

95 Phil. 453

[ G.R. No. L-6327. July 29, 1954 ]

**BENJAMIN BUYCO, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND COURT OF APPEALS, RESPONDENTS.**

**D E C I S I O N**

**CONCEPCION, J.:**

Petitioner, Benjamin Buyco, seeks a review, by certiorari, of a decision of the Court of Appeals affirming that of the Court of First Instance of Iloilo, convicting him of the crime of homicide and sentencing him to an indeterminate penalty ranging from 8 years and 1 day of *prision mayor* to 14 years, 8 months and 1 day of *reclusion temporal*, with the accessory penalties provided by law, to indemnify the heirs of Luis Gonzales, deceased, in the sum of four thousand (P4,000) pesos, without subsidiary imprisonment in case of insolvency, and to pay the costs.

Petitioner contends that:

I

“The Court of Appeals erred in holding that it was necessary for herein petitioner to admit or to have admitted having taken part in the killing of the deceased Luis Gonzales in order to be entitled to the benefits of the amnesty proclamation, and in refusing to consider and determine whether under the facts of the case, as proven by herein petitioner, the latter was entitled to the benefits thereof, because the Court of First Instance of Iloilo and the Court of Appeals disregarded the more recent doctrine laid down by this

Honorable Supreme Court.

II

“The Court of Appeals further erred in not applying the doctrine laid down by this Honorable Supreme Court in the cases of *People vs. Loreto Barrioquinto et al.*, G. R. Nos. L-2011 and L-2267, promulgated on July 30, 1951, wherein it is held that the accused need not openly and expressly admit having committed the act imputed to said accused, and in not holding that in spite of the fact that herein petitioner denied the responsibility of having committed the criminal act did not preclude the application of the amnesty proclamation to him, if and when the evidence showed that herein petitioner was included within its terms, because said petitioner committed the act in support of the resistance government.

III

The respondent Court of Appeals furthermore erred in holding that said petitioner was ‘in a maze in his desire to be forgiven by the courts of justice by alleging now what he learned from his erroneous omission before the tenth amnesty commission/ and that said respondent court of appeals ‘cannot countenance the tactical move of the accused, that is, by switching to another avenue which he learned from his error.’

IV

The respondent Court of Appeals finally erred in not granting to herein petitioner the benefits of the amnesty proclamation by permitting and allowing him to present evidence before the tenth amnesty commission to prove the collaboration activities of the deceased, so that said commission could decide whether or not herein petitioner was entitled to the benefits of said proclamation, in spite

of the fact that herein petitioner did not admit having taken part in the actual killing of the deceased, for, as pointed out in the above mentioned cases decided by this Honorable Supreme Court, it was not necessary for accused petitioner to do so, and even where ALIBI was the defense of the accused, the latter was permitted to invoke and was granted the benefits of said amnesty proclamation.”

On February 10, 1949, petitioner was charged with murder in the Court of First Instance of Iloilo. It was alleged in the information:

“That on or about the 12th day of July, 1942, in the municipality of Anilao, province of Iloilo, Philippines, and within the jurisdiction of this Court, the said accused, confederating and working together with Jose Buenavista, Jose Ledesma and Emiliano Cabangal who are now all dead, Benjamin Buyco being armed with a revolver and his confederates with daggers and canes (baji), with treachery, evident premeditation and abuse of superior strength, did then and there willfully, unlawfully and feloniously shoot with their revolver, stab with their daggers and strike with their canes one Luis Gonzales, hitting and wounding the latter in the different parts of his body, and as a result of his bullet, dagger and cane wounds said Luis Gonzales died instantaneously.”

On motion of the petitioner, who claimed to be entitled to the benefits of Proclamation No. 8 of the President of the Philippines, dated September 7, 1946, “granting amnesty to all persons who committed acts penalized under the Revised Penal Code in furtherance of the resistance to the enemy,” said court referred the case to the Tenth Amnesty Commission, which had jurisdiction over the place in which the crime had been allegedly committed. Inasmuch as, prior thereto, the court of first instance had already begun to receive the evidence in said criminal case, the record thereof was, on March 4, 1950, returned thereto by said amnesty commission, with the conformity of the parties, for completion of said evidence. After accomplishing this task, the court of first instance, upon the request of herein petitioner,

forwarded said record to the amnesty commission for determination of petitioner's claim to the benefits of said Proclamation No. 8. By an order dated July 3, 1951, the amnesty commission rejected said claim and again returned the record, for judgment on the merits, to the court of first instance, which, subsequently, rendered the decision of conviction already adverted to.

In an effort to establish his alleged innocence and obtain an acquittal, petitioner disclaimed any participation whatsoever in the killing of Luis Gonzales, and testified that he did not go to the scene thereof until sometime after the occurrence; that, as Deputy Governor of Iloilo for the resistance government therein, he had done nothing except to order that Luis Gonzales, who had been reported engaged in some pro-Japanese activities, be brought before him for investigation; and that he merely learned, thereafter, that Gonzales had been killed by persons employed as provincial guards under the resistance movement. Under this version, if true, it would appear that petitioner had committed no crime whatsoever, and, hence, there would be no room, either for his conviction or for the application of the provisions of the aforementioned amnesty proclamation. Unfortunately, however, appellant's testimony merited no credence from either the Court of Appeals or the court of first instance or the Tenth Amnesty Commission. What is more, said courts accepted the theory of the prosecution, which, in the language of the decision of said appellate court, was as follows:

