

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANGEL JOVEN, DEFENDANT AND APPELLANT.

G.R. No. 12066. February 03, 1917

Ponente: ARAULLO, J.

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ARAULLO, J.:

This cause was commenced in the Court of First Instance of the Province of Pampanga by a complaint of the following tenor filed by the provincial fiscal of said province on July 17, 1915:

"The undersigned fiscal charges Angel Joven with the crime of attempted homicide, committed as follows:

"That the said defendant, in the municipality of Bacolor, Pampanga, P. I., on the afternoon of June 13, 1915, armed with a pocket-knife, did willfully, unlawfully and criminally, and with the intent to kill Edilberto Joven, assault him with his pocket-knife and inflict upon him several wounds, and, if he did not succeed in his said design, it was due to the timely intervention of Fortunato Datu.

"An act committed contrary to law."

On arraignment the defendant plead not guilty. After trial and the introduction of evidence, the court rendered judgment on October 25th of the same year, finding the defendant guilty as principal of the crime of attempted homicide, without any modifying circumstance, and sentenced him, under article 404, in connection with article 3 of the Penal Code, to the penalty of two years, four months and one day of presidio correccional, to indemnify the aggrieved party, Edilberto Joven, in the sum of P500, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs. From this judgment the defendant appealed.

It was proven at the trial, beyond all doubt, and was not denied by the defendant, that between 3 and 4 o'clock in the afternoon of June 13, 1915, while Edilberto Joven, a pharmacist and resident of the municipality of Bacolor, Province of Pampanga, was crossing the street in front of the market of said pueblo, he met the defendant, Angel Joven, his cousin, and said to him that he (Angel) was pale and seemed to be sick; that thereupon the defendant replied "yes," and, approaching Edilberto and placing his left hand upon his shoulder, asked him whether he had spoken with Emilio; that scarcely had Edilberto replied "no," when the defendant, who had one hand in his trousers' pocket, drew it out armed with a pocket-knife; that with this weapon he assaulted Edilberto Joven, inflicting upon him a wound on the neck, another on the left forearm and still another on the stomach; that thereupon a man by the name of Fortunato Datu approached them and caught the defendant by the arm, in the hand of which he was holding the knife, and then Edilberto, who, while in such manner continued to be assaulted by the defendant and kept withdrawing until he arrived at one corner of the market, improving the opportunity offered him by the defendant's being held, rushed to his pharmacy near by, for first medical treatment, where he became very weak as a result of the hemorrhage of the wounds in his arm and neck, and later was obliged to enter the General Hospital and undergo two operations because of the atrophy of his injured arm, which lost its strength rendering him incapacitated to perform a part of his work in the pharmacy. The injured member was still in the same condition during the time of the trial, and it could not then be determined positively how long it would

remain so.

The defendant introduced no evidence whatever at the trial, having waived, through counsel, his right so to do. He now assails the judgment appealed from, which he deems erroneous, but only as regards the classification of the crime, which he considers should not be that of attempted homicide, but lesiones menos graves; and in respect to the sentence in so far as it imposes an indemnity for damages. The appellant argues that damages were not proven at the trial, and that the lower court fixed them under the sole guide of his judicial discretion.

Doctor Clemente Punu who examined the wounded man immediately after the assault and rendered him professional services for some time, said that he had a wound produced by a cut 5 centimeters long in the outer, lower part of the left forearm; another wound, inflicted by a cutting and pointed instrument, situated on the left side of the neck one and a half centimeter long, the depth of which he did not probe in order to avoid a hemorrhage which might have caused the patient's death; that the wound on the neck was of a serious nature, as it was just behind some main arteries, and had these been cut the patient would have died in five minutes; that, had this wound been deep, it necessarily would have been mortal and none of the doctors would have been able to arrive in time to save the patient; that the wound on the left arm also might have caused his death, had it been completely neglected and the precaution not taken to bind it so as to prevent further hemorrhage; that this latter wound affected the muscles and one of the interosseous arteries and probably was not caused directly, but while the injured man was shielding his neck, as explained by the fact that it was a cut, and, had it been inflicted directly, it would have been a puncture or stab, witness adding that the blow was probably aimed at the neck; that the other wound of Edilberto Joven was not exactly on the breast, as he stated in his testimony, but was on a level with the stomach, and was not serious, though it would have been mortal had it been deeper.

The weapon with which the defendant wounded his victim was exhibited at the trial and the court took judicial notice of the fact that it was an automatic pocket-knife, which, when opened, could not be closed without touching a spring, and that its blade was five inches long.

Finally, Fortunato Datu (who, as aforesaid, went up to the wounded man to help him and held the defendant's arm, the hand of which grasped the knife with which he assaulted his victim) testified that he got between the two men and caught hold of the defendant's right hand that held the knife; that he said to the defendant: "No more, now that he is wounded," and succeeded in separating the men, but that the defendant, before the witness intervened and held him, said to the assaulted party, who kept withdrawing and was avoiding the blows: "Until I can kill you."

