

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. EDUARDO MONTIEL, DEFENDANT AND APPELLANT.

G.R. No. 3852. November 11, 1907

Ponente: TORRES, J.

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TORRES, J.:

Between 9 and 10 a. m. on the 13th of July, 1905, Eduardo Montiel, accompanied by his bondsman, Domingo Gutierrez, appeared before the court of the justice of the peace of the town of Romblon in compliance with the summons served on him, to be notified of his conviction in the proceedings against him for theft. As soon as the decision was read by the justice of the peace, Wenceslao Molo, to the accused, the latter addressed the judge with insulting and injurious words, and the judge then informed him that the sentence would not become final until fifteen days later and that he could appeal therefrom to the Court of First Instance. At the moment when the judge commenced to dictate to the secretary, Bernabe Calzado, who was sitting on the right-hand side of the desk, turning his back toward the accused, who stood on the left, he suddenly felt a blow upon his back, and upon turning round found the accused standing behind him and holding a dagger or a double-edged weapon covered with blood, and upon asking his assailant why he had wounded him the latter replied, "You will not laugh at me now; you have enough." The justice of the peace then went toward the kitchen looking for something with which to defend himself, and his assailant, Montiel, took advantage of the opportunity to make his escape.

Dr. Abella, an inspector of the board of health, examined the injured man and found that he had received a wound in the region of the left shoulder blade which penetrated the skin, the inner tissues, and the lungs. The wound was a serious one, the prognosis being reserved and it was found that it had been inflicted with a short sharp instrument. The patient suffered from extreme weakness, spitting blood for many days, and even after the treatment was completed he was unable to attend to his agricultural pursuits. That he did not die in "consequence of his serious wound was partly due to the prompt assistance rendered by the medical inspector who happened to be at the capital of Romblon.

By reason of the foregoing facts, on the 11th of August, 1905, the provincial fiscal filed a complaint as follows: "The undersigned accuses Eduardo Montiel, a resident of the municipality of Romblon, Province of Romblon, of the crime of frustrated murder with attempt against a public official, armed with a weapon, as defined and punished by article 403 in connection with articles 65 and 249, paragraph 2, and 250, paragraphs 1 and 2, of the Penal Code, committed as follows:

"That on the 13th day of July of the present year 1905, in this municipality of Romblon, Province of Romblon, within the jurisdiction of this Court of First Instance, the said accused being then and there a councilor of this municipality of Romblon, did willfully, unlawfully, and feloniously attack with a weapon Wenceslao Molo, principal justice of the peace of this municipality of Romblon, Province of Romblon, while in the discharge of his official duties in his court room, and at a time when by reason of his said duties he had notified the accused of his conviction as a result of the proceedings against him for theft, inflicting a wound of two centimeters in extent in the region of the left shoulder blade which penetrated the skin, the inner tissues, and the lungs, a

consummated murder not having resulted through the prompt assistance rendered by a medical inspector who was at the time in this capital, and because of the patient's favorable condition of health, said causes being entirely independent of the will of the accused.

"All of which acts, committed contrary to law, are hereby brought to the notice of the court for such action as may be proper."

Counsel for the accused demurred to the above complaint on the ground that more than one crime was charged therein, and because the facts stated in the same in connection with the crime of frustrated assassination did not constitute the said crime, citing in support thereof paragraphs Nos. 3 and 4 of section 21 of General Orders, No. 58. On the 16th of the said month of August, the objection was sustained by the court, and thereupon, on the 17th of the same month, the provincial fiscal amended his complaint in the following terms:

"The undersigned accuses Eduardo Montiel, a resident of this municipality of Romblon, Province of Romblon, of the crime of frustrated murder, denned and punished under article 403 in connection with article 65 of the Penal Code, committed as follows:

"That on the 13th day of July of the present year 1905, in this municipality of Romblon, Province of Romblon, within the jurisdiction of this Court of First Instance, the said accused, who was then and there a councilor of this municipality of Romblon, Province of Romblon, did willfully, unlawfully, and feloniously, and with intent to kill, suddenly and unexpectedly attack with a weapon Wenceslao Molo, principal justice of the peace of this municipality of Romblon, Province of Romblon, while the former (the said Molo) was discharging the duties of his office as such justice of the peace in his court room,, after notifying the accused herein of his conviction as a result of the proceedings against him for theft, and caused a wound of two centimeters in length in the region of the left shoulder blade which penetrated the skin, the inner tissues, and the lungs, death not ensuing because of the prompt assistance rendered by a medical inspector who happened to be temporarily in this capital, and also because of the patient's favorable condition of health, the same being entirely independent of the will of the accused. "All of which acts, committed contrary to law, are hereby brought to the notice of the court for such action as may be deemed proper."

