

SULPICIO INTOD, PETITIONER, VS. HONORABLE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 103119. October 21, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

Petitioner, Sulpicio Intod, filed this petition for review of the decision of the Court of Appeals[1] affirming in toto the judgment of the Regional Trial Court, Branch XIV, Oroquieta City, finding him guilty of the crime of attempted murder.

From the records, we gathered the following facts.

In the morning of February 4, 1979, Sulpicio Intod, Jorge Pangasian, Santos Tubio and Avelino Daligdig went to Salvador Mandaya's house in Katugasan, Lopez Jaena, Misamis Occidental and asked him to go with them to the house of Bernardina Palangpangan. Thereafter, Mandaya and Intod, Pangasian, Tubio and Daligdig had a meeting with Aniceto Dumalagan. He told Mandaya that he wanted Palangpangan to be killed because of a land dispute between them and that Mandaya should accompany the four (4) men, otherwise, he would also be killed.

At about 10:00 o'clock in the evening of the same day, Petitioner, Mandaya, Pangasian, Tubio and Daligdig, all armed with firearms, arrived at Palangpangan's house in Katugasan, Lopez Jaena, Misamis Occidental. At the instance of his companions, Mandaya pointed the location of Palangpangan's bedroom. Thereafter, Petitioner, Pangasian, Tubio and Daligdig fired at said room. It turned out; however, that Palangpangan was in another City and her home was then occupied by her son-in-law and his family. No one was in the room when the accused fired the shots. No one was hit by the gun fire.

Petitioner and his companions were positively identified by witnesses. One witness testified that before the five men left the premises, they shouted: "We will kill you (the witness) and especially Bernardina Palangpangan and we will come back if (sic) 'you were not injured'".[2]

After trial, the Regional Trial Court convicted Intod of attempted murder. The Court of Appeals affirmed in toto the trial court's decision. Hence this petition.

This petition questions the decision of the Regional Trial Court (RTC), as affirmed by the Court of Appeals, holding that Petitioner was guilty of attempted murder. Petitioner seeks from this Court a modification of the judgment by holding him liable only for an impossible crime, citing Article 4(2) of the Revised Penal Code which provides:

ART. 4(2). CRIMINAL RESPONSIBILITY. -- Criminal Responsibility shall be incurred:

x x x x x x x x

2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual

means.

Petitioner contends that, Palangpangan's absence from her room on the night he and his companions riddled it with bullets made the crime inherently impossible.

On the other hand, Respondent People of the Philippines argues that the crime was not impossible. Instead, the facts were sufficient to constitute an attempt and to convict Intod for attempted murder. Respondent alleged that there was intent. Further, in its Comment to the Petition, respondent pointed out that:

x x x. The crime of murder was not consummated, not because of the inherent impossibility of its accomplishment (Art. 4(2), Revised Penal Code), but due to a cause or accident other than petitioner's and his co-accused's own spontaneous desistance (Art. 3., *ibid.*) Palangpangan did not sleep at her house at that time. Had it not been for this fact, the crime is possible, not impossible.[3]

Article 4, paragraph 2 is an innovation[4] of the Revised Penal Code. This seeks to remedy the void in the Old Penal Code where:

x x x it was necessary that the execution of the act has been commenced, that the person conceiving the idea should have set about doing the deed, employing appropriate means in order that his intent might become a reality, and finally, that the result or end contemplated shall have been physically possible. So long as these conditions were not present, the law and the courts did not hold him criminally liable.[5]

This legal doctrine left social interests entirely unprotected.[6] The Revised Penal Code, inspired by the Positivist School, recognizes in the offender his formidability,[7] and now penalizes an act which were it not aimed at something quite impossible or carried out with means which prove inadequate, would constitute a felony against person or against property.[8] The rationale of Article 4(2) is to punish such criminal tendencies.[9]

Under this article, the act performed by the offender cannot produce an offense against persons or property because: (1) the commission of the offense is inherently impossible of accomplishment; or (2) the means employed is either (a) inadequate or (b) ineffectual.[10]

That the offense cannot be produced because the commission of the offense is inherently impossible of accomplishment is the focus of this petition. To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment.[11] There must be either (1) legal impossibility, or (2) physical impossibility of accomplishing the intended act[12] in order to qualify the act as an impossible crime.

