

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ESTEBAN PACIS, DEFENDANT AND APPELLANT.

G.R. No. 24010. October 22, 1925

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STATEMENT

January 15, 1925, the provincial fiscal filed in the Court of First Instance of Abra the following information:

"The undersigned accuses Esteban Pacis of the crime of frustrated murder, committed as follows:

"That on or about the 6th day of February, 1922, in the municipality of Bucay, Province of Abra, Philippine Islands, the said accused willfully, unlawfully, and feloniously with intent to kill, and with treachery, assaulted and attacked Fernando Bobiles while the latter was asleep in his home by striking him with a deadly weapon, to wit: A bolo, thereby inflicting serious wounds in the person of Fernando Bobiles, thus performing all the acts of execution which should have produced the crime of murder as consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to said Fernando Bobiles which has prevented his death.

"That besides the aggravating circumstance of treachery, there were also present in the commission of this crime, the aggravating: circumstance of nocturnity and the employment of means to insure or afford immunity.

"All contrary to law."

As a result of the trial, the defendant was found guilty of the crime of frustrated murder and sentenced to fourteen years, eight months and one day imprisonment, with the accessories of the law, and to pay the costs. The defendant appeals, contending that the trial court erred in designating the crime committed against Fernando Bobiles as frustrated murder, and in declaring the defendant guilty of that crime, and in not acquitting him of the charge.

JOHNS, J.:

About midnight of February 6, 1922, while Fernando Bobiles was asleep in his own home in the barrio of Ucab, municipality of Bucay, Abra, he was suddenly and treacherously attacked with a bolo, as a result of which he received six serious wounds, one below the right elbow which required sixty-three days to cure, one below the abdomen affecting the peritoneum, curable in fifty days, one on the right lower jaw, curable in twenty-five days, one below the right ear, curable in fifteen days, and a wound on the left wrist, affecting the cubital artery and the bones, curable in fifty-four days, and the last below the right shoulder which caused a permanent disability. At the same time and place an assault was committed on Dionisia Bobiles, the wife of Fernando Bobiles, and upon their daughter Rufina Bobiles.

The evidence is conclusive that it was the defendant who committed the crime, and it appears from the nature and number of the wounds inflicted upon Fernando Bobiles that the assault was both vicious and brutal, and that it was made with intent to kill, and that it is very fortunate for the defendant that it did not result in a higher crime.

The defendant cites and relies upon the decision of this court in the case of *People vs. Yabot* (45 Phil., 207, 210), where it is held:

"As we analyze the evidence, the proof is not sufficient to sustain either frustrated murder or frustrated homicide. At no time or in any manner was the defendant frustrated in the commission of the act. In other words, he was not in any manner prevented from killing Carmona. It is true that Carmona was seriously wounded. It is also true that, through medical treatment, he fully recovered. But the fact that he recovered through medical treatment does not make the crime either frustrated murder or frustrated homicide, or in any manner change the character or nature of the crime."

It also appears from that opinion that in that case the injuries were inflicted during a fight between the defendant and the offended party which took place out in the open. The facts in that case are very different from those in the instant case. The prosecution cites the case of *United States vs. Sanchez* (20 Phil., 427), in which the defendant was convicted of frustrated murder upon proof that he entered the house and stabbed Walter P. Linton and Nina Linton while they were asleep, and that the wounds inflicted were cured after more than thirty days' medical attendance. In that case the court says:

"The particular part of the body of a person struck during an assault, the deadly character of the weapon used and the violence of the attack, taken together, do not constitute proof of an intention to kill when they are all incidental to a quarrel in which the contending parties come to blows; under such circumstances, the actual conditions surrounding the encounter form the best criterion by which to arrive at the facts; but when all the said circumstances are present, and the crime further involves acts committed with alevosia, in such manner as to insure the safety of the assailant while depriving the victim of the opportunity to make defense, and when the aggressor, having special knowledge of the place of the assault, surprises and attacks his victim while the latter is asleep, and is then able to escape because of his intimate acquaintance with the interior of the house, in which he was formerly employed as a servant, the intention to kill clearly appears and the crime is properly classified as frustrated murder."

That is this case. Here, the offended party was in his own home sound asleep and defenseless, in which condition and about midnight six serious wounds were treacherously inflicted upon him, with the apparent intent to kill.

Through a mistake or oversight, the Acting Attorney-General recommends that the defendant be sentenced to eight years and one day of presidio mayor. Upon the facts, the penalty imposed by the lower court is right. There is no merit in the appeal.

The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Villamor, J., did not take part.

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