NOTE

ATTEMPTED OR FRUSTRATED HOMICIDE

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While walking down the street, A comes face to face with his arch-enemy, B who was then leaning against a wooden fence. With intent to kill, he whips out a six-inch *balisong* and lunges at B, but instead of burying the knife between B's shoulder blades, the knife hits the railing and becomes imbedded there as B, in a split second ducks the blow.

Would you say that the homicide in this instance was attempted or frustrated? Some may venture an opinion out of sheer conjecture, but homicide in itself is not attempted nor frustrated mainly on the basis of a belief. Rather, the answer must be predicated on some principles more plausible than a mere opinion. A crime is not considered an attempt or a frustration just because a majority believe it to be so; on the contrary, it is such because of some factors that cannot be ignored.

In this regard, one's answer postulates a clear delineation between attempted and frustrated homicide and therefore a presentation of the various rulings which our Supreme and Court of Appeals have made on the matter is of fundamental importance. However, an examination of these decisions will reveal that there hasn't been a uniform pattern of distinction between attempted and frustrated homicide. Hence, to fully grasp the significance of the question, one has to invariably depend on a well-rooted understanding of the series of acts which eventually ripen into a concrete offense. These series of facts is known to every criminal law student as the stages of execution, namely; attempted, frustrated, and consummated.[1] This article is concerned mainly with the first two stages mentioned.

In every crime, criminologists have ascertained the following: First, the internal act or mere intention to commit the crime; secondly, the external acts preparatory to commit the crime; and lastly, the execution of the crime itself.[2] An offense is in reality a complex whole divisible into parts; a series of acts interrelated with one another which consequently produce the felony. The series of acts are divided into preparatory acts and acts of execution. The former is subdivided into internal acts and external

* LL.B., Ateneo de Manila (1959).
[1] Art. 6, Rev. Penal Code.
[2] 1Francisco, The Revised Penal Code 125, 2d Ed. (1954).

acts; and the latter are acts of execution which may either be consummated or unconsummated.[3] Internal acts as the word implies is an inner motivation, an idea, a wish, a hesitation, a purpose or a plan, and these form a series of moral steps to which the term is reduced.[4] These ideas or determinations in the mind of the culprit, no matter how immoral or improper they may be, are not punishable,[5] because being hidden in the mind, the proof of their existence call for voluminous conjectures and inductions which may go beyond what may be rationally just.[6]

Following these internal acts, the offender commences the performance of external acts which reveal the pure desire, the manifest expression of the violator to commit a prohibited act. But even at this point, neither the rights of an individual nor those of society are injured, and so no punishment can be provided.[7] A clear example can be seen under our laws where a person is not punished for a proposal or conspiracy to commit a felony, save in cases where the law expressly so provides.[8] So far the culprit has only had an idea in his mind externalized by some outward expression and which the law still deems not punishable. But from this point on, the offender proceeds to perform the acts of execution.

The acts of execution may or may not be consummated. If the acts are consummated the question ends there, a crime is definitely committed. However, if the acts of execution are unconsummated, would there be any criminal liability? Would the culprit be held responsible even if no crime is in fact consummated? The answer is in the affirmative. At this juncture criminal liability is already incurred and the acts of execution are classified as either an attempt to commit a felony or a frustration thereof.[9]

Article 6 of the Revised Penal Code defines an attempted felony as that which results when the offender commences the commission of a felony directly by *overt acts* and *does not perform all the acts of execution which should produce the felony* by reason of some cause or accident other than this spontaneous desistance. Note that the law states that the offender commences the execution of the crime. When is an offender deemed to have commenced the execution of the crime? If there is an external act and such act has a direct connection with the crime intended to be committed, then we may infer that the offender has commenced the execution of the felony.[10] The provision is clear in that the offender must perform the execution of the offense directly by overt acts. Thus if A induces B to kill C and B refuses, A cannot be held guilty of attempted homicide for

[3] Albert, The Revised Penal Code 39, (1946).
[4] *Ibid.*
[5] 1 Reyes, The Revised Penal Code 56 (1956).
[6] *Op. cit. supra*, note 2, at 126.
[7] *Op. cit. supra*, note 3, at 40.
[8] Art. 8, Rev. Penal Code.
[9] Art. 6, par. 1, Rev. Penal Code.
[10] *Op. cit. supra*, note 5, at 57.

although there was an attempt, there was no physical activity, no overt act directly committed by A.

