

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JUAN RAQUINIO, DEFENDANT-APPELLANT.*G.R. No. 16488. August 12, 1966*

Ponente: SANCHEZ, J.

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The charge is frustrated homicide. [1] The judgment below found defendant guilty thereof, with the aggravating circumstance of treachery offset by voluntary surrender in mitigation. The court in the exercise of its discretion imposed an indeterminate corporal penalty - lower by one degree - ranging from 4 months and 1 day of arresto mayor, as minimum, to 2 years, 11 months and 11 days of prision correccional, as maximum. [2] It also ordered defendant to indemnify the offended party, Apolonio Ravina, in the sum of P170.00 with subsidiary imprisonment in case of insolvency, and to pay the costs. Defendant's appeal is direct to this Court.

Briefly, the controlling facts found below are:

After lunch, in the early afternoon of November 8, 1957, complainant Apolonio Ravina, accompanied by his helper, Luciano Reynon, drove his jeep to the river bank of Gabu, Laoag, Ilocos Norte. He was to load and transport to the market, as usual, the fish catch for that day. Upon arrival at the place, complainant was told by Agustin Raquinio, local barrio lieutenant and head-man of a group of fishermen who caught the fish, that he had already promised Gaspar Retutal to load the fish in the latter's jeep in which defendant was helper. Complainant and Agustin Raquinio engaged in a heated discussion. Complainant then reminded Agustin Raquinio that he should be given the preference to transport the fish. Agustin refused and stood pat on his promise to Gaspar. Apolonio Ravina then told Agustin: "We did not come here to force ourselves to you." Fearing trouble, complainant's mother called him. Just as complainant turned to go to his mother, defendant stabbed him at the stomach with a small bolo. Wounded complainant took to his heels, collapsed to the ground at a distance of about 25 meters. Defendant wanted to pursue him. But Agustin Raquinio held defendant fast, grabbed the bolo from his hand.

Complainant was placed in his jeep, brought to the Ilocos Norte Provincial Hospital. Dr. Maximiano L. Agbayani, associate resident physician, treated complainant and found the following injuries: "Stab[bed,] wound, penetrating abdomen 10 cm. to the right of median line and little below the level of the umbilicus; entrance 2 cm., upper extremity contused, lower extremity sharp; directed postero-medially and slightly upwards; puncturing liver".[3] The doctor declared that were it not for the timely medical assistance, the victim would have died of hemorrhage caused by the stab wound that penetrated the liver. Discharged from the hospital on November 21, 1957, complainant had to return twice for continuation of the treatment. He was incapacitated from pursuing his calling up to March 1958.

1. Appellant's brief [4] recites facts at variance with the findings of the trial court. And this, in the hope that this Court might spotlight his theory that the crime committed falls to the level of physical injuries.

Defendant's notice of appeal before us reads:

"NOTICE OF APPEAL

COMES now the accused, Juan Raquinio, in the above-entitled criminal case, thru his undersigned attorney, and hereby gives formal notice of his intention to appeal to the Honorable Supreme Court the Judgment of conviction rendered by this Honorable Trial Court, - because a question of law is involved in this appeal.

WHEREFORE, it is respectfully prayed that the Record of this case be elevated to the Honorable Supreme Court, as early as possible." [5]

Note that the appeal was direct to this Court and that the prayer in the notice of appeal is that the record of this case be elevated here because a question of law is involved in this appeal. Because of this, counsel's attempt to inject facts different from those found below, is impermissible. Having cast aside questions of fact in his notice of appeal, he may not revive them at will. He is deemed to have accepted without reservation the facts as found below. He has waived his right to an inquiry into these facts. He himself has closed the door to a review of the facts. [6] He has chosen to take issue upon a question of law.

This Court has held in a factual context similar to the present that where an appeal was taken on purely questions of law, we are bound by the findings of fact below. [7] We do not intend to retreat from the doctrine thus forged. It is in line with sound practice. [8]

We therefore hold that a direct appeal to this Court on questions of law - in criminal cases in which the penalty imposed is not death or life imprisonment - precludes a review of the facts.

