

[ G.R. No. 1175. August 27, 1903 ]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TOMAS HINTO SANTOS ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

On June 1, 1902, a band composed of some twenty-five men (it does not appear clearly whether they were insurgents or brigands, but that is a matter of indifference for the purpose of this decision), armed with guns, revolvers, and bolos, had an encounter, between the towns of Cardona and Binangonan, Rizal Province, with some American cavalry soldiers stationed at Tanay. They succeeded in capturing five of these soldiers and subsequently took them to a place called Mount Aduas. On the road the same band captured Agapito Nicolas and Deogracias Paynon, whom they also carried to Mount Aduas, where the former was held for twenty-four hours and the latter for a week. Both these men testified to having seen the accused, who was known to them before the occurrence, as one of the band which captured them, and testified that he was armed with a revolver. At the time of their capture they also saw the five Americans in the hands of this band. When the witness Nicolas regained his liberty, he observed that the Americans were still held as prisoners by the band. The witness Paynon says that he saw the Americans every day during the week of his detention, and that during the last night he passed as a prisoner with his captors he saw five of the band, among them the accused, armed with revolvers and guns, take the Americans from the house in which they were all living and lead them away. About daybreak the next morning the captors returned alone, without the Americans, who were not again seen alive by the witness. He testifies that on that day Eusebio de la Cruz and another member of the band called Marcelo de la Cruz, told him that the Americans had been killed by the two mentioned in the presence of the accused and the other three men in the band. The witness was liberated by his captors on the night of that same day, and testifies that he subsequently saw the bodies of the five Americans at Mount Aduas when he went there in

company with some members of the Constabulary.

Another witness, Rafael Manguna, states that he was present in the justice court at Antipolo when the accused testified in the preliminary examination, and that at that time the accused testified that he was taken from his house and carried away, together with the five American soldiers, to Mount Aduas, where these Americans were killed, while bound, by Guillermo Hinto Santos, Eusebio Cagayan, and Marcelo de la Cruz.

The accused did not put any witnesses on the stand in his defense, but stated in the course of the trial that everything the witnesses for the Government had said was true, and added under oath that when he was informed that Eusebio Cagayan had decided to kill the five Americans he objected, saying that in his opinion this should not be done because it was against the law; that the best thing to do would be to propose to the president of the town the exchange of the Americans for any prisoners belonging to his band whom the president might have, and that Eusebio, striking him, replied that if they allowed the Americans to live they would increase the number of their enemies.

If the testimony of the witnesses for the prosecution is true, as admitted by the accused himself, it must also be true that he was a member of the band which captured the Americans. It is also true that he, armed with a revolver, was present at the time the Americans were killed, as a member of that band, and it is also true, finally, that the victims were killed while bound and therefore unable to defend themselves. It is of no importance that the accused first opposed the proposition to kill them—supposing that this be true—for he finally assented to it and sanctioned the act with his presence; nor is it of any importance that he did not himself strike the blow or blows by which the prisoners were killed. It is sufficient that he was present at the act, augmenting with his arms and presence the power of the band, thus aiding the common act of all, for him to be considered as a principal, by direct participation, in the crime prosecuted.

The fact that the prisoners were bound when they were killed proves the existence of the qualifying circumstance of *alevosia*.

The evidence shows that the defendant and his companions, after keeping their prisoners for a week or more, took them one night about midnight from the house where they were kept, carried them some distance into the woods, and there killed them, returning after two hours or more. These facts show the existence of the aggravating circumstance of known premeditation. It can not be doubted that their captors had formed the intention of killing

their prisoners when they took them from the house. The time elapsing between that event and the actual killing was sufficient to constitute that period of reflection which must be present in order that this circumstance may exist. (United States vs. Ricafort, decided Mar. 19, 1902.)<sup>[1]</sup>

The judgment of the court below imposing the penalty of death is hereby confirmed, and it will be carried into execution by the said court in accordance with the provisions of the Penal Code relating to that subject.

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

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<sup>[1]</sup> 1 Phil. Rep., 173.

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*DISSENTING*

**MAPA, J.:**

I concur in the classification of the crime and in the judgment that the accused is guilty, but am of the opinion that the aggravating circumstance of deliberate premeditation does not exist in this case, and that the proper penalty is that of life imprisonment (*cadena perpetua*).