

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ROMAN MAGHIRANG, DAMASO RIVERA AND FRANCISCO GUTIERREZ, DEFENDANTS AND APPELLANTS.

G.R. No. 9991. December 19, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Laguna convicting the accused of the crime of frustrated murder and sentencing each one of them to eight years and one day of prison mayor, with the accessories provided by law, to pay, jointly and severally, to the offended party the sum of P400, and to pay the costs of the trial.

It appears from the evidence that late at night on the 1st day of May, 1913, the accused Roman Maghirang, Damaso Rivera, and Francisco Gutierrez, in company with Pablo Sahagun, went to the house of Cornelio Briones in the barrio of Remedios, municipality of San Pablo, Laguna, carrying banjos and guitars, for the purpose of giving a serenade in front of Briones' house in honor of his sister-in-law, to whom Sahagun was paying some attention. The young lady being ill, Briones, from his window, called to the accused and asked them not to continue the serenade as he was afraid the music would awaken her. The accused thereupon departed. About 2 o'clock of the afternoon of the following day Briones, riding a carabao, went to visit a piece of land belonging to him in Maabu. During the journey he had to cross a dry run which, in the wet season, emptied its waters into the Patay-na-tubig River. Briones had crossed this run and was in the act of ascending the opposite bank when suddenly the three accused, Roman Maghirang, Francisco Gutierrez, and Damaso Rivera, leaped from the bushes in which they were hidden. Gutierrez seized the carabao while Rivera struck Briones on the left arm with a club. The force of the blow knocked Briones to the ground. While down, Maghirang approached him with a bolo and, in spite of the remonstrances and prayers of Briones, struck him two blows, one on the shoulder and the other across the lips. The accused then withdrew. The blows were heavy ones and rendered the victim senseless. After returning to consciousness he was able, with great difficulty, to reach his house.

According to the testimony of the physician who examined Briones after the assault, the wound on the shoulder was about 18 centimeters long and, at the point of greatest profundity, 4 to 5 centimeters deep. The wound cut through all of the muscles of the shoulder, through the capsular ligament, and into the bone a distance of 2 centimeters. The arm has lost about 60 per cent of its strength and usefulness, and Briones is unable, and will be unable, to engage in his usual occupation. This injury is permanent.

The second wound, the one across the mouth, intersected both lips. The upper lip was cut away in part, while a portion cut from the lower lip was still hanging by a small portion of the skin when first seen by a doctor. Attempts were made by the surgeon to sew this piece to the lower lip. He finally succeeded and, although the parts have grown together, the lower lip is paralyzed and Briones is able to speak only by placing his hand against the lower lip and holding it in position while he articulates.

These injuries were cured, so far as cure was possible, in about forty days at an expense of P300.

From the evidence in this case we have no doubt whatever that the accused are guilty of the acts charged in the information. Briones recognized all three as they attacked him and detailed clearly and satisfactorily what each one did. The only question calling for discussion in this case is one raised by the private prosecutor, who insists that the solicitor-general, in this court, has not properly qualified the crime, the latter insisting that the crime is lesiones graves instead of frustrated murder.

In support of his contention that the crime is lesiones graves and not frustrated murder, the solicitor-general says:

"The trial court found that the crime committed was frustrated murder, with the aggravating circumstance of premeditation.

"There exist, it is true, certain circumstances which appear to sustain this conclusion of the court: The use of bolos, which in themselves are deadly weapons; the words 'we are going to kill you' which Maghirang used to Briones when the attack was made, and which were followed immediately by the blow across the face; the ambush and the unexpected and sudden assault, all appear to sustain the contention that there was an intention to kill, induced as the trial court said, by the insult which they supposed had been offered them the night before.

