

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SEYMOUR ADDISON, DEFENDANT AND APPELLANT.*G.R. No. 4189. February 28, 1908*

Ponente: ARELLANO, C.J.

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According to article 408 of the Penal Code, the act of discharging a firearm at any person shall be punished with the penalty of prision correccional in its minimum and medium degrees, if all the circumstances of the deed necessary to constitute a frustrated crime or attempt at parricide, murder, homicide, or any other crime for which a higher penalty is prescribed by any of the articles of the same code, should not be attendant.

The crime in question consists of the following acts: Leon Patricio was cutting a tree in a forest situated within the limits of the pueblo of Concepcion, Province of Tarlac, when the accused, who was engaged in cutting wood, as stated by his witnesses, discharged his revolver twice at said Patricio, not hitting or not intending to hit him (nothing regarding this point is set forth), but directing the shots toward the said Patricio, the first of the shots hitting the tree which the latter was cutting. The affair occurred about 11 a. m. on the 19th day of January, 1906.

Leon Patricio and two eyewitnesses so declare, and the latter at the time informed the lieutenant of the barrio of what had occurred, and returned to the place with an assistant of said officer, where they found Leon Patricio, who was still in hiding because of fright.

Two witnesses presented by the counsel for the accused testified that from 7 a. m. until evening the accused had been with them, not having left them even for dinner. One of them, in order to explain the distance between the sitio of Asong, at which place he alleges the accused was with them, and the sitio of Malapatan, in which the affair is alleged to have occurred, states that a cry given in the latter place could be heard in the former. The captain of the Constabulary in Concepcion was also introduced in order to prove that the revolver had been taken back by him in February, 1906; but it appears from the receipt exhibited that the revolver was taken back on March 6 of that year—that is to say, after the case at bar had occurred—and that, after this retaking, a superior officer had advised the captain not to grant the accused a license to carry a revolver while he was under charges and while the bond was not increased.

Against the preponderance of the evidence considered by the court below, no important argument appears to counteract the conclusion of guilt which resulted in the judgment, nor is there any reason why we should not credit the veracity of the witnesses for the prosecution who, except in a few particulars not well detailed (for instance, whether the ball from the first shot remained imbedded in the tree, or simply grazed it), have testified uniformly and in much detail as to the manner in which the acts were committed.

Although two shots were fired, the repetition of the shooting with a firearm toward the same person, on the same occasion and by the same aggressor, may constitute a greater crime than that provided for in the above-mentioned article of the Penal Code, but never more than one, taking into account the intent of the accused and the means employed, following the judgments in cassation of December 19, 1882, and January 30, 1884.

Therefore, the judgment appealed from being in accordance with the law, we affirm the same, with the costs of this instance against the appellant. So ordered.

Torres, Mapa, Willard, and Tracey, JJ., concur.

Johnson and Carson, JJ., dissent.

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