By overt act is meant some physical activity indicating the intention to commit the crime, more than a mere planning or preparation, which if carried to its complete termination, following its natural course, without being frustrated by external obstacles nor by voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.[11] Hence, it is an outward act in pursuance and in manifestation of a criminal intent or design;[12] an act which manifests a criminal intention and tends toward the accomplishment of the criminal object.[13] If a person for instance buys a gun, or rope, or tools, or even draws the sketch of another's house in preparation for the commission of the offense, would it be right to say that these are overt acts, and that therefore if a person does them he commences the execution of a felony? Not necessarily, because these acts in themselves are so remote as not to suggest the intent to commit the crime.[14] It might, however, be said that these acts are mere external acts which evince the culprit's desire to commit a crime but which *per se* are not punishable.

In an attempted felony, the offender commences to perform the overt acts, but he does not perform the acts of execution which would naturally and necessarily produce the felony, because of causes other than his willful desistance. Therefore, in what does an attempted felony really consist? It mainly consists of the fact that the person merely does an overt act and is about to perform the act of execution which will produce the felony but is interrupted by outside causes. These external factors which interrupt him may be natural causes beyond his control such as wind, rain, or acts of God; or they may even be interruptions resulting from the intervention of third persons unexpected by him.[15] For example A intends to kill B. He aims his gun at B's heart, fires it, but does not hit B because a car passed by. The crime is attempted homicide. The overt act is the aiming and the firing of the gun. The act of execution would be the hitting of B by the bullet which will cause B's death. The external interruption is the unexpected passing of the car. A was prevented from performing the acts of execution because of forces outside of his control. But if in the example A actually hits B yet B does not die because of medical assistance, is the crime an attempt? No, in this case it is a frustrated felony. Thus as shown in the first example if anything yet remained for the offender to do in order to produce the crime, it would be

[11] P. V. Lamahang, 61 Phil. 703, 707 (1935).
[12] U.S. v. Hapt, N.D. III (1942) 47 F. Supp., 836, 839.
[13] 63 C.J., Sec. 9, 815.
[14] *Op. cit. supra*, note 2 at 128.
[15] *Ibid.*

an attempt; if nothing remained for him to perform in order to produce the crime, it is frustrated.[16]

Supposing the offender does not perform the acts of execution to produce the felony, by reason of his own spontaneous, deliberate, and willful desistance, would he still be guilty of an attempt? The answer is clearly in the negative. The law requires that the desistance must not come from his own free will, i.e., that he did not voluntarily refrain from continuing the commission of the felony, in order that he may be declared guilty of an attempt. So if his desistance comes from his own free will, there is no attempt, and the law does not punish him.[17]

There are numerous decisions of the Supreme Court and the Court of Appeals which clearly illustrate the crime of attempted homicide. One of these is the case of a Chinaman who, having a fishing concession told the defendants to cease fishing in the area of his concession. Irritated, the latter threw the Chinaman into the water, and as he did not know how to swim, he made efforts to cling to the boat, but the defendant attempted to loosen the victim's hold by hitting him with the oar. It was the timely intervention of third persons that prevented the defendant from continuing said acts. As the facts show, the defendant performed the overt acts but did not commence the acts of execution by reason of the intervention of third persons.[18]

The fact for instance that the offender, after killing the cousin and brother-in-law of the offended party, aims his revolver at the latter while the latter was fleeing for his life, and fires not only once but successively at the running figure, shows that the offender was determined to kill the offended party. But if because of poor aim or because the intended victim successively dodged the shots, none of the shots found their mark, the defendant is guilty of attempted homicide. Here the assailant performs directly the overt acts of shooting but does not perform the acts of execution i.e., hitting or wounding the victim, which would produce the death, because of causes independent of his will.[19] Again, if a person motivated by revenge thrusts a knife at another who successfully parries the blow but at the same time falls to the ground; and once down the assailant kneels on him to inflict the final blow but is prevented by a neighbor who grabs the weapon from his hand, the crime is an attempt. Having performed the physical act, the culprit was not able to perform the acts of execution to produce the crime due to a cause outside of his will.[20] Note that the offended party did not even suffer a wound or a scratch and the crime is classified as attempted homicide. However, where a group of persons goes to another's house to kill him and he closes his door which the assailants

