

Morelia, Michoacán, on August 12th, 2004 two thousand four.

After having heard and examined the facts of file 358/2004, in connection to the appeal filed by the defendant and her counsel, against the final judgment, issued in the criminal process 257/2003, against Obdulia Martínez Morales, for the crime of attempted filicide, committed against her male newborn child.

Pursuant to article 156, section II, of the code for criminal procedures for the state, the defendant after issuing her initial statement, stated that her name is Obdulia Martínez Morales, does not have an alias, originally from Felipe Tzintzun, in the municipality of Santa Clara del Cobre, Michoacán, 20 years old of age, single, and states that she does not belong to any specific ethnic indigenous group, having her domicile in Felipe Tzintzun.

FACTUAL FINIDNGS

FIRST. At the lower court for criminal matters on the judicial district of Pátzcuaro, Michoacán, the criminal investigation was opened by the public prosecutor against the defendant, for the crime of attempted filicide, against her male newborn child; after rendering her initial statement, a formal order for her imprisonment was issued within the legal term; and after following the corresponding legal procedures a final judgment was issued, on March 30, 2004, which included the following resolutions:

“... **FIRST.-** This court is competent to resolve the criminal process in a definite manner.- **SECOND.-** The elements of the **ATTEMPTED FILICIDE** against her **MALE NEWBORN CHILD** were established, as well as the full responsibility of the accused **OBDIULIA MARTINEZ MORALES** in the commission of the same, therefore.- **THIRD.-** The defendant **OBDULIA MARTINEZ MORALES** is hereby sentenced to **4 FOUR YEARS IN PRISON**, as she is guilty for the commission of said criminal offense.- **FOURTH.-** The defendant is hereby exempt for the payment of compensation for damages for the reasons stated in the relevant resolution.- **FIFTH.-** Apply the corresponding punishment to the convicted party to avoid recidivism.- **SIXTH.- NOTIFY IN PERSON...**”.

SECOND. Not conforming to the Court’s decision, the defendant and her counsel filed an appeal before this court of appeals with suspensory effects.

THIRD. This first criminal chamber of the Supreme Court of Justice of the State, undertook the study and analysis of the appeal filed in April 23, 2004; notifying the parties in due time; stating the date and time for the final hearing, which was carried out at 10:00 ten hours on May 14th of the current year; with the attendance of Messrs. María Cristina Silva Cruz, agent of the prosecutor’s office and Arturo Quintana Zetina, private counsel of the defendant; the counsel filed an assignment of errors on behalf of the defendant which is attached to this file, to be considered in the corresponding procedural stage; and having heard and examined the facts to declare a judgment, we hereby issue the following:

WHEREAS

FIRST. This chamber is competent to analyze and issue a final resolution regarding this appeal, pursuant to the second paragraph of article 17, of the Mexican Constitution; articles 67, 68, 70, second paragraph and 77, section I, subsection b), of the political constitution for the state of Michoacán; 38, section IV, 53, 449, 453 of the code of criminal procedures for the State, and 21, section I, of the organic law of the State Judicial System.

SECOND. As stated in the appealed judgment, the constituent elements of the crime of attempted filicide were deemed to be proven, against the male newborn child, as well as the legal and criminal liability by Obdulia Martínez Morales in the commission of the act.

THIRD. The grievances expressed by the defendant's private counsel contained in the criminal file (pp. 20-26, and those expressed on the final hearing) are deemed as reproduced hereto, in observance of the rule that procedure must economize time and cost and to obviate futile repetition.

FOURTH. The assignment of errors expressed by the defendant's counsel, regarding the constituent elements of the crime, even if procedural deficiencies are cured, is unfounded.

As a matter of fact, as stated in the appealed judgment, the constitutive elements of the crime of attempted filicide against her male newborn child, of which the defendant has been accused, set forth in article 283 bis of the state criminal code, have been proven and established as part of the judicial proceeding records.

The above is true, being that evidence contained in the proceeding records (described in the second section above), which are deemed as reproduced hereto for the sake of brevity, which was the base to establish such elements, demonstrates that:

- Approximately at 12:00 hours on October 24, 2003 two thousand three, the defendant gave birth to the victim, inside one of the public restrooms of the municipal headquarters of Santa Clara del Cobre, Michoacán;
- Following (as one may appreciate from the judicial proceeding records issued by state police officers, as well as from the psychological examination, signed by psychologist Susana López Medina), the woman placed toilet paper on the newborn child's mouth cavity and nostrils, to prevent others from hearing the newborn child cry, cutting his umbilical cord with her left thumbnail, and placing the baby in the garbage can.
- After the defendant left the restroom, Mr. Alfredo Tinoco Cázares, son of Juana Cázares Ornelas (the person in charge of cleaning), entered the restroom to help his mother do the cleaning, and came across a bag with toilet paper moving inside the garbage can.

