

7 Phil. 497

[G.R. No. 3462. February 16, 1907]

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SANTACRUZ DURUELO ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ARELLANO, C.J.:

This is an appeal by the defendants, Santacruz Duruelo and Eulalio Duruelo, from the Court of First Instance of Iloilo, sentencing them to three years' imprisonment for the crime of attempted homicide, and to pay the costs. The record discloses the following facts:

(1) That the defendants were charged with the crime of attempted homicide, and that they, according to the complaint, went to the house of one Agustin Drilon, and brandishing their bolos, called to the said Drilon to come down for they were going to kill him, but "as Agustin Drilon refused to leave the house, the defendants went up the stairs for the purpose of killing him, and finding the door locked, they broke the same open with their bolos in order to enter the house and kill the said Drilon, but the latter made his escape through the kitchen of the house while the defendants were breaking the front door open, by reason of which they did not succeed in their purpose to kill him."

(2) That the only proof of a deliberate intention on the part of the defendants to kill the said Drilon were the words alleged to have been uttered by the defendants, to-wit: "Agustin, come down, we are going to kill you!" and "Agustin, come down, and we will cut you to pieces!"

One of the witnesses testified that one of the defendants broke open the door and entered the house. Another witness stated that the defendants cut the door open, and another witness that they went up the steps but did not enter the house. (Record, pp. 137, 131, and 104.)

The foregoing facts do not even constitute the beginning of the execution of the crime of

homicide, so as to hold the defendants guilty of the crime of attempted homicide. Those facts might constitute the crime of forcible entry of a dwelling, as suggested by the Attorney-General, but the testimony of the witnesses who testified that the defendants broke open the door and entered the house can not be harmonized with the testimony of the witness who testified that the defendants cut the door, and the testimony of another witness who stated that the defendants went up the steps but did not enter the house.

It seems that the defendants did nothing but shout to the said Drilon, and cause some damage to the door of the house. There is nothing upon which the charge of attempted homicide contained in the complaint can be sustained, nor can the defendants be convicted thereunder of the crime of forcible entry of a dwelling.

We accordingly reverse the judgment of the court below without prejudice to the filing of a new complaint for some other crime, and we hereby acquit the said Santacruz Duruelo and Eulalio Duruelo of the charge of attempted homicide, with the costs of both instances *de officio*.

After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter let the cause be remanded to the Court of First Instance. So ordered.

Torres, Mapa, Johnson, Carson, Willard, and Tracey, JJ., concur.
