

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ROMAN DAMIAO, DEFENDANT AND APPELLANT.

G.R. No. 36083. March 31, 1932

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

Roman Damiao, the accused,, appealed from the judgment of the Court of First Instance of Oriental Misamis convicting him of frustrated murder and sentencing him to ten years, eight months and one day of reclusion temporal, to indemnify the offended person in the amount of P300, with subsidiary imprisonment in case of insolvency, and to pay the costs.

The information filed contains the following allegations:

"That on or about the night of January 22, 1931, in the municipality of Cagayan, Province of Oriental Misamis, Philippine Islands, and within the jurisdiction of this court, the accused Roman Damiao, with treachery and evident premeditation, willfully, unlawfully, and feloniously, and with the intent of taking the life of one Cayetano Dablio, attacked the latter with a deadly weapon, to wit, a bolo, wounding him in the left forearm and in different parts of the body, thereby rendering said left forearm permanently useless, having performed all the acts which would have produced the crime of murder but which did not, by reason of causes independent of the defendant's will, namely, the able and timely medical attendance given said Cayetano Dablio, which prevented his death in violation of article 403 in connection with article 3, paragraph 2, of the Penal Code."

Upon arraignment the appellant voluntarily pleaded guilty, but has now appealed on the ground that the trial court erred in not granting his petition to substitute for that plea the plea of not guilty.

The record shows that the trial court rendered a judgment of conviction on May 26, 1931, of which the appellant was duly notified. On June 1st of the same year, the latter filed a motion for reconsideration of the judgment and a notice of appeal. In the first he prayed for leave to withdraw his plea of guilty and to substitute one of not guilty, and that he be given an opportunity to present evidence; but it was neither verified nor accompanied by an affidavit of merits. On July 11, 1931, the court denied said motion of reconsideration.

In view of these facts we hold that the trial court did not err in denying the aforesaid motion. In the first place, the petition was presented too late, after the court had lost jurisdiction of the case by virtue of the appeal taken by the appellant himself. In the second place, the motion was not supported by an affidavit of merits, and was not even verified. After a judgment of conviction has been rendered a motion filed for the purpose of substituting the plea of guilty for the plea of not guilty theretofore entered, is equivalent to a petition for rehearing, and must not only be verified but supported by an affidavit of merits. It was so held in the case of the Fiscal of the City of Manila vs. Del Rosario (52 Phil., 20). In that case it was said:

"The trial judge has control over judgments rendered by him until they become final. He may set aside a judgment or revise it as he deems best in the interest of justice. But the trial judge may not act so as to nullify

the explicit provisions of section 25 of the Code of Criminal Procedure, or any other provision of law. After judgment, the showing made must be more than a mere request, a mere motion, a mere petition, and must assume the characteristics of a motion for the reopening of the case. Such reasons must exist as would justify the granting of a new trial. The motion must be verified and supported by affidavits."

The penalty imposed is not in accordance with law. That fixed for frustrated murder, article 403 in connection with article 65 of the Penal Code, is presidio mayor in the maximum to cadena temporal in the medium degree. The aggravating circumstance of evident premeditation alleged in the information, in addition to the qualifying circumstance of treachery, being offset by the mitigating circumstance of a plea of guilty, introduced by the Revised Penal Code, the penalty must be applied in the medium degree, extending from twelve years and one day to fourteen years and eight months.

The judgment appealed from is modified, and the appellant is sentenced to twelve years and one day of reclusion, temporal, instead of cadena, temporal which has been eliminated by the Revised Penal Code, to indemnify the offended party in the amount of P300, the other accessories of law, and to pay the costs of both instances. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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