

ISIDORO MONDRAGON, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G. R. No. 1-17666. June 30, 1966

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

The petitioner, Isidoro Mondragon, was prosecuted in the Court of First Instance of Iloilo of the crime of frustrated homicide. After trial the Court of First Instance of Iloilo found him guilty of the crime of attempted homicide and sentenced him to an indeterminate prison term of from months and 21 days of arresto mayor to 2 years, 4 months and 1 day of prision correccional, with the accessory penalties of the law and the costs. Mondragon appealed to the Court of Appeals, and the latter court affirmed the decision of the Court of First Instance of Iloilo in all its parts, with costs. This case is now before us on a petition for certiorari to review the decision of the Court of Appeals. No brief for the respondent, The People of the Philippines, was filed by the Solicitor General.

The pertinent portion of the decision of the Court of Appeals, which embody the findings of fact and conclusion of said court, is as follows:

"At about 5:00 in the afternoon of July 11, 1954, while complainant Serapion Nacionales was opening the dike of his ricefield situated in Antandan, Miagao, Iloilo, to drain the water therein and prepare the ground for planting the next day, he heard a shout from afar telling him not to open the dike, Nacionales continued opening the dike, and the same voice shouted again, 'Don't you dare open the dike.' When he looked up, he saw Isidoro Mondragon coming towards him. Nacionales informed appellant that he was opening the dike because he would plant the next morning. Without much ado, Mondragon tried to hit the complainant who dodged the blow. Thereupon, appellant drew his bolo and struck complainant on different parts of his body. Complainant backed out, unsheathed his own bolo, and hacked appellant on the head and forearm and between the middle and ring fingers in order to defend himself. The appellant retreated, and the complainant did not pursue him but went home instead. The following day, the complainant was treated by Dr. Alfredo Jamandre, Municipal Health Officer of Miagao, Iloilo, for the following lesions (Exhibit A):

- '1. Incised wound about 2-1/2 inches long and 1/3 inch deep cutting diagonally across the angle of the left Jaw.
 - '2. Incised wound 1-1/2 inches long and cutting the bone underneath (3/4 centimeters deep) below the right eye.
 - '3. Incised wound about 1 inch long at the lunar side of the left wrist.
 - '4. Incised wound about 3-1/2 inches long and 1/2 inch deep at the left side of the lower part of left am.
 - '5. Incised wound about 1/2 inch long at the back of the left index, middle and ring fingers.
 - '6. Incised wound about 1 inch long of the palmar side of the left thumb.
- 'Barring complication the above lesions may heal from 20 to 25 days.'

* * * * *

"Also upon the evidence, the offense committed is attempted homicide. Appellant's intention to kill may be inferred from his admission made in court that he would do everything he could to stop Nacionales from digging the canal because he needed the water. However, it was established that the injuries received by the complainant Here not necessarily fatal as to cause the death of said complainant."

The issue raised by the petitioner in the present appeal is that the Court of Appeals erred In finding him guilty of the crime of attempted homicide and not of the crime of less serious physical injuries. It is the contention of the petitioner that the facts as found by the Court of Appeals do not show that the petitioner had the intention to kill the offended party.

There is merit In the contention of the petitioner. We have carefully examined the record, and We find that the intention of the petitioner to kill the offended party has not been conclusively shown. The finding of the Court of Appeals that the petitioner had the Intention to kill the offended party is simply the result of an inference from an answer made by the petitioner while testifying in his own behalf. Thus in the decision appealed from, it is stated:

****Appellant's intention to kill may be inferred from his admission made in Court that he would do everything he could to stop Nacionales from digging the canal because he needed the water."

The facts as found by the Court of Appeals, in our opinion, do not establish the intent to kill on the part of the petitioner. Rather, We gather that what happened was that the petitioner and the offended party had a quarrel over the matter regarding the opening of the canal which would drain the water away from the land of the petitioner, and because of this quarrel a fight between then took place. The fight started with the petitioner first giving fist blows to the offended party and later he drew his bolo and inflicted on the offended party the injuries which the Court of Appeals found to be not necessarily fatal and which were certified by a government medical officer that the would heal in less than 30 days. The facts as found by the Court of Appeals also show that the offended party drew his bolo and hit the petitioner on different parts of his body, and that the petitioner retreated and did not insist on hitting the offended party with his bolo. It may be assumed that the petitioner drew his bolo and hit the offended party with it only when the offended party had shown a defiant attitude, considering that the offended party himself had a bolo, as in fact the offended party had also drawn his bolo and hit the petitioner with it. We consider that under the circumstances surrounding the fight between the petitioner and the offended party the intention of the petitioner to kill the offended party was not manifest.

