

45 Phil. 207

[G.R. Nos. 20674, 20675. October 04, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
ANTONIO YABOT, DEFENDANT AND APPELLANT.**

D E C I S I O N

STATEMENT

In case No. 25289 in the Court of First Instance of the City of Manila, the defendant was charged with the crime of homicide, and in case No. 25462, he was charged with the crime of frustrated murder. The two cases were tried as one, and in case No. 25289, the defendant was found guilty, with the mitigating circumstance of lack of instruction in his favor, and sentenced to twelve years and one day of *reclusion temporal*, with the accessory penalties, and to indemnify the heirs of the deceased Alfonso del Castillo in the sum of P1,000, and to pay the costs.

In case No. 25462, he was sentenced to ten years and one day of *presidio correccional*, with the accessory penalties, and to indemnify the offended party, Felix Carmona, in the sum of P67.50, and to pay the costs, from which judgments he appeals, contending:

“1. That the trial court erred in holding that the proofs and evidence presented by the prosecution are sufficient to establish the guilt of the accused beyond reasonable doubt.

“2. That the trial court erred also in sustaining that the witnesses of the accusation deserve more credit or are more creditable than those of the defense.

“3. That the trial court erred also in holding that the crime of frustrated murder was established by appreciating the qualifying circumstance of *alevosia*.

“4. The trial court erred also in admitting the testimonies of the witness Filemon Rodriguez, being said testimonies purely hearsay.

“5. That the trial court erred also in not having acquitted the accused, Antonio Yabot, from the crimes charged when according to his testimonies, corroborated by the testimonies of the witnesses of the defense, that said accused acted only in defense of his person and of his wife.”

JOHNS, J.:

The evidence tends to show that the defendant and the offended parties, Alfonso del Castillo and Felix Carmona, were neighbors, living in the district of Sampaloc in the City of Manila. Felix Carmona was foreman in the cigar factory “La Comercial” where the defendant was employed as a laborer. As a result of some trouble between them, the defendant was discharged about the middle of December, 1922, and found a job in another factory with better wages.

January 18, 1923, while Carmona was going to his work, he was accosted by the defendant, and a dispute arose, resulting in a fight between them until they were finally separated by Gaudioso Rodriguez. In this fight neither party was seriously injured. Both of them lived near the scene of the altercation, and after they were separated, the defendant went up into his own house. In a few moments he returned and the fight was resumed. It was then that the defendant stabbed Carmona in the abdomen, inflicting upon him serious personal injuries, as a result of which he was confined in a hospital more than thirty days and did not resume labor until the 5th of March. In this last altercation, the defendant also stabbed Alfonso del Castillo in the abdomen, as a result of which he died on the following morning.

After the stabbing, the defendant went to the nearest police station and surrendered. Upon his arrival there he had the knife in his hand with which the stabbing was done.

There is no evidence as to whether the defendant had a knife at the time of the original fight, or as to when or where he got the knife with which he did the stabbing. Be that as it may, the defendant had retreated to a place of safety, and when he later returned, he had a knife in his possession and stabbed both of the offended parties.

It is claimed by the defendant that Carmona came to his house while he was away and insulted his wife, and it was that which provoked the quarrel between him and Carmona. He also claims that after he had gone into his house, he looked out of the window and saw Carmona and others abusing and assaulting his wife, and that he returned to defend her, and that he was justified in doing so; that in the stabbing of Carmona, he acted in self-defense, and that when Alfonso del Castillo, who is the father-in-law of Carmona, came to the relief of Carmona, he assaulted the defendant, and that it was for such reason that he stabbed Alfonso del Castillo, and that in doing so, he also acted in self-defense.

We have carefully read all of the evidence on the part of the defendant, and some of it twice, and agree with the trial court that the plea of self-defense is not sustained by the evidence. The record is conclusive that the defendant acted on the impulse of the moment and under a sudden heat of passion, and that at the time did not fully realize what he was doing.

After an analysis of the evidence, the Attorney-General frankly says that in case No. 25462 in the Court of First Instance, the evidence is not sufficient to sustain a conviction for the crime of frustrated murder, and upon that charge, the defendant should be found guilty of the crime of frustrated homicide, the penalty for which is *prision mayor* under article 65 of the Penal Code in the minimum degree or from six years and one day to eight years.

As we analyze the evidence, the proof is not sufficient to sustain either frustrated murder or frustrated homicide. At no time or in any manner was the defendant frustrated in the commission of the act. In other words, he was not in any manner prevented from killing Carmona. It is true that Carmona was seriously wounded. It is also true that, through medical treatment, he fully recovered. But the fact that he recovered through medical treatment does not make the crime either frustrated murder or frustrated homicide, or in any manner change the character or nature of the crime.

Upon the facts shown in the record, the crime comes under paragraph 4, of article 416 of the Penal Code, as follows:

“The penalty of *arresto mayor* in its maximum degree to *prision correccional* in its minimum degree, if the injured party, by reason of the physical injuries inflicted. shall have been ill or incapacitated for labor for more than thirty days.

“If the offense shall have been committed against any of the persons enumerated in article four hundred and two, or under any of the circumstances mentioned in article four hundred and three, the penalties shall be *reclusion temporal* in its medium and maximum degrees in cases falling within paragraph one of this article; *prision correccional* in its maximum degree to *prision mayor* in its minimum degree in cases falling within paragraph two thereof; *prision correccional* in its medium and maximum degrees in cases falling within paragraph three, and *prision correccional* in its minimum and medium degrees in cases falling within paragraph four.

“The provisions of the next preceding paragraph shall not be applicable to a parent who shall inflict physical injuries upon his child by excessive chastisement.”

The penalty for which is from four months and one day to one year.

In case No. 25462, the judgment of the lower court is modified, and the defendant will be sentenced to six months of *prision correccional*, and in all other respects affirmed.

In case No. 25289, in which the defendant was sentenced to twelve years and one day of *reclusion temporal*, the judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C.J., Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

