

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. RAMON MABUG-AT, DEFENDANT AND APPELLANT.*G. R. No. 25459. August 10, 1926*

Ponente: ROMUALDEZ, J.

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The Court of First Instance of Oriental Negros imposed upon Ramon Mabug-at the penalty of twelve years and one day cadena temporal, with the accessories of the law, to indemnify the offended party in the sum of P700 and to pay the costs, for the crime of frustrated murder.

The appellant appealed from this judgment, making two assignments of error as committed by the trial court, to wit:

1. In holding that the crime committed is frustrated murder, and
2. In not giving any credit to the evidence presented by the defense, finding the defendant guilty beyond a reasonable doubt.

The evidence of the prosecution shows that the accused and Juana Buralo were sweethearts. Juana had been jealous of the accused on account of the latter having frequently visited the house of one Carmen. Their relations were such that the accused invited Juana to take a walk on the afternoon of August 9, 1925, Juana refused him, later sending him a note of excuse. On the third day, or the night of August 11th, the accused went to the threshold of Cirilo Banyan's house where Juana Buralo had gone to take part in some devotion. There the accused, revolver in hand, requested Francisco Abellon to ask Juana to come downstairs and as Abellon refused to do so, the accused said: "If you do not want to go upstairs, I will get Juana and if anyone tries to defend her I will kill him."

The accused waited until Juana and her niece Perfecta Buralo came downstairs, when they went in the direction of their house. The accused, who was seen by the two girls, followed them without saying a word. It is only a short distance from the house where the devotion took place to that of the offended party, the houses being adjacent. As the two girls were going upstairs, the accused, while standing at the foot of the stairway, fired a shot from his revolver which wounded Perfecta Buralo, the bullet passing through a part of her neck, having entered the posterior region thereof and coming out through the left eye, which was completely destroyed. Due to proper medical attention, Perfecta Buralo did not die and is one of the witnesses who testified at the trial of this case.

The defense, without abandoning its allegation that the accused is not responsible for the crime, contends that the crime proven is not frustrated murder but the discharge of a firearm, with injuries, it not having been proven that it was the accused's intention to kill.

The relations existing between the accused and Juana Buralo, his disappointment at her not accepting his invitation to take a walk, the fact that the accused, revolver in hand, went to look for Juana Buralo at the house where the devotion was being held, later following her to her house, and especially having aimed at her person—the head—are facts which, in our opinion, permit of no other conclusion than that, in firing the shot, it was

the accused's intention to kill.

In the decision of this court in the case of *United States vs. Montenegro* (15 Phil., 1), it was held:

"We do not doubt that there may be cases wherein the discharge of a firearm at another is not in itself sufficient to sustain a finding of the intention to kill, and there are many cases in the books wherein the attendant circumstances conclusively establish that on discharging a firearm at another the actor was not in fact animated by the intent to kill. But, in seeking to ascertain the intention with which a specific act is committed, it is always proper and necessary to look not merely to the act itself but to all the attendant circumstances so far as they are developed by the evidence; and where, as in the case at bar, a revolver is twice discharged point-blank at the body of another, and the shots directed at the most vital parts of the body, it needs but little additional evidence to establish the intent to kill beyond a reasonable doubt."

The fact that a person received the shot which was in-tended for another, does not alter his criminal liability. (Art. 1, par. 3, Penal Code.)

The circumstances qualifying the murder alleged in the complaint are evident premeditation and treachery. Even when there is sufficient proof of premeditation (which we do not believe has been sufficiently established), yet, it cannot be considered as a qualifying circumstance in the present case, because the person whom the accused intended to kill was not Perfecta Buralo, who was hit by the bullet, but her aunt Juana Buralo. Had evident premeditation been proven, and there being no other qualifying circumstance of frustrated murder present in this case, the acts should be held to be frustrated homicide and punished with the maximum degree of the penalty prescribed by law. (Question 2, p. 28, 1890 ed., Viada's Penal Code.) But, the 'fact is that treachery was proven and must be taken into consideration in this case, because the accused fired at Perfecta Buralo, employing means which tended to insure the execution of the crime without running any risk himself from anyone who might attempt to defend the said offended party. The treachery which, according to the evidence, would have attended the crime had the bullet hit Juana Buralo was present in this case because the offended party Perfecta Buralo and Juana were going upstairs with their backs towards the accused when he fired his revolver. The Supreme Court of Spain, in a decision of May 7, 1885 (Viada, do., pp. 29, 30), in holding a crime to be murder and not homicide, stated the following:

"Considering that, according to the concept of treachery as it is explained in article 10 of the Civil Code dealing with said circumstance, it is evident that in firing the gun which Alejandro Sola was carrying which caused the death of Nazario Inigo, he employed means which tended to insure the commission of the crime without any risk to himself arising from any defense that might be made by the offended party, for neither the wounded party Bartolome Lobejano, at whom the shot was aimed in order to kill him so that he might not testify as to the assault committed upon him shortly before, as held by the trial court, was not in a position to defend himself in any way, nor could Nazario Inigo become aware of any attack so unjustified, rapid and unforeseen; considering, further, that the purely accidental circumstance that as a result of the shot a person other than the one intended was killed, does not modify, in the instant case, the elements constituting the crime of murder qualified by the treachery with which Alejandro Sola acted, whether with respect to the wounded Bartolome Lobejano or to the deceased Nazario Inigo, for which reason the rules of article 65 are not applicable herein, the culprit not having, in fact, committed a crime different from that which he intended, taking into consideration the substantial and intrinsic meaning thereof, etc."

Although the case just cited refers to the crime of consummated murder, the doctrine sustained therein is applicable to the case at bar so far as the concurrence of treachery as a qualifying circumstance is concerned.

The crime now before us is frustrated murder, the accused having intended to kill and performed all the acts of execution which would have produced the crime of murder but which, nevertheless, did not produce it by reason of causes independent of his Will. (Art. 3, Penal Code.)

We find no merit in the first assignment of error. In regard to the second, it appears beyond a reasonable doubt that the facts enumerated above constitute the crime of frustrated murder. With the exception of the qualifying circumstance of treachery, we find no other aggravating circumstance. The judgment appealed from being in accordance with the law and the facts proven, the same is hereby affirmed in all its parts, with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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