The Court of Appeals concluded that the petitioner had the intention to kill the offended party when the petitioner answered in the affirmative t he question as to whether he would do everything that he could do to stop the offended party from digging the canal because he needed the water. We reproduce here the transcript of the pertinent testimony:

* * * * *

ATTY. MOBADA:

"Q - In other words you want to tell us that you will do everything you could to step Nacionales digging the canal, because you need water?

ATTY. CANTO:

I object to the question. It is misleading.

COURT:

Witness may answer.

WITNESS:

"Yes, sir, because I need the water."

* * * * *

The foregoing statement or answer was made by the petitioner during the trial which took place on January 14, 1959. The incident in question took place on July 11, 1954. The statement made by the petitioner almost five years after the occurrence of the incident should not, in our opinion, be considered as an accurate indication of what he had in his mind at the time of the incident. Besides, that answer of the petitioner is not a categorical statement of an intention on his part to kill the offended party. The term "will do everything" has a broad meaning and it should be construed in a manner as to give the petitioner the benefit of the doubt as to what he really meant to do. At least it cannot be said that when the petitioner answered "yes", when he was asked whether he would do everything to stop Nacionales from digging, the canal, the only way he had in mind to stop Nacionales was to kill him. It must be noted that this answer of the petitioner was made to a qualifying question propounded to him by the private prosecutor over the objection of his counsel on the ground that the question was misleading. At most, that answer of the petitioner may only be considered as an expression of opinion of what he would do under a given circumstance.

The intent to kill being an essential element of the offense of frustrated or attempted homicide, said element must be proved by clear and convincing evidence. That element must be proved with the same degree of certainty as is required of the other elements of the crime. The inference of intent to kill should not be drawn in the absence of circumstances sufficient to prove such intent beyond reasonable doubt (*People vs. Villanueva*, 51 Phil. 488).[1]]

We hold that the facts brought out in the decision of the Court of Appeals in the present case do not justify a finding that the petitioner had the intention to kill the offended party. On the contrary, there are facts brought out by the decision appealed from which indicate that the petitioner had no intention to kill, namely: the petitioner started the assault on the offended party by just giving him fist blows; the wounds inflicted on the offended party were of slight nature, indicating no homicidal urge on the part of the petitioner; the petitioner retreated and went away when the offended party started hitting him with a bolo, thereby indicating that if the petitioner had intended to kill the offended party he would have held his ground and kept on hitting the offended party with his bolo to kill him.

The element of intent to kill not having been duly established, and considering that the injuries suffered by the offended party were not necessarily fatal and could be healed in less than 30 days, We hold that the offense that was committed by the petitioner is only that of less serious physical injuries.

The offense of less serious physical injuries, as defined in Article 265 of the Revised Penal Code, is punishable by *arresto mayor* or imprisonment of from 1 month and 1 day to 6 months. The facts as found by the Court of Appeals do not show any aggravating or mitigating circumstance that may be considered in the imposition of the penalty on the petitioner. We, therefore, sentence the petitioner to suffer the penalty of three (3) months and fifteen (15) days of *arresto mayor*.

IN VIEWS OF THE FOREGOING, the decision of the Court of Appeals appealed from should be, as it is hereby, modified in the sense that the petitioner is declared guilty of the offense of less serious physical injuries and he is sentenced to suffer the penalty of three (3) months and fifteen (15) days of *arresto mayor*, with costs.

Concepcion, C.J., Reyes, Barrera, Dizon, Regala, Bengzon, Zaldivar, and Sanchez, JJ., concur.

[1] See also: *U.S. vs. Reyes and Palanca*, 30 Phil. 551; *U.S. vs. Mendoza*, 38 Phil. 691; *People vs. Montes*, 53 Phil. 323; *People vs. Pacusbas and Pacusbas*, 64 Phil. 614; and *People vs. Penesa*. 81 Phil. 398.

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