2. Defendant assails the finding of frustrated homicide. He avers lack of intent to kill. We take a look at the facts. Appellant used a lethal weapon, a bolo. The thrust - "sudden and unexpected" – [9] was directed at a vital spot of the body, the abdomen. Were it not for the fact that Agustin Raquinio held defendant fast and grabbed the bolo from his hand, he would have finished off with his victim. The wounds suffered by the latter would have been fatal, were it not for the timely and adequate medical assistance rendered him. Intention to kill, a mental process, may be inferred from the nature of the weapon used, the place of the wound, the seriousness thereof and the persistence to kill the victim. All these are present in the case at bar. These facts nail down the question. The crime is frustrated homicide. [10]

3. Appellant claims that treachery should not have been considered as an aggravating circumstance. His point is that treachery is not alleged in the criminal charge against him and that he timely objected to the evidence tending to prove it.

Had treachery been averred, unquestionably, the crime would have risen to the level of frustrated murder. [11] But the information did not allege treachery. The crime charged is merely frustrated homicide. Evidence of treachery then would not make the crime one of frustrated murder. [12] This is axiomatic.

In said frustrated homicide charge, the prosecutor alleges that defendant "with evident intent to kill, wilfully, unlawfully and feloniously attacked, assaulted and stabbed" Ravina with a bolo. How that act was perpetrated has to be proved. To achieve this end, it is inescapable that the attack be described. To show the conditions under which the attack was perpetrated, an aggravating circumstance - which is part of the act - may be related. Else, a gap may result, the narrative incomplete. So it is, that evidence of an aggravating circumstance is not intended to bring about a change in the nature of that crime averred, for the worse. Rather, it serves the purpose of aiding the court in assessing the penalty to be imposed "in a more or less severe form, within the limits prescribed for the offense charged in the complaint or information". Therefore, the rule has been laid down that generic aggravating circumstances, although not alleged in the information may be proved. Because, the ponderous impact of this rule is to show precisely the manner in which the offense actually charged was committed. [13] The accused may not object to such evidence. For, it does not violate his constitutional right to be informed of the nature and cause of

accusation against him. [14]

The decision appealed from is not infirm. It is accordingly affirmed. Costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Barrera, Dizon, Makalintal, Bengzon, JP, and Ruiz Castro, JJ., concur.
Regala, and Zaldivar, JJ., no part.

[1] Criminal Case No. 2909, Court of First Instance of Ilocos Norte, entitled "People of the Philippines, plaintiff, versus Juan Raquinio, accused."

[2] The penalty for frustrated homicide is prision mayor, i.e., one degree lower than reclusion temporal which is the penalty for consummated homicide. Art. 250 in relation to Article 50 of the Revised Penal Code. Art. 250 of the said Code, however, declares that "The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50".

[3] Exhibit A; record below, p. 65.

[4] Pp. 4-8.

[5] Record below, p. 100.

[6] Under Section 29 of the Judiciary Act of 1948, as amended, this case should have been taken to the Court of Appeals, if a review of the facts were desired.

[7] People vs. Ponelas, et al., L-10853, May 18, 1959.

[8] See the following civil cases where a similar rule has been adopted: Aballe, etc., et al., vs. Santiago, L-16307, April 30, 1963; Cason, etc., vs. San Pedro and Favila, L-18928, December 28, 1963; GSIS vs. Cloribel, etc., et al., L-22236, June 22, 1965; DBP vs. Ozarraga, etc., L-16631, July 20, 1965.

[9] Decision, Record below, p. 93.

[10] People vs. Mercado, 51 Phil. 99, 101-102; People vs. Orongan, 58 Phil. 426, 429; People vs. Reyes, 61 Phil. 341, 343; People vs. Parana, 64 Phil. 331, 334; People vs. Boyles, et al., L-15308, May 29, 1964.

[11] Article 248(1), Revised Penal Code.

[12] U.S. vs. Campo, 23 Phil. 369, 371, citing cases; People vs. Pineda, et al., 56 Phil. 688, 690; People vs. Borbano, 76 Phil. 702, 708; People vs. Tagaro, L-18518, January 31, 1963.

[13] U.S. vs. Campo, supra, p. 374; People vs. Collado, 60 Phil. 610, 614; People vs. Domondon, 60 Phil. 729, 737-738.

[14] Article III, Section 1 (17), Constitution; Section 1(c), Rule 115, Rules of Court.

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