

6 Phil. 227

[G.R. No. 2318. April 30, 1906]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGO-CHI (ALIAS GO-GAY-CHY), DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

The complaint in this case is as follows:

“The undersigned accuses Ago-Chi (*alias* Go-Gay-Chy) of the crime of assassination, committed as follows:

“That on or about the 12th day of May, 1904, in the city of Manila, Philippine Islands, the said Ago-Chi (*alias* Go-Gay-Chy) did willfully, unlawfully, and feloniously, with malice aforethought, with deliberate premeditation, with treachery by employing means and methods and forms in the execution of said crime tending directly and especially to insure its execution without risk to the person of the said Ago-Chi (*alias* Go-Gay-Chy) arising from any defense the injured party might make—with vindictiveness, by deliberately and inhumanely increasing the sufferings of the person attacked—assault, attack, beat, strike, cut, and stab one Chua-Chong with a dangerous and deadly weapon, to wit, a knife or bolo, inflicting upon the said Chua-Chong fatal wounds, from which the said Chua-Chong then and there died. That in the commission of said crime the following aggravating circumstances were present:

“Advantage was taken of superior strength, and means were employed to weaken the defense; the crime was committed in the nighttime. All contrary to the form of the statute in such cases made and provided.

“C. R. TROWBRIDGE.

“Subscribed and sworn to this 21st day of May, 1904, before me by George W. Marshall.

“J. MCMICKING,
“Clerk, Court of First Instance, City of Manila.”

The accused was found guilty of the crime of assassination as charged, and sentenced to death.

Counsel for appellant contends that the trial court was without jurisdiction, to try the case because, as he alleges, the accused was deprived of his right to a preliminary trial. It does not appear from the record that such preliminary trial was not in fact granted the accused, and in the absence of affirmative proof to the contrary it must be presumed that the trial court proceeded according to law, and no objection having been made at the trial, the accused must be taken to have waived his right to a preliminary trial, if in fact he was not given the benefit thereof. (U. S. vs. Cockrill.^[1])

Appellant also maintains that the complaint was insufficient because it was signed by one O. R. Trowbridge and sworn to by one George W. Marshall Section 4 of General Orders, No. 58, dated at Manila, April 23, 1900, defines a complaint as “a sworn written statement made to a court or magistrate that a person has been guilty of a designated offense,” and section 6 of said order provides that a complaint is sufficient if it shows—

“(1) The name of the defendant, or, if his name can not be discovered, that he is described under a fictitious, name, with a statement that his true name is unknown to the informant or official signing the same. His true name may be inserted at any stage of the proceedings instituted against him, whenever ascertained.

“(2) The designation of the crime or public offense charged.

“(3) The acts or omissions complained of as constituting the crime or public offense in ordinary and concise language, without, repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended, and the court to pronounce judgment according to right.

“(4) That the offense was committed within the jurisdiction of the court and is triable therein.

" (5) The names of the persons against whom, or against whose property, the offense was committed, if known." It thus appears that the signature of the person who swears to a complaint is not an essential requisite thereof, and its omission is at most a mere defect of form and not of substance. Section 10 of General Orders, No. 58, provides that—

"No information or complaint is insufficient, nor can the trial judgment, or other proceedings be affected by reason of a defect in matter of form which does not tend to prejudice a substantial right of the defendant upon the merits."

The evidence of record proves beyond a reasonable doubt that the accused did unlawfully kill the said Chua-Chong on the night of the 12th day of May, 1904, and in the house of the said Chua Chong in the city of Manila. No one except the accused and his victim was present at the commission of the crime, and while the evidence strongly tends to sustain the findings of the trial court that it was done with "deliberate premeditation, treachery, and vindictiveness," nevertheless we do not think that the circumstantial evidence upon which the trial court based its conclusions sustains these findings beyond a reasonable doubt.

In the absence of satisfactory proof that the commission of the crime was marked by one or more of these qualifying circumstances, the judgment and sentence of the trial court should be, and is hereby, reversed, and instead thereof we "find the accused, Ago-Chi (*alias* Go-Gay-Chy), guilty of the crime of homicide, as defined and penalized in article 404 of the Penal Code, and the commission of the offense having been marked by two aggravating circumstances (Nos. 15 and 20 of art. 10 of the Penal Code) we impose upon the said Ago-Chi (*alias* Go-Gay-Chy) the penalty of twenty years' imprisonment (*reclusion temporal*) in its maximum degree, the accessory penalties prescribed in article 59 of the Penal Code, the costs of the trial in both instances, and the civil indemnification of the heirs of the deceased in the sum of 1,000 pesos. After the expiration of ten days from the date of final judgment let the record be remanded to the court from whence it came for proper action. So ordered.

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

^[1] Not reported.