- He immediately informed his mother, as well as María de Jesús Cervantes Farías (a social worker of DIF¹) and Olga Vejar Rodríguez (the president of DIF), who immediately showed up at the scene and observed that there was a newborn child inside the garbage bag, with his respiratory cavities – forcibly – covered with toilet paper.

In such manner, the aforementioned facts constitute the first and second elements of the offense attributed to the defendant, consisting of: a) the intent to end the life – in a willful manner – of a blood-related descendant (legitimate or natural), with knowledge of said relationship, and b) the commission of the acts that constitute the elements of the offense, in order to materialize such intent.

The above is true, as it has been proven that the defendant demonstrated her will to end the life of her newborn son, after giving birth to him (inside the public restrooms of the municipality of Santa Clara del Cobre Michoacán), through the commission of acts that constitute the elements of the offense by covering his mouth and nostrils with toilet paper and abandoning him in the garbage can.

Furthermore, the last element of the charged criminal offense, that requires that the result intended is not achieved for causes outside of the defendants will, is also established, since the desired outcome was not fulfilled, precisely due to such circumstance, consisting of the timely assistance provided by María de Jesús Cervantes Farías and Olga Vejar Rodríguez, who removed the toilet paper from the newborn's airways.

However, even though the defendant admits in her preliminary statement to have left her newborn baby in the wastebasket where he was found, and, at the same time, she also expressed that she did not want to leave him, or kill him, and only left him there because she was “terrified and out of fear of her father kicking her out of the house”, and that, as soon as she arrived to her house, she told her sister Verónica Martínez Morales and her sister-in-law Erika Cázares Oros where she had placed the baby for them to go and get him back, but immediately afterwards, her father asked them to accompany him to Turian, which prevented them for being able to go and retrieve the baby, which statement was later confirmed by both witnesses, in similar terms.

Notwithstanding the foregoing, the intent of the defendant to commit the offense is proven, precisely by the commission of actions suitable for the achievement of the same, such as covering the newborn baby's mouth and nose with toilet paper.

The above is not undermined by the fact that the defendant told the state police officers (pp. 45-46), as well as psychologist Susana López Medina, that the reason why she covered the newborn baby's airways was to prevent others from hearing him cry, being that, even without the defendant expressly recognizing her intention to end the life of her son; it is worth mentioning that leaving him (moments right after birth) abandoned at the wastebasket at a public bathroom, in the conditions noted above (blocking the baby's airways with toilet paper), at least must have presented to the defendant as a plausible scenario resulting in the death of the baby (eventual willful misconduct).

¹ Translator's note: Desarrollo Integral de la Familia or Integral Family Development

Furthermore, the report issued on December 2nd, 2003, by the physician M.D. Agustín Andaya Espino, concluding that the newborn baby could have involuntarily performed reflex acts of search, suction and swallowing that led him to absorb and suck the toilet paper inside the wastebasket, does not suffice for the purposes intended by the defendant's counsel.

The above is the case, for the same reasons set forth by the judge to dismiss such argument.

In this manner, as set forth in the contested final judgment, judicial proceeding records contain demonstrative evidence of the constituent elements of the offense of attempted filicide committed against the defendant's male newborn baby, attributed to the defendant.

As a matter of fact, it is stated that the conduct displayed by the defendant (intentionality to terminate the life of her newborn baby, with full knowledge of their relationship, through the commission of the actions suitable for such purpose – as described above), is typical, as it is foreseen and falls within the legal description provided in article 283 bis, with regard to article 11 of the state criminal code.

Also, it is demonstrated that the behavior displayed by the defendant is against the law, since it endangered the legal right that the norm is designed to protect (that is, life), without—in addition—sufficiently demonstrative any justification.

For the above reasons, the grievances expressed by the defendant's private counsel are lacking legal grounds and, therefore, this aspect of the appealed resolution is hereby confirmed.

FIFTH. Now therefore, the assignment of errors expressed by the defendant's counsel, regarding defendant's culpability, after curing its procedural deficiencies, are sustained, by reason that the offense of attempted filicide as evidenced in judicial proceeding records cannot be fully criminally attributable to the defendant Obdulia Martínez Morales due to the following considerations:

- a. Actually, pursuant to the factual elements contained in the summary, it is justified that the defendant, in terms of article 15 of the state criminal code, is criminally liable; this means that at the moment of the commission of the offense stated in the judicial proceeding records, the defendant was capable of knowing that her actions were unlawful and of acting with self-determination based on such knowledge, without the defendant providing convincing elements to challenge the foregoing assumption;
- b. In addition, from the aforementioned means of evidence, no circumstance is observed that allows one to conclude that that the defendant lacked *ex ante* or at the moment of the commission of the offense her aptitudes necessary to know the unlawfulness of her behavior and conform to what the norm requires, that in the case at hand would be to refrain from attempting to kill her son;

Notwithstanding the foregoing, on facts, the exculpatory grounds in favor of the defendant, set forth in article 12, section X of the state criminal code,² are present and have been established since her behavior was compelled, in part, by the conditions prior to the illicit act, resulting from her social background and, in another part, from the specific circumstances in which the events presented themselves, as well as the specific personal circumstances of the defendant, for the following reasons:

