

[G.R. No. 2288. September 27, 1905]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. FELIX GARCIA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The defendant here is charged with the crime of assassination, in that he did, in company with Hilario Tal Placido, Isauro Tobias, and Bartolome Agapito, kill with a gun one Pedro de la Cruz "en el sitio de Danpulan," in the pueblo of Jaen, in the Province of Nueva Ecija.

The proof adduced at the trial shows that the defendant did kill Pedro de la Cruz by shooting him with a gun, that the ball entered the back of the neck, passing out through the right eye of the said Pedro de la Cruz, from the effects of which the said Pedro de la Cruz then and there died. These facts were admitted by the defendant and substantiated and proven by the said Hilario Tal Placido and Isauro Tobias. The defendant alleged in his defense that he killed the said Pedro de la Cruz by virtue of an order issued by one David P. Willar, a lieutenant in the United States Army, of the Twenty-second Infantry, who was then and there in command of a detachment of United States soldiers in the Province of Nueva Ecija. The defendant made no pretense nor did he offer any evidence to show that the order of the said lieutenant to kill the said Pedro de la Cruz had been given to him. The evidence shows that if such order was given at all, it was given to the said Isauro Tobias, who was then and there acting as interpreter for the said lieutenant, and by him communicated to the said defendant. It was further admitted that if said order had been given at all, it was

given orally.

Even admitting that the order as claimed by the defendant had been given, it was illegal and it was his duty to disobey it. He had no right to obey the order even though it had been given. His acts were illegal and in violation of law.

None of the conditions mentioned in article 403 of the Penal Code are found to exist in the commission of the crime charged against the defendant here. The acts committed by the defendant in taking the life of the said Pedro de la Cruz constitute the crime of homicide, defined and punished in article 404 of the Penal Code.

The Court of First Instance of the Province of Nueva Ecija, after hearing the evidence adduced in said cause, sentenced the said Felix Garcia to be imprisoned for a period of seventeen years four months and one day of *cadena temporal*; to the accessories of civil interdiction during the term of the sentence, perpetual absolute disqualification and subjection to the surveillance of the authorities during his life; to indemnify the heirs of the deceased in the sum of P500, and to the payment of the costs of the proceedings.

The evidence adduced during the trial is sufficient to justify the sentence rendered by the lower court and the same is hereby affirmed with costs. So ordered.

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