

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LUIS BIEN,
DEFENDANT AND APPELLANT.***G.R. No. 6739. October 16, 1911*

Ponente: TORRES, J.

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This is an appeal by the defendant from a judgment of conviction by the Hon. Judge P. M. Moir.

Between 8 and 9 o'clock on the morning of the 3d of May, 1910, the Chinaman, Go Sui Chiang, a resident of the pueblo of Bacacay, Albay, heard that, in the maritime fishing zone comprised within the concession obtained by him, there were several men engaged in fishing by means of a hoop net; he therefore got into a small boat, or baroto, and went to the point indicated, and when he reached a place where there was a depth of about 3 varas of water, he was approached by Luis Bien in his baroto. Chiang then told Bien to cease fishing and leave the place, whereupon the latter caught hold of the Chinaman and threw him into the water. As Chiang could not swim, he made efforts to keep himself afloat until finally he succeeded in seizing the gunwale of the boat in which he had come; and while one of the companions of the defendant told the latter to submerge the Chinaman at a place where the water was deeper, Camilo Bas and Victorino Bas, whose attention had been attracted to the spot by the Chinaman's cries for help, arrived on the scene and prevented the defendant from striking the victim of the attack with an oar and took him to the shore. Chiang then immediately went to the lieutenant of the barrio, before whom he presented himself with his clothes wet, and reported that the defendant had thrown him into the water with the intention of drowning him.

Subsequently, on September 20 of the same year, the provincial fiscal filed a complaint against the accused, Luis Bien, charging him with the crime of frustrated homicide; and the court, upon the evidence adduced, rendered judgment on the following 8th of November and sentenced the defendant to the penalty of six years and one of prison mayor and to the payment of the costs, from which judgment he appealed.

From the foregoing facts, which were duly proved at the trial, it is concluded that the crime of attempted homicide against the person of the Chinaman, Go Sui Chiang, was actually committed, for the said Chinaman was thrown into the water, where he was exposed to asphyxia through submersion, as he did not know how to swim, and it is therefore unquestionable that the assailant commenced the commission of the crime directly by overt acts; if the death of the party attacked was not consummated, it was because of the opportune intervention of two witnesses who responded to the cries of the Chinaman when he was sinking and helped him to get out of the water and to reach the land; hence, it may not be said that the crime was not consummated because of any voluntary and spontaneous desistance on the part of the aggressor; consequently the crime under prosecution should be technically classified as attempted homicide, provided for and punished by article 404, in connection with article 3, second paragraph, and article 66, of the Penal Code.

The defendant Luis Bien, is the sole perpetrator, by direct participation, and fully convicted of the homicidal attempt charged against him; notwithstanding his denial and his plea of not guilty, the record shows decisive and

conclusive proof of his guilt in having thrown the said Chinaman into the water, the latter being unable to swim, and of his having further attempted, by the use of an oar, to loosen the victim's hold upon the boat; and if the latter was finally saved, it was due to the assistance of two eyewitnesses who responded to his call for help and took him to the land where he afterwards presented himself, with his clothes thoroughly drenched, to the lieutenant of the barrio to report what had occurred to him; this particular was confirmed by the said lieutenant.

The two witnesses presented by the defense testified that the Chinaman did, on the morning of the crime, appear at the place where there were fishing nets set in the Bay of Bacacay and where they were engaged in fishing; that he inquired as to the ownership of the net which was placed there and, on learning that it belonged to the defendant, Luis Bien, he approached the latter in his boat and immediately got into that where the defendant was; that they did not see what afterwards transpired; and that the Chinaman left his boat floating- on the water and returned to the land, without getting wet. These statements were belied entirely at the trial by the testimony of the two witnesses who helped the Chinaman out of the water and took him to land, thoroughly drenched; also by the testimony of the lieutenant of the barrio before whom the said Chinaman immediately appeared for the purpose of making complaint.

True enough, the witnesses for the prosecution did not see the defendant throw the offended Chinaman into the water, for when they came up to him, in response to his cries, they found him already in the water and holding on to the gunwale of the boat; but it is no less true that neither the defendant nor his witnesses could explain how and in what manner the said Chinaman fell into the water. Therefore, because of the lack of evidence to the contrary, the charge must be admitted as true, for it can not be believed that the Chinaman, with no reason whatever and not knowing how to swim, should have jumped into the water. On the other hand, it was not proven that his fall was due to an accident, but, according to the prosecution, to the criminal act of the defendant, performed with the unquestionable purpose of doing harm to the offended party who, justly angered at the time, was reproaching the defendant because the latter had proceeded to fish in the place where the offended party had obtained, from competent authority, a license to engage in fishing.

In the commission of the crime, there is no aggravating circumstance whatever to be taken into account, but due weight must be given to the special circumstance of article 11 of the Penal Code, in view of the defendant being a native, the nature of the act committed, and his scant education ; therefore the penalty of prision correccional must be imposed in the minimum degree.

For the foregoing reasons, whereby the errors attributed to the judgment appealed from are held to have been refuted, with the declaration that the crime committed should be classified as attempted homicide, we hereby sentence the defendant to the penalty of two years of prision correctional, the accessories of article 61 of the Penal Code, and to pay the costs of both instances. So ordered.

Mapa, Johnson, and Moreland, JJ., concur.

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