[16] U.S. v. Eduave, 36 Phil. 209, 211 (1917).
[17] *Op. cit. supra*, note 5, at 60.
[18] U.S. v. Bien, 20 Phil. 354, 357 (1911).
[19] P. v. Kalalo, 59 Phil. 715, 717 (1934).
[20] P. v. Aban (CA) G.R No. L-103412, Nov. 30, 1954.

try to break down while he makes good his escape through the window, the crime in this instance is not attempted homicide because acts performed by the assailants do not even constitute the beginning of the execution of an offense.[21] Couldn't we say that the acts performed by the defendants in this case are not even overt acts as we defined, and that therefore, they are at most only external acts, revealing a desire to commit a crime which is not at all punishable?

Neither can a person be deemed guilty of atempted homicide when he attempts to draw a pistol but is unable to do so, because to constitute attempted homicide, the person must use the firearm and fire the same at the offended party with intent to kill.[22] The same rule applies where a person raises his bolo as if to strike or stab another, who upon seeing such acts runs and shouts for help, and immediately thereafter, a detective appears and arrests the supposed offender. The intent to kill is not evident.[23] Wouldn't the act only amount to a threat? However, where the defendant with a pocket knife inflicts several superficial wounds on the victim and at the same time crying out the words, "Until I can kill you", the crime is attempted homicide because the intent to kill is clear and manifest.[24]

We have just considered the elements which comprise an attempted felony in the light of the provision of the law and the jurisprudence on the matter. From here, let us examine the second stage of execution which is designated as a frustrated felony.

A frustrated felony properly defined, is that offense which results when the offender *performs all the acts of execution which would naturally produce the felony as a consequence* but which, nevertheless, do not produce it by reasons of causes independent of the will of the perpetrator.[25] From the foregoing definition it is clear that in a frustrated felony the offender must perform all the acts of execution which would produce the crime; and this stage is distinguished from an attempt where the offender merely commences the commission of the offense directly by overt acts. But in both cases the offender is stopped by causes independent of his own will.

Applying these principles to the crime of homicide, we find that in order to hold a person guilty of a frustrated homicide, it is essential that the offender has in fact performed the acts which would naturally produce the death of the offended party, but due to some external factors independent of the will of the perpetrator the death does not result. To illustrate: If A with intent to kill, strikes B with a bolo, seriously wounding him in the lungs, however, B is saved from death because of successful surgery, then A is guilty of frustrated homicide. He has in fact performed the act of

[21] U.S. v. Duruelo, 7 Phil. 497,498 (1907).
[22] P. v. Tabago, (CA) 48 O.G. 3419.
[23] U.S. v. Simeon, 3 Phil. 688,689 (1904).
[24] U.S. v. Joven, 44 Phil. 796,801 (1917).
[25] Art. 6, par. 2, REV. PENAL CODE.

execution, i.e., the infliction of wounds which by their nature would produce B's death. The death does not ensue because of the successful operation, which was entirely unforseen by A.

Changing the facts of the case, supposing A with intent to kill strikes B with a bolo but B parries it with a cane, thus not inflicting any wound or if so merely scratching B. is the crime frustrated homicide? Evidently not. The crime is an attempt because A only performed the overt act of striking a blow and was prevented by a cause outside of his will from inflicting a wound serious enough to cause B's death. A, therefore, was not able to perform the acts of executoin contemplated by the law.

Our jurisprudence is filled with rulings exemplifying frustrated homicide. As where an assailant fires his revolver at the offended party hitting him on the upper left side of the body, piercing it from side to side and perforating the lungs, but not producing death due to the adequate and timely interventoin of medical science, the Court held it to be frustrated homicide; the assailant having performed all the acts of execution but did not produce the resulting effect due to a cause outside of his will.[26] The principle is the same when a person attacks the victim on the abdomen with a sharp-edged weapon causing a wound in the peritonial cavity, serious enough to produce death, but was prevented from a second assault by a third person's interference for which reason the victim was saved and survived.[27] Likewise, where a man draws a revolver, a deadly weapon, knowing the consequences of his doing so; points it at the heart of another and freely and intentionally, although overcome by loss of self control pulls the trigger and fires; his intention is clear and he aims to kill; and if the victim does not die, he commits frustrated homicide.[28]

But at one time the Court rendered a decision which seems to have deviated from the line of decisions just cited. In this particular case, the Court held that even if the offended party was lying flat on the ground during the attack and thus in a disadvantageous position while defending himself with a flashlight, the crime committed is frustrated homicide.[29] Doesn't this case seem to fall into the category of a mere attempt, there being no acts of execution performed by the culprit? There was no wound inflicted, no act which would naturally produce the death of the offended party. This point will be more thoroughly discussed when the author attempts to draw a definite demarcation line between attempted and frustrated homicide.

