

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANTONINO DOMINGO AND FAUSTINO DOLOR, DEFENDANTS AND APPELLANTS.***G.R. No. 6147. January 07, 1911*

Ponente: TORRES, J.

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This is an appeal filed by both defendants against the judgment of conviction rendered in this cause by the Honorable Judge Dionisio Chanco.

Between 7 and 8 o'clock on the evening of January 8, 1910, while Juan Edusor was walking along the main street in the town of Santa Maria, Ilocos Sur, he met Antonino Domingo and Faustino Dolor, who were going in the opposite direction; they asked Edusor from whence he had come and the latter replied that he had come from the rice fields and continued upon his way, passing between the said two men who, scarcely had Edusor passed a yard beyond them, assaulted him with clubs, with which they were provided, and struck him several heavy blows on the head; as a result he fainted and fell at full length face down on the ground. At the beginning of the assault Edusor asked his aggressors to pardon him, for he had done them no wrong, to which one of them replied that they should be done with the matter at once and take his life. The assault was not preceded by any trouble whatever, there had been no provocation on the part of the offended party, and the two aggressors were his friends. After the assault, the defendants, believing that their victim was dead, took him out of the town and into the rice fields of the sitio of Payas and left him in a ditch, where, in the early morning of the following day, the injured man regained consciousness, although he was unable to return to his house on account of weakness. Through information given by Honorato Foronda, the justice of the peace of the pueblo repaired to the place indicated by Foronda and there found the wounded man at a short distance from the ditch where he had been left; his face was covered with blood and he bore fifteen wounds, the majority of which were in the head and face, besides two slight bruises, one on the head and the other on a finger of the right hand. These wounds were cured by medical attendance in fifty-three days at a cost of P35, during which time the patient was unable to work, and as a result of the blows received, he lost three teeth.

For the foregoing reasons, the provincial fiscal filed an information in the Court of First Instance, on the 4th of the following month of March, charging the accused with the crime of frustrated murder, and, this cause having been instituted, the court, in view of the evidence adduced, rendered judgment, on April 13, 1910, sentencing the defendants each to the penalty of one year eight months and one day of prison correctional, to the accessory penalties, to pay an indemnity of P35 to the offended party, and, in case of insolvency, to the corresponding subsidiary imprisonment, and to pay the costs; and on April 22, the day following, the court overruled the motion for a new trial made by the defendants' counsel, who appealed from the said judgment.

From the facts hereinbefore stated, duly proved in the present cause, it is concluded that the crime of frustrated murder was committed against the person of Juan Edusor on the night of January 8, 1910, a crime provided for and punished by article 403, in connection with article 3, paragraph 2, and article 65 of the Penal Code. The punishable act is qualified by the specific circumstance of treachery, one determining the crime of murder,

inasmuch as the offended party was assaulted while his back was turned toward his two aggressors, for, as found from the medical examination of the contusions, the first two blows, struck with clubs, were inflicted upon the victim at the back of the neck; and, further, in the commission of the frustrated crime the said aggressors employed means, ways and modes tending directly and especially to insure the consummation of the crime without risk to their persons such as could have arisen from any defense which the assaulted party might have made, and in the execution of the deed they performed all the acts calculated to produce death; and, although the victim did not die, it was due to causes independent of the will of those who assaulted him; the large number of serious wounds, inflicted by repeated blows administered by the defendants, the majority of them on the head and face, while he was stretched out on the ground and unconscious, the insistency with which they illtreated him, striking him on a part of the body where contusions usually cause fatal results, and the fact that, after such cruel treatment and believing that the injured man was dead, they picked him up from the spot where he had fallen, took him out of the town into the rice fields and left him in a ditch, as if he were a corpse - all these acts reveal marked perversity and evidence their criminal intention to deprive him of his life; in fact they treacherously assaulted him at a moment when he had his back turned to them and when he had no reason to believe, from the conversation the defendants were holding between themselves, that he was to be assaulted in such a manner.

The defendants pleaded not guilty, denied the charge, and alleged the following: Faustino Dolor said that during the entire day of the crime, January 8, 1910, and since the 5th of the same month, he was sick with fever and did not leave the house. Antonino Domingo declared that he was in the barrio of Danyaquin of the pueblo of Santiago, distant about 5 kilometers from that of Santa Maria, engaged in superintending the grinding of his sugar cane, from the morning of the said day until that of the following day, Sunday, without leaving the barrio during that time. This latter defendant testified, moreover, that Juan Edusor, on being examined by the justice of the peace in his presence, swore that he did not know who his aggressors were, although he afterwards designated this defendant by name as being one of them, which was not true. But notwithstanding these allegations of the defendants and the testimony of their supporting witnesses, sufficient evidence was presented at the trial to produce in the mind the full conviction, beyond all doubt, of the defendants' guilt as the principals, by direct participation, of the wounds and contusions, some of them serious, inflicted upon the offended party on the night aforementioned.