- a. Regarding the first: a) initially, the gestation of the victim and pregnancy of the defendant, is a result, as stated in her preliminary statement, of a violent sexual encounter, a situation corroborated by the psychological and socioeconomic analysis performed on the defendant (pp. 66-68 and 70-71), and b) this circumstance, in addition to her socio-cultural and economic background, conditioned the defendant to hide her pregnancy for approximately eight months, without anyone from her family noticing such a generally obvious situation, as a result of the newborn baby's father's threats that "if she said anything, he would kill either her or her mother"; and also, fundamentally, her fear of getting herself kicked-out (expelled) of her house;
- b. Meanwhile, regarding specific time-space circumstances in which the facts occurred: a) in consideration of the subhuman conditions to give birth to a human being, in the place where it was done (public restrooms in Santa Clara del Cobre, Michoacán), without medical or hospital assistance required in these type of situations, up to the point of cutting the umbilical cord of the newborn with the left thumbnail;
- c. Finally, regarding specific personal circumstances of the defendant: a) due to the fact that, notwithstanding that the defendant declares that she does not belong to any specific ethnic-indigenous group, it is an open and well-known fact that, being from her place of origin (Felipe Tzinzun, municipality of Santa Clara del Cobre, Michoacán) means that she belongs to the indigenous Purépecha community, and b) due to the fact that she does not know how to read or write.

In this context, one must conclude that, in kind, the circumstance that would exonerate the defendant from criminal liability, set forth in article 12 section X of the state criminal code, is established in favor of the defendant Obdulia Martínez Morales, and, therefore, in the particular conditions set forth in procedural records, rationally, one cannot demand a different conduct than the one displayed.

Therefore, the final judgment appealed on March 30, 2004, issued by the judge of the lower court for criminal matters in the judicial district of Pátzcuaro, Michoacán, on the criminal process 257/2003, against Obdulia Martínez Morales, for the commission of the offense of attempted filicide, against a newborn child; for now, pursuant to articles 359, section IX and 363, second paragraph, of the state criminal procedure code, is hereby revoked, and the nonsuit of the cause, with exculpatory effects and *res judicata* is resolved, ordering the immediate release of the defendant, except if there were any additional legal grounds for her detention, in which case, please issue

² Translator's note: "X. To act under duress or threat of serious harm, actual or imminent, not caused by the agent and whether or not caused by the action of a third party where a different behavior could not be reasonably required;"

corresponding communication via telegram, addressed to the director of the detention facility in the city of Pátzcuaro, Michoacán, Michoacán, where the defendant is currently held in custody.

SIXTH. On the other hand, record shows that, on official communication 2908, dated October 24 twenty-four 2003 two thousand and three, an agent from the public prosecutor's office (p. 9), left the newborn child of the defendant under the care of the delegate of the family development center in the city of Pátzcuaro, Michoacán. Please, remit a true copy of this resolution to the Under-aged and Family Protection Agency, so that, acting in such capacity, it may enact all family integration and prevention measures it deems necessary.

For all the above stated, the appeal is hereby resolved pursuant to the following:

RESOLUTIONS

FIRST. This court is competent to analyze and resolve this appeal, in terms of the first section above.

SECOND. Even if procedural deficiencies are cured, the grievances expressed by the defense are inadmissible, with respect to the constituent elements of the offense, as set forth in the fourth section above.

THIRD. After procedural deficiencies are cured, the grievances expressed by the defense, regarding criminal liability are sustained, in terms of the fifth section above.

FOURTH. In consequence, final judgment appealed on March 30 thirty 2004 two thousand and four, issued by the judge of the lower court for criminal matters in the judicial district of Pátzcuaro, Michoacán, as part of the criminal process 257/2003, against Obdulia Martínez Morales, for the commission of the offense of attempted filicide, against a newborn child, is hereby modified; for now, pursuant to articles 359, section IX and 363, second paragraph, of the state criminal procedure code, the dismissal and nonsuit with cause, with effects of absolute judgment and *res judicata* is resolved, ordering the immediate release of the defendant, except if there were to be any additional legal grounds for her detention, in which case, please issue corresponding communication via telegram, addressed to the director of the detention facility in the city of Pátzcuaro, Michoacán, Michoacán, where the defendant is currently held in custody.

FIFTH. Pursuant to the sixth section above, please remit a true copy of this resolution to the Under-aged and Family Protection Agency, so that, acting in such capacity, it may enact all family integration and prevention measures it deems necessary.

SIXTH. Please notify this resolution to the parties hereto; make corresponding entries on the records of this chamber and with a true copy of this resolution, return this file to the court of origin and, file the same.

The foregoing is resolved and signed by Alejandro González Gómez, judge in the First criminal chamber of the Supreme Court of Justice of the State, who acts together with court clerk Guadalupe Rodríguez Magallón. I hereby certify.

Listed in the abovementioned date

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