

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ELEUTERIO MARASIGAN, DEFENDANT AND APPELLANT.*G.R. No. 280. July 25, 1908*

Ponente: TORRES, J.

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About 7 o'clock on the evening of the 17th of September, 1892, Engracio Ronimo, a lieutenant of the town of Calaca, Batangas, being in front of the house of Geronimo Ramos in said town, noticed that a quarrel was going on upstairs. He immediately went up to investigate the affair, and found that the quarrel was between Eleuterio Marasigan and Severo Magsino, the latter charging Marasigan with having stolen a bull owned by Magsino. Lieutenant Ronimo tried to take them to the municipal building, but at that moment Arcadio de Joya, the justice of the peace, appeared before the house and, upon being informed of what had happened, ordered all those who were in the house to come down at once; everyone did so and after a conversation in Spanish which took place between Marasigan and the justice of the peace, Lieutenant Ronimo became aware that they were arranging to settle the matter. Ronimo objecting thereto, Marasigan caught hold of the gun which the justice of the peace was carrying with him and fired a shot at Lieutenant Ronimo who, in consequence, was wounded in the head and fell to the ground. All the foregoing happened in the presence of several witnesses who, upon examination, so testified.

The wounded man was promptly assisted by two curanderos, and, although the injured party declared that it took him one month and two days to recover, that during the first twenty days he was unable to work, and that he spent 7 which, together with other damages, amounted to 12, yet one of the curanderos stated that the cure took twenty days, while the other said that it took only ten days. The wounded man was later on examined by the municipal physician, who stated that he found a scar in the left parietal region of the head as the result of a gunshot wound; that the bullet only affected the scalp without penetrating the skull, the wound having entirely healed without further consequences; and that by proper treatment, barring accidents or complications, cure should have been effected in from twenty to thirty days.

Proceedings were instituted against Eleuterio Marasigan and Arcadio de Joya for the crime of lesiones graves, and the trial court rendered judgment on the 2d of May, 1896, sentencing Eleuterio Marasigan, for the crime of discharging a firearm and lesiones menos graves, to the penalty of three years and six months of prison correccional with the accessory penalties, to indemnify the injured party in the sum of 18, or to suffer subsidiary imprisonment in case of insolvency, and to pay one-half of the costs, one-half of the time of his detention to count in his favor. Arcadio de Joya was acquitted, and the other half of the costs was declared de oficio. Counsel for the accused Marasigan appealed from the above judgment, but after the appeal was admitted, the latter disappeared and in consequence was declared in default, the proceedings being suspended until such time as he should present himself or be arrested. This occurred on the 3d of November, 1902, and the case was proceeded with, the Solicitor-General asking that the judgment appealed from be affirmed, and counsel for the accused moving that the criminal liability of the accused be declared extinguished because he had been pardoned by the Government of the former sovereignty. However, notwithstanding the time elapsed since February of 1903, neither he nor his

counsel have been able to produce the original of the decree of pardon alleged by them. It further appears that the accused Arcadio de Joya, who was acquitted, has since died. The above related facts fully proven in this case, really constitute the crime of discharge of a firearm causing lesiones menos graves; the act can not be classified as an armed aggression by Marasigan upon an agent of the authorities, inasmuch as it does not appear that Lieutenant Ronimo was acting or had any occasion to act in the performance of his official duties on the night in question, as the justice of the peace, whose duty it was to make the investigation, was on the spot; the quarrel arose from the loss of a bull which Severo Magsino charged Marasigan with having stolen. Neither can such act be classified as frustrated murder or homicide because the case does not contain sufficient proof that it was the intention of the aggressor to deprive Ronimo of his life.

The accused Eleuterio Marasigan is convicted of the crime of discharge of a firearm thereby causing lesiones, and it has been fully proven that he is the sole author thereof, since, notwithstanding his exculpatory allegations, the case contains full evidence of his guilt as being the only person who fired a shot at Engracio Ronimo who, in consequence, was wounded in the head and fell to the ground on the spot; moreover, several witnesses saw the accused fire the weapon at the injured party, and against the testimony of these witnesses the declarations of certain others presented by the accused, they being his relatives or next of kin, can not prevail. It is, therefore, unquestionable that the accused is the only one liable for the crime with which he is charged.

Whenever one sole act constitutes two or more crimes, if one of them is the necessary means for committing the other, the penalty corresponding to the more serious crime shall be imposed in its maximum degree, as provided in article 89 of the Penal Code.

The discharge of a firearm by the accused against the injured party, inflicting on the latter lesiones menos graves about the head, according to the criminal law produced two offenses, one being for discharging a firearm against a given person, defined by article 408 of the Penal Code, and the other, that of lesiones menos graves, penalized under article 418 of said code, and as both offenses were the result of one sole criminal act, the adequate penalty, according to article 89 aforesaid, is that imposed by the law upon the more serious one, the same being applied in its maximum degree. No mitigating or aggravating circumstance is present in the commission of the crime herein, therefore the penalty should be imposed in the medium grade of the maximum degree, and the penalty of three years and six months of prision correccional and accessories imposed on the accused, is in accordance with the law.

In view of the foregoing considerations, it is our opinion that the judgment appealed from should be affirmed in all of its parts with the costs against the accused, with the, approval of the order in connection with the proceedings for attachment. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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