

2 Phil. 669

[G.R. No. 1338. November 07, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JULIAN SANTOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

WILLARD, J.:

The evidence shows that in October, 1902, the defendant Santos was in the command of a band of so-called Katipunan soldiers who were operating in the Provinces of Rizal and Bulacan. His soldiers had captured Toinas Testa, the president of the pueblo of Meycauayan, and his brother Francisco Testa. They were kept in confinement for three days, then taken from the *cuartel*, carried to a place called Caingin, and there executed by the defendants Alejo Oeneta. and Santiago Juan, in the presence of Santos and by his orders, he handing to Santiago Juan the dagger with which the latter killed Tomas. There is no doubt as to the guilt of the two defendants.

The deceased were bound at the time they were killed. This shows the existence of the qualifying circumstances of *alevosia* and raises the offense to the crime of *asesinato*. As to Julian Santos, there existed also the aggravating circumstance of known premeditation. The case as to this circumstance, with reference to Santos, is fully covered by the case of the United States vs. Ricafor, decided March 19, 1902.^[1]

The same can not, however, be said as to the other de- fendant. Article 79 of the Penal Code is as follows: "Aggravating or extenuating circumstances which consist in the moral disposition of the delinquent, or in his particular relations with the injured person, or any other personal cause, shall serve to increase or mitigate the responsibility solely of such principals or accessories as to whom these conditions exist.

"Those which consist in the material execution of the act or in the means

employed for its commission shall serve to augment or mitigate the responsibility solely of those who had knowledge of such circumstances at the moment of the act or of their cooperation in the commission of the crime.”

The circumstance of “known premeditation” falls within the first paragraph of this article.

The evidence shows that this organization of Santos was of a military character. It appears that he was a general, one Vicente was his captain, and one Esteban was his lieutenant. Santiago Juan was, according to the defendant Santos himself, either a sergeant or a lieutenant. The witness Amando was a private soldier. Over 100 soldiers attended the execution. Under these circumstances, it can not be said that the defendant Alejo premeditated the death of the brothers Testa. He had no control over their fate. Being only a private soldier, subject to the orders of his general, he could not have known whether they were to be killed or pardoned until the moment of committing the act. As to him, the circumstance of known premeditation did not exist.

The judgment condemning Julian Santos to death is confirmed. The judgment as to Alejo Ceneta is reversed and he is convicted of the crime of asesinato, without any circumstances extenuating or aggravating, and sentenced to life imprisonment, with the costs of this instance against the appellants.

Arellano, C. J., Torres, Gooper, Mapa, McDonough, and Johnson, JJ., concur.

^[1] Phil. Rep., 173
