

## THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO SAMSON, DEFENDANT AND APPELLANT.

*G. R. No. 35014. August 19, 1931*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

Gregorio Samson appeals to this court from the judgment of the Court of First Instance of Leyte finding him guilty of the crime of frustrated murder, qualified by treachery, and considering the aggravating circumstances of evident premeditation and nocturnity, sentenced him to seventeen years, four months, and one day of reclusion temporal, with the accessory penalties, defined in article 56 of the Penal Code, the confiscation of Exhibit A, and to pay the costs of the case.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its decision, to wit:

- In finding the accused guilty of frustrated murder.
- In not acquitting the accused for having acted in self-defense."

The prosecution sought to establish the following facts:

Felipe Amadeo, the offended party, and Gregorio Samson the defendant, are neighbors, the former's house being situated on a portion of the latter's land, for which he pays the latter rent. The offended party having torn down the fence about the land where he and the accused had some plants, the latter became angry and destroyed some corn which he had, and in doing so he also injured three camote and eleven gabe plants belonging to the offended party, who thereupon told his wife to file a complaint against the accused. The chief of police of Tacloban, to whom the offended party's wife presented the complaint, sent a policeman to ascertain the damage caused by the defendant and had ordered the latter to try and settle the matter amicably between the parties. When the defendant arrived, the chief of police told him that if he had really injured the offended party's plants, it was just that he should pay the price. The defendant refused to pay, saying that the plants were on his land. The attempt at an amicable settlement having failed, the chief of police told the defendant and the offended party to return to his office the next day, or, the 15th of the month. Inasmuch as when the accused appeared on the date fixed he insisted upon his refusal to pay for the damaged plants, the chief of police advised the offended party to file a complaint with the justice of the peace for damages.

It was past 10 o'clock that night when Felipe Amadeo was returning home, after having fished in the sea, carrying a torch in one hand, and a fishing net and a basket containing the fish he had caught in the other, that he was suddenly attacked by the accused who wounded him in the right arm with a bolo. When he felt the wound, the offended party cried out for help, and ran towards the house of detective Margarito Desbarro, over whose threshold he fell upon his face. The defendant who was pursuing him, upon seeing him fall struck him again with the weapon, wounding him on the right side of the back, and immediately went up into the house of Margarito

Desbarro who inquired what was the matter, and he answered that he had wounded Felipe Amadeo.

Testifying in his own behalf, the defendant said that at his refusal to pay the price of the plants belonging to the offended party which he destroyed, the latter grew angry and called him "beast," "brute," "outlaw," and "bandit;" that after the offended party's wife had filed the complaint against him with the chief of police for the damaged plants, he told Felipe Amadeo to vacate the premises; that on the afternoon of October 15, 1930, the latter went to the defendant's house armed with a bolo and a dagger, and started tearing down the fence, calling on him at the same time to come down if he was brave; that because his wife held him back and because of fear, he did not do so; that at about 10 o'clock that night, while he was closing the shop he had downstairs, the injured party unexpectedly appeared, armed with a bolo and a stick, and, while asking him why he had destroyed his gabe plants, attacked him with the bolo, the point of which wounded him in the left forearm; that as his assailant continued the attack and he could not escape, he defended himself by snatching up a bolo he had in the shop, and with it he tried to ward off the blows dealt him by the other, who in the course of the struggle was wounded in the right arm and in the back; that in response to the cries for help uttered by the defendant's wife, several persons came, among them the offended party's wife, who picked up the bolo and the stick which her husband had left in his flight; that immediately afterwards he went to the house of the detective Margarito Desbarro, before whose door he threw down the bolo with which he had wounded the offended party; that the defendant told Desbarro that the offended party was armed with a bolo and a stick; that on being taken to the town hall, he showed the chief of police his wound which was still bleeding.

In rebuttal the offended party's wife testified that she had not picked up any bolo or stick left by her husband at the defendant's house; that she did not leave her house all that night until, hearing her daughter's cry, she went to help her wounded husband, who was in Mariano Espejo's house.

Detective Margarito Desbarro, testifying also in rebuttal, said that the accused only told him that the offended party had a stick; and that the accused had told him that he had left the injured party in the middle of the street in front of Mariano Espejo's house.

The chief of police of Tacloban, Marcos Francisco, also testifying in rebuttal, said that on the 16th of October, 1930, or the day after the occurrence, while the accused was being detained in the Tacloban jail, the latter showed him a slight scratch in the form of a circle on his left fore-arm, and that it could not have been produced by an edged weapon.

The only point to decide in this appeal is, Who attacked whom, and why?

Doctor Dionisio Marave, resident physician of the provincial hospital of Tacloban, who examined the injured party in the early morning of October 16, 1930, answering one of the questions asked by counsel for the accused, as to whether the wound on the arm could have been caused by a person attacking the injured man facing him, said that he could not conceive how a man attacking another from the front could inflict such a wound, although it would be possible if the injured person was stooping; that with reference to the wound in the back, it is rather impossible for the attacker to inflict it while face to face with his opponent, especially with the right hand, although it would be possible if the attacker happened to be left-handed and the injured person raised his right hand to avoid being wounded on the arm. This expert opinion, which may be considered as requested by counsel for the accused, contradicts the theory of the defense that the offended party was the aggressor, and that the accused did nothing more than to defend himself, and corroborates the testimony of the injured man and his witnesses to the effect that the defendant was the aggressor, and that the first attack was made while the offended party had his back turned, causing the wound on the arm; and the second attack was when he had fallen on his face over the threshold of the detective's house.

With regard to the motive of the attack, while it is true that the two had quarreled, yet, since it has been shown that the attack was made by the accused, his motive must have been his revenge against the other.

The court below qualified the crime committed by the accused as frustrated murder, in accordance with the information. In order legally to maintain this stand, the intent to kill must clearly appear. Although this intent may be deduced from the facts of the case, the place and nature of the wounds, in the present case the wound inflicted upon the offended party are not, in the opinion of the physician who examined him, necessarily fatal, though death would have supervened if they had not been attended to in time, and the man should have lost much blood. Furthermore, after having inflicted the second wound the defendant left the injured man lying and immediately ran to the home of the detective Margarito Desbarro to report the matter to him, and told him that he had wounded the offended party, which tends to show that it was not his intention to kill the man; otherwise before leaving him, he would have made sure that the man was dead, and would not have told the detective that he had merely wounded him.

Since the intent to kill, then, remains unproved, the offense must be qualified as "less serious physical injuries," in accordance with article 418 of the Penal Code, the injured man not having been rendered incapacitated for his ordinary work for over thirty days, nor been in need of medical assistance for a like period, the penalty provided by law being *arresto mayor* or banishment, or a fine not less than 325 nor more than 3,250 pesetas in the discretion of the court. In fixing the penalty, the aggravating circumstances of treachery and nocturnity are to be taken into account, but not evident premeditation, since it has not been shown that the defendant had been brooding over his purpose to attack the offended party,—without any offsetting mitigating circumstance; the penalty is therefore *arresto mayor* in its maximum degree, that is, six months.

Wherefore, the judgment appealed from is modified, and the defendant is sentenced to suffer the penalty of six months of *arresto mayor*, with the accessories of law, and the costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Romualdez, and Imperial, JJ., concur.

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