Proceedings having been instituted for the crime of frustrated murder by virtue of the foregoing complaint, the court, in view of the result thereof, rendered judgment on the 30th of August, 1906, and sentenced Eduardo Montiel to the penalty of four years of prision correccional and to suffer the accessory penalties of article 61, to indemnify Wenceslao Molo in the sum of P108, and, in case of insolvency, to the corresponding subsidiary imprisonment, and to pay the costs of the proceedings. From said judgment the accused has appealed.

While the present cause was still pending in court, another complaint was filed by the provincial fiscal accusing the same Eduardo Montiel of the crime of attempt against the authorities. Separate proceedings were had in the Court of First Instance which ended in the conviction of the accused, who was sentenced to the penalty of imprisonment for six years and to pay a fine of 1,000 pesetas and costs. Appeal having been taken by the accused, upon review of the case, the judgment of the court below for the crime of attempt against the authorities was confirmed. The case is registered under No. 2882 in the general register of this court.[1]

Upon the appeal in the present case, under the charge of frustrated murder, registered under No. 3852, counsel for the accused in this second instance moved that the complaint be dismissed on the ground that the defendant herein had already been convicted for the same crime under another classification, the law not permitting the same crime to be twice prosecuted, alleging double jeopardy and possible conviction in the present cause for the crime of frustrated murder, and that the legal classification of a crime does not alter the identity thereof, since the statement of facts as they occurred is the same, which must necessarily happen because of the sole fact at issue.

In the original complaint presented by the provincial fiscal, Eduardo Montiel was accused of the double crime of

frustrated murder and attempt against the authorities by a public official armed with a weapon, and although the more rational classification of the act was that of an armed attempt against the authorities and lesiones graves, the fact is that, because in the original complaint he was accused of two crimes which arose from one single act, the provisions of section 11 of General Orders, No. 58, and of article 89 of the Penal Code were not violated.

The matter at issue is that of one single act which constitutes the two crimes of attempt against the authorities and lesiones graves, in lieu of frustrated murder, because the attempt consisted precisely in the aggression with a weapon by Eduardo Montiel against the justice of the peace of Romblon at a time when said officer was discharging the duties of his office, and for this reason section 11 permits several crimes to be included in the information or complaint for which the above-mentioned article 89 of the Penal Code prescribes that only one penalty shall be imposed, to wit, that corresponding to the most serious of the crimes charged in the complaint or information, to be applied in its maximum degree.

The wound inflicted by Eduardo Montiel upon the said justice of the peace, considering the details and circumstances of the aggression, was caused by the single blow given by the aggressor, which was not repeated, a fact which shows that it was not the purpose or intent of the latter to kill the person assaulted, and for this reason the offense should only be classified as lesiones graves. The consummation of the crime of murder or of homicide necessarily requires that the intention to deprive a person of his life be made manifest by acts tending in an unmistakable manner to secure such result by employing from the beginning adequate means therefor, and, further, because we are dealing with crimes in which the Penal Code especially looks to the material results of the criminal transgression. As regards the case at bar, it is evident that Montiel, after striking the injured person in the back with the weapon, did not repeat the aggression, but fled at a time when the person assaulted was entirely unarmed, and for this reason the double crime should have been classified as attempt against the authorities with a weapon, with lesiones graves.

Under said suppositions and as, notwithstanding the undue separation of the two crimes which were the result of one criminal act, it is unquestionable that both in the complaint for attempt and in that for frustrated murder in which the classification of lesiones graves should have been stated, the fact is that Montiel was only accused of one sole act which constituted two crimes; therefore, having been prosecuted and convicted for the crime of attempt, which is more serious than that of lesiones, it is not proper that he should be further prosecuted for the latter crime, erroneously classified as frustrated murder. Hence, taking in consideration the rule regarding twice in jeopardy, the present case should be dismissed, since it would be unjust to subject the accused to the risk of being again convicted for a crime which has already been the subject of a conviction in a former case for attempt. For the foregoing reasons it is our opinion that the judgment appealed from should be reversed and the present case dismissed, with the costs of both instances de oficio. So ordered.

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

[1] 7 Phil. Rep., 272.

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