

[G.R. No. 583. October 16, 1902]**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ISIDRO PADDIT ET AL., DEFENDANTS AND APPELLANTS.****D E C I S I O N****COOPER, J.:**

The defendants, Isidro Paddit, Marcelino Lozano, and Julian Serios, are accused of robbery *en cuadrilla*, resulting in homicide, in the following manner: The defendants on a night in November, 1900, in the town of San Nicolas, presented themselves at the house of Jacob de la Cruz, and after having tied him carried him to a place where the deceased had hidden a certain package, the property of Don Gregorio Mejia, which contained various articles and jewelry, and there committed the robbery and the killing of the deceased. The defendants were found guilty under the provisions of article 503, Penal Code, and the penalty of death was imposed upon them, from which judgment they have taken an appeal to this court. It was proven at the trial that on the night in question, on the occasion of the entering into the pueblo of the American Army, four persons armed with guns and bolos went to the house of the deceased, Jacob de la Cruz, and after binding his hands carried him off. Nicolasa Valdez, the widow of the deceased, testified that the three defendants were the persons who came to the house and commanded her husband to come downstairs. She lit a candle and went with her husband and recognized these three defendants; that she knew the three men because they lived in the same pueblo and barrio in which she was living; that the defendant Marcelino Lozano was a neighbor; that she had known him since her childhood; that in the month of November one Gregorio Mejia, on account of the confidence which he had in her husband, confided to his keeping a package containing the articles mentioned; that the defendants knew her husband was keeping the property of Gregorio Mejia because they saw the property when it was brought to his house; that she supposed they killed her husband in order that he might not report the matter to the authorities. That she knew they were killing her husband after taking him away, because he called to her aloud just before they

succeeded in killing him in a phrase used by the natives in bidding goodbye just before death; that about one hour and a half afterwards, on the return of her father, she told him what had happened, and they immediately went out and found the body of Jacob de la Cruz. He had five wounds on the breast and one on the back near the spinal column; it was east of the house that her husband was killed, near the place where the package was buried. She went to look for the package next day after her husband was killed and found that it was gone.

This witness was corroborated in her statements, as to the carrying off of her husband on the night in question, by Gregorio Mejia, Vicenta Valdez, and Lorenza Javellana, and as to the finding of the body and the character of the wounds which had been inflicted upon him and the disappearance of the articles mentioned. The defense offered the witnesses Joaquin Martinez; Eugenia Vicente, wife of Isidro Paddit; Juana Bibat and Oiriaca Serios, wife and daughter of Julian Serios, who testified that the three defendants were, during the whole month of November, in their respective houses; Paddit in the barrio of Santo Tomas, and Lozano and Serios in the same barrio in which the occurrence took place. We give no credence to the proof of *alibi* by these witnesses for the defendant.

If the charge had been murder (*asesinato*) the evidence would have been entirely sufficient to sustain the charge as qualified by *alevosia*, with the aggravating circumstances of nocturnity, and the sentence of the court to the death penalty might have been sustained, but the charge is for robbery resulting in homicide.

After a careful consideration of the testimony we are inclined to believe that the offense of robbery has not been proven beyond a reasonable doubt. No witness saw the taking of the package by the defendants and none of the property has been found in their possession. The property was hidden two weeks before the occurrence; there was no evidence as to the manner in which it was hidden nor whether it remained at the place or was seen there at any time from the time it was placed there two weeks previous to the time of its disappearance.

By the provisions of section 29, General Orders, No. 58, a defendant may be found guilty of any offense the crime of which is necessarily included in the charge under the complaint and information.

The offense of homicide is included in the offense of robbery resulting in homicide, and we find the defendants guilty of homicide with the aggravating circumstance of nocturnity,

which is punishable under article 404, with seventeen years and four months *reclusion temporal* in its medium degree. The judgment of the Court of First Instance is reversed and the defendants are each now sentenced to seventeen years four months and one day of *reclusidn temporal* in its medium degree, with indemnification of 1,000 pesos, Mexican, to the family of deceased, and costs of suit.

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

Smith and Mapa, JJ., did not sit in this case.

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