

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. PEDRO PACUBAS AND FERNANDO PACUBAS, DEFENDANTS AND APPELLEES.

G. R. No. 44727. August 28, 1937

Ponente: AVANCENA, C.J.

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AVANCENA, C.J.:

The information filed in this case is as follows:

"That on or about the 21st day of March, 1935, in the municipality of Vigan, Province of Ilocos Sur, Philippine Islands, the said accused Pedro Pacubas and Fernando Pacubas, conspiring together and helping each other, did then and there willfully, unlawfully and feloniously and with intent to kill Pedro Reyes, perform all the acts of execution which should have produced the latter's death as a consequence, assault and attack him, and if the acts in question failed to produce the death of said Pedro Reyes except only four wounds in different parts of the body, it has been due to causes independent of the will of the said accused. Said wounds required medical attendance for more than ten but less than thirty days and prevented said Pedro Reyes from engaging in his customary work for the same period of time."

A demurrer to the foregoing information was filed on the ground that it charges more than one offense. The court sustained the demurrer and ordered the fiscal to amend the information. As the fiscal had refused to make the amendment, the court dismissed the case with costs de officio. From this resolution the fiscal appealed.

The appealed resolution is erroneous. It is claimed that the information charges two offenses, to wit: frustrated homicide and physical injuries which required medical attendance for more than ten but less than thirty days and prevented the offended party from engaging in his customary work for the same period of time. Although the information really involves the said two offenses, it cannot be assailed for alleged duplicity because the two offenses in question constitute only one offense. To prove that there is but one offense charged, that of frustrated homicide, suffice it to take into consideration that if all the facts alleged in the information were established the accused could only be convicted of frustrated homicide, notwithstanding the fact that this offense includes that of physical injuries as one of its essential elements in this case, inasmuch as they simply constitute a lighter offense, physical injuries, embraced in a graver one, frustrated homicide.

It is contended that if the intent to kill is not established, the accused could be convicted of the crime of physical injuries. However, this circumstance does not show that there is duplicity in the information because in such case the accused could neither be convicted of the crime of frustrated homicide. Such argument, however, deviates the question from its own course. By means of the demurrer, the case is submitted by assuming that all the facts alleged are to be proven, not upon the contrary hypothesis that they are not to be proven. For this same reason this court finds no merit in the consideration made in the appealed decision in the sense that the accused does not know which of the two crimes he is charged with, because it is clear that he is charged with frustrated homicide and not with another crime. It must be presumed that the Government expects to prove the facts constituting its charges and, consequently, it must be understood that it charges the crime resulting from such facts.

The real question, in the opinion of this court, lies in determining whether or not the facts alleged in the information are essential in the crime of frustrated homicide charged. If they are, they may and must be alleged, notwithstanding the fact that some of them may also constitute another less serious offense, because otherwise it would be impossible to prosecute a more serious offense which embraces the less serious one.

An examination of the facts alleged in the information shows that they are essential in the crime of frustrated homicide charged. This crime is committed when the offender, with the intention to kill, performs all the acts of execution which would bring about the realization of such intention as a consequence but which, nevertheless, is not realized by reason of causes independent of the will of the perpetrator. Inasmuch as the acts tending to the realization of the intention to kill in this case, consisted in the infliction of physical injuries on the offended party by the accused, without the allegation of this fact there would be no crime of frustrated homicide and it would be impossible to prosecute the accused for this crime.

It seems that the objection to the information, by reason of duplicity, is based on the ground that it also states the seriousness of the injuries, it being claimed that such specification makes it possible to convict the accused of the crime of physical injuries of such gravity, if the intention to kill is not established. This reasoning does not appear sound because, at any rate, although the seriousness of the physical injuries is not taken into consideration, the accused may be sentenced to the lightest penalty prescribed for this crime (art. 266, subsec. 2, of the Revised Penal Code). However, the truth is that; the specification of the seriousness of the physical injuries in the information is material in a case of frustrated homicide, when the act performed to realize the intention to kill is made to consist in having inflicted the physical injuries in question. In this case it is necessary to establish the relation between the defendant's act of wounding the offended party and the intention to kill which inspired it and which was not realized. Inasmuch as the mere act of wounding does not necessarily imply the intention to kill, it is essential to state the circumstances linking said act with such intention, and one of them, is, certainly, the seriousness of the physical injuries caused.

In view of the foregoing considerations, and reversing the appealed resolution, the demurrer to the information is overruled and the case is ordered remanded to the court of origin for its prosecution, without special pronouncement as to costs. So ordered.

Villa-Real, Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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