

4 Phil. 479

[G.R. No. 1612. April 27, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GEORGE GRAY,
DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

George Gray, the appellant in this case, was charged with the crime of assassination, in that “on the night of the 15th of August, 1903, in the town and Province of Cavite, the said George Gray, with a bar of iron, and Michael Davitt, Harry Matterson, William Brunn, and James J. Higgin, with sticks and pieces of wood, did willfully, maliciously, and treacherously beat one Hermenegildo Eclar, inflicting upon him grave wounds, as a consequence of which he died.”

The trial court found him guilty as charged in the complaint and sentenced him to seventeen years four months and one day of *cadena temporal* (imprisonment) and to pay the costs of the proceedings and civil damages to the heirs of the deceased in the sum of 1,000 pesos.

We are of opinion that the evidence adduced at the trial fully established the unlawful killing of the said Hermenegildo Eclar by the said George Gray, at the time and in the place and manner set out in the information, except in so far as it is alleged that said killing was done treacherously (*alevosamente*). The trial court was of opinion that there was “treachery” in the commission of the offense, because “the deceased was surrounded by various Americans and pursued in his flight by the said Gray for the purpose of striking the fatal blow.”

In view of all the facts in the case we do not think that this

circumstance should be taken into consideration as constituting treachery so as to raise the offense committed from homicide to assassination, as provided in article 403 of the Penal Code, and therefore the sentence appealed from should be, and is hereby, reversed.

The crime of homicide, of which the appellant was proven guilty, is a crime necessarily included in the charge upon which he was tried, and we therefore find the accused guilty of homicide as denned in article 404 of the Penal Code, and, taking into consideration the mitigating circumstance mentioned in article 9 of paragraph 7 of the Penal Code, as found by the trial court, we sentence the said George Gray to the penalty of twelve years and .one day of *reclusion temporal*, with the accessory penalties prescribed in article 59 of said code, and to the payment of 1,000 pesos civil damages to the heirs of the deceased, and the costs of the proceedings in both instances. So ordered.

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

DISSENTING

JOHNSON, J.:

I can not concur with the majority in this case. In my opinion the proofs are not sufficient to demonstrate, beyond a reasonable doubt, that the accused is guilty of the crime of which he is charged.