Legal impossibility occurs where the intended acts, even if completed, would not amount to a crime.[13] Thus:

Legal impossibility would apply to those circumstances where (1) the motive, desire and expectation is to perform an act in violation of the law; (2) there is intention to perform the physical act; (3) there is a performance of the intended physical act; and (4) the consequence resulting from the intended act does not amount to a crime.[14]

The impossibility of killing a person already dead[15] falls in this category.

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime.[16] One example is the man who puts his hand in the coat pocket of another with the intention to steal the latter's wallet and finds the pocket empty.[17]

The case at bar belongs to this category. Petitioner shoots the place where he thought his victim would be, although in reality, the victim was not present in said place and thus, the petitioner failed to accomplish his end.

One American case has facts almost exactly the same as this one. In *People vs. Lee Kong*,[18] the accused, with

intent to kill, aimed and fired at the spot where he thought the police officer would be. It turned out, however, that the latter was in a different place. The accused failed to hit him and to achieve his intent. The Court convicted the accused of an attempt to kill. It held that:

The fact that the officer was not at the spot where the attacking party imagined where he was, and where the bullet pierced the roof, renders it no less an attempt to kill. It is well settled principle of criminal law in this country that where the criminal result of an attempt is not accomplished simply because of an obstruction in the way of the thing to be operated upon, and these facts are unknown to the aggressor at the time, the criminal attempt is committed.

In the case of *Stokes vs. State*,^[19] where the accused failed to accomplish his intent to kill the victim because the latter did not pass by the place where he was lying-in wait, the court held him liable for attempted murder. The court explained that:

It was no fault of Stokes that the crime was not committed. x x x It only became impossible by reason of the extraneous circumstance that Lane did not go that way; and further, that he was arrested and prevented from committing the murder. This rule of the law has application only where it is inherently impossible to commit the crime. It has no application to a case where it becomes impossible for the crime to be committed, either by outside interference or because of miscalculation as to a supposed opportunity to commit the crime which fails to materialize; in short it has no application to the case when the impossibility grows out of extraneous acts not within the control of the party.

In the case of *Clark vs. State*,^[20] the court held defendant liable for attempted robbery even if there was nothing to rob. In disposing of the case, the court quoted Mr. Justice Bishop, to wit:

It being an accepted truth that defendant deserves punishment by reason of his criminal intent, no one can seriously doubt that the protection of the public requires the punishment to be administered, equally whether in the unseen depths of the pocket, etc., what was supposed to exist was really present or not. The community suffers from the mere alarm of crime. Again: 'Where the thing intended (attempted) as a crime and what is done is a sort to create alarm, in other words, excite apprehension that the evil intention will be carried out, the incipient act which the law of attempt takes cognizance of is in reason committed.

In *State vs. Mitchell*,^[21] defendant, with intent to kill, fired at the window of victim's room thinking that the latter was inside. However, at that moment, the victim was in another part of the house. The court convicted the accused of attempted murder.

The aforecited cases are the same cases which have been relied upon by Respondent to make this Court sustain the judgment of attempted murder against Petitioner. However, we cannot rely upon these decisions to resolve the issue at hand. There is a difference between the Philippine and the American laws regarding the concept and appreciation of impossible crimes.

In the Philippines, the Revised Penal Code, in Article 4(2), expressly provided for impossible crimes and made them punishable. Whereas, in the United States, the Code of Crimes and Criminal Procedure is silent regarding this matter. What it provided for were attempts of the crimes enumerated in the said Code. Furthermore, in said jurisdiction, the impossibility of committing the offense is merely a defense to an attempt charge. In this regard, commentators and the cases generally divide the impossibility defense into two categories: legal versus factual impossibility.^[22] In *U.S. vs. Wilson*^[23] the Court held that:

x x x factual impossibility of the commission of the crime is not a defense. If the crime could have been committed had the circumstances been as the defendant believed them to be, it is no defense that in reality the crime was impossible of commission.

Legal impossibility, on the other hand, is a defense which can be invoked to avoid criminal liability for an attempt. In *U.S. vs. Berrigan*,^[24] the accused was indicted for attempting to smuggle letters into and out of prison. The law governing the matter made the act criminal if done without the knowledge and consent of the warden. In this case, the offender intended to send a letter without the latter's knowledge and consent and the act was performed. However, unknown to him, the transmittal was achieved with the warden's knowledge and consent. The lower court held the accused liable for attempt but the appellate court reversed. It held unacceptable the contention of the state that "elimination of impossibility as a defense to a charge of criminal attempt, as suggested by the Model Penal Code and the proposed federal legislation, is consistent with the overwhelming modern view". In disposing of this contention, the Court held that the federal statutes did not contain such provision, and thus, following the principle of legality, no person could be criminally liable for an act which was not made criminal by law. Further, it said:

Congress has not yet enacted a law that provides that intent plus act plus conduct constitutes the offense of attempt irrespective of legal impossibility until such time as such legislative changes in the law take place, this court will not fashion a new non-statutory law of criminal attempt.

