

4 Phil. 152

[G.R. No. 1851. January 23, 1905]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. SATURNINO TRINIDAD, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

The evidence in the record furnishes sufficient proof that the defendant, with a kitchen knife, inflicted a wound on Margarita Maria Pando, in the right scapular region of her body. This wound necessitated medical attendance for two days and prevented her from attending to her ordinary labors for a period of twenty-nine or thirty days. The cause of the aggression seems to be the scolding that Margarita gave the defendant, who was her cook, for having broken a piece of china ware. Neither the offended party nor any of the other witnesses who testified in the case points out any other cause for the act of the accused.

The court below qualified the facts in the case as attempted homicide and sentenced the defendant to five years of *prision correccional* and its accessories, in accordance with article 61 of the Penal Code.

We do not find this qualification in conformity with the law. The first and most essential element constitutive of the crime of attempted homicide is the intention on the part of the guilty party to cause the death of the person attacked, and this intention must be proved in such a clear and evident manner that it shall exclude every possible doubt as to the homicidal intention on the part of the aggressor. In the present case there is nothing tending to show in a plain and conclusive manner that the defendant had formally made up his mind to kill

Margarita Pando when he assaulted her with a knife. The futility of the motive which prompted him to this action; the nature of the wound inflicted being of a character so slight that it required only two days of medical attendance; and the lack, furthermore, of more definite and concrete particulars about the accident, can in no way authorize the conclusion that the intention of the accused was that of depriving the said Margarita of her life instead of only inflicting on her a wound of more or less serious character.

It is a well-known principle of criminal law that when a particular act constitutes a crime by itself, and is separately and distinctly punished by law, like that of *lesiones*, it is not possible in law to qualify the act as a greater offense unless definite circumstances should show in a clear way and beyond doubt that the intention of the guilty party was to commit an offense of greater criminal importance. (Judgments of the supreme court of Spain of October 4 and 25, 1886, and January 18, 1887.)

The facts in the case are only constitutive of the crime of *lesiones menos graves*, provided for and punished by article 418 of the Penal Code, inasmuch as the wound inflicted upon Margarita Pando did not cause her any sickness nor incapacity to work for more than thirty days.

The penalty prescribed by said article is that of *arresto mayor*, which penalty should be imposed upon the defendant in its maximum degree, because he committed the act with offense to the sex of the injured party and with abuse of confidence as well, the defendant being a servant in the latter's house.

By virtue whereof, we sentence the accused to six months of *arresto mayor* as principal in the crime of *lesiones menos graves*, and reverse the judgment below in so far as it is inconsistent herewith, affirming all the other parts thereof, with the costs of this instance to the accused. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

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