

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SY PIO, ALIAS POLICARPIO DE LA CRUZ, DEFENDANT AND APPELLANT.

G.R. No. L-5848. April 30, 1954

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Manila finding the defendant-appellant herein Sy Pio, alias Policarpio de la Cruz, guilty of frustrated murder against the person of Tan Siong Kiap, and sentencing him to suffer an indeterminate sentence of 6 years, 1 month, and 11 days of prision mayor, to 14 years, 8 months, and 1 day of reclusion temporal, to indemnify the offended party Tan Siong Kiap in the sum of P350, without subsidiary imprisonment in case of insolvency, and to pay the costs. The case was appealed to the Court of Appeals, but that court certified it to this Court under the provisions of section 17(4) of Republic Act No. 296, on the ground that the crime charged was committed on the same occasion that the defendant-appellant had committed crime of murder, with which the defendant-appellant was also charged.

The evidence for the prosecution shows that early in the morning of September 3, 1949, the defendant-appellant entered the store at 511 Misericordia, Sta. Cruz, Manila. Once inside he started firing a .45 caliber pistol that he had in his hand. The first one shot was Jose Sy. Tan Siong Kiap, who was in the store and saw the accused enter and afterwards fire a shot at Jose Sy, asked the defendant-appellant, "What is the idea?" Thereupon defendant-appellant turned around and fired at him also. The bullet fired from defendant-appellant's pistol entered the right shoulder of Tan Siong Kiap and passed through his back. Upon being hit, Tan Siong Kiap immediately ran to a room behind the store to hide. From there he still heard gunshots fired from defendant-appellant's pistol, but afterwards defendant-appellant ran away.

Tan Siong Kiap was brought to the Chinese General Hospital, where his wound was treated. He stayed there from September 3 to September 12, 1949, when he was released upon his request and against the physician's advice. He was asked to return to the hospital for further treatment, and he did so five times for a period of more than ten days. Thereafter his wound was completely healed. He spent the sum of P300 for hospital and doctor's fees.

The defendant-appellant shot two other persons in the morning of September 3, 1949, before shooting and wounding Tan Siong Kiap; one was Ong Pian and the other Jose Sy. On September 5 information was received by the Manila Police Department that defendant-appellant was in the custody of the Constabulary in Tarlac, so a captain of the Manila police by the name of Daniel V. Lomotan proceeded to Tarlac. There he saw the defendant-appellant and had a conversation with him. On this occasion defendant-appellant admitted to Lomotan that his victims were Tan Siong Kiap, Ong Pian, and Jose Sy. The Constabulary in Tarlac also delivered to Lomotan the pistol used by the defendant-appellant, marked Exhibit C, and its magazine, Exhibit C-1, both of which the Constabulary had confiscated from the defendant-appellant. The defendant-appellant was, thereupon delivered to the custody of Lomotan, and the latter brought him to Manila, where his statement was taken down in

writing. This declaration was submitted at the time of the trial as Exhibit D, and it contains all the details of the assaults that defendant-appellant had made in Manila in the morning of September 3 against the persons of Tan Siong Kiap, Ong Pian, and Jose Sy. This written statement was taken down on a typewriter and afterwards signed by the defendant-appellant in both his Chinese and Filipino names, the latter being Policarpio de la Cruz.

According to the declaration of the defendant-appellant, some months prior to September 3, 1949, he was employed as an attendant in a restaurant belonging to Ong Pian. Defendant-appellant's wife by the name of Vicenta was also employed by Ong Pian's partner, Eng Cheng Suy. Prior to September 3 the relatives of his wife had been asking the latter for help, because her father was sick. Defendant-appellant asked money from Ong Pian, but the latter could only give him P1. His wife was able to borrow P20 from her employer, and this was sent to his wife's parents in Cebu. Afterwards defendant-appellant was dismissed from his work at the restaurant of Ong Pian, and he became a peddler. Ong Pian presented a list of the sums that defendant-appellant had borrowed from him, and these sums were deducted from the salary of his wife. Defendant-appellant did not recognize these sums as his indebtedness, and so he resented Ong Pian's conduct.

As to Tan Siong Kiap, the confession states that a few days before September 3, 1949, defendant-appellant had been able to realize the sum of P70 from the sales of medicine that he peddled. He laid this money in a place in his room, but the following morning he found that it had disappeared from the place in which he had placed it. Tan Siong Kiap and Jose Sy, upon the discovery of the loss of the money, told defendant-appellant that he must have given the money to his wife, and that nobody had stolen it. After this incident of the loss, the defendant-appellant used to hear Tan Siong Kiap and Jose Sy and other Chinamen say that the money had not been actually stolen, but that he lost it in gambling. Because of these accusations against him, he nurtured resentment against both Tan Siong Kiap and Jose Sy.

So early in the morning of September 3, while a China-man by the name of Ngo Cho, who was the possessor of a caliber .45 pistol, was away from his room, defendant-appellant got his pistol and tucked it in his belt. With this pistol he went to the restaurant at 822 Ongpin, and there shot Ong Pian. After shooting him, he proceeded to 511 Misericordia, in the store where Jose Sy and Tan Siong Kiap were, and there he fired at them. Then he escaped to Legarda street, in Sampaloc, where he borrowed P1 from his relatives. From there he went to Malabon, to the house of his mother, to whom he told he had killed two persons and from whom he asked money.

