

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. BASILIO BORINAGA, DEFENDANT AND APPELLANT.

G.R. No. 33463. December 18, 1930

Ponente: MALCOLM, J.

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MALCOLM, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

Sometime prior to March 4, 1929, an American by the name of Harry H. Mooney, a resident of the municipality of Calubian, Leyte, contracted with one Juan Lawaan for the construction of a fish corral. Basilio Borinaga was associated with Lawaan in the construction of the corral. On the morning of March 4, 1929, Lawaan, with some of his men, went to Mooney's shop and tried to collect from him the whole amount fixed by the contract, notwithstanding that only about two-thirds of the fish corral had been finished. As was to be expected, Mooney refused to pay the price agreed upon at that time. On hearing this reply of Mooney, Lawaan warned him that if he did not pay, something would happen to him, to which Mooney answered that if they wanted to do something to him they should wait until after breakfast, inasmuch as he had not yet taken his breakfast. Lawaan then left with his men, and Mooney, after partaking of his morning meal, returned to his shop.

On the evening of the same day, Mooney was in the store of a neighbor by the name of Perpetua Najarro. He had taken a seat on a chair in front of Perpetua, his back being to the window. Mooney had not been there long when Perpetua saw Basilio Borinaga from the window strike with a knife at Mooney, but fortunately for the latter, the knife lodged in the back of the chair on which Mooney was seated. Mooney fell from the chair as a result of the force of the blow, but was not injured. Borinaga ran away towards the market place. Before this occurred, it should be stated that Borinaga had been heard to tell a companion: "I will stab this. Mooney, who is an American brute." After the attack, Borinaga was also heard to say that he did not hit the back of Mooney but only the back of the chair. But Borinaga was persistent in his endeavor, and hardly ten minutes after the first attack, he returned, knife in hand, to renew it, but was unable to do so because Mooney and Perpetua were then on their guard and turned a flashlight on Borinaga, frightening him away. Again that same night, Borinaga was overheard stating that he had missed his mark and was unable to give another blow because of the flashlight. The point of the knife was, subsequently, on examination of the chair, found imbedded in it.

The foregoing occurrences gave rise to the prosecution of Basilio Borinaga in the Court of First Instance of Leyte for the crime of frustrated murder. The defense was alibi, which was not given credence. The accused was convicted as charged, by Judge Ortiz, who sentenced him to fourteen years, eight months, and one day of imprisonment, reclusion temporal, with the accessory penalties and the costs.

The homicidal intent of the accused was plainly evidenced. The attendant circumstances conclusively establish

that murder was in the heart and mind of the accused. More than mere menaces took place. The aggressor stated his purpose, which was to kill, and apologized to his friends for not accomplishing that purpose. A deadly weapon was used. The blow was directed treacherously toward vital organs of the victim. The means used were entirely suitable for accomplishment. The crime should, therefore, be qualified as murder because of the presence of the circumstance of treachery.

The only debatable question, not referred to in the briefs, but which must be decided in order to dispose of the appeal, is: Do the facts constitute frustrated murder or attempted murder within the meaning of article 3 of the Penal Code? Although no exact counterpart to the facts at bar has been found either in Spanish or Philippine jurisprudence, a majority of the court answer the question propounded by stating that the crime committed was that of frustrated murder. This is true notwithstanding the admitted fact that Mooney was not injured in the least.

The essential condition of a frustrated crime, that the author perform all the acts of execution, attended the attack. Nothing remained to be done to accomplish the work of the assailant completely. The cause resulting in the failure of the attack arose by reason of forces independent of the will of the perpetrator. The assailant voluntarily desisted from further acts. What is known as the subjective phase of the criminal act was passed. (U. S. vs. Eduave [1917], 36 Phil., 209; People vs. Mabugat [1926], 51 Phil., 967.)

No superfine distinctions need be drawn in favor of the accused to establish a lesser crime than that of frustrated murder, for the facts disclose a wanton disregard of the sanctity of human life fully meriting the penalty imposed in the trial court.

Based on the foregoing considerations, the judgment appealed from will be affirmed, with the costs of this instance against the appellant.

