

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PEDRO SANCHEZ, DEFENDANT AND APPELLANT.

*G.R. No. 6782. October 24, 1911*

Ponente: ARELLANO, C.J.

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### ARELLANO, C.J.:

The hearing on this appeal has disclosed the following facts:

- The defendant is charged with the commission of the crime of frustrated murder, alleged by the complaint to have been perpetrated in the following manner:

"That Pedro Sanchez, in the early morning of or about March 31, 1910, in the pueblo of Binalonan of the Province of Pangasinan, armed with a sharp-pointed bolo, climbed a bamboo ladder to the window of the room of the house where the married couple Walter B. Linton and Nina Linton were sleeping, with the intent treacherously to kill them and did in fact stab the said two persons while they were sound asleep, inflicting upon Walter P. Linton a wound in the upper part of the armpit of the left side, and upon Nina Linton a wound in the left arm, piercing through the same to the inner side thereof, and, another superficial wound in her left side; but their respective wounds did not produce death and were cured after more than thirty days' medical attendance, the two said parties being obliged to refrain from engaging in their customary labors during the time they were under treatment."

- The crime, the circumstances attending its perpetration, and the liability of the accused as the sole author having been satisfactorily proven, the latter was sentenced under article 403, in connection with article 3, paragraph 2, of the Penal Code, to seventeen years and four months of cadena temporal, to the accessories, to indemnify the offended parties in the sum of P324, and to pay the costs. From this judgment the defendant appealed.

- The learned counsel for the defense only asks in this instance that, with a reversal of the judgment appealed from, the crime under prosecution be declared to be one of lesiones menos graves, and that the penalty imposed be reduced; he alleges, as the only error committed by the trial court, that the latter, notwithstanding the evidence adduced, sentenced the defendant for the crime of frustrated murder, instead of for that of lesiones menos graves.

- Mrs. Linton's wound according to the expert medical examination made, extended from one side of the left arm to the other and reached the left side of her body. The trial judge, considering its gravity, said that the blow had been so violent that if, instead of the weapon piercing the left arm, it had been driven directly into the left side, it would have embedded itself up to the hilt and pierced the heart. Mr. Linton's wound, also according to expert medical examination, was in the left side of the breast, 3 decimeters deep and exposed the patient to the danger of death, until the hemorrhage had been stopped. The weapon with which the accused inflicted such wounds is

described in the judgment as a sharp-pointed bolo with a well-sharpened blade 10 inches in length and, according to Mrs. Linton's testimony, was clean and bright on the night of the crime - it was a dagger rather than a bolo, in the opinion of the judge. The defendant, until two days prior to the crime, had been a servant in the house where it was committed and, on the very day of the crime, insistently sought to return to the service of the offended parties, but was not admitted by the lady of the house, one of the complaining witnesses. According to her testimony, Sanchez was acquainted with all the rooms and other parts of the house and it was he who used to make the bed when he was in the service of the Lintons. For the purpose of committing the crime, the defendant entered the house by means of a ladder through one of the windows of the sleeping room, and the first person he assaulted was Mrs. Linton who was lying in the bed on the side next to the window.

- With respect to the classification of the crime and to the punishment of the guilty party, the trial court took account of the qualifying circumstance of treachery and, as aggravating generic circumstances, those of escalamiento and entry into the offended parties' own dwelling. By reason of the treacherous attempt to kill two persons, the crime was classified as frustrated double murder. The judgment relates that the defendant took advantage of the silence and darkness of the night, cautiously entered the room where his victims were sleeping, approached the bed and, finding them sound asleep and knowing that he was perfectly safe and was in no risk of danger to himself such as might have arisen had the Linton spouses made any defense, struck Mrs. Linton with a dagger, and then Mr. Linton, and took to flight.

In a case where it appeared that the accused, without saying a word, had stabbed the offended party with a dagger, in the middle of the right side of the back about four centimeters from the spinal column, and immediately thereupon fled, the wound not producing death nor disability for work and requiring ninety days for its cure, and the weapon used in inflicting the wound being a prohibited one, the insular supreme court classified the crime as frustrated homicide; but the supreme court of Spain held that the acts constituted the crime of frustrated murder, on account of the attendance of the specific circumstance of treachery, since the accused assaulted his victim in an unexpected manner at a moment when the latter was seated on the counter of the store, with his back to the entrance door and to his aggressor, and was looking toward the interior of the establishment, which situation was taken advantage of by the accused to wound the offended party without being seen by him. All these facts show treachery. (Decision of April 17, 1895.)

In another case where the aggressor struck his victim a blow from behind with a sharp weapon, cutting him in the middle part of the inner edge of the left shoulder blade, and then started to run; but seeing himself pursued by the injured man, turned about and approaching him to within a step struck another blow at the injured party, directed at his abdomen, which the latter was able to avoid by giving a jump that caused him to slip and fall to the ground, and his assailant, seeing that he had fallen, threw the weapon at him, without hitting him, and again started to run - both the insular supreme court and the supreme court of Spain classified the crime as frustrated murder; the latter court held, in accordance with the facts found to have been proven in the judgment appealed from, that the accused performed all the acts which might have resulted in depriving the assaulted of his life, and that the trial court, in classifying the crime as one of frustrated murder, did not commit any error of law. (Decision of September 29, 1881.)

And, finally, in another case - where an old man who was walking along the street was wounded in the back by a knife of a kind whose use was prohibited, the weapon remaining fastened in the bone of the right upper scapular region and causing a wound that was cured in seven days, a wound which might have been fatal if the knife had penetrated through the upper part of the scapula or if the impulse of the blow had been stronger - the insular supreme court, considering that the perpetrator of the deed laid in wait for his victim in order to derive advantage

from the most favorable moment, to the end that the latter might not be able to rely upon any help in his defense, and that the assailant, after striking: the blow from behind, took to flight, classified the crime as frustrated murder, and the supreme court of Spain said:

"That the attempt perpetrated was properly classified as a crime of frustrated murder, because, from the proven facts related in the judgment appealed from, the known, determined and premeditated intent of the guilty parties was to kill the person assaulted, and such intent being premised, the classification of the crime can not be made in accordance with the mere result produced by the violent act; as there were attendant in its commission the circumstances of treachery, premeditation and price, any one of which is sufficient for the aforesaid classification of the crime of the attempted killing, the trial court did not incur any of the errors alleged." (Decision of supreme court of Spain, Dec. 31, 1890.)

The particular part of the body of a person struck during an assault, the deadly character of the weapon used and the violence of the attack, taken together, do not constitute proof of an intention to kill when they are all incidental to a quarrel in which the contending parties come to blows; under such circumstances, the actual conditions, surrounding the encounter form the best criterion by which to arrive at the facts; but when all the said circumstances are present, and the crime further involves acts committed with alevosia, in such manner as to insure the safety of the assailant while depriving the victim of the opportunity to make defense, and when the aggressor, having special knowledge of the place of the assault, surprises and attacks his victim while the latter is asleep, and is then able to escape because of his intimate acquaintance with the interior of the house, in which he was formerly employed as a servant, the intention to kill clearly appears and the crime is properly classified as frustrated murder.

Therefore, the crime under prosecution is properly classified as frustrated double murder, and the judgment so holding and applying to the defendant the penalty corresponding to the crime of frustrated murder attended by the two aforesaid aggravating circumstances, is in accordance with the law, and is affirmed, with the costs against the appellant.

Torres, Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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