To restate, in the United States, where the offense sought to be committed is factually impossible of accomplishment, the offender cannot escape criminal liability. He can be convicted of an attempt to commit the substantive crime where the elements of attempt are satisfied. It appears, therefore, that the act is penalized, not as an impossible crime, but as an attempt to commit a crime. On the other hand, where the offense is legally impossible of accomplishment, the actor cannot be held liable for any crime -- neither for an attempt nor for an impossible crime. The only reason for this is that in American law, there is no such thing as an impossible crime. Instead, it only recognizes impossibility as a defense to a crime charge -- that is, attempt.

This is not true in the Philippines. In our jurisdiction, impossible crimes are recognized. The impossibility of accomplishing the criminal intent is not merely a defense, but an act penalized by itself. Furthermore, the phrase "inherent impossibility" that is found in Article 4(2) of the Revised Penal Code makes no distinction between factual or physical impossibility and legal impossibility. *Ubi lex non distinguit nec nos distinguere debemos*.

The factual situation in the case at bar presents a physical impossibility which rendered the intended crime impossible of accomplishment. And under Article 4, paragraph 2 of the Revised Penal Code, such is sufficient to make the act an impossible crime.

To uphold the contention of respondent that the offense was Attempted Murder because the absence of Palangpangan was a supervening cause independent of the actor's will, will render useless the provision in Article 4, which makes a person criminally liable for an act "which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment x x x". In that case, all circumstances which prevented the consummation of the offense will be treated as an accident independent of the actor's will which is an element of attempted and frustrated felonies.

WHEREFORE, PREMISES CONSIDERED, the petition is hereby GRANTED, the decision of respondent Court of Appeals holding Petitioner guilty of Attempted Murder is hereby MODIFIED. WE hereby hold Petitioner guilty of an impossible crime as defined and penalized in Articles 4, paragraph 2, and 59 of the Revised Penal Code, respectively. Having in mind the social danger and degree of criminality shown by Petitioner, this Court sentences him to suffer the penalty of six (6) months of arresto mayor, together with the accessory penalties provided by the law, and to pay the costs.

SO ORDERED.

Feliciano, Regalado, and Nocon, JJ., concur.

Narvasa, C.J., (Chairman), on official leave.

[1] *People vs. Intod*, C.A.-G.R. Cr. No. 09205, August 14, 1991; Justice Fidel P. Purisima, Ponente; Justices Eduardo R. Bengzon and Salome A. Montoya, concurring.

[2] TSN, p. 4, July 24, 1986.

[3] Records, p. 65.

[4] Guevarra, *Commentaries on the Revised Penal Code* 15 (4th ed., 1946).

[5] Albert, *The Revised Penal Code, Annotated* 35 (1946).

[6] Albert, *ibid.*

[7] Albert, *ibid.*

[8] Albert, *ibid.*

[9] Gregorio and Feria, *Comments on the Revised Penal Code* 76 (Vol. I, 1st ed. 1958).

[10] Reyes, *The Revised Penal Code*, 90 (Vol. I, 11th ed., 1977).

[11] Reyes, *ibid.*

[12] Reyes, *ibid.*

[13] *U.S. vs. Berrigan*, 482 F. 2d. 171 (1973).

[14] *U.S. vs. Berrigan*, *ibid.*

[15] Aquino, *The Revised Penal Code*, 82 (Vol. I, 1987).

[16] *U.S. vs. Berrigan*, *supra*, n. 13.

[17] *U.S. vs. Berrigan*, *ibid.*

[18] 21 L.R.A. 626 (1898).

[19] 21 L.R.A. N.S. 898 (1908).

[20] 17 S.W. 145 (1888).

[21] 71 S.W. 175 (1902).

[22] *U.S. vs. HENG AWKAK ROMAN*, 39 L. Ed. 2d. 874 (1974).

[23] 565 F. Supp. 1416 (1983).

[24] *Supra*, n. 13.

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