

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MARDONIO SURBIDA, ALIAS MARDING, DEFENDANT AND APPELLANT.

G.R. No. L-15865. October 30, 1961

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

On August 15, 1957, before the justice of the peace of Gonzaga, Cagayan, Mardonio Surbida was charged with frustrated homicide. He pleaded guilty. After the records had been forwarded, the provincial fiscal accused him of frustrated homicide in an information alleging:

"That on or about August 5, 1957, in the municipality of Gonzaga, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused Mardonio Surbida alias Marding, armed with a batangas knife, with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and stab Juanito Salvador inflicting upon him the following wound, to wit:

1. Wound, stabbed, perforating, penetrating, Hypochondrium, left. That the accused performed all the acts of execution, which would have produced the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Juanito Salvador, which prevented his death."

Arraigned before the court of first instance, Surbida pleaded guilty again, with the assistance and help of his counsel, Atty. Pantaleon Jurado. Whereupon the Hon. Roberto Zurbano, Judge, promulgated the following order:

"Mardonio Surbida alias Marding is accused of frustrated homicide. On calling this case for arraignment today, the defendant appeared, assisted by his counsel, Atty. Pantaleon Jurado. When the defendant was informed of the nature of the charge filed against him in the local dialect, he voluntarily pleaded guilty. Considering, however, that the defendant is 14 years old, the provision to be applied in this case is Article 80 of the Revised Penal Code."

"Wherefore, the Court, pursuant to the provisions of Article 80 of the Revised Penal Code, orders the confinement of the defendant at the Welfareville, Mandaluyong, Rizal, and he shall not be released from said institution unless he reaches the age of majority. The Director of Public Welfare or his duly authorized representative is hereby directed to visit the defendant at the Welfareville Institution once every four months and he shall submit his report to the Court as to the conduct of the defendant, the moral and intellectual progress that he makes during his confinement."

Thereafter, having secured the services of another attorney, the defendant Surbida filed a motion for new trial alleging that as he was below fifteen and above nine years of age at the time of the commission of the offense and on the date of the arraignment (14 years), the Court erred in taking no evidence to determine whether or not he (the accused) had acted with discernment. Denial of such motion gave rise to this appeal, which we find to have no merits.

In *People vs. Nieto*, L-11965, April 30, 1958, we held that when a minor between nine and fifteen pleads guilty to an information alleging that the accused "with intent to kill, did then and there willfully, criminally and feloniously" attack his victim, he may be convicted without the need of positive proof of his having acted with discernment. It was there explained that the phrase above quoted signified "more than merely knowing the difference between right and wrong. It connotes that the accused killed with intention to kill and knowing that it is a crime to kill, not merely knowing that it is wrong to kill. The combined effect of the adverbs 'willfully, criminally and feloniously' together with the phrases 'with intent to kill' and 'contrary to the provision of Article 240 of the Revised Penal Code', emphasizes her knowledge or understanding when she committed the act that the act is unlawful and is penalized." (*Italic Supplied.*)

In this particular case, we are all the more inclined to apply the above view inasmuch as neither here nor in the court below, has any affidavit been presented disputing the mental capacity of this minor to understand the difference between right and wrong, or the consequences of his criminal act.

The order is affirmed.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

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