

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. MARCELO HONRADA, DEFENDANT AND APPELLANT.*G.R. No. 43495. September 14, 1935*

Ponente: VICKERS, J.

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The appellant Marcelo Honrada was tried in the Court of First Instance of Cavite for the crime of frustrated murder. It was alleged in the information: "That on or about July 1st, 1934, in the municipality of General Trias, Province of Cavite, Philippine Islands, the said accused with intent to kill one Gregorio Estandarte did, then and there voluntarily, illegally and criminally and with treachery stab him with a big knife inflicting on him a wound, stabbed perforating, hypochondrium, right, cutting costal arch; wound stabbed, penetrating, liver, right; wound, incised, chest, left, upper 1½ inches; wound, incised, lumbar, right (3½ inches, 1/3 inch deep); wound, stabbed penetrating to bone, lumbar, left (cutting muscles, 1½ inches wide, 1½ inches deep); wound, incised, nose, ridge (1 centimeter) having the accused performed all the acts which would produce the death of the said Gregorio Estandarte as a consequence, but which, nevertheless did not produce it by reason or causes independent of the will of the accused, and which wounds incapacitated the said Gregorio Estandarte for his customary labor and required medical attendance for a period of more than 60 days."

The trial judge found the defendant guilty as charged, and sentenced him to an indeterminate penalty ranging from four years, two months, and one day of prison correctional to eight years and one day of prison mayor, and to pay the costs.

From that judgment the defendant has appealed to this court, and now alleges that the lower court erred in not finding that the defendant acted in legitimate self-defense; in finding that the offense committed was frustrated murder, and that it was committed with alevosia.

It appears from the evidence that while Gregorio Estandarte was walking along the road in the municipality of General Trias about four o'clock in the afternoon of July 1, 1934 he was suddenly and without warning stabbed twice in the back, and when he looked around he saw the defendant with a long fan knife in his hand. The defendant then renewed the attack, and Estandarte tried to defend himself with the riding whip he was carrying, but the defendant succeeded in stabbing him in the abdomen. The offended party fell on his back in a ditch beside the road. The defendant continued the attack and stabbed the offended party in the chest and under the breastbone.

The assault took place near the house of Candido Rosari; and Maxima Ballecer, who was going to the house of Rosari and saw the defendant attack the offended party, shouted for help. Miguel Tagle, Pedro Ballecer, and Leonardo Figueroa heard her cries and went to the scene of the crime. When the defendant saw the three men approaching he ran away. Pedro Ballecer took the wounded man to the poblacion, where he was given first aid. He was then taken to the Philippine General Hospital. Upon examination by Dr. E. M. Lesaca he was found to have the following wounds: A stabbed wound under the breastbone, a stabbed wound penetrating the liver, an

incised wound in the right lumbar region and another in the left lumbar region, and an incised wound on the nose. He was also suffering from shock and anemia. Because of the wound in the liver, he was promptly operated upon, and was able to leave the hospital at the end of three weeks.

It does not clearly appear what was the motive for the murderous assault. It may have been the fact that about a week prior to the occasion in question Gregorio Estandarte, in trying to separate two men who were fighting, struck Hilario Honrada, defendant's father, with his elbow. Hilario Honrada resented the action of Estandarte and tried to hit him, but Estandarte ran away. Hilario Honrada told Estandarte that his time would come.

The theory of the defense is that the defendant was attacked by Gregorio Estandarte with a blackjack; that the defendant ran away after he received two blows, and was pursued by the offended party and his companions, Leonardo Figueroa, Miguel Tagle, and Santiago Loren. According to the accused Figueroa and Loren struck him with sticks. The defendant testified that the offended party overtook him and struck him several times with a blackjack, whereupon the defendant stabbed the offended party in self-defense; that a struggle ensued between them and they fell into a ditch, and the offended party was wounded in the back when they fell down. It appears that the so-called caborrata was not a blackjack, but only a riding whip.

The trial judge rejected the contention of the defense, and we think he was fully justified in doing so. The testimony of the defendant that the offended party received the two wounds in the back when he fell into the ditch is incredible. They were undoubtedly caused by the defendant when he attacked the offended party from behind, as stated by the latter and Maxima Ballecer. The attack was therefore treacherous, and the number and seriousness of the wounds, especially the one in the abdomen that penetrated the liver, show that it was the intention of the defendant to kill the offended party. It was only the prompt and skillful medical treatment which the offended party received that saved his life. The offense committed by the defendant was therefore frustrated murder. He is entitled to the mitigating circumstance of voluntary surrender.

The penalty imposed by the lower court is not in accordance with the law. Murder is punished by reclusion temporal in its maximum period to death, and in accordance with article 50 the penalty for frustrated murder is one degree lower, or prision mayor in its maximum period to reclusion temporal in, its medium period. The minimum period of this penalty is from ten years and one day to twelve years of prision mayor. It is true that article 250 of the Revised Penal Code provides that the courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide a penalty lower by one degree than that which should be imposed under the provisions of article 50, but there exists in this case no special reason for applying article 250. In accordance with the Indeterminate Sentence Law the minimum penalty to be served by the defendant was correctly fixed at four years, two months, and one day. The appellant is therefore sentenced to suffer an indeterminate sentence ranging from four years, two months, and one day of prision correctional to ten years and one day of prision mayor. As thus modified, the decision appealed from is affirmed, with the costs against the appellant.

Avanceña, C.J., Abad Santos, Hull, and Recto, JJ., concur.

Judgment modified.

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