

THE UNITED STATES, PLAINTIFF ANFL APPELLEE, VS. VICTORIANO MENDOZA, DEFENDANT AND APPELLANT.*G.R. No. 13818. September 26, 1918*

Ponente: AVANCEÑA, J.

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The defendant was sentenced, by the Court of First Instance of Tarlac, for the crime of frustrated homicide, to the penalty of ten years and one day of prision mayor, with the corresponding accessory penalties, to indemnify the offended party, Gasper W. Creason, in the sum of P37, and to pay the costs of the case. From this judgment he appealed.

The defendant was at outs with Gasper W. Creason because the latter had¹ not wished to testify as a witness in a case in which the defendant's daughter was interested. At about 8.30 o'clock in the evening of December 23, 1917, the defendant entered the house where Creason was living, in the municipality of Tarlac, Province of Tarlac, and insulted him by words. Creason, who was sick, arose from his bed on hearing the defendant's insults and just at that moment the latter assaulted him with a pocket knife, therewith causing him a wound in the abdomen. Creason then struggled with the defendant, to snatch the weapon from him, and at the same time called his father-in-law to come to help him. Thereupon the defendant ran away, leaving the weapon. As a result of the wound he received, Creason was prevented for a period of 22 days from engaging in his customary labors, spent P15 in effecting his cure, and during this time failed to earn one peso a day.

The Attorney-General is of the opinion that the facts proven do not constitute the crime of frustrated homicide, but only that of lesiones menos graves. We agree with that opinion. In order that the crime may be classified as one of frustrated homicide, it would be necessary to admit that the defendant intended to kill the offended party. The circumstances of the case, however, do not show beyond reasonable doubt that the defendant had such an intention. Rather is the contrary indicated by his running away and his leaving the weapon during the struggle he maintained with the offended party. If his purpose had been to kill, the moment he gave up the struggle was not yet the most opportune, if the circumstances justified his acts. The offended party was only wounded, and, it appears, not seriously wounded, while he was struggling with his assailant. The defendant continued in the possession of the weapon and was in the same favorable conditions for the realization of his purpose, as in the beginning of the assault. The offended party's father-in-law had not yet taken a hand in the former's defense. And yet, notwithstanding, the defendant fled and left his weapon behind. It cannot be said that he did so because it was impossible for him to realize his purpose. When criminal liability is made to consist in the intention to perform an act which was not realized, the facts from which it is claimed that intention sprang must be such as to exclude all contrary supposition. When this intention is not necessarily disclosed by the acts performed by the defendant, greater importance should not be given to such acts than that which they in themselves import, nor should the defendant's liability be extended beyond that which is actually involved in the material results of his act. Nothing is more difficult to discover than intention, as being a mental act; we are only able to deduce it from the external acts performed by the agent, and when these acts have naturally given a definite result, courts should not, without

clear and conclusive proof, hold that some other results was intended.

The judgment appealed from is reversed, and it is held that the defendant is guilty of the crime of lesiones, as defined in article 418 of the Penal Code, and, taking into account that the crime was committed in the dwelling of the offended party and at nighttime, the defendant is sentenced to 6 months of arresto mayor, to indemnify the offended party in the sum of P37, or, in case of insolvency, to suffer the corresponding subsidiary imprisonment, and to pay the costs of this action. So ordered.

Torres, Johnson, Street, Malcolm, and Fisher, JJ., concur.

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