

[G.R. No. 1937. March 10, 1905]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. TOMAS DOON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

In a complaint dated October 14, 1903, the provincial fiscal of Bulacan charged Tomas Doon with the crime of murder. The complaint stated that the defendant, on or about the month of April, 1902, with known premeditation, did follow one Ramon Gotica into a field in the barrio of Caruhatan, town of Polo, armed with a revolver and a bolo and accompanied by an unknown person; that when he overtook said Gotica he tied him around the elbows and conducted him to Sapangmalalim in said barrio; that when he arrived there the defendant took the victim by the hair and cut his throat with a bolo, the said Gotica dying instantly; all contrary to law.

The case having been tried, the court below found the defendant guilty of the crime of murder and sentenced him to *cadena perpetua* with the accessories and to pay the sum of 1,000 pesos to the heirs of the deceased, and the costs. From this judgment the defendant appealed.

It appears from the evidence adduced in the case that some days previous to the occurrence the defendant was heard to say that he would kill said Ramon Gotica, but those who heard him did not pay any attention to his statement, although it was public in the barrio that Tomas Doon lived illicitly with Gotica's wife; that between 8 and 9 o'clock on the morning of a day, the date of which being unknown, the defendant was seen pursuing the deceased through the fields; that at

that time the defendant was armed with a bolo and carried some twine; that two of the residents of the barrio, Jose Dorona and Apolonio Padrinao, on seeing him come from his house, came out of their homes and went toward the woods between the barrios of Caruhatan and Pugad Babuy; that when the defendant reached the deceased, Gotica, he tied him around the elbows and, taking him by the hair with one hand, struck him with a bolo in the neck; that the deceased died instantly, and that the defendant was accompanied by an unknown person.

All this was witnessed by the two neighbors aforesaid, who from different points went after the defendant and concealed themselves behind some bushes and saw the occurrence; that the place where the murder was committed was between the barrios of Caruhatan and Pugad Babuy, near Sapangmalalim, and about 300 yards from the house of the witness Dorona; that between 9 and 10 o'clock on the evening of the same day the defendant, Tomas Doon, accompanied by four other unknown persons, called on the witness Apolonio Padrinao and commanded him to follow them under pain of instant death; that Apolonio Padrinao did as he was told and went with the defendant and his companions to the place called Sapangmalalim; that when he arrived there the defendant told him to take the corpse of Gotica, assisted by the other companions of defendant, to a small creek near there, and by order of the defendant he covered the body with some leaves; that when he returned to his house from that place the defendant and his companions warned him, under threats of death, not to tell anything to anybody; that the defendant was in the habit of going to the house of the deceased, and that after the latter was killed defendant went to live in the house with the wife of the deceased, Paula; that the defendant used to say he was a captain under Contreras, a chief of the Katipunan, and for this reason the inhabitants of the barrio feared him; they did not report the occurrence to anybody because the defendant was armed as a captain under Contreras, and because the latter's band used to invade the pueblos, the residents were afraid and very few remained in the barrio.

It appears, then, from the foregoing statements that it is a fact fully proven in the present case that Ramon Gotica was killed violently; that his killing was accompanied by the aggravating

circumstance of treachery (*alevosia*), because the defendant, in order to insure the execution of the crime without any risk to himself which might arise from whatever defense the victim might make, tied him around the elbows, and while in this position he struck him with the bolo in the neck, from which blow the deceased died. These facts constitute the crime of murder provided for and punished by article 403 of the Penal Code.

The liability of the defendant, Tomas Doon, as principal in the commission of the said crime can not be denied, notwithstanding the fact that he pleaded not guilty. The evidence introduced by the defense has not succeeded in overcoming the evidence of the prosecution. Further, the defendant has not succeeded in proving the truth of his allegations, nor that the witnesses for the prosecution testified falsely. The testimony of the widow of the deceased, far from showing the nonexistence of the crime, corroborates the unexplained disappearance of her husband. In the crime there are no aggravating or extenuating circumstances to be considered.

The circumstance of premeditation can not be taken into account, because it has not been established that the defendant premeditated or had a deliberate intention to deprive the deceased of his life, and therefore the penalty incurred by defendant must be imposed in its medium degree.

By virtue of the reasons above stated we are of the opinion that the judgment below should be affirmed, with the costs in this instance, it being understood that Tomas Doon is also sentenced to the accessory penalties provided for in paragraphs 2 and 3 of article 54 of the Penal Code.

This case to be remanded to the court below with a certified copy of this decision and of the judgment to be rendered in accordance herewith. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

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