“\* \* \* on July 12, 1942, and prior to that date, a cockpit had been operated in *sitio* Loawan, *barrio* of San Carlos, Anilao, Iloilo. Among the several persons present in the cockpit on said date were accused Benjamin Buyco and Luis Gonzales, now deceased. At about 3 o'clock on the afternoon of July 12, two whistles alarms were heard. A commotion among the people then ensued. Later on, some provincial guards (Emergency Provincial Guards) armed with firearms and canes approached Luis Gonzales. On seeing this, he retreated. The accused, who was armed with a revolver, was with the provincial guards. Moments later, Jose Buenavista, one of the

provincial guards, hit Luis Gonzales on the left shoulder with a cane. The provincial guards then surrounded Luis Gonzales who said, "are you going to kill me?" Upon hearing this, the accused directed his men to move away. Immediately then, Benjamin Buyco drew his revolver and shot Luis Gonzales who was not far from him, hitting his left breast. The bullet entered into his breast and found its way out thru the back, causing Gonzales to fall on the ground, with face downward He died instantly. Not yet contented, some provincial guards kicked the deceased and committed other abuses upon him. The people in the cockpit went away when the accused instructed the provincial guards to pick up those from Banate. On the same afternoon, the deceased was buried in the municipal cemetery of Anilao. The following day, the cadaver of Luis Gonzales was exhumed and after having been autopsied on July 14, 1942, by Dr. Nemesio Badilla whose findings are stated in Exhibit 'A', it was transferred to the catholic cemetery of Banate for internment."

Commenting on appellant's alleged right to the benefits of said amnesty proclamation, the Court of Appeals had the following to say:

"Another question with which we are confronted is whether or not we can extend to the accused the benefits of the amnesty proclamation. The purpose of the amnesty proclamation is undoubtedly to free guerrillas from criminal liability in "certain crimes committed under certain conditions. And wherever there is any doubt as to whether or not a guerrilla had committed a crime in furtherance of his activity in the resistance movement, such doubt should be resolved in his favor. Indeed, such, provision is wise and laudable, for if there is any body who merits amnesty from the sovereign, that would be the true guerrilla who heroically battled the enemies under tremendous odds. However, *in the instant case the accused has failed to convince us that he killed Luis Gonzales because the latter was an enemy collaborator. The accused vehemently denied* that he was the author of the death of Luis Gonzales, and for that reason, the Tenth Amnesty Commission had correctly ruled that it is rank inconsistency on the part of the appellant to justify an act, or

seek forgiveness for something which according to his own defense, he had not committed. As a matter of fact, *we really doubt whether the deceased Luis Gonzales was in his lifetime an enemy collaborator. The accused himself, when questioned in 1947 by N.B.I. Agents Nos. 5 and 9 regarding the death of said Luis Gonzales, stated under oath that he had not received any report that he was a fifth columnist or that he was collaborating with the Japanese (Exhibit 'B').*" (Italics ours.)

In other words, the Court of Appeals did not believe the evidence for the defense to the effect that Luis Gonzales had collaborated with the enemy and that his death was due to his activities as such or otherwise connected with the resistance Movement. Considering that the findings of the Court of Appeals on the credibility of testimonial evidence are not subject to our review, on appeal by certiorari, we cannot hold that said court erred in denying to petitioner the benefits of the amnesty proclamation.

It is next urged that the inconsistency in the stand taken by petitioner herein does not warrant the conclusion drawn therefrom by the Court of Appeals and that the latter should have, at least, remanded the case to the court of first instance so that he could prove that Luis Gonzales was killed under the conditions contemplated in said proclamation. In support of this contention, petitioner cites our decision in the cases of *People vs. Barrioquinto* (G. R. Nos. L-2011 and L-2267, promulgated June 30, 1951). There is no merit in petitioner's pretense. To begin with, the contradiction in his defenses (alibi and justification or exemption from liability) was merely one of the factors that led the Court of Appeals to find that petitioner's testimony cannot be relied upon, a finding which, as already pointed out, is conclusive to us.

Secondly, the *Barrioquinto* cases involved two defendants, namely, Loreto Barrioquinto and Norberto Jimenez. The latter was tried before the issuance of Amnesty Proclamation No. 8. When, *subsequently* thereto, a judgment of conviction was rendered against him, Jimenez and Barrioquinto, who, meanwhile, had been apprehended, requested the

corresponding amnesty commission to extend to them the benefits of said amnesty proclamation. This request was turned down by the amnesty commission, mainly upon the ground that both defendants had denied their guilt. When said commission returned the record to the court of first instance, Jimenez moved for a new trial and for an opportunity to prove that the offense charged had been perpetrated in furtherance of the resistance movement. Both requests having been denied, Jimenez appealed, and so did Barrioquinto, who, after due trial, had, also, been convicted.

Referring to the appeal taken by Jimenez, we held that the *alibi* set up by him *before* the date of the amnesty Proclamation, should not bar the opportunity he had sought *thereafter*, to prove that his case came within the purview of said proclamation, its existence being unknown when he was tried. Consequently, the record was remanded to the lower court for a new trial, in order to afford him a chance to establish his alleged right to the amnesty. As regards Barrioquinto, we found that the evidence of record satisfactorily showed that he had committed the crime in furtherance of the resistance movement, and, accordingly, the decision appealed from was reversed and Barrioquinto was exonerated. In disposing of said cases, we declared that:

“\* \* \* to enjoy the benefits of the above amnesty, the accused need not openly and expressly admit having committed the deed imputed to them, and the fact they at first denied Responsibility or denied having committed the criminal act, does not prevent the application of the amnesty to them, *if and when the evidence shows they are included within its terms*, because they did the act in support of guerrilla warfare.” (Italics supplied.)

In the case at bar, the Tenth Amnesty Commission, the court of first instance and the Court of Appeals found, in effect, that the evidence did not suffice to show that appellant had acted in the manner contemplated in the amnesty proclamation. Moreover, unlike the Barrioquinto cases, which were appealed *directly* to this

Court, which, accordingly, had authority to pass upon the validity of