Avanceña, C. J., Villamor, Ostrand, Johns and Romualdez, JJ., concur.

DISSENTING

Villa-Real, J., with whom concur Johnson and Street, JJ.:

We dissent from the opinion of the majority in so far as it finds the defendant-appellant guilty of the crime of frustrated murder instead of that of an attempt to commit murder.

Article 3 of the Penal Code provides as follows:

"Art. 3. Frustrated felonies and attempts to commit felonies are punishable, as well as those which are consummated.

"A felony is frustrated when the offender performs all the acts of execution which should produce the felony as a consequence, but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

"There is an attempt when the offender commences the commission of the felony directly by overt acts, and does not perform all the acts of execution which constitute the felony by reason of some cause or accident other than his own voluntary desistance."

The pertinent facts as found by the court below and by this court are the following:

On the evening of the same day, Mooney was in the store of a neighbor by the name of Perpetua Najarro, He had taken a seat on a chair in front of Perpetua, his back being to the window. Mooney had not been there long when Perpetua saw Basilio Borinaga from the window strike with a knife at Mooney, but fortunately for the latter, the knife lodged in the back of the chair on which Mooney was seated. Mooney fell from the chair as a result of the force of the blow, but was not injured. Borinaga ran away towards the market place. Before this occurred, it should be stated that Borinaga had been heard to tell a companion: "I will stab this Mooney, who is an American brute." After the attack, Borinaga was also heard to say that he did not hit the back of Mooney but only the back of the chair. But Borinaga was persistent in his endeavor, and hardly ten minutes after the first attack, he returned, knife in hand, to renew it, but was unable to do so because Mooney and Perpetua were then on their guard and turned a flashlight on Borinaga, frightening him away. Again that same night, Borinaga was overheard stating that he had missed his mark and was unable to give another blow because of the flashlight. The point of the knife was subsequently, on examination of the chair, found imbedded in it.

Since the facts constituting frustrated felony and those constituting an attempt to commit felony are integral parts of those constituting consummated felony, it becomes important to know what facts would have been necessary in order that the case at bar might have been a consummated murder, so that we may determine whether the facts proved during the trial constitute frustrated murder or simply an attempt to commit murder.

In order that the crime committed by the defendant-appellant might have been a consummated murder it would have been necessary for him to have inflicted a deadly wound upon a vital spot of the body of Mooney, with treachery, as a result of which he should have died.

Since according to the definition given by the Code a frustrated felony is committed "when the offender performs all the acts of execution which should produce the felony as a consequence, but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator" let us examine the facts of record to find out whether the said defendant-appellant has performed all the acts of execution which should produce the murder of Mooney as a consequence. The prisoner at bar, intending to kill Mooney, approached him stealthily from behind and made a movement with his right hand to strike him in the back with a deadly knife, but the blow¹, instead of reaching the spot intended, landed on the frame of the back of the chair on which Mooney was sitting at the time and did not cause the slightest physical injury on the latter. The acts of execution performed by the defendant-appellant did not produce the death of Mooney as a consequence nor could they have produced it because the blow did not reach his body; therefore the culprit did not perform all the acts of execution which should produce the felony. There was lacking the infliction of the deadly wound upon a vital spot of the body of Mooney.

It is true that the frame of the back of the chair stood between the deadly knife and the back of Mooney; but what it prevented was the wounding of said Mooney in the back and not his death, had he been wounded. It is the preventing of death by causes independent of the will of the perpetrator, after all the acts of execution which should produce the felony as a consequence had been performed, that constitutes frustrated felony, according to the law, and not the preventing of the performance of all the acts of execution which constitute the felony, as in the present case. The interference of the frame of the back of the chair which prevented the defendant-appellant from wounding Mooney in the back with a deadly knife, made his acts constitute an attempt to commit murder; for he had commenced the commission of the felony directly by overt acts, and did not perform, all the acts of execution which constitute the felony by reason of a cause or accident other than his own voluntary desistance.

The foregoing considerations force us to the conclusion that the facts alleged in the information and proved during the trial are not sufficient to constitute the crime of frustrated murder, but simply the crime of an attempt to commit murder.

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