Juan Edusor, the victim, averred in a positive manner that, a few moments prior to the assault and while he was in the place where he was assaulted by the defendants, the latter were engaged in conversation, and that, as they all knew each other very well and were friends, he recognized his assailants perfectly in spite of the darkness; the moon was not shining, but the starlight enabled him to see and recognize them, and he also recognized their voices. Two residents of the locality, Eulogio Foronda and German Foronda, testified to their having seen the defendants going along the main highway of the town of Santa Maria in the direction of the town at about 9 o'clock on the evening of the crime, while the witnesses were going in an opposite direction to fish, and that the following words passed between the defendants: "nos vamos ya, bien que ya esta guardado" and they then recognized him well, for they were old acquaintances of his; that on the following day when they learned of what had occurred they suspected from those words that the defendants had done something; later, their suspicions were confirmed by the statement made by the wounded man after he was picked up from the rice field, to the effect that Antonino Domingo was one of those who on the evening in question struck him the blows with the club. Owing to the seriousness of his wounds, he did not at the time remember the name of the other assailant.

It is true that the only witness who directly designated the defendants as the perpetrators of the crime was the offended party himself; yet since no other witness was present at the commission of the crime than the aggrieved party himself, and his testimony given at the trial appears to be corroborated by other incriminating evidence, such testimony by the aggrieved party may serve as grounds for a conviction, if it is supported at trial by other

circumstantial evidence. In this case two other witnesses, Claudio Escobar and Eugenio Espiritu, confirming the statements made by the victim and by the said two resident fishermen, testified, Escobar, to his having seen Faustino Dolor leave his house, cross the street and bathe himself in a well near his (Escobar's) house, on the said 8th day of January, and therefore he could not have been dangerously sick with fever; and Espiritu, to his having seen the defendants seated by the roadside between 7 and 8 o'clock that evening armed with clubs and conversing together. The testimony of these witnesses is a refutation of the allegations made by the defendants that one of them was sick in his house, and the other absent in a barrio 5 kilometers away on the evening of January 8, 1910, and offsets in a positive manner the testimony of the witnesses called by the defendants.

It can not be held that the perpetration of the said crime was attended by any extenuating or aggravating circumstance, for the reason that the circumstances of abuse of superiority and of nocturnity, taken advantage of in the execution of the deed, are included in the qualifying circumstance of *alevosia* and, in the present case, are involved in the consummation of the crime of frustrated murder; wherefore the corresponding penalty should be imposed upon the defendants in the medium degree.

With respect to the multiplicity of errors attributed to the trial judge by the defendant's counsel, it must be kept in mind that the question addressed to the offended party, Juan Edusor - who was still suffering from the effects of the atrocious illtreatment inflicted by the defendants, and well aware that the courts were investigating his case - as to whether anything had occurred between him and the defendants on the evening of January 8, can in no manner be considered a leading one, like others bearing on the investigation of the crime, its circumstances, and its perpetrators, unless we establish the theory that, in order not to prejudice criminals it shall neither be permitted to proceed with the investigation of the crime, nor to address any question whatever to the witnesses for the prosecution conducive to the result sought by the proceedings.

The law prohibits all questions which suggest to the witness the answer intended to be obtained by the questioner; but not those the purpose of which is to discover the truth of the facts that occurred, and it authorizes the judge to rely upon his discretion and good judgment in deciding upon the relevancy and propriety of the questions which may be put to the witness, to the end that, in passing judgment, he may be enabled to administer strict justice, with rectitude and impartiality.

With respect to the denial of the motion for a new hearing, the grounds on which this decision rest justify the ruling of the judge and show that the sole testimony of Juan Directo, new evidence subsequently discovered, according to the defense of the accused, even were it admitted in the terms expressed by the affidavit which accompanied the motion, would not have affected the final result of the cause. It might be true that, at half past 5 o'clock of the afternoon of the said day, January 8, Juan Edusor fought with Martin Imperial and Faustino Agoyaoy with clubs; but, besides its not being shown what was the result of the fight, it is further proven that before 8 o'clock on that evening the said Edusor was seriously illtreated by the defendants who left him unconscious and abandoned in a ditch in a field - facts entirely different from those set forth in the said affidavit, and therefore the testimony of the aforementioned Juan Directo, though it may prove a new fact, could not prove that the charge under which the defendants are held to be liable was false.

For the foregoing reasons, it is proper, in our opinion, to reverse the judgment appealed from, and we hereby sentence Antonio Domingo and Faustino Dolor, as the perpetrators of frustrated murder, each to the penalty of twelve years and one day of *cadena temporal*, to the accessory penalties provided by article 56 of the Penal Code, to indemnify the offended party in the amount of P35, without subsidiary imprisonment in view of the nature of the principal penalty, and each to pay one-half of the costs of both instances. So ordered.

Arellano, C. J., Mapa, Carson, Moreland, and Trent, JJ., concur.

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