

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. CHARLES J. KOSEL, DEFENDANT AND APPELLANT.

G.R. No. 4127. March 17, 1908

Ponente: CARSON, J.

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CARSON, J.:

The accused was acquitted of the crime of frustrated assassination, with which he was charged, but was convicted of unlawfully discharging a firearm at another person as defined and penalized in article 408 of the Penal Code, and sentenced to six months and one day of prison correccional.

It was proven at the trial that the accused attempted to intimidate the complaining witnesses by pointing his revolver in their direction, whereupon they threw themselves upon him and disarmed him. In the course of the struggle the accused discharged the revolver so close to one of the complaining witnesses that his side was burned by the flash of the discharge and a number of particles of burnt powder were imbedded in his skin.

The accused swore that the revolver was discharged accidentally during the struggle, but the testimony of the witnesses leaves no room for reasonable doubt that the accused willfully fired the revolver, not with the intention of killing or wounding his opponents but for the purpose of intimidating them and frightening them away.

A majority of the court are of opinion that this constitutes the offense of "discharging a firearm at a person" (disparar una arma de fuego contra cualquiera persona) as defined and penalized in article 408 of the Penal Code, and that the judgment of conviction by the trial court should therefore be affirmed.

Counsel for the accused insist that the crime of frustrated assassination and the crime of which the accused was convicted are two separate and distinct offenses, not necessarily included one in the other, and that the complaint having charged two offenses was for that reason fatally defective.

It does not appear, however, that the accused made any objection on this ground in the court below, and we are therefore of opinion that he can not be heard to raise this objection for the first time on appeal; and in accordance with the doctrine laid down in the case of the United States vs. Paraiso [1] (1 Phil. Rep., 66), affirmed by the Supreme Court of the United States December 16, 1907 the trial court did not err in convicting the accused of any offense sufficiently charged in the complaint of which the evidence of record sustains a finding of his guilt.

The judgment and sentence of the Court of First Instance are affirmed with the costs of this appeal against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

[1] 5 Phil. Rep., 149.

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