 194 of August 10, 1901, we are of opinion that the judgment appealed should be affirmed in so far as by it Mauricio Rubeta is condemned to life imprisonment (*cadena perpetua*) and to the costs of the prosecution j the defendant to be also condemned to suffer the accessories designated in rules 2 and 3 of article 54 of the Penal Code, to indemnify the heirs of the deceased in the sum of 1,000 Mexican pesos, and to pay the costs of this instance. So ordered.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.

Mapa, J., did not sit in this case.

