

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. LORENZO DE LA CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 39552. November 24, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Nueva Ecija, convicting the defendant-appellant of the crime of frustrated murder upon the following information:

"That on or about the 23rd day of November, 1932, in the municipality of Aliaga, Province of Nueva Ecija, Philippine Islands, and within the jurisdiction of this court, the abovenamed accused Lorenzo de la Cruz with treachery and evident premeditation and with intent to kill, did then and there, voluntarily, illegally, maliciously and criminally, attack, assault and stab with a knife in the municipal building of Aliaga Raymundo Calderon, then chief of police of Aliaga, Nueva Ecija, causing upon the latter serious wound which needed medical attendance to heal for a period of more than 30 days but less than 90, and incapacitated said Raymundo Calderon for labor for a like period of time, the accused performed all the acts of execution which should have produced the death of said Raymundo Calderon, as a consequence, but which, nevertheless, did not produce it by reason of causes independent of the will of the mentioned accused, to wit, because of the timely medical attendance rendered to the mentioned Raymundo Calderon."

Upon arraignment, the accused plead not guilty. At the trial he waived his right to present evidence in his behalf. The lower court found the following as the established facts of the case:

"The evidence for the prosecution shows that at 8:30 a. m. of November 23, 1932, while Raymundo Calderon, chief of police of the municipality of Aliaga, Province of Nueva Ecija, was in the municipal building, and when he was going down the stairway, the defendant with a knife marked Exhibit A stabbed him on the back. As a result thereof, he rolled down from the first step to the last of the stairway. The aggression was unexpected, because there was no exchange of words between the defendant and the offended party. He was taken by corporal of police Meliton Facundo to the dispensary. Raymundo Calderon felt weak and dizzy on account of the wound. He was treated by Dr. Marcelo Medina, but Raymundo Calderon did not know exactly what the doctor did to him. He only knew that he vomited the food he had taken at breakfast and spit blood. The wound that was found by Dr. Marcelo Medina in the body of Raymundo Calderon, when the latter was lying on bed in the municipal building of Aliaga, was more than one-half inch in length and less than two inches in depth. The right lung was affected, because thirty minutes after partially suturing the wound the patient vomited blood. On that date, Raymundo Calderon was taken to the Cabanatuan Hospital, and stayed there until December 8, 1932. He could not stand up, nor lie down sideways. He was very weak and had fever and difficulty in breathing. On December 8, 1932, Dr. Restituto Yuson saw Raymundo Calderon in the Cabanatuan Hospital, and, after examining him, he found that he had effusion in the pleural cavity, and was in a serious condition. He had a wound in the upper part of the thorax between the scapula and the spine. The wound was the cause of the effusion in the pleural cavity. The patient could not stand up, so he decided to take him to Manila by train. On December 9, 1932, Raymundo Calderon was taken to Saint Paul's Hospital in

Manila. After taking a radiograph of the wound, he decided to operate on him immediately. He took from the pleural cavity a bloody serum. Raymundo Calderon stayed in Saint Paul's Hospital from December 9, to December 24, 1932. When Raymundo Calderon left the hospital, the wound was healed but he was still weak. There was no need of further treatment, but the doctor advised him not to work. So, only on February 1, 1933, Raymundo Calderon resumed his work as chief of police in the municipality of Aliaga. His salary was P40 monthly, which he failed to earn from November 23, 1932, to February 1, 1933. He spent P800 for the treatment of his wound. On November 23, 1932, the defendant made a sworn statement before the justice of the peace of the municipality of Aliaga, Province of Nueva Ecija, which is marked Exhibit B.

"The defendant waived his right to present evidence in his behalf."

The defendant was sentenced to suffer twelve years and one day of reclusion temporal and required to indemnify Raymundo Calderon in the sum of P890.64.

Upon this appeal, the appellant submits the following single assignment of error:

"The lower court erred in convicting the accused of the crime of frustrated murder when he should be convicted only of the crime of serious physical injuries, penalized under the first paragraph of subdivision 4, article 263, Revised Penal Code, with the mitigating circumstance under subdivision 7, article 13, of the same Code."

The only question submitted, therefore, is whether the evidence makes out a case of frustrated murder.

The chief argument of the appellant is that the defendant should be convicted only of the crime of serious physical injuries because there is no sufficient evidence of intention to kill on the part of the accused. In the absence of any formal or express declaration of such intention, the same must be inferred from the evidence like any other fact in the case. The defendant presented the same argument in the court below as he presents here. In commenting upon this argument, the court below said:

"The only question to be decided is whether the crime committed by the defendant is as charged in the information, or merely serious physical injuries, as claimed by counsel for the defendant.

"Taking into consideration the fact that the defendant was under the belief that Raymundo Calderon won over the love and affection of Pastora Acebron, the concubine of the defendant, to the extent that the defendant then believed that Pastora Acebron was already a concubine of Raymundo Calderon, there is sufficient basis for the conclusion that on November 23, 1932, when the defendant stabbed the offended party with a knife of the size of Exhibit A from behind, the former was determined to do away with the latter. Moreover, the wound inflicted by the defendant upon the offended party warrants the conclusion that the defendant had the intention to kill the offended party performing all the acts of execution which would have deprived the offended party of his life as a consequence but which, nevertheless, did not deprive him of it by reason of causes independent of the will of the defendant.

"In the commission of the crime, the qualifying circumstance of treachery was present, because when the defendant stabbed the offended party from behind, the latter was caught unaware, so the defendant employed means, methods or forms in the execution of the crime which tended directly and especially to insure its execution, without risk to himself arising from the defense which the offended party might have made."

The evidence shows that when Calderon was stabbed in the back by the accused, Calderon collapsed and rolled down from the head to the foot of the stairway of the municipal building. That fact might reasonably have produced in the mind of the accused the impression that he had killed Calderon or at least had inflicted a mortal wound. This would explain his desistance from pursuit and further attack. He may have been prevented from further pursuit by the officers who arrested him but the evidence upon that point is not clear. In any event, in the absence of any evidence to the contrary, we think the court below was warranted in inferring from the facts that it

was the intention of the accused to inflict a mortal wound upon Raymundo Calderon. A variety of pertinent facts may furnish the basis for a reasonable inference of intention to kill. In the case at bar, the motive for the crime, namely, the desire of the accused to keep his concubine for himself and not to Jose her to Raymundo Calderon, is important. The use of a deadly weapon; the infliction of the wound in a vital spot which the accused might reasonably suppose would be mortal; making the attack with treachery from behind, which might reasonably influence the accused to believe that he could inflict a mortal wound because of the absence of opposition; the fact that the accused knew that Calderon, being chief of police, had a revolver might reasonably raise in his mind the belief that he must inflict a fatal wound so as to disable Calderon at once otherwise his own life would be in jeopardy—all these circumstances warrant the inference that it was the intention of the accused to kill Calderon.

The crime was correctly found by the lower court to be frustrated murder. (U. S. vs. Eduave, 36 Phil., 209; People vs. Reyes, 47 Phil., 635; People vs. Dagman, 47 Phil., 768; People vs. Borinaga, 55 Phil., 433.)

The judgment is affirmed with costs against the appellant.

Street, Malcolm, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

Avanceña, C. J., dissenting: In my opinion, the intention to kill has not been established beyond a reasonable doubt and therefore the appellant should only be sentenced for the crime of physical injuries.

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