

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FERNANDO GOROSPE, FELIX GOROSPE, ESPINELO GOROSPE AND ANDRES GOROSPE, DEFENDANTS AND APPELLANTS.*G.R. No. 29423, December 29, 1928*

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-29423/>**OSTRAND, J.:**

The defendants were accused of the crime of frustrated murder. It appears from the evidence that in the evening of November 6, 1926, the offended party, Vicente Mendoza, was present in the La Loma Cabaret situated in the municipality of Caloocan, Province of Rizal. Between 10 and 11 o'clock that evening, while walking from the toilet of the cabaret towards the table he had been occupying, Mendoza was struck on the right eye by an unknown person and embraced from behind by the defendants Felix, Andres and Espinelo Gorospe. While he was thus held, Felix Gorospe stabbed him in the back with a pocket-knife. Mendoza endeavored to free himself, but the defendant Fernando Gorospe joined the other defendants and struck him on the head with a blunt instrument wrapped in a small handkerchief, as a result of which blow he fell to the floor. Fernando thereupon ran away, but the other defendants continued the attack, Espinelo and Andres striking Mendoza with the fists, and Felix stabbing him with the pocketknife. Lazaro Faustino, the manager of the cabaret, came to his rescue and succeeded in pulling Felix and Andres away from their victim. Ambrosio Cruz, a special policeman, also intervened and Seized Espinelo and, delivering him to another policeman, pursued the other defendants, who in the meantime had tried to escape. He overtook Andres and Fernando and succeeded in arresting the former. Fernando escaped in a carromata but was subsequently pursued by Cruz with an automobile and captured. Shortly afterwards Felix Gorospe was also apprehended. Mendoza was very seriously wounded and was immediately taken to the Philippine General Hospital. One of the wounds had penetrated the lungs, and, as a consequence, the patient was expectorating blood for several days. Another wound was also deep, and very nearly reached the left kidney, and still another deep wound almost touched the peritoneum. Due to his robust constitution and the immediate medical attendance, Mendoza survived and was discharged from the hospital in a few weeks.

Upon the facts stated, the defendant Felix Gorospe was convicted of the crime charged in the information and sentenced to suffer twelve years and one day of cadena temporal, with the accessory penalties, and to pay one-fourth of the costs. The other defendants were found guilty of the crime of less serious physical injuries, and each of them was sentenced to six months of arresto mayor, with the accessory penalties and with the proportional share of the remaining three-fourths of the costs. From these sentences the defendants appealed and present the following assignments of error:

- "1. The court erred in assuming jurisdiction over and proceeding with the trial of the complaint.
- "2. The court erred in overruling the defendants' objection to the jurisdiction of the court to try the defendants, to which the defendants duly excepted.
- "3. The court erred in subjecting the defendants to a trial and sentencing them without due process of law.

"4. The court erred in convicting the defendant and appellant, Felix Gorospe, of the crime of frustrated murder.

"5. The court erred in convicting the defendants and appellants, Fernando Gorospe, Espinelo Gorospe, and Andres Gorospe, and each of them of the crime of lesiones menos graves.

"6. The court erred in holding that the circumstance of treachery on the part of the defendants and appellants was proved by the evidence.

"7. The court erred in the severity of the various sentences imposed upon the defendants and appellants."

The first three assignments of error present a question of law. The provincial fiscal of Rizal filed a complaint in this case in the justice of the peace court of Caloocan for a preliminary investigation. Upon such investigation, the justice of the peace concluded that the defendants were not guilty of frustrated homicide but of lesiones menos graves and so informed the fiscal "para los efectos que en derecho tuviere lugar" in an "auto" dated April 5, 1927. The fiscal filed a motion with the Court of First Instance praying "that this Honorable Court require the appearance of the justice of the peace, Ladislao de Jesus, to make the necessary corrections in his order of April 5, 1927, or to submit an amended order stating therein whether he would order the dismissal of the case for lack of reasonable evidence of the commission of the crime charged, or whether he would transmit the case to the court on the ground that prima facie evidence of the commission of the crime by the herein accused had been presented."

On May 6, 1927, the Court of First Instance, in accordance with the fiscal's motion, ordered the justice of the peace to make the necessary corrections in his "auto" of April 5, 1927, and in compliance with that order, the justice of the peace revoked said "auto" and in another "auto" reported that the evidence presented during the preliminary investigation of the case established prima facie that the crime charged had been committed, and, after the approval of this report by the Court of First Instance, the fiscal presented the information for frustrated murder.

The defendants' contention is that the justice of the peace, having found and declared that the crime committed was only lesiones menos graves, the court had no authority to try the defendants for frustrated murder without another preliminary investigation.

This contention is entirely untenable. The duty of the justice of the peace was only to determine whether or not the evidence presented supported prima facie the allegations of fact contained in the complaint; he had no legal authority to determine the character of the crime and his declaration upon that point can only be regarded as an expression of opinion in nowise binding on the court. His attention was called to this fact, and, in compliance with the court's order, he finally did what it was his duty to do, i. e., state whether or not the evidence reasonably sustained the allegations of the complaint. The court had a perfect right to require him to do so and committed no error in taking jurisdiction of the case upon his final report. The authorities cited by counsel for the defendants are not in point.

The fourth assignment of error deals with the guilt of the defendant Felix Gorospe, and it is argued that he at most can only be held guilty of lesiones menos graves without aggravating or mitigating circumstances. We cannot give much weight to this argument. The evidence seems conclusive that Felix stabbed the offended party in the back while the latter was in a defenseless position. That constitutes treachery. The fact that he inflicted three deep wounds near vital spots sufficiently shows his murderous intent. The sentence imposed on him is in accordance with the law and seems well deserved.

The three remaining assignments of error are equally without sufficient foundation. There may, indeed, be some doubt as to whether Fernando, Espinelo and Andres should not be held guilty as principals in the commission of

the frustrated murder, but there is no sufficient evidence of conspiracy to commit that crime, and it is not clear that their cooperation was essential to its commission. We have therefore concluded that the court below did not err in finding them guilty of the lesser crime.

The sentence appealed from is affirmed with the costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

STREET, J.:

I submit that the offense committed in this case would be properly characterized as an attempt and not as a frustrated offense. I am further of the opinion that all four of the appellants were involved as principals.

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