

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. AURELIO LAMAHANG, DEFENDANT AND APPELLANT.*G.R. No. 43530. August 03, 1935*

Ponente: RECTO, J.

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The defendant Aurelio Lamahang is before this court on appeal from a decision of the Court of First Instance of Iloilo, finding him guilty of attempted robbery and sentencing him to suffer two years and four months of prison correctional and to an additional penalty of ten years and one day of prison mayor for being an habitual delinquent, with the accessory penalties of the law, and to pay the costs of the proceeding.

At early dawn on March 2, 1935, policeman Jose Tomambing, who was patrolling his beat on Delgado and C. R. Fuentes streets of the City of Iloilo, caught the accused in the act of making an opening with an iron bar on the wall of a store of cheap goods located on the last named street. At that time the owner of the store, Tan Yu, was sleeping inside with another Chinaman. The accused had only succeeded in breaking one board and in unfastening another from the wall, when the policeman showed up, who instantly arrested him and placed him under custody.

The fact above stated was considered and declared unanimously by the provincial fiscal of Iloilo, the trial judge and the Solicitor-General, as constituting attempted robbery, which we think is erroneous.

It is our opinion that the attempt to commit an offense which the Penal Code punishes is that which has a logical relation to a particular, concrete offense; that, which is the beginning of the execution of the offense by overt acts of the perpetrator, leading directly to its realization and consummation. The attempt to commit an indeterminate offense, inasmuch as its nature in relation to its objective is ambiguous, is not a juridical fact from the standpoint of the Penal Code. There is no doubt that in the case at bar it was the intention of the accused to enter Tan Yu's store by means of violence, passing through the opening which he had started to make on the wall, in order to commit an offense which, due to the timely arrival of policeman Tomambing, did not develop beyond the first steps of its execution. But it is not sufficient, for the purpose of imposing penal sanction, that an act objectively performed constitute a mere beginning of execution; it is necessary to establish its unavoidable connection, like, the logical and natural relation of the cause and its effect, with the deed which, upon its consummation, will develop into one of the offenses defined and punished by the Code. It is necessary to prove that said beginning of execution, if carried to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. Thus, in case of robbery, in order that the simple act of entering by means of force or violence another person's dwelling may be considered an attempt to commit this offense, it must be shown that the offender clearly intended to take possession, for the purpose of gain, of some personal property belonging to another. In the instant case, there is nothing in the record from which such purpose of the accused may reasonably be inferred. From the fact established and stated in the decision, that the accused on the day in question was making an opening by means of an iron bar on the wall of Tan Yu's store, it may only be inferred as a logical conclusion that his evident intention was to enter by means of force said store against the will of its owner. That his final objective, once he

succeeded in entering the store, was to rob, to, cause physical injury to the inmates, or to commit any other offense, there is nothing in the record to justify a concrete finding.

"It must be borne in mind (I Groizard, p. 99) that in offenses not consummated, as the material damage is wanting, the nature of the action intended (action fin) cannot exactly be ascertained, but the same must be inferred from the nature of the acts executed (action medio). Hence, the necessity that these acts be such that by their very nature, by the facts to which they are related, by the circumstances of the persons performing the same, and by the things connected therewith, they must show without any doubt, that they are aimed at the consummation of a crime. Acts susceptible of double interpretation, that is, in favor as well as against the culprit, and which show an innocent as well as a punishable act, must not and can not furnish grounds by themselves for attempted nor frustrated crimes. The relation existing between the facts submitted for appreciation and the offense which said facts are supposed to produce must be direct; the intention must be ascertained from the facts and therefore it is necessary, in order to avoid regrettable instances of injustice, that the mind be able to directly infer from them the intention of the perpetrator to cause a particular injury. This must have been the intention of the legislator in requiring that in order for an attempt to exist, the offender must commence the commission of the felony directly by overt acts, that is to say, that the acts performed must be such that, without the intent to commit an offense, they would be meaningless."

Viada Vol. I, p. 47) holds the same opinion when he says that "the overt acts leading to the commission of the offense, are not punishable except when they are aimed directly to its execution, and therefore they must have an immediate and necessary relation to the offense."

"Considering — says the Supreme Court of Spain in its decision of March 21, 1892—that in order to declare that such and such overt acts constitute an attempted offense it is necessary that their objective be known and established, or that said acts be of such nature that they themselves should obviously disclose the criminal objective necessarily intended, said objective and finality to serve as ground for the designation of the offense: * * *."

In view of the foregoing, we are of the opinion, and so hold that the fact under consideration does not constitute attempted robbery but attempted trespass to dwelling (People vs. Tayag and Morales, 59 Phil., 606, and decisions of the Supreme Court of Spain therein cited). Under article 280 of the Revised Penal Code, this offense is committed when a private person shall enter the dwelling of another against the latter's will. The accused may be convicted and sentenced for an attempt to commit this offense in accordance with the evidence and the following allegation contained in the information: "* * * the accused armed with an iron bar forced the wall of said store by breaking a board and unfastening another for the purpose of entering said, store * * * and that the accused did not succeed in entering the store due to the presence of the policeman on; beat Jose Tomambing, who upon hearing the noise produced by the breaking of the wall, promptly approached the accused * * * V Under the circumstances of this case the prohibition of the owner or inmate is presumed. (U. S. vs. Ostrea[^] 2 Phil., 93; U. S. vs. SHvano, 31 Phil., 509 ^U. S'. vs. Ticson, 25 Phil., 67; U. S. vs. Mesina, 21 Phil., 615; U. S. vs. Villanueva 18 Phil., 215; U. S. vs. Panes, 25 Phil., 292.) Against the accused must be taken into consideration the aggravating circumstances of nighttime and former convictions,— inasmuch as the record shows that several final judgments for robbery and theft have been rendered against him—and in his favor, the mitigating circumstance of lack of instruction. The breaking of the wall should not be taken into consideration as an aggravating circumstance inasmuch as this is the very fact which in this case constitutes the offense of attempted trespass to dwelling.

The penalty provided by the Revised Penal Code for the consummated offense of trespass to dwelling, if committed with force, is prision correctional in its medium and maximum periods and a fine not exceeding P1,000 (art. 280, par. 2); therefore the penalty corresponding to attempted trespass to dwelling is two degrees lower (art. 51), or, arresto mayor in its minimum and medium periods. Because of the presence of two aggravating

circumstances and one mitigating circumstance the penalty must be imposed in its maximum period. Pursuant to article 29 of the same Code, the accused is not entitled to credit for one-half of his preventive imprisonment.

Wherefore, the sentence appealed from is revoked and the accused¹ is hereby held guilty of attempted trespass to dwelling, committed by means of force, with the aforesaid aggravating and mitigating circumstances and sentenced to three months and one day of arresto mayor, with the accessory penalties thereof and to pay the costs.

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

Judgment revoked and defendant found Guilty of attempted trespass to dwelling.

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