

2 Phil. 485

[G.R. No. 1226. September 04, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. DOROTEO SABIO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MCDONOUGH, J.:

The defendant was charged with the crime of frustrated murder, committed in the city of Manila November 2, 1902, in that he did then and there willfully, feloniously, and with deliberate premeditation assault Aniceto Reyes by attempting to shoot him.

The defendant was placed upon trial in the Court of First Instance of Manila December 17, 1902, and was convicted and sentenced to imprisonment for a term of eight years, and to pay the costs of the prosecution.

The defendant and Aniceto Reyes were members of the Constabulary, and, on November 2, 1902, they were engaged in gambling in their quarters. During the game a dispute arose between Reyes and the defendant regarding a debt of 30 cents, which the defendant claimed Reyes owed him. The defendant demanded payment of this sum, and Reyes asked for a little time to make payment, not desiring to then open his box in which he had money and upon which they were sitting during the game. Thereupon this witness and the defendant got into a fight, using their fists and uttering obscene language. The defendant withdrew from this quarrel, went to the gun rack near by, took down a gun, loaded it, and aimed it at the witness, who testified that the defendant insisted on trying to shoot at the feet of the witness, and during a struggle between the two for the gun it was discharged by the defendant, the bullet striking the floor about 5 inches from the feet of the witness.

In the quarrel, before the discharge of the gun, each party claimed that the other struck the first blow.

Reyes testified that when he saw the defendant coming toward him with the gun, he was about 3 yards away. He had the gun in his hand, and said to the witness, "Are you going to pay me or not?" Reyes answered, "Yes, I will pay you. "Wait a minute. I have my money in the box;" and then the defendant pushed Reyes with the gun, and Reyes grabbed it. Francisco Gaspar, a member of the Constabulary, testified that he was present on the occasion in question; that the defendant was losing money in the game, and, needing more, he was trying to collect from Reyes 30 cents. Reyes said, "Wait a minute; I won't pay you," Defendant then stood up and said, "Won't you pay me?" and they started to fight. Defendant was smaller than the other man, and when he could fight no longer he ran away and got a gun, and when the other saw him coming with the gun he jumped at once, and went to meet him, took hold of the gun, and told him to let go of it. He would not give up the gun, and discharged it.

The defendant and Reyes had bunks within a few feet of each another in the barracks. The carbines were kept in a rack, and defendant took the carbine from the rack, about 3 brassas from where they were gambling.

Witness testified that he saw defendant load the gun. Reyes struck the first blow. He stood up and said he would not pay defendant and then struck him, and defendant stood up and struck Reyes when he said he would not pay him.

Defendant was sworn in his own behalf and testified substantially as did the other witnesses regarding the gambling, the debt of 30 cents, the demand for it, the refusal, and the fight. He said he ran and grabbed the gun with the intention of hitting Reyes with the butt of it. Reyes caught hold of the gun and tried to take it away, and during the struggle the shot was fired.

In order to convict the defendant in this case of the crime of frustrated murder, it was necessary to prove that the defendant with deliberate premeditation intended to kill Reyes.

The crime of frustrated murder is committed when the guilty person performs all the acts of execution which should produce the crime as their consequence, but nevertheless do not constitute it by reason of causes independent of the will of the perpetrator.

Evidently the defendant had not the intent to kill. He did not aim to kill. He did not threaten to kill. Nor can it be inferred, as it was in the court below, that an intent to kill was proved when the defendant testified that he intended to hit Reyes with the butt end of his gun. Such a blow might do bodily harm and might not, depending on its force and the part of the body

struck; it might even result in death, but the conclusion does not follow that the defendant with deliberate premeditation tried to kill Reyes,

The defendant, however, violated article 408 of the Penal Code in that he discharged a firearm at Reyes.

He is therefore convicted of the crime of discharging a firearm at a person, and is sentenced to imprisonment for one year and one month *provisional correccional* with costs *de officio*.

Arellano, C, J., Torres, Cooper, Willard, and Mapa, JJ., concur.
