

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PABLO VILLANUEVA, DEFENDANT AND APPELLANT.*G.R. No. 28201. February 08, 1928*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of Iloilo finding the appellant, Pablo Villanueva, guilty of the offense of frustrated parricide and sentencing him to undergo imprisonment for fourteen years, eight months, and one day, reclusion temporal, with the accessories prescribed by law, and requiring him to pay the costs.

The accused in this case, Pablo Villanueva, and the injured woman, Salvacion Tesoro, are husband and wife; and until June 23, 1927, they were living together in the municipality of Balasan, in the Province of Iloilo. For some time prior to the day mentioned, ill feeling had existed on the part of the accused towards his wife; and a few days before the incident now to be referred to, in the course of the matrimonial dispute, the accused exhibited a hatchet to his wife and told her that he had not bought it for the purpose of splitting wood but to use upon her body. On the date mentioned the wife had a wordy altercation with a younger sister of the accused, whereupon the accused intervened and said to the girl, "Leave her alone, sister, for lightning is going to strike soon, and there will be a cutting." Upon this, the sister retired, and the wife, Salvacion Tesoro, turned away. In a few minutes, however, the accused approached her with hatchet in hand and struck her on the right occipital part of the head, making a gash that was not of a dangerous nature. Surprised at this aggression, Salvacion asked the accused why he had wounded her. Instead of answering, he placed himself in front of the woman and aimed at her a second blow, which she parried with her right hand, at the cost of fracturing a bone in her wrist. Following upon this aggression, the accused attempted to give the woman a third blow, but she evaded the stroke by stooping, and at the same time gave the accused a push. As a consequence the blade of the hatchet passed harmlessly in the air, and only the handle struck on the woman's left shoulder. At this moment another woman, who was the wife of a brother of the accused, stepped in and caught the accused by the shoulder, thereby causing him to desist from the assault.

The wound inflicted upon the head of the injured woman appears to have taken some fifteen days to heal, while she did not recover the complete use of her forearm until the expiration of about twenty-five days, and even at the time of the trial she stated that she still felt pains in her wrist. For fifteen days she was so far disabled as to be unable to attend to her customary duties.

As to the qualification of the crime we agree with the Attorney-General that the offense for which the accused should be convicted is the infliction of minor physical injuries (*lesiones menos graves*), punishable under article 418 of the Penal Code, because the injuries required more than eight but less than thirty days for their cure. The fact that the injured woman was the wife of the accused is a circumstance to be taken into account as an aggravation of the offense (No. 1 of art. 10, Penal Code). No mitigating circumstance is discernible. The proper penalty therefore falls within the maximum degree of the penalty indicated in the first paragraph of article 418 of

the Penal Code; and in view of the ugly nature of the assault, we are of the opinion that the accused merits said penalty in its extreme extension, or six months, *arresto mayor*.

The trial judge defined the offense as frustrated parricide, but the majority of this court are of the opinion that this qualification of the offense is too severe, because it does not appear beyond a reasonable doubt either that the accused actually intended to kill his wife or that he performed all of the acts of execution which should have resulted in the woman's death and was only prevented from accomplishing this result by causes independent of his will. A fair interpretation of the evidence is, in our opinion, to the effect that the accused was somewhat of a blusterer and bully and that the threat implied in his statement, some days before the assault, that he had bought the hatchet to use on his wife, is at least partly explainable as having been prompted by a desire to intimidate the woman. Again, if the accused had really intended to kill his wife, it is difficult to see what there really was to prevent him when she was crouched helplessly on her knees before him.

In connection with offenses of this character, before the graver qualification can be placed upon the offense, the intention to take life must be proved with the same degree of certainty as is required as to other elements of the crime, and the inference of such intent should not be drawn in the absence of circumstances sufficient to prove such intention beyond a reasonable doubt. Moreover, it is always to be remembered that the first and simplest presumption which the law draws with respect to human conduct, in connection with acts of violence, is that the actor intended the natural consequences of his acts; and this presumption should be applied in a fair and rational way, with proper regard to all the details of the act, and without the suppression of any of its elements. For instance, if an accused is shown to have fired a gun at his victim, thereby inflicting a minor wound in some part of the body, it should be assumed *prima facie* that he intended to inflict such a wound. And from the mere fact that the use of firearms is dangerous to life, the inference should not be drawn that the accused intended to kill. Likewise, in a case of this kind, where the accused inflicted a scalp wound with a hatchet and struck at his victim a second time, it should not be inferred, from the mere fact that a hatchet in the hands of an infuriated man is a deadly weapon, that the accused really intended to kill. In cases of this kind the intent to kill should be proved by convincing external evidence incompatible with any other intention. *Prima facie* a man must be assumed to have intended to do that which he actually did, and not something more. In the opinion of the court the proof of intention to kill in this case is lacking in certainty and convincing character.

Similar considerations make it improper to convict the accused of attempted parricide, because the intention to kill is equally necessary in case of an attempted homicide as in case of the frustrated crime; and we consider untenable the suggestion that in this case the desistance of the accused from the purpose to kill his wife was due to the intervention of a sister-in-law who caught the accused by the shoulders after he had struck at his victim the third time; for the woman who thus intervened ceased at once from this mild form of intervention at the command of her own husband, a brother of the accused, who was standing near and who, to judge by his words, sympathized with the aggression. The fair and natural interpretation of the acts of the accused is that he desisted from the assault of his own volition.

The judgment convicting the accused of frustrated parricide is therefore reversed, and judgment will be entered convicting the accused of the offense of *lesiones menos graves* and sentencing him to six months, *arresto mayor* with the accessories appropriate to this penalty, and requiring him to pay all costs of prosecution, with proper credit of course for one-half the period of provisional confinement prior, to the date when service of this sentence shall begin. So ordered.

Johnson, Malcolm, Villamor, and Romualdez, JJ., concur.

CONCUR AND DISSENTING

VILLA-REAL, J., with whom OSTRAND and JOHNS, JJ.:

The disagreement between the accused and his wife, the securing of an axe to attack her, the defendant's apologetic words to his sister upon the occasion of a dispute between her and the offended party a few minutes before the aggression, to the effect: "Leave her alone, sister, for lightning is going to strike soon, and there will be a cutting," the nature of the weapon, the vital part of the body at which the first blow was struck, and the direction of the two subsequent ones, which the victim dodged,—are clear and convincing evidence of the defendant's intention to kill his wife, and this would have happened had it not been for the timely intervention of a sister-in-law of the accused, who held him by the shoulder and prevented him from continuing the assault upon his wife. The fact that when he found himself free, he did not persist in his design, and went upstairs to his house, does not exempt him from criminal liability for attempted parricide, according to paragraph 3 of article 3 of the Penal Code, because in order that the desistance might extinguish the effects of the crime commenced by the accused, it is not enough that it be voluntary, but it is necessary besides that it be due to a spontaneous impulse from his conscience, and not due to an external cause, as in the instant case, since he might have abandoned his purpose only for the moment, in order to resume it under more favorable circumstances. In establishing said special exemption, the legislator desired to grant the grace of pardon to the penitent and to provide an incentive for the felon to desist from the crime during its commission.

I am, therefore, of opinion that the accused is guilty of the crime of attempted parricide, since, with the intention of killing his wife, he commenced the execution of the crime directly by overt acts, and failed to perform all the acts of execution which should have produced the crime, by reason of a cause or accident which was not his own voluntary desistance.

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