The foregoing is the substance of the written declaration made by the defendant-appellant in Exhibit D on September 6, 1949. At the time of the trial, however, he disowned the confession and explained that he signed it without having read its contents. He declared that it was not he who shot the three victims, but it was one by the name of Chua Tone, with whom he had previously connived to kill the three victims. He introduced no witnesses, however, to support his denial. Neither did he deny that he admitted before Captain Lomotan having killed the three persons, or having been found in Tarlac in possession of the caliber .45 pistol, Exhibit C, and its magazine, Exhibit C-1. In his cross-examination he admitted many of the incidents mentioned in the confession, especially the cause of his resentment against his victims Ong Pian, Jose Sy, and Tan Siong Kiap.

The trial court refused to believe his testimony, and, therefore, found him guilty of the crime charged.

On this appeal counsel for the defendant-appellant claims that the trial court erred in not finding that Tan Siong Kiap received the shot accidentally from the same bullet that had been fired at Jose Sy, and in finding that defendant-appellant has committed a crime distinct and separate from that of murder for the slaying of Jose Sy. We find no merit in this contention. According to the uncontradicted testimony of the offended party Tan Siong Kiap, when the latter saw defendant-appellant firing shots, he asked him why he was doing so, and the defendant-appellant, instead of answering him, turned around and fired at him also. It is not true, therefore, that

the shot which hit him was fired at Sy.

It is also contended that the evidence is not sufficient to sustain the judgment of conviction. We also find no merit in this contention. The evidence submitted to prove the charge consists of: the uncontradicted testimony of the victim himself; the admissions made verbally by the defendant-appellant before Captain Lomotan in Tarlac; the fact that the defendant-appellant had escaped and was found in Tarlac; his possession of the .45 caliber pistol coupled with the fact, attested to by the testimony of the physician who examined and treated the wounds of Tan Siong Kiap, that the wounds found in his person must have been caused by the caliber .45 bullet; and, lastly, the confession of the defendant-appellant himself, Exhibit D, which he was not able to impugn. As against this mass of evidence, defendant-appellant has only made a very unbelievable story that it was not he but another that had committed the crime charged. His admissions at the time of the trial regarding the incidents, as well as the cause of his having assaulted his victims, coincide exactly with the reasons given in his written confession. This shows that he had made the confession himself, for nobody but himself could have known the facts therein stated. The claim that the offense has not been proved beyond reasonable doubt must be dismissed.

The defendant-appellant lastly claims that the lower court also erred in sentencing him to pay an indemnity of P350. The offended party testified that he actually spent P300 for hospital and doctor's fees, and that he was confined in the hospital for nine days. The above facts stand uncontradicted. This assignment of error must also be dismissed.

It is lastly contended that the defendant-appellant should be found guilty only of less serious physical injuries instead of the crime of frustrated murder as defendant-appellant admitted in his confession in the open court that he had a grudge against the offended party, and that he connived with another to kill the latter. The intent to kill is also evident from his conduct in firing the shot directly at the body of the offended party.

But while the intent to kill is conclusively proved the wound inflicted was not necessarily fatal, because it did not touch any of the vital organs of the body. As a matter of fact, the medical certification issued by the physician who examined the wound of the offended party at the time he went to the hospital, states that the wound was to heal within a period of fourteen days, while the offended party actually stayed in the hospital for nine days and continued receiving treatment thereafter five times for a period of more than ten days, or a total of not more than thirty days. The question that needs to be determined, therefore, is: Did the defendant-appellant perform all the acts of execution necessary to produce the death of his victim?

In the cases of *U.S. vs. Eduave*, 36 Phil., 209, *People vs. Dagman*, 47 Phil., 768, and *People vs. Borinaga*, 55 Phil., 433, this Court has held that it is not necessary that the accused actually commit all the acts of execution necessary to produce the death of his victim, but that it is sufficient that he believes that he has committed all said acts. In the case of *People vs. Dagman*, supra, the victim was first knocked down by a stone thrown at him, then attacked with a lance, and then wounded by bolos and clubs wielded by the accused, but the victim upon falling down feigned death, and the accused desisted from further continuing in the assault in the belief that their victim was dead. And in the case of *People vs. Borinaga*, supra, the accused stabbed his intended victim, but the knife with which he committed the aggression instead of hitting the body of the victim, lodged in the back of the chair in which he was seated, although the accused believed that he had already harmed him. In both these cases this Court held that the crime committed was that of frustrated murder, because the subjective phase of the acts necessary to commit the offense had already passed; there was a full and complete belief on the part of the assailant that he had committed all the acts of execution necessary to produce the death of the intended victim.

In the case at bar, however, the defendant-appellant fired at his victim, and the latter was hit, but he was able to escape and hide in another room. The fact that he was able to escape, which appellant must have seen, must have

produced in the mind of the defendant-appellant that he was not able to hit his victim at a vital part of the body. In other words, the defendant-appellant knew that he had not actually performed all the acts of execution necessary to kill his victim. Under these circumstances, it can not be said that the subjective phase of the acts of execution had been completed. And as it does not appear that the defendant-appellant continued in the pursuit, and, as a matter of fact, he ran away afterwards a reasonable doubt exists in our mind that the defendant-appellant had actually believed that he had committed all the acts of execution or passed the subjective phase of the said acts. This doubt must be resolved in favor of the defendant-appellant.

We are, therefore, riot prepared to find the defendant-appellant guilty of frustrated murder, as charged in the information. We only find him guilty of attempted murder, because he did not perform all the acts of execution, actual and subjective, in order that the purpose and intention that he had to kill his victim might be carried out.

Therefore, the judgment appealed from should be, as it is hereby, modified, and the defendant-appellant is found guilty of the crime of attempted murder, and the sentence imposed upon him reduced to an indeterminate penalty of from 4 years, 2 months, and 1 day of prision correccional, to 10 years of prision mayor. In all other respects the judgment is affirmed. With costs against the defendant-appellant.

Paras, C. J., Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, and Concepcion, JJ., concur.

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