

3 Phil. 688

[G.R. No. 1603. April 15, 1904]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. FLAVIANO SIMEON,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MCDONOUGH, J.:

The defendant, Flaviano Simeon, was charged with having, on or about April 10, 1903, in the city of Manila, feloniously attempted to assassinate one Bali Kan with a dangerous and deadly weapon, to wit, a bolo; and that he was frustrated in the execution of his purpose by being overpowered by third parties.

He was placed upon trial April 28, 1903; was found guilty, and was sentenced to imprisonment for a term of four years and two months.

The proof in this case, briefly stated, shows that Bali Kan was night watchman at the railroad station in Manila; that his dwelling place was very near that station; that the defendant was seen on several occasions walking near that place with a working bolo in his hand and had been requested by Bali Kan to go away but refused to do so, whereupon Bali Kan pushed the defendant.

On the morning in question, while Bali Kan was walking from the station toward his house, he encountered the defendant who, while about two yards away, raised his bolo as if about to strike or stab Bali Kan with it. The latter shouted for help and ran away, and immediately thereafter a detective of the police department arrested the defendant. No blow was struck; nor is there proof of threats to kill or to do bodily harm.

A crime is frustrated 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. (Art. 3, Penal Code.)

In order to constitute the crime of assassination, it must be proved that the accused committed the crime with treachery; for a price or reward; by means of flood, fire, or poison ; with deliberate premeditation, or with vindictiveness, by deliberately and inhumanely increasing the suffering of the person attacked.

The evidence does not show that any of these essential elements of the crime of assassination existed in this case. There is no proof whatever from which it may be even inferred that the defendant intended to kill Bali Kan, much less to show that he intended to do so with deliberate premeditation.

The crime committed by the defendant is that provided for in article 589 of the Penal Code for threatening an other with weapons, and it is punishable by imprisonment from one to five days or by a fine of from 15 to 125 pesetas.

The judgment of the Court of First Instance is reversed, and judgment is ordered that the defendant be imprisoned for a term of five days, with costs *de officio*.

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