

6 Phil. 676

[G.R. No. 3182. November 13, 1906]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE SOLIS,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a written complaint filed by the provincial fiscal of Batangas on the 16th of November, 1905, the defendant, Jose Solis, was charged with the crime of murder, in that on or about the 19th of July, 1902, at night in the town of Taal, of the said Province of Batangas, he, together with Eliseo Herrera and Leon Garcia, who were tried separately, treacherously killed one. Julio 'Lontoc, whom they purposely sought and unexpectedly attacked, inflicting upon him a wound on the left temple and stabbing him in the epigastric region, the weapon having penetrated his diaphragm, the said Lontoc having died shortly after, this in violation of the statute made and provided.

The foregoing complaint having been allowed by the court, the motion by defendant's counsel to dismiss the case on the ground that the defendant, Solis, had been formerly accused of the same crime, which charge had been dismissed, and that a second trial under the complaint in this case would place the defendant twice in jeopardy in violation of the provisions of the act of Congress of July 1, 1902, was overruled, the court holding that the former complaint having been provisionally dismissed without prejudice to the filing of another complaint for the same offense, the defendant had not been placed in jeopardy as alleged, and after hearing the evidence introduced at the trial which took place on the 24th of January, 1906, sentenced the said defendant for the crime of homicide to twelve years and one day of imprisonment (*reclusion temporal*), with the accessories provided by law and to pay the costs of the proceedings, from which said judgment the defendant appealed.

It appears duly proven from the evidence of record that the deceased, Julio Lontoc, and the defendant, Jose Solis, had been for a long time rivals for the affections of Ana Orlina, who at

the time lived in the house of Tomas Aliling, in the town of Taal; that several days prior to the occurrence, the defendant stopped going to the house, while the deceased Lontoc continued to frequent the same for the purpose of making love to her; that about 8 or 9 o'clock on the evening of Saturday, July 19, 1902, Jose Solis, accompanied by Eliseo Herrera and Leon Garcia, went near the house in question, waited at the gate, and when the deceased Lontoc was going out of the yard into the street, he was suddenly assaulted by Eliseo Herrera, who struck him a blow with a cane on the left temple and knocked him down; that Herrera and Garcia then ran away, but Solis, who remained there, immediately attacked the said Lontoc while he was lying on the ground, stabbed him in the abdomen, and then ran away; that the deceased was shortly afterwards examined by the municipal physician while he was still alive, and a bruise was found on his left temple, which apparently had been caused by a blow with a hard and blunt instrument, and a stab in the epigastric region, the weapon having penetrated the diaphragm, the stomach, and the descending aorta; and that as a result of the copious hemorrhage which followed, the deceased died a few minutes after the examination, the physician being of the opinion that the deceased had dragged himself for a distance of about 4 brazas from the spot where he fell, judging by the trail of blood.

From the facts proved in this case it is to be inferred that the crime committed was that of homicide as provided and punished in article 404 of the Penal Code, inasmuch as the killing of the deceased, Julio Lontoc, on the evening of the 19th of July, 1902, did not occur under such circumstances as would qualify the crime as murder, none of the qualifying circumstances enumerated in article 403 of the said code being present.

If it is true that the deceased was stabbed while he was lying on the ground, as the result of the blow struck by Eliseo Herrera on the left temple, it is none the less true that, both aggressors having acted together, the act committed by the defendant, Solis, in stabbing the deceased in the epigastric region was nothing but the continuation of the unlawful purpose to kill the deceased. Herrera committed the first act of this unlawful deed by striking the defendant a blow, and the defendant, Solis, consummated the crime by stabbing the deceased. None of the circumstances which would qualify the killing as murder ever existed in this case, and, considering the other details of the commission of the crime, we think that it should be qualified as homicide.

The guilt of the defendant, Solis, as principal of the crime charged by direct participation therein was fully established at the trial, not only by testimony of witnesses to the occurrence, but by conclusive circumstantial evidence drawn from the facts testified to by

the witnesses, and we find him guilty of the said crime beyond a reasonable doubt.

The deceased was killed in the middle of the street one moonlight night in the town in question. It is not, therefore, strange that the killing should have been witnessed by some of the neighbors and other residents walking along the road that night. The disappearance of the defendant after the night in question and his subsequent absence from the town of Taal until he surrendered to the local authorities in March, 1905—that is to say, nearly three years—during which absence he had joined a band of brigands; all this taken together, confirms the finding of the court below that he was one of those guilty of the killing of the said Lontoc; his plea of “not guilty,” the evidence offered by him in his own behalf, and the sole testimony of his father, Felix Solis, to the contrary notwithstanding. There should be taken into consideration in favor of the defendant, as the court below did, the special circumstance provided in article 11 of the Penal Code, which is counterbalanced in this case by the aggravating circumstance of nocturnity, there being no doubt that the defendant and his companions planned to commit the crime in the nighttime so as to facilitate its commission, avoid possible detection, and make their escape easily. The defendant Solis should be, therefore, punished with the medium degree of the penalty for that crime.

As to the order of the court below, dated the 4th of January of this year, overruling defendant’s motion to dismiss the case on the ground that he had been twice placed in jeopardy, the same is hereby sustained. The dismissal of the complaint in the former case before the defendant had been arraigned and had pleaded to the complaint did not place him in jeopardy.

The defendant was not placed twice in jeopardy on account of this second prosecution, as he never pleaded to the complaint in the former case and the order of the court dismissing that complaint was without prejudice to the filing of another complaint for the same crime.

Eliseo Herrera and Leon Garcia, who accompanied the defendant Soils on the night in question, were tried separately for the same offense.

For the reasons hereinbefore set out, we are of the opinion that the judgment appealed from should be affirmed, provided, however, that the defendant is hereby sentenced to fifteen years’ imprisonment (*reclusion temporal*) with the accessories provided in article 59 of the Penal Code, to indemnify the heirs of the deceased in the sum of P1,000, and to pay the costs of these proceedings. After the expiration of ten days from the date of final judgment the case will be remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

Date created: May 05, 2014