

2 Phil. 458

[G.R. No. 1316. August 29, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. LI-DAO, DEFENDANT
AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The defendant has made a motion to reverse the judgment in this case and remand the case for a new trial because there is no complaint in the record.

The following document, evidently filed under section 4 of General Orders, No. 58, though improperly called an information, appears on folio 5 :

“Information. Bontoc, subprovince of Bontoc, Lepanto-Bontoc, P. I. Inspector Elmer Eckman, P. C, being first sworn, on oath does say that on the eighth (8) day of December, 1902, three (S) Igorrotes, namely, Li-Dao and Dag-Sin and Lu-Don, all residents of the pueblo of Tulubin, subprovince of Bontoc, Province of Lepanto-Bontoc, P. I., to the best of my knowledge and information one or all did at or near the place called Sugit, subprov. Bontoc, Prov. Lepanto-Bontoc, P. I., inflict wounds on the person of an Igorrote named Al-i-co, a resident of the pueblo of Samaqui, subprovince of Bontoc, Province of Lepanto-Bontoc, P. I., from the effects of which he died. (Signed) Elmer A. Eckman, 2nd class inspector, Philippine Constabulary. “Subscribed and sworn to before me this twenty-fourth (24) day of December, 1902, in Bontoc, subprovince of Bontoc, Province of Lepanto-Bontoc, P. I. (Signed) T. K. Hunt, It. gov. and justice of the peace, ex oficio.”

This can not be a complaint for parricide, because it does not allege facts constituting that offense; it does not allege any relationship between the deceased and the defendant. For the

same reason it can not be a complaint for *asesinato*, for it does not allege facts which elevate the act of killing to that crime, nor does it call the crime *asesinato*, The only other crime which can result from the killing of a human being, namely *homicidio*, is sufficiently described in this complaint. That crime is, by article 404 of the Penal Code, defined to be any killing of a person which is not parricide or *asesinato*.

It is true that this complaint does not comply with No. 2 of section 6 of General Orders, No. 58, in that it does not give a name to the crime which the facts alleged show to have been committed. This noncompliance must be disregarded for two reasons: (1) It was a defect in form which did not tend to prejudice any substantial right of the defendant on the merits. Under section 10 of said General Orders the judgment can not be set aside for such reason; (2) the defendant made no objection to the complaint by demurrer or otherwise, but went to trial on the merits. The objection now urged was raised for the first time in this court By failing to present it in the trial court, the defendant waived it.

The court below convicted the defendant of *asesinato*. It is said by the Solicitor-General in his brief that there is no evidence in the record on which a conviction for that crime can be sustained. Whether that appears or not is immaterial, for we hold that under this complaint the most that, he can be convicted of is *homicidio*. The motion of the defendant is denied. We have determined this motion on its merits, but we call the attention of counsel to the fact that the practice pursued by him is irregular. All objections to the judgment both of form and substance should be included in one brief, and should be presented and argued together when the case is heard on its merits. The practice followed here has produced the necessity for two hearings of this case. The defendant is allowed twenty days from the date of this order in which to file a brief on the merits, and the case is set down for hearing on the 25th day of September, 1903.

Arellano, C. J., Torres, Cooper, Mapa, and McDonough, JJ., concur.
