

2 Phil. 102

[G.R. No. 958. April 03, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JUAN BABASA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

ARELLANO, C.J.:

Juan Babasa, late on the night of January 27, 1899, went to the house of Maria Antolin and called to the latter's daughter, Fausta, telling her to come out. Fausta, Maria, and a little boy, the latter's son, came out to see who was calling. No sooner had Fausta, who went ahead, arrived at the door of the house than she received a wound in the abdomen, from which she died on the following day. This is the statement of the mother and of the boy, Julio Bauan.

The death was discovered by a police officer named Mamerto Gabot, He testified that, having asked the mother what had caused the death of the deceased, she replied that the girl had died of a stomach ache, but he, suspecting that it was the result of a crime, sent for a doctor to examine the body; that the doctor found the wound in the abdomen, and stated that the girl, who was some 16 years of age, had died from its effects. The mother, nevertheless, testified that some two days before Babasa had been making love to her daughter, who did not respond to his advances, as he was a married man, and that on the night in question the facts occurred as above stated. Maria Antolin, in her testimony, says: "Upon stepping outside, Fausta asked him, 'What do you want of me?' and Juan, without saying anything, stabbed my daughter." The girl then, feeling that she was wounded, sat down on the; second step of the stairway and from there was carried by her mother into the house.

The accused testified that he was drunk and did not know what he had done; that he had had no intention of doing anything of the kind, and that on this account the family had promised not to make any complaint about the occurrence, they being convinced that he.

had not intended to inflict the wound, which was simply the unfortunate result of a movement of his hand. The entire defense has consisted in showing that the accused maintained amorous relations with the deceased, to which several witnesses have testified.

The judge, considering present the aggravating circumstances of nocturnity, abuse of superiority, and the commission of the offense in the dwelling house of the deceased, and the specific circumstances of premeditation and treachery (*alevosia*), condemned the accused to death.

We can not consider that the specific circumstance of premeditation is present, because there is no evidence indicating reflection, which is required for this circumstance. We consider the specific circumstance of treachery (*alevosia*) to be present, because¹ of the means employed by the defendant in the commission of the crime, which was held to constitute *alevoma* by the supreme court of Spain in its judgment of July 14, 1870. This circumstance being present, it becomes unnecessary to consider the aggravating circumstance of abuse of superiority and nocturnity. Neither is there any necessity for considering the circumstance of the commission of the offense in a dwelling house, as this fact does not appear to be proven by the testimony of Maria Antolin.

Therefore, there being no aggravating or mitigating circumstances, the specific crime of murder must be punished by the medium degree of the penalty fixed by the law. By virtue thereof we decide that Juan Babasa must be condemned to life imprisonment (*cadena perpetua*) with the legal accessories, to the payment of 1,000 Mexican pesos to the nearest relatives of the deceased, and to pay the costs of both instances.

Torres, Cooper, Willard, Mapa, and Ladd, JJ., concur.