

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LIM SAN, DEFENDANT AND APPELLANT.

G.R. No. 5335. November 08, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

The defendant in this case was convicted of the crime of attempted murder in the Court of First Instance of the city of Manila and sentenced to seven years of presidio mayor and to pay one-third of the costs of the trial.

It is alleged that on or about the 18th day of October, 1908, the defendant Lim San attempted to kill one Keng Kin by assaulting him with a bolo and inflicting upon him several wounds; that one of the wounds would have proved fatal had not the injured person received prompt and efficient medical assistance.

The guilt of the defendant was established beyond reasonable doubt," if the testimony of Keng Kin, Chua Hung, and Gregorio Mariano is to be believed. All of these witnesses testify that the accused assaulted Keng Kin without cause or provocation and stabbed him several times with a bolo. All unite in saying that Keng Kin, at the time, was standing just outside the limits of the street, his attention upon a dog which he had with him, when the accused leaped upon him with his bolo and committed the acts complained of. All of these witnesses saw the accused in the act, fully recognized him, and later identified him as the person who committed the offense.

The defense interposed by the accused was an alibi. He produced several witnesses to support it. Between the testimony of these witnesses and that of the witnesses of the prosecution there is an irreconcilable contradiction. The court below, having heard the witnesses testify and having observed their manner and attitude upon the witness stand, decided that credibility lay with those of the prosecution. A careful reading of the testimony discloses no reason why the conclusion of the court in this particular should be disturbed. The court decided between witness and witness. There are no conditions found in the record which render the story told by the witnesses for the prosecution inherently improbable. There is no circumstance disclosed which impeaches their truthfulness. There is nothing found which impugns in any way their credibility. Under such conditions we will not interfere with the conclusion of the trial court respecting credibility.

The crime in this case was committed about 10 o'clock at night. It was somewhat dark, the only light being that given by a lamp suspended from the ceiling of a tienda directly across the street. Keng Kin was not expecting to be attacked. His attention was directed exclusively to his dog. He was wholly unsuspecting. Every faculty was withdrawn from consideration of danger. The accused, without warning of any kind, careful not to disturb the quiescent attitude in which he found his victim until the very instant of the blow, attacked him with great rapidity and force, driving his bolo straight into his face. On the first blow the point of the knife entered the left eye, penetrating to and slightly cutting the brain, destroying the eye completely and rendering him entirely incapable of protecting himself. As a necessary result, the assaulted had no opportunity whatever to defend himself, to escape the blow, to ward it off, or to mitigate its consequences. He was wholly surprised and incapable of offering the slightest resistance. This means simply that the accused committed the crime maliciously and treacherously by

methods which tended, directly and especially, to insure him against risk that might proceed from any defense which his victim might make. In other words, the combination of the conditions, darkness, distracted attention, lack of knowledge of the attack, lack of warning, the suddenness of the assault, the maneuvering of the accused in such way as not to attract attention till the very moment of the blow, keeping him quiescent until the end was accomplished, constitutes *alevosia* under subdivision 2 of article 10 of the Penal Code. This would have made the crime murder had Keng Kin been killed.

The court found the defendant guilty of the crime of attempted murder. We are unable to agree with that finding. We regard the crime as frustrated murder. The distinction between frustrated murder and attempted murder is this: In frustrated murder the accused performs all of the acts which he believes necessary to consummate the crime. Death, however, fails to follow for causes entirely apart from his will. In attempted murder the accused begins the commission of the crime by overt acts, but involuntarily desists from performing the other acts necessary to consummate the crime, he being prevented from so doing by some cause outside of his own will. In the case at bar it appears clearly that the defendant believed that he had performed all of the acts necessary to consummate the crime of murder, and, therefore, of his own will, desisted from striking further blows. He believed that he had killed Keng Kin. Death did not result for reasons entirely apart from the will of the accused. This surely stamps the crime as frustrated murder. If, after the first blow, some one had rushed to the assistance of Keng Kin and by his efforts had prevented the accused from proceeding further in the commission of the crime, the accused not believing that he had performed all of the acts necessary to cause death, he would have been guilty of attempted murder.