So far we have only seen the elements constituting attempted and frustrated homicide. What in reality is the exact fundamental difference between these two crimes? Is it possible to draw a fixed distinguishing line between these two offenses? Given a set of facts, would one be able to

[26] P. v. David, 60 Phil. 93, 101 (1934).
[27] P. v. Mercado 51 Phil. 99, 101 (1957).
[28] U.S. v. Montenegro, 15 Phil. 1, 4 (1910).
[29] P. v. Nolasco, G.R. Nos. 23112-13, May 14, 1954.

safely assert that the offense is attempted homicide or a frustrated homicide without the danger of just advancing a baseless opinion? The answers to these questions would be much clearer if we consider the aggregate of elements which comprise attempted and frustrated homicide in the light of the jurisprudence interpreting these two offenses.

To begin with, in attempted homicide, the offender does not perform the acts of execution which would produce the crime; while in frustrated homicide the offender has performed all the acts of execution to produce the felony.[30] So if the offender merely commences the commission of the felony directly by overt acts and is prevented from performing the acts of execution, the crime is attempted homicide; on the other hand, if the offender has performed all acts of execution but does not produce the death of the victim, the crime is frustrated homicide.[31] Note that in both offenses the offender is stopped by external forces. It is in the point of time where the outside intervention takes places that the essential difference between these two crimes hinges. Let us refer to these points of time as the objective phase and the subjective phase of the crime.

The subjective phase is that portion of the acts constituting the crime included between the act which begins the commission of the crime and the last act performed by the offender, which with prior acts, should result in the consummated crime. From the time on the phase is already objective. In other words the subjective phase is that period occupied by the acts of the offender over which he has control — that period between the point where he begins and the point where he may still voluntarily desist. And if between these two points the offender is stopped by any reason outside of his voluntary desistance, the subjective phase is not passed, and the crime is an attempt. However, if he was not stopped and he continues until he performs the last act, it is frustrated.[32]

In attempted homicide therefore, the offender never passes the subjective because he is interrupted. This point, as discussed, is that point where he performs the overt acts and is interrupted before he commences the acts of execution. In frustrated homicide, the subjective phase is completely passed. All acts of execution are performed and subjectively, the crime is complete. Nothing interrupted the offender while he was passing through the subjective phase. The crime is not consummated mainly because of causes independent of his will. In other words, he did all that was necessary to produce the crime but the same did not result because of something beyond his control.[33]

Let us clarify the point with an example: A with the intent to kill B, lunges at the latter with a bolo. He raises the weapon and brings it down on B, but his bolo scrapes an overhanging branch and his blow is deflected,

[30] Art. 6, par 2, 3, REV. PENAL CODE.
[31] *Op. cit. supra*, note 5, at 68.
[32] U.S. v. Eduave, *supra* note 16, at 213.
[33] *Ibid.* at 212.

so much, so that he does not hit B but strikes a fence against which B is leaning. The crime is attempted homicide. From the point where A raises his bolo and begins to strike, to the point where he would be about to actually hit B, the phase is subjective. A did not pass the subjective phase for while he could have still desisted voluntarily, i.e., before he was able to hit B. his blow was interrupted by the overhanging branch. Hence he did not inflict any wound, for if he did, assuming the wound to be mortal, he would have passed the subjective phase and from then on the phase would be objective. The crime would then be frustrated. But all A performed were overt acts in this case, not acts of execution.

In the same example, if the branch did not prevent A from hitting B, then A's acts would pass from the subjective phase to the objective phase over which he has no more control. He has performed all acts of execution which would naturally produce the death of B were it not for the interference of outside causes, like medical assistance.

