

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUSTO GAMIS, DEFENDANT AND APPELLANT.

G.R. No. 3750. November 26, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of assassination in the words following:

"That on the 15th of November, 1906, and within the municipality of Tanauan, the said Justo Gamis, with known premeditation, treachery, and vindictiveness, with a bolo which he then and there carried, assaulted Feliciano Peliio by inflicting nine wounds on the latter; that one of said Avounds was made on the deceased's neck and almost separated the head from the trunk, while another one was made in the abdomen of the deceased, on account of which the latter's intestines came out; and from the effects of all of which resulted the death of Feliciano Peliio. All contrary to the form of the statute.

"Tacloban, Leyte, November 28, 1906."

On this complaint the defendant was duly arrested and brought before the Court of First Instance of the Province of Leyte, was duly arraigned and pleaded "not guilty." After hearing the evidence adduced during the trial of the cause, the lower court found the defendant guilty of the crime charged in said complaint, and sentenced him to the penalty of death and to pay the costs. From this sentence the defendant did not appeal. The cause is here en consulta.

An examination of the evidence brought to this court shows the following facts to be true beyond peradventure of doubt:

That on or about the 15th day of November, 1906, in the barrio of San Victor, of the pueblo of Tanauan, of the Province of Leyte, the defendant, Justo Gamis, went to the house of Feliciano Pelifio and called the latter out of his house; that after Feliciano Peliflo came out to the place where the defendant was standing in the yard, the defendant at once stabbed the said Pelino in the stomach with a bolo which he then and there carried, and after inflicting this wound inflicted various other wounds upon the body of the said Feliciano Pelino, from the effects of which the said Peliio then and there immediately died.

These facts were admitted by the defendant, except that the defendant contended that the said Peliflo was at the house of the accused. This contention of the defendant, however, is completely refuted by the fact that the body of Pelino was found in his own yard, some distance from the house of the defendant. The defendant admitted that Pelino died immediately after the infliction of the wounds. This being, true it was impossible for the deceased to have returned to his own house. The defendant made no contention that he or others had carried the body of the deceased back to the house of the latter.

There is nothing in the record which in any way indicates the motive which the defendant had in committing the alleged crime. The wife of the deceased stated that the defendant was drunk at the time of the commission of the

said crime. This fact is strenuously denied by the defendant.

The lower court qualified the crime as that of assassination (murder). There is no fact or facts in the record justifying this qualification. The crime was that of simple homicide. There were neither extenuating nor aggravating circumstances accompanying the commission of the crime. The defendant must therefore be punished in the medium degree of reclusion temporal.

It is the judgment of this court, therefore, that the judgment of the lower court be reversed and that the defendant be sentenced to be imprisoned for a period of fourteen years eight months and' one day of reclusion temporal, with the accessories provided for in article 59 of the Penal Code, and to indemnify the heirs of the deceased in the sum of P500, and to pay the costs of both instances. So ordered.

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

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