

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ESTEBAN MONTENEGRO, DEFENDANT AND APPELLANT.

G.R. No. 4614. January 15, 1910

Ponente: CARSON, J.

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CARSON, J.:

The information in this case charges Esteban Montenegro and Vicente Sison, with the crime of frustrated assassination, committed as follows:

"That on or about April 19, 1907, at night, in the municipality of Taal, Batangas, the said Esteban Montenegro and Vicente Sison were walking together; the first named, Esteban Montenegro, was provided with a big stick of palma brava and a revolver, and the second, Vicente Sison, also carried a stick of palma brava and a dagger. They stopped at the foot of the bridge that connects the town of Taal with that of Lemery on the Taal side, and waited at said place for Doroteo Ilagan, with the deliberate intent to kill him; in furtherance of such purpose the accused Esteban Montenegro willfully, maliciously, and feloniously gave Ilagan a heavy blow with the stick while the other accused, Vicente Sison, standing in a threatening attitude, was watching Ramon Castillo, the friend of Doroteo Ilagan, in order to prevent his rendering any assistance to the latter. During the struggle that ensued between the two the former, Esteban Montenegro, fired two shots in succession and at point-blank range against the said Ilagan, causing a contused wound in his left forearm and two wounds in the abdomen, which last two, on account of their seriousness, might have caused the death of the person attacked had it not been for the prompt and extraordinary assistance and efforts of the physicians. The accused Esteban Montenegro, with the cooperation of the other accused, Vicente Sison, executed all the acts which would have resulted in the death of Doroteo Ilagan, although, for reasons which are independent of the will of the accused, such result was avoided. All of the foregoing being contrary to law."

The trial court acquitted both defendants of the crime of frustrated assassination with which they were charged, but convicted Esteban Montenegro of the lesser included crime of frustrated homicide, and sentenced him to eight years and one day of prison mayor, together with the accessory penalties prescribed by law, and to the payment of the sum of P500 to the complaining witness as civil damages.

On the night of the 19th of April, 1907, Doroteo Ilagan, the complaining witness, and his friend Ramon Castillo, met Esteban Montenegro and his codefendant in this action on the bridge connecting the town of Lemery and the town of Taal, in the Province of Batangas. Montenegro called Ilagan aside and charged him with having made offensive remarks about a certain woman, to which Ilagan replied that not only had he never made such remarks, but that he wanted to know the name of the person who had charged him with doing so, in order that he might investigate the matter. Montenegro refused to give the name of the person from whom he had received his information and challenged Ilagan to accompany him to a suitable place for a fight. Ilagan declined to accept the challenge on the ground that he was not ready at that moment, but offered to meet Montenegro on some other occasion. They then separated, but a short time afterwards Ilagan and Castillo again met Montenegro, accompanied by various companions; and on this occasion Montenegro separated himself from his friends, went up to Ilagan and struck him with a club (garrote de palma-brava). Ilagan in his turn struck at Montenegro with his

stick, which in some way fell from his hand, and then seized Montenegro by the collar (cuello) or throat. Montenegro on being seized by his opponent threw away his club, drew a revolver from his pocket and fired two shots, one of which took effect in Ilagan's left side, just below the tenth rib, and the other about 4 inches below the left nipple. Ilagan was under medical treatment for the wounds thus inflicted for some twenty-eight days, and incurred considerable expenses for medical attendance, nursing, medicine, the amount of which, together with damages, the trial court fixed at P500.

The foregoing summary of the facts as found by the trial judge is in our opinion proven by the evidence of record beyond a reasonable doubt, and we find no error in the proceedings in the trial court prejudicial to the rights of the accused.

In discussing the allegations in the information as to deliberate premeditation and the intent of the accused, the trial court made use of the following language:

"Had it been the deliberate intention of Esteban to kill Doroteo, he could have easily done so at their first encounter, during which there is no doubt that he was armed j he had then more reason for attacking him, as according to his declaration, Doroteo had said to him that he might do as he pleased with the news circulated with respect to his cousin, a young woman who lived in the house of the accused and whom Doroteo visited. However, when they met for the first time, they agreed to let the question stand for another day, and the accused did not then even attempt to compel him to fight, much less to kill him.

