

2 Phil. 61

[G.R. No. 1017. March 21, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS, GUILLERMO
YILLANUEVA, DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On the night of July 9, 1902, while Juana Aguinaldo was going up the stairway of her house in the town of San Mateo, followed by her husband, Guillermo Villanueva, the latter, impelled by the passion of jealousy, fired at his wife with a revolver which he, in his capacity as a member of the police force, was carrying in his belt. The shot was fired at a distance of some three yards. The bullet struck the woman in the back and went through her body. The bullet entered between the sixth and seventh ribs on the right side, near the omoplate and the lung, ranging upward, the point of egress being near the nipple of the right breast. Notwithstanding the seriousness of the wound, which, according to the physician who examined her, might well have been mortal, the judgment appealed stated that on the 7th of August the woman was still alive, and that the wound received by her was healing.

These facts, fully established by the evidence, constitute the crime of frustrated parricide, denned and punished in article 402 in connection with articles 3 and 407 of the Penal Code. The defendant, when aiming and discharging his revolver at his wife's back, performed all the acts which necessarily and ordinarily would produce the violent death of the victim. The fact that she did not die at once or a few days after receiving the wound was due to causes independent of the defendant's will. Upon his part he doubtless fully intended to kill the victim. He made use of a deadly weapon, and in the commission of the offense availed himself of means which directly and specially tended to insure the consummation of the crime without any risk to himself which might arise from an attempt at defense on the part of his victim, who, as she looked back, attracted by the noise of the weapon, received the shot in her back.

The accused, upon being arraigned on the complaint, stated that he had done the act charged, but that he did not regard himself as guilty of a crime. He stated in his defense that the suspicion that his wife was unfaithful to him had made him jealous and that on the night in question he had gone to look for her in the house of one Captain Lucas, knowing that his wife was there at that time. Upon his asking for his wife, Lucas's wife told him that she was not there, but a few moments afterwards the defendant, lying in wait near the house, saw her emerge from it. The answers she gave to his questions and her embarrassed manner led him to the conclusion, in connection with other information in his possession concerning her conduct, that his suspicion was not unfounded. He then took her home, and upon arriving there saw an old woman called Pilar Pineda, the one who had taken his wife to the house of Lucas, in the act of packing up some clothes, which he supposed belonged to his wife. At this, overcome by his jealousy, he fired at his wife with the revolver he was carrying.

Until the contrary is proven the act of wounding his wife in the back must be regarded as voluntary, and therefore intentional, and so the accused himself testifies in his statements as a witness for the defense. The record does not disclose that the act was committed without intent to harm the complainant, who still lives notwithstanding the gravity of the wound received, and her recovery, if not due to chance, must be attributed to the medical attention which she received shortly after the wound. In other words, her recovery was due to causes independent of the will of the aggressor.

The facts in the case fall within the definition of the crime of frustrated parricide, as above stated, owing to the relationship between the complainant and the defendant. This circumstance and the fact that the woman is still living and on the way to recovery make it necessary to classify the crime, not as frustrated homicide or murder, but as frustrated parricide inasmuch as it appears from the record to be fully proven that the defendant performed all the acts the natural tendency of which was to produce the death of his wife. The fact that he availed himself of a deadly weapon, that he discharged it at a distance of three yards, at which range such projectiles have a great penetrating and destructive force, that he aimed the shot at the part of his victim's body in which a wound was most likely to deprive her of life, and that he wounded her in the back without her having received the slightest intimation of the commencement of an aggression, are all details which demonstrate the most complete intention to kill, and if this purpose was not accomplished it was due to facts completely independent of the will of the accused, and wholly foreign to his criminal intent.

In the commission of the crime the concurrence of the mitigating circumstances No. 7 of article 9 of the Code must be considered, to wit, the fact that the accused acted upon the impulse of the passion of jealousy, which doubtless at the time of the commission of the crime had deprived him of reason and judgment. This circumstance is offset in its favorable effect by the concurrence of the circumstance of treachery (*alevosia*), No. 2 of article 10 of the Code. This circumstance in the case of a frustrated parricide is not to be regarded as a specific qualifying circumstance, but only as an ordinary generic circumstance, as the crime in question is undoubtedly graver than that of frustrated murder.

With respect to the adequate penalty, the court, in consideration of the circumstances of the case and of the fact that this crime was evidently due to passion, considers it proper to make use of the authority conferred by article 407 of the Penal Code, imposing upon the accused the penalty inferior by one degree to that of *cadena temporal*, to wit, that of *presidio mayor* in its medium degree.

We are therefore of the opinion that the judgment appealed should be reversed, and the defendant, Ouillermo Yillanueva, condemned to the penalty of eight years and one day of *presidio mayor*, with the accessories of absolute temporary disqualification and subjection to the vigilance of the authorities for a term equal to that of the principal penalty, to run from the expiration of the principal penalty, to the payment to the complainant, Juana Aguinaldo, of an indemnification of 600 Mexican pesos, without subsidiary imprisonment in case of insolvency (as provided by art. 51 of the Code), and to pay the costs of both instances. So ordered.

Cooper, Willard, and Ladd, JJ., concur.

Arellano, C. J., and *Mapa, J.*, dissent.