Time and again, the Supreme Court in numerous decisions[34] has laid emphasis on the subjective phase of the act in order to distinguish an attempt from a frustration. But in this line of decisions one will note that the Court has enunciated the doctrine that it is not necessary for the offender to actually perform the acts of execution which will produce the offense, but that it is sufficient that the offender believes that he has committed all the said acts. In consonance with this doctrine a crime is held to be frustrated or attempted depending on whether or not the offender has passed the subjective phase, and the same consists in the full belief of the offender that he has committed all the acts necessary to produce death as a consequence.[35] Viewing this line of decisions in the light of Article 6 of the Revised Penal Code, one can readily notice that these rulings do not consider the element of a frustrated felony which is, that the offender performs all the acts of execution *which would naturally produce the offense*. If a person therefore merely grazes another with a weapon, is such wound sufficient to produce death as a consequence? If we follow this doctrine, isn't it possible for anyone to believe that he has inflicted a mortal wound when in fact he hasn't? Would we therefore hold a man liable for frustrated homicide simply on the basis of his belief, or would we hold him guilty of only an attempt because he believes otherwise? These are the situations which may arise if this doctrine were to find root in this jurisdiction.

In another line of decisions, however, the Supreme Court took into consideration the nature of the wounds inflicted by the offender in the determination of whether or not the crime is attempted or frustrated homicide. Thus where the accused stabs the offended party in the abdomen, pene-

[34] P. v. Sy Pio, G.R. No. L-5848. April 30 1954; U.S. v. Eduave, 36 Phil. 209 (1917); P. v. Dagman, 47 Phil. 768, 771 (1925); P. v. Borinaga 55 Phil. 433, 435 (1930); U.S. v. Lim San, 17 Phil. 273, 276 (1910).
[35] *Ibid.*

trating the liver, and also in the chest;[36] or where the assailant wounded the victim with a sharp-edged weapon causing a serious wound in the peritonial cavity, enough to cause death;[37] where the offender fires a revolver at the offended party hitting him on the upper left side of the body, piercing it from side to side and perforating the lungs;[38] the Court held the defendant of frustrated homicide because he performed all acts of execution which would naturally produce death as its consequence but which nevertheless did not produce it by reason of causes independent from his own will. It is to be gleamed that these acts were considered frustrated homicide because of the infliction of mortal wounds serious enough to cause death, if not properly treated.

The Court of Appeals in the case of *People vs. Somera*,[39] ruled that it is not enough that one merely shoots at another or wounds him thereby, with intent to kill, in order that he may be said to have performed all acts of execution necessary to qualify the crime as frustrated homicide or murder. It must also appear that the wounds inflicted is of such a nature as to produce the felony, that is, the death of the victim as a consequence, but nevertheless do not produce it by reason of causes independent of the will of the perpetrator.

In line with this doctrine, the Supreme Court by implication considered the nature of the wounds inflicted when it held as frustrated homicide an attack by an assailant on another inflicting wounds on the latter which wounds would have caused his death had the weapon not met with an obstacle such as the ribs which prevented its penetrating vital organs like the lungs and the kidney.[40] Again, where the offended party was in his home asleep in which condition serious wounds were inflicted upon him, the crime is frustrated if the victim does not die.[41]

Even in attempted homicide, the Court also gives weight to the seriousness or superficiality or absence of wounds in inflicted. So that in the case of *People vs. Kalalo*[42] where the accused fired successive shots at the fleeing offended party and missed because of poor aim or because of the successful dodging by the intended victim, the crime committed is attempted homicide. The same principle applies if one shoots another and the bullet *merely grazes* the offended party's head, the wound being far from mortal.[43]

The Court of Appeals once held that where the attending physicians could not agree whether the wounds inflicted were serious enough to cause death or not and when the facts show that one of them testified that the wounds

[36] P. v. Honrada, 62 Phil. 112 (1935).
[37] P. v. Mercado, *supra* note 27.
[38] P. v. David, *supra* note 26.
[39] 52 O.G. 3473.
[40] P. v. Reyes, 47 Phil. 635, 638 (1925).
[41] P. v. Pacis, 48 Phil. 190, 193 (1925).
[42] P. v. Kalala, *supra* note 19.
[43] P. v. Somera, *supra* note 39.

were not serious enough to produce death even if not treated, the crime is merely attempted homicide.[44]