"The evidence shows that when they separated, and fifteen or twenty minutes after their first encounter, the fight between the two took place, and that Esteban was the first to attack Doroteo with a stick and only used the revolver against Doroteo when the latter held him in his arms to prevent his using the stick. If it had been his intention to kill Doroteo, he would not have lost such valuable time in attacking him with the stick, but would have used the revolver as soon as Doroteo arrived at the place where he waited for him. I believe that his intention to kill Doroteo only sprung up when the latter held him in his arms, depriving him of every opportunity to use the stick, and he then feared that he would get the worst of the contest. Treachery is not shown by the fact that, during the progress of a fight, while two men are struggling for the advantage over each other, one of them draws a revolver and fires at the other who is unarmed.

* * * * *

"When a man draws a revolver, a deadly weapon the consequences of which are well known, points it at the heart of another and freely and intentionally, although overcome by the loss of self-control, pulls the trigger and fires, his intention, the object of his efforts, can not be said to be unknown; he means to kill."

It is contended that the trial judge erred in his characterization of the offense committed; that the facts proven at the trial and found by the trial judge himself raise a reasonable doubt, not merely as to whether the accused acted with deliberate premeditation but also as to his intention to kill at the moment when he discharged his revolver; and that the intention to kill being an essential element of the crime of attempted homicide, the accused should be acquitted of that crime, and if he be not exempted from punishment on his plea of self-defense, convicted of the complex crime of the unlawful discharge of a firearm at another which resulted in the infliction of lesiones menos graves (lesser injuries).

In support of this contention our attention is directed to the decision of the supreme court of Spain of the 18th of January, 1887, wherein that court held that "while it is true that the discharge of a firearm at a short distance, under certain conditions, is, as a general rule, an adequate means for the consummation of the crime of homicide, this fact is not sufficient in itself to demonstrate the homicidal intent of the actor;" and to its decision of the 12th of December, 1884 (with which compare its sentence of November 20, 1883), wherein it held that proof that certain wounds were inflicted in the trunk of the body of the injured party, as a result of repeated shots fired at a

short distance, did not constitute in itself sufficient motive for raising the crime of the unlawful discharge of a deadly weapon at another, accompanied by the infliction of wounds, to the graver crime of frustrated homicide; also to various decisions of this court wherein we have held that "homicidal intent must be evidenced by acts which at the time of their execution are unmistakably calculated to produce the death of the victim by adequate means;" and that where an act constitutes in itself a specific crime, defined and penalized by law, such act should not be held to constitute an attempt to commit a higher offense unless the accompanying circumstances marking the execution of the act are such as to preclude beyond a reasonable doubt a finding that the act may have been committed without the intent to commit the higher offense. (U. S. vs. Taguibao, 1 Phil. Rep., 16; U. S. vs. Trinidad, 4 Phil. Rep., 152; U. S. vs. Camacho, 8 Phil. Rep., 142.)

We do not doubt that there may be cases wherein the discharge of a firearm at another is not in itself sufficient to sustain a finding of the intention to kill, and there are many cases in the books wherein the attendant circumstances conclusively establish that on discharging a firearm at another the actor was not in fact animated by the intent to kill. But, in seeking to ascertain the intention with which a specific act is committed, it is always proper and necessary to look not merely to the act itself but to all the attendant circumstances so far as they are developed by the evidence; and where, as in the case at bar, a revolver is twice discharged point-blank at the body of another, and the shots directed at the most vital parts of the body, it needs but little additional evidence to establish the intent to kill beyond a reasonable doubt. The persistent manner in which the accused in this case forced the fight upon his opponent, and the fact that in seeking his opponent he carried a revolver concealed in his pocket, taken together with the use of the revolver against his unarmed victim, although the presence of onlookers and friends when the fight occurred rendered it wholly improbable that he would or could suffer serious injury at the hands of his opponent, even if the latter were to obtain the mastery, tend to negative the possibility that in twice discharging the revolver and directing his aim point-blank toward the region of the heart and the abdomen of his victim, the accused had any other intention than that of killing his enemy; and in view of all the circumstances, we are unable to conceive of any reasonable hypothesis which would explain the action of the accused other than that when he shot, he shot to kill.

We agree with the trial judge that the evidence is not sufficient to establish the existence of deliberate premeditation beyond a reasonable doubt, but we think that there can be no reasonable doubt that, finding himself worsted in the fight with clubs which he himself provoked, the accused there and then resolved to kill and did attempt to kill his enemy.

The judgment and sentence of the trial court should be and is hereby affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres and Moreland, JJ., concur.

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