"But an examination of the doctrine of this court in the cases of U. S. vs. Duruelo (7 Phil Rep., 497) ; U. S. vs. Trinidad (4 Phil. Rep., 152); U. S. vs. Dagalea (4 Phil. Rep., 398) ; U. S. vs. Manlalang (6 Phil. Rep., 339), induces us to believe that the crime committed is that of lesiones graves (serious injuries) described and punished in paragraph 2, article 416 of the Penal Code, with the aggravating circumstance of treachery. That is to say, although the information was for frustrated murder and that was the crime found by the trial court to have been committed, the facts demonstrate that the accused are guilty simply of lesiones graves for the reason that the accusation did not prove on the trial that the intention or the purpose was to kill, for, although one of the accused was armed with a bolo and the other with a club, and Briones lay upon the ground on his back, the wounds inflicted upon him were not mortal wounds, nor were they located in a fatal spot; and yet, in spite of that, the accused did not continue the assault in order to effectuate his death, nor did they use the bolo with which to deliver the first blow, although they were not prevented by anybody from consummating their intention to kill him if they had had such a purpose. It is necessary to take into consideration the aggravating circumstance of treachery in view of the fact that Briones was attacked from behind and suddenly, without having been given an opportunity to offer any resistance."

We are disposed to agree with the theory of the Solicitor General, in spite of the strong argument advanced by the private prosecutor, that the crime committed was really frustrated murder. According to the provisions of the Penal Code, article 3, "a felony is frustrated when the offender performs all the acts of execution which should produce the felony as a consequence, but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator."

It is clear to our minds that, in this particular case, the accused did not perform "all of the acts of execution which should produce the felony as a consequence." The wounds were not located in a vital spot. Neither of them was mortal nor likely to produce death; in other words, the wounds inflicted were not such as "should" produce death, nor such as would naturally and ordinarily produce death.

The Lim San case (17 Phil. Rep., 273) is illustrative of the conditions necessary to present a case of frustrated murder. There the wound inflicted was such as "should" have produced death and would necessarily have produced death if the injured person had not been instantly taken to a hospital, his intestines replaced and his abdomen properly closed. While the information charged attempted murder, we found the accused guilty of frustrated murder upon the ground that he performed all of the acts which should produced death, which acts,

nevertheless, did not produce death by reason of causes independent of the will of the perpetrator. In the case before us the accused did not perform all of the acts necessary to produce death nor was the life of the complaining witness saved by causes independent of the will of the perpetrator. In other words, the accused in this case did not perform all of the acts which "should" produce death.

Nor is the crime attempted murder; for, in order that the crime be qualified as such, the offender must commence "the commission of the felony directly by overt acts" but must "not perform all of the acts of execution which constitute the felony by reason of some cause or accident other than his own voluntary desistance."

In the case at bar the accused voluntarily desisted from injuring the victim further. They probably knew, which was the fact, that the injuries were not inflicted in a vital part of the body and were not such as "should" produce death. This presents a condition from which we cannot say that the accused intended to kill. Without this intention the crime can be neither frustrated nor attempted murder. (U. S. vs. Marasigan, 11 Phil. Rep., 27; U. S. vs. Domingo, 18 Phil. Rep., 250; U. S. vs. Montenegro, 15 Phil. Rep., 1; U. S. vs. Samea, 15 Phil. Rep., 227; U. S. vs. Maquiraya, 14 Phil. Rep., 243; U. S. vs. Taguibao, 1 Phil. Rep., 16; U. S. vs. Sabio, 2 Phil. Rep., 485; U. S. vs. Dagalea, 4 Phil. Rep., 398; U. S. vs. Trinidad, 4 Phil. Rep., 152; U. S. vs. Redion, 4 Phil. Rep., 500; U. S. vs. Duruelo, 7 Phil. Rep., 497; U. S. vs. Barnes, 8 Phil. Rep., 59.)

As a necessary result of these considerations, the crime must be characterized as lesiones graves, as stated by the solicitor-general. There being present the aggravating circumstances of alevosia, premeditation, desoblado and superior force, the penalty must be imposed in its maximum degree.

The judgment of conviction is reversed and the accused are hereby each convicted of the crime of lesiones graves and sentenced each to six years eight months and twenty one days of prision mayor, to the accessories provided by law, to indemnify the offended party in the sum of P400 and to be jointly and severally liable therefor, and to pay the costs.

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

Trent, J., concurs in the result.

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