

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUCIO CAMACHO, DEFENDANT AND APPELLANT.

G.R. No. 3280. March 23, 1907

Ponente: MAPA, J.

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MAPA, J.:

The accused herein and the offended party, one Patricio Mosqueda, were members of a detachment of the Constabulary in the service of the municipality of Cebu on March 14, 1905. The first was a corporal and the second a private detailed as cook in the cuartel and was also in charge of the issuing of the meat rations among the soldiers of the detachment. On that day the accused entered the kitchen of the cuartel and asked Mosqueda for meat, and as the latter answered that he could not give him any without previous knowledge of the person in charge, the accused left the kitchen without saying a word, returning a few moments later with a gun which he, the accused, pointed at Mosqueda in a threatening way, asking him whether or not, after all, he would give him, the accused, the meat asked for. At that moment Mosqueda was cutting up meat and answered the accused, saying yes, he could take some; the accused lowered his hand for the purpose of taking the meat, but raised it again immediately thereafter, taking hold of the chamber of the gun, which gun was then discharged, the bullet from the same grazing the breast and passing through Mosqueda's left arm. The wound inflicted in the arm was serious and has resulted in the complete loss of the use of said arm.

This fact was fully proven during the trial of the case, was alleged in the complaint to be that of frustrated murder, and was found by the judge of the Court of First Instance to be that of lesiones graves (serious personal injuries), caused by reckless negligence, in consequence of which finding the court below sentenced the accused to two years and four months' imprisonment (prision correccional), to pay to the offended party an indemnity of 500 pesos, or to suffer subsidiary imprisonment in case of insolvency, together with the payment of the costs.

The qualification of frustrated murder may be disregarded in any event, inasmuch as the act has not caused anything more than personal injuries or wounds to the offended person, constituting the crime of lesiones (assault). Therefore the offense should be so qualified in the record and not as homicide or murder, it not having been shown, as proven in the cause, that the accused had the intention of killing the offended party in inflicting upon him said injuries.

The question that remains to be considered is whether or not these injuries were caused through mere recklessness or caused intentionally. The court below is of the opinion that the act was that of reckless negligence, as is stated above. The court, in its judgment herein, says: "The court has not been convinced beyond reasonable doubt that the act of discharging the gun was an act committed intentionally. It is possible," the court adds, "that the accused, carried away by his blindness of anger, discharged the gun intentionally, but there is a lack or want of proof in this case which does not exclude the idea that the act of discharging the gun was done unintentionally * * *."

This court does not agree with this finding. The proofs show sufficiently, in our opinion, that the accused intentionally discharged the shot that wounded the offended party. The offended party states in his testimony that

"he (the accused) opened one of the parts of the gun, immediately closed the same and pointed the gun at me." If the shot or discharge was prepared for in this manner it appears without doubt that it was intentional and not merely casual. As to this point the offended party affirms categorically in different parts of his testimony given herein that the accused discharged the shot at him, all of which indicates voluntary action on the part of the accused. Another witness testifies, as follows: "The accused took the gun, went to where Patricio was and asked him if he wanted to resist, and Patricio said no, * * * and he then shot him." Another witness refers to this matter in the following terms: "I saw Lucio Camacho threatening Mosqueda three times with the gun in the Constabulary quarters, he asking Mosqueda if he wanted to resist, and, after the third threat, discharged the gun." This witness, when asked expressly if the gun was discharged accidentally or by Lucio, answered: "The accused discharged it." The fact that this same witness testifies he saw the accused move the trigger is without doubt sufficient reason for this affirmation. And finally another witness who was present at the time, after testifying that he saw the accused point the gun at Mosqueda, and, upon being asked if the gun was discharged accidentally or by the accused, answered: "He fired it because he pulled the trigger."

In view of this testimony we consider it sufficiently proved that the accused voluntarily and intentionally discharged the gun that wounded Mosqueda, and, therefore, this act of the accused should be considered as that of the crime of lesiones graves (serious personal injuries), coming under paragraph 2 of article 416 of the Penal Code, in that the result of the act was the complete loss of the use of the wounded arm, one of the principal members of the body, a fact to be considered as one of the essential elements of said offense.

Therefore we reverse the judgment appealed from and impose upon the accused the penalty of four years' imprisonment (prision correccional), the payment of an indemnity of 500 pesos to Mosqueda, the offended person, or to suffer subsidiary imprisonment therefor in case of insolvency at the rate of one day for each 12½ pesetas, such subsidiary imprisonment, however, not to exceed a one-third part of the principal penalty herein, and allowing to the accused a credit of one-half of the period he has been imprisoned on this charge; and in addition thereto the costs of this instance are assessed against said accused. After the expiration of ten days from the notification of this decision let judgment be entered 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, Johnson, Willard, and Tracey, JJ., concur.

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