As may be seen, the defendant, in assaulting and wounding Edilberto Joven made use of a weapon adequate to the purpose of causing on the latter's body sufficient injury for the realization of the intent to kill him. One of the wounds which the defendant succeeded in inflicting upon his victim with said weapon, was inflicted on the latter's neck and was of such a nature that, according to Dr. Punu, had it severed the main arteries in front of it, the victim would have died in five minutes, and it would necessarily have been fatal had it been deeper, as then there would not have been time for the doctors to prevent its consequences. The defendant's intent to wound the assaulted man on the neck was indicated by the fact of his having also inflicted upon him a wound on his left arm, not directly, but, as Doctor Punu also stated, while the assaulted man was shielding his neck, for this wound was not straight and was not a thrust or stab, but was a cut. All the foregoing facts force upon us the inevitable conviction that the defendant's purpose was to kill Edilberto Joven, and he manifested this intention clearly by saying to Edilberto while the latter was withdrawing and trying to avoid the blows which the defendant was striking at him with the knife: "Until I can kill you." The defendant did not succeed in performing all the acts of execution which were to produce the result that he intended, because of the intervention of Fortunato Datu, who, by holding his arm, in the hand of which the knife was grasped, gave the assaulted man an opportunity to get out of his assailant's reach and

free himself from the danger in which he really was.

The manifest intention of the agent, as shown by his acts and confirmed by his words, and for the realization of which, means were employed adequate to obtain the result sought by him, is an element that necessarily must be taken into account for the classification of the crime which such acts constitute, and for the imposition of the corresponding penalty.

As the defendant commenced the execution of the crime of homicide directly by exterior acts, though he did not perform all the acts of execution which were to produce the crime, owing to a cause or accident that was not his own voluntary desistance, to wit, through the intervention of Fortunato Datu at the moment when the defendant, knife in hand, was pursuing and wounding Edilberto Joven, the classification of the crime committed by the defendant and for which he is responsible as principal by direct participation, is that of attempted homicide, and the lower court did not err in so holding in the judgment appealed from.

Although it is true as the appellant says in his brief, that at the trial no evidence at all was introduced with respect to the value of the medicine used in curing the offended party, and no voucher whatever of any expense incurred and no bill for doctor's fees were presented, yet the record itself of the case discloses the nature, seriousness, and consequences of the wound inflicted upon the victim by the defendant, as hereinabove stated. It is also shown, by the testimony of the aggrieved party himself, which was not contradicted by the defendant, that he suffered consequential injury as a result of his wounds; that he was attended by Doctor Singian, who had not yet collected his bill from the patient; that the cost incurred on account of the injury suffered by the patient was approximately P400, covering his expenses in coming to this city and of his sojourn here, his hospital bills and the medicine used, including among the expenses of his coming to Manila, the travelling expenses of his wife, for he had to bring her along with him and to be accompanied by her twice in the hospital, together with two of his children. Finally, in closing his said testimony, witness stated that doctor's fees were not included in the P400.

Doctor Punu, in describing the condition of Edilberto Joven's left arm as a result of the wound made in it by the defendant, said that the injured man was hindered in the use of that arm for "hitting purposes" (so witness said), but not for light work in the pharmacy,—laboratory work. In referring to his fees for his attendance upon, and medical care of, the patient, this witness added that up to that time, that is, to the time of his testimony, he had not yet collected the same; that he had collected no fees from the Joven family, nor had the latter requested his bill; that he attended the patient for quite a while; and that his fees would probably not exceed P100 and might be P80.

In view of these facts, the court stated in the judgment appealed from that in cases of this nature it was its duty to fix damages in the amount he believed to be reasonable; that the doctors had not collected their fees from the patient, and that considering the seriousness of the wounds and the fact of the injured man's not having completely recovered the use of his left arm, the damages should, he believed, be fixed at P500.

Pursuant to article 122 of the Penal Code, it is the duty of the courts to regulate the amount of the damages the payment of which, as civil liability, should be imposed upon the person criminally responsible for the injury. The second paragraph of the same article prescribes that the courts shall determine the amount of this indemnity in the manner prescribed for the reparation of damages in the next preceding article (121). In the instant case the lower court, in regulating the amount of the indemnity for the injuries caused the offended party by the defendant and in fixing it at P500, taking into account for this purpose the nature and importance of these wounds and their consequences, as well as the testimony given by the aggrieved party himself and by Doctor Punu, hereinabove cited, far from incurring the error assigned by the appellant in his brief, followed out the mandate of the law, above-mentioned, and we are of the opinion that the amount fixed by him for that purpose is reasonable and just.

As it does not appear that the commission of the crime of attempted homicide of which the defendant is guilty as

principal by direct participation, was attended by any circumstance modifying said liability, the penalty that should be imposed upon the defendant, under article 404, in connection with article 66, of the Penal Code, is that of prision correccional in its medium degree, and not that of presidio correccional in the same degree, which latter penalty was the one imposed upon him by the lower court in the judgment appealed from. He should also be sentenced to the accessory penalties mentioned in article 61 of the said Code.

For the foregoing reasons, with the understanding that the penalty of two years, four months and one day, imposed upon the defendant, shall be deemed to be prision correccional, and sentencing him, besides, to the accessory penalties of suspension of the right to hold public office and the right of suffrage during the term of his sentence, we affirm in all other respects the judgment appealed from, with the costs of this instance against the appellant. So ordered.

Torres, Carson, Moreland, and Trent, JJ., concur.

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