

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. W. B. BARNES, DEFENDANT AND APPELLANT.*G.R. No. 3129. March 15, 1907*

Ponente: MAPA, J.

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It is a fact fully proven that the accused inflicted upon M. D. Wright a cut 2 inches wide by 3 inches in depth in the left iliac region, touching the crest of the hip bone and affecting the muscles of the abdomen, without, however, penetrating that region. The wound was made by a knife and was cured in eighteen days. The motive of this aggression was due to Wright's trying to collect for two glasses of beer that the accused had taken in his bar and had refused to pay for. Wright upon observing his refusal to pay, told the accused that he had better pay for what he drank, whereupon the accused drew a knife from one of his coat pockets with which he stabbed Wright without giving Wright any time or opportunity to prevent such an aggression, the same being sudden and unexpected. The accused immediately after this ran away, after having also stabbed another person, who came to Wright's assistance. Barnes, the accused, was captured by the police a few hours afterwards.

The judge qualified the act as attempted homicide and imposed on the accused the penalty of three years' imprisonment at hard labor, and to pay as indemnity to Wright, the aggrieved party, the sum of \$171, United States currency, together with the costs of the case.

The proof does not support this legal qualification of the offense of the accused. The fundamental condition of the crime of attempted homicide is intent, on the part of the accused, to kill, and it must be shown in an unmistakable manner that the intent was to cause the death of the party attacked. In the present case there is nothing in the record showing that such was the intention of the accused. Neither the lack of sufficient motive which caused the aggression, nor the character of the wound, nor the fact that the accused, who after inflicting the wound, voluntarily ran away without being pursued by any one, show beyond reasonable doubt that he had the intention of killing and not that of only wounding the injured party.

We agree with the prosecuting attorney in qualifying the offense as lesiones menos graves as defined in article 418 of the Penal Code. There is to be taken into consideration the existence of the aggravating circumstance of treachery as shown by the unexpected nature of the attack.

We reverse the judgment appealed from, and sentence the accused to six months' imprisonment (arresto mayor), and to pay to the aggrieved party an indemnity of \$171, United States currency, or in case of insolvency to suffer subsidiary imprisonment at the rate of one day for each 12½ pesetas, but not exceeding one-third part of the principal penalty imposed, and also taking into consideration and allowing to the accused one-half of the time he has already been imprisoned, together with the costs of both instances.

After the expiration of ten days from the date of the notification of this decision let judgment be rendered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

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