One interesting decision of the Supreme Court is that laid down in the case of *People vs. Borinaga*.[45] The facts of the case reveal that the culprit attacked the offended party with a knife while the latter was sitting on a chair, making the offended party fall and escape uninjured. The Court considered the crime as frustrated murder, because of the attending qualifying circumstances. But in its reasoning the Court stated that nothing remained for the defendant to do in order to accomplish his work. The failure to realize crime resulted from a cause independent from the offender's will. But it cannot be denied that the offended party did not even suffer a scratch, so there is no question as to the seriousness of wounds, and yet the Court ruled it as frustrated murder. However, in a strong dessenting opinion, Mr. Justice Villa-Real contended that in order that the crime committed be consummated, it would be necessary that the defendant inflicts a deadly wound upon a vital spot. The acts of execution by the defendant did not produce the death of the offended party, nor could they have produced it because the blow did not even reach the body of the victim. Therefore, there was lacking, the infliction of a deadly wound on a vital spot so that all the acts of execution were not performed. The crime evidently should be attempted murder not frustrated.[46]

This decision however seems to have been superseded by the ruling laid in the case of *People vs. Kalalo* 59 *Phil.* 715 (1934), which requires that in order to constitute the crime of frustrated homicide, it is necessary that a mortal wound be inflicted because without inflicting a deadly wound upon a vital spot, the crime would never be produced as a consequence.

After having seen the two lines of decisions, which of these two would we follow? The first which enunciates the doctrine that a crime is frustrated if the offended party believes he performed all the acts of execution, or the second, which holds that the nature of the wounds should be taken into consideration? It is submitted that the ruling of the Supreme Court which favors the consideration of the nature of the wound inflicted in the determination of these two classes of offenses seems to be the better ruling. And the reason is that this ruling is more in accordance with the letter and spirit of Article 6 of the Revised Penal Code which is the law on the matter. Besides, to subscribe to the other ruling would be to open the doors or the second, which holds that the nature of the wounds should be taken Belief being a mental state, no court can safely deduce inferences, not even from surrounding circumstances because of the danger of going beyond actual reality.

Therefore after determining whether the culprit has in fact performed

[44] P. v. Domingo (CA) G.R. No. 14222-R, April 11, 1956.
[45] 55 Phil. 433, 435 (1930).
[46] *Ibid.* at 437, 438.

mere overt acts or acts of execution so as to distinguish the two offenses, the next point of inquiry would be what is the nature of the wound inflicted? Is the wound serious enough to cause the death of the victim? If it is so, then the crime is frustrated homicide. If the wound is not of a nature as to produce death, then the crime is attempted homicide. This rule is in accordance with the second line of decisions which as was submitted before, seems to be a better ruling. Consequently, no inquiry shall be made as to whether or not the offender believed that he performed all the acts of execution necessary to produce the offense.

It is essential, however, that in attempted or frustrated homicide one must not just limit his inquiry to an investigation of acts performed by the offender or the nature of the wounds inflicted, but the intent to kill must likewise be taken into consideration. Before the accused can be convicted of the crime of attempted or frustrated homicide, the intention to take the life of another must be established.[47] The law in this class of crimes is only concerned with the material results produced by the transgression, measured by the consequential harm done to the victim, unless the perverse intention of taking the victim's life is clearly manifested.[48] Therefore the intent to deprive a person of his life must be manifest from the beginning in an unmistakable manner[49] and in so clear and evident a way as to exclude any doubt regarding the real intent of the aggressor.[50] But when this intent is not necessarily disclosed by the acts performed by the defendant, greater importance should not be given to such acts than that which they in themselves import, nor should the defendant's liability be extended beyond that which is actually involved in the material results of his acts.[51]

The mere act of discharging a firearm, for instance, against another and inflicting wounds on him may be classified as frustrated murder or homicide after establishing the intent to kill, which is made manifest by acts unmistakably tending to attain such result by adequate means from the beginning of its execution.[52] As when the offender, although using a deadly weapon, did not direct the blows to the vital parts of the body, and desisted from attacking again when the victim was lying on the ground, the Supreme Court considered the crime as serious physical injuries merely, and neither attempted nor frustrated homicide because his desistance negatives the idea of intent to kill.[53] The same ruling applies when the offender after inflicting two wounds stops the assault and sits quietly until

[47] P. v. Villanueva, 51 Phil. 488, 491 (1928); U.S. v. Maghirang, 28 Phil. 655, 670 (1914); U.S. v. Barnes, 8 Phil. 59, 60 (1907).
[48] P. v. Tayo (CA) G.R. No. 14171.
[49] U.S. v. Montiel 9 Phil. 162, 167 (1907).
[50] U.S. v. Reyes, 6 Phil. 38, 39 (1906). U.S. v. Trinidad, 4 Phil. 152,153 (1905).
[51] U.S. v. Mendoza, 38 Phil. 691, 693 (1918).
[52] U.S. v. Marasigan. 11 Phil. 27. 30 (1908).
[53] P. v. Quimbo, 51 O.G. 1956.