The information in this case reads as follows:

"Pursuant to a preliminary investigation heretofore conducted in the office of the prosecuting attorney for the city of Manila, under the provisions of section 39 of Act No. 183 of the United States Philippine Commission, as amended, the undersigned, prosecuting attorney of the city of Manila, gives the court information against Lim San, Lim Chu, and Que Lat, and accuses the same, and each of them, of the crime of attempted assassination, committed as follows:

"That on or about the 18th day of October, 1908, in the city of Manila, Philippine Islands, the said Lim San, Lim Chu, and Que Lat, conspiring together, did then and there willfully, unlawfully, feloniously, with treachery, deliberate and known premeditation, and in the nighttime, attempt to kill and assassinate one Keng Kin, by then and there, in the nighttime, lying in wait for and assaulting, cutting, and stabbing the said Keng Kin with deadly weapons - to wit, large bolos - and inflicting then and there upon the head and body of the said Keng Kin numerous cuts, wounds, and physical injuries, with intent then and there to kill and assassinate the said Keng Kin; that the said accused then and there performed all of the acts of execution which should constitute the crime of assassination, but which did not constitute said crime by reason of the fact that though said wounds were intended by the said accused to cause the death of the said Keng Kin, and were believed by the said accused to be sufficient to cause the death of the said Keng Kin, did not cause his death, by reason of prompt and efficient medical assistance, which prevented the said wounds from becoming fatal.

"All contrary to law."

It appears from this pleading that the prosecuting attorney characterized the crime in the caption of the information as attempted assassination. It appears, however, that the facts set out in the body of the information describe the crime of frustrated assassination. Notwithstanding apparent contradiction between caption and body, we believe that we ought to say and hold that the characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless, and that the facts stated in the body of the pleading must determine the crime of which the defendant stands charged and for which he must be tried. The establishment of this doctrine is permitted by the Code of Criminal Procedure, and is thoroughly in accord with common sense and with the

requirements of plain justice. We are aware that such a doctrine departs somewhat from the established theories of American criminal jurisprudence; but we are confident that the result obtained fully justifies our holding. Many cases might be cited in which justice has either been greatly delayed or wholly defeated by adhering to the doctrine which we discard. Procedure in criminal actions should always be so framed as to insure to each criminal that retributive punishment which ought swiftly and surely to visit him who willfully and maliciously violates the penal laws of society. We believe that a doctrine which does not produce such a result is illogical and unsound and works irreparable injury to the community in which it prevails.

From a legal point of view, and in a very real sense, it is of no concern to the accused what is the technical name of the crime of which he stands charged. It in no way aids him in a defense on the merits. Whatever its purpose may be, its result is to enable the accused to vex the court and embarrass the administration of justice by setting up the technical defense that the crime set forth in the body of the information and proved in the trial is not the crime characterized by the fiscal in the caption of the information. That to which his attention should be directed, and in which he, above all things else, should be most interested, are the facts alleged. The real question is not did he commit a crime given in the law some technical and specific name, but did he perform the acts alleged in the body of the information in the manner therein set forth. If he did, it is of no consequence to him, either as a matter of procedure or of substantive right, how the law denominates the crime which those acts constitute. The designation of the crime by name in the caption of the information from the facts alleged in the body of that pleading is a conclusion of law made by the fiscal. In the designation of the crime the accused never has a real interest until the trial has ended. For his full and complete defense he need not know the name of the crime at all. It is of no consequence whatever for the protection of his substantial rights. The real and important question to him is, "Did you perform the acts alleged in the manner alleged?" not, "Did you commit a crime named murder?" If he performed the acts alleged, in the manner stated, the Jaw determines what the name of the crime is and fixes the penalty therefor. It is the province of the court alone to say what the crime is or what it is named. If the accused performed the acts alleged in the manner alleged, then he ought to be punished and punished adequately, whatever may be the name of the crime which those acts constitute.

The plea of not guilty ought always to raise a question of fact and not of law. The characterization of the crime is a conclusion of law on the part of the fiscal. The denial by the accused that he committed that specific crime so characterized raises no real question. No issue can be raised by the assertion of a conclusion of law by one party and a denial of such conclusion by the other. The issues raised by the pleadings in criminal actions, as well as in civil, are primarily and really issues of fact and not of law. The issue to be tried in all criminal cases should be one of fact, raised by the allegation of certain facts in the information and a denial of those facts by the plea of not guilty on the part of the defendant. There is no more reason why the defendant should be allowed to take advantage of a misnomer of the action where the people are prosecuting than when assailed civilly by a private individual.