the arrival of the policeman, it being established that there was no resentment or bitter feeling between the offender and the offended party.[54] In the event that the assault is committed with the back of the cutting edge of the bolo, such act negatives the idea of homicidal intent and precludes the crime as constituting frustrated homicide.[55] Likewise, the conviction of the crime of frustrated homicide should be reversed when it does not appear that it was the intention of the accused to kill the complaining witness at the time when the acts upon which the complaint is based were committed.[56]

In general, intent is gathered from the circumstances surrounding the attack as, for instance, the nature of the wounds and also the words exclaimed by the offender.[57]

In determining whether the crime is frustrated or attempted homicide, we have thus far, weighed the acts of the assailant, the nature of the wounds, and the homicidal intent of the assailant. In addition to these, the Supreme Court includes as points for consideration the following: the character of the weapon used, whether it is deadly or not; the vital parts of the body attacked; the violence of the attack; and the statement of the aggressors of their purpose to kill.[58] And finally in weighing the different factors we must not lose sight of the fact that the victim did not die owing to a chance or accident or reason independent of the criminal act performed.[59]

In resume therefore, to determine whether the crime committed is attempted or frustrated homicide, the question is whether a wound has been inflicted or not. If no wound has been inflicted then the surrounding circumstances of the case should be investigated to establish intent to kill and if such is manifest but the death did not result because of independent causes which prevented its infliction, the crime is attempted homicide.

Should a wound however have been inflicted, one has to inquire as to whether the same is mortal or not. If the wound inflicted is not fatal, one which not cause the death of the offended party, due either to the character of the weapon used, or the part of the body attacked or due to the fact some accident or chance prevented it from being a serious and fatal one, the crime is attempted homicide if the victim does not die. If the wound is fatal, so that death will undoubtedly result, but nevertheless

[54] U.S. v. Malalang, 6 Phil. 339, 340 (1906).
[55] U.S. v. Taguibao, 1 Phil. 16, 17 (1910).
[56] U.S. v. Redion, 5 Phil. 500 (1905).
[57] U.S. v. Mendoza, 38 Phil. 691 (1918); U.S. v. Sanchez, 20 Phil. 427 (1911); U.S. v. Domingo, 18 Phil. 250 (1911); U.S. v. Marasigan, 11 Phil. 27 (1908); U.S. v. Reyes, 6 Phil. 38 (1906); U.S. v. Sabio 2 Phil. 435 (1903); U.S. v. Taguibao, 1 Phil. 16 (1901).
[58] P. v. Dagman, 47 Phil. 768 (1925); U.S. v. Sanchez 20 Phil. 427 (1911) citing decisions of the Supreme Court of Spain of April 17, 1895, Sept. 29, 1881, and December 31, 1890.
[59] U.S. v. Agoncillo, 33 Phil. 243 (1916); U.S. v. Bastas, 5 Phil. 251 (1905); U.S. v Poblete, 10 Phil. 578 (1908); U.S. v. Domingo, 18 Phil. 250 (1911).

the victim does not die by reason of causes independent of the will of the perpetrator, then the crime is frustrated homicide.

In view of the foregoing, let us answer the problem presented at the beginning of this article. After having understood and discerned the various principles governing attempted and frustrated homicide, at first blush one can say that the case is one of attempted homicide, not frustrated. How did we deduce that? Was it by chance or guesswork? Certainly not. By proceeding in the manner described before, the question asked is: Was a wound inflicted upon the offended party? The answer is no, there was none. Was there an overt act? Yes, there was — the act of striking at the intended victim. Did A wound B? No, because his blow was stymied by the wooden railing, a cause unforeseen entirely and totally beyond A's control. Evidently, there is no necessity of inquiring whether the wound is serious or not inasmuch as no wound, not even a scratch was inflicted. However, A's act is punishable because it is not a mere external act which reveals a desire to kill, but rather, it is an overt act which begins the commission of the felony. We cannot consider that act as an act of execution because hitting the wooden railing can in no way produce B's death. Hence, As is guilty of attempted homicide.

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