The failure to observe this fundamental distinction has been one of the causes of the frequent miscarriage of justice in criminal cases in many parts of the United States. If a plaintiff in a civil action should open his complaint with the statement, "This is an action of tort," and then proceed to set out fully facts showing that his action was really to foreclose a mortgage, asking the remedy proper to that end, no court would hesitate a moment as to what was the real nature of the action. It could not be contended for an instant that the plaintiff, in order to recover, would be obliged to prove an action in tort. The statement, "This is an action in tort," is a mere conclusion of law and not a statement of fact. It has no influence whatever upon the nature of the action. It is pure surplusage. It can not fairly be said to deceive the defendant. So far as the procedure or the merits are concerned, it is of no consequence what the name of the action may be. Issues are not made by asserting and denying names. They are framed by the allegation and denial of facts. The acts or omissions of the defendant, as set out by the

plaintiff in the complaint as the basis of his action, are that to which the defendant looks to prepare his defense. They are that to which, when proved, the court looks to apply the remedy.

So it is with pleadings in criminal actions. To quibble about names is to lose sight of realities. To permit an accused to stand by and watch the fiscal while he guesses as to the name which ought to be applied to the crime of which he charges the accused, and then take advantage of the guess if it happens to be wrong, while the acts or omissions upon which that guess was made and which are the real and only foundation of the charge against him are clearly and fully stated in the information, is to change the battle ground in criminal cases from issues to guesses and from fact to fancy. It changes lawyers into dialecticians and law into metaphysics - that fertile field of delusion propagated by language.

Section 5 of the Code of Criminal Procedure reads as follows:

"An information is an accusation in writing charging a person with a public offense, presented and signed by the promotor fiscal or his deputy and filed with the clerk of the court."

Section 6 is as follows:

"A complaint or information is sufficient if it shows:

"1. The name of the defendant, or, if his name can not be discovered, that he is described under a fictitious name with a statement that his true name is unknown to the informant or official signing the same. His true name may be inserted at any stage of the proceedings instituted against him, whenever ascertained.

"2. The designation of the crime or public offense charged.

"3. The acts or omission complained of as constituting the crime or public offense in ordinary and concise language, without repetition, not necessarily in the words of the statute, but in such form as to enable a person of common understanding to know what is intended and the court to pronounce judgment according to right.

"4. That the offense was committed within the jurisdiction of the court and is triable therein.

"5. The names of the persons against whom, or against whose property, the offense was committed, if known."

Section 8 reads as follows:

"A complaint or information may be substantially in the following form:

" The United States against A. B.

" In the Court of. for, Province of, the day of, 19.....

" 'A. B. is accused by the undersigned of the crime of (giving its legal appellation, such as murder, arson, robbery, or the like, or designating it as a felony or misdemeanor), committed as follows:

" 'That said A, B., on the.....day of....., 19....., at the.....of....., Province of....., (here set forth the acts or omissions charged as an offense), contrary to the statute in such case made and provided.

"" (Signed)"

Subdivision 2, section 6, above quoted, requires that the information shall contain "the designation of the crime or public offense charged/" But while that is so and while section 8 provides that the information may state the legal appellation of the crime, "such as murder, arson, robbery, or the like," nevertheless, said section also provides that such offense may be designated generally "as a felony or misdemeanor." This evidently and unquestionably

permits an information to be drawn and framed upon the lines marked in the doctrine we here lay down. This is the form in which information should be drawn.

We are aware that it may be said that, when a fiscal has characterized by name the offense with which he charges the defendant, and the defendant has accepted that characterization in good faith and prepared his trial in accordance therewith, he ought not to be required upon appeal or elsewhere to meet a new or different crime; that such a proceeding would prejudice him severely and might be the means of convicting him without a real hearing, if not without due process of law. Our reply is, in the first place, that it is very rare indeed that circumstances would be presented in which an accused could by any change be thus prejudiced. Such contingency is so remote as to be almost negligible. But, should such a condition arise, we say, in the second place, that this court will not permit the doctrine here laid down to prejudice any defendant who has been innocently misled in any action heretofore tried. However, after the lapse of a reasonable time following the publication of this decision, its contents and tenor will be presumed to be known to all. After the doctrine here promulgated is fully known, no one will be heard to say that he has been prejudiced by its application. We reply, in the third place, that the people of the land are interested more than any single individual in the punishment of those who offend against its laws; that the fiscal has no right to characterize a crime in defiance of the interests of society; that he has no authority to speak for the State and say what crime has been committed. That is the duty of the courts - the duty of a coordinate branch of the government, one of its three departments - to which and to which alone the sovereignty has delegated the right to denominate crime from facts alleged or proved and to impose punishment in accordance with that denomination. The duty of the fiscal in framing an information is limited to a statement of the facts which the accused has performed and the manner in which he performed them. It is no part of his duties to give a technical name to the crime which is born of the facts set forth, or draw an inference or conclusion as to how the courts will or will not denominate the crime described by the facts. If the fiscal denominate or characterize the crime and if that denomination binds the court, as it always does under the doctrine we are criticizing, then it is clear that the fiscal has, by such act, usurped the function of the court, inasmuch as he has thereby irrevocably decided by his own fiat of what crime, if any, the defendant shall be convicted. This is not only performing duties ministerial, but legislative and judicial as well. He thus not only tries the case as fiscal, but he also, by his mischaracterization, changes the law really applicable to the case. Moreover, such mischaracterization being binding on the courts, he also thereby in a sense adjudicates the offense for which the defendant shall be punished. He thus leaves little for the court to do but apply the penalty. Even that must be in accordance with the n'seal's characterization. We would say, fourthly, that a careful lawyer ought always to prepare the defense of his client to meet every allegation of material fact presented by the people's pleading, and to deny, and to substantiate that denial by proof, every such fact which is alleged and proved to his prejudice, and that wholly irrespective of the characterization of the crime by the fiscal. It is undoubted that every innocent man can and will do that. No innocent man will permit himself to rest under proof that he has been guilty of a malicious and criminal act against the law of the land. He desires above all things to disprove, and will always insist upon disproving, everything presented by the prosecution which smirches his character or taints his honor. Generally speaking, it is only the criminal, either by act or intention, who is willing to rest his defense upon the technicality of a characterization, leaving the main facts proved against him untouched and the conclusions from them unrebuked. Every innocent man wants to meet facts and not theories. He wants to strike at the substance of fact and not the straw man of conclusion. He will insist on meeting the thing and not the characterization of the thing.

Moreover, one can not claim to be prejudiced who voluntarily and willfully shuts his eyes to the facts alleged. Why are the facts alleged at all if not to specify the real nature of the crime? If the accused looks to the characterization of the fiscal and not to the facts, why have facts at all; why not have the information state conclusions only? But it will be observed that if we should urge that proposition, the accused would be he who

would first object. His instant reply would be, "I want facts and not conclusions. I can prepare no defense against the allegation of mere conclusions." Nevertheless he insists on holding the people strictly to the pure conclusion involved in the fiscal's characterization of the crime. In other words, he wants conclusions if the facts hurt him, and he wants facts if the conclusions hurt him. A technicality is something which makes a criminal life worth living. This is here fully exemplified.

We are not forgetful, in what we have said, of those sacred and immutable rights which belong to every freeman. We do not forget, either, that institutions and states which do not sacredly protect and guard those rights can not live. To their protection every man is willing to dedicate his life, his fortune, and his honor. The doctrine here laid down conserves those rights swiftly and perfectly far more so than does the doctrine we are criticizing. On the other hand and in addition, it protects society from the malicious activities of those who are ever ready to commit crime if there exists in the law anywhere a technicality upon which they may rest a hope of escape.

For these reasons it is competent for this court to find the defendant guilty of the crime described by the facts stated in the information, these facts being fully and satisfactorily proved and the accused having in no wise been prejudiced.

Under article 407 of the Penal Code the defendant should be punished with a penalty lower by one degree than that which would have been applied had he consummated the crime. The penalty for the consummated crime ranges from cadena temporal in its maximum degree to death. The penalty lower by one degree is from presidio correccional in its maximum degree to presidio mayor in its medium degree. There being present the aggravating circumstance of nocturnity, the penalty must be imposed in its maximum degree.

The judgment of the court below is, therefore, reversed, and the defendant is convicted of the crime of frustrated murder and sentenced to eight years and one day of presidio mayor and to pay one-third of the costs, There being no evidence in the case of the damages which Keng Kin has suffered by reason of the acts complained of, no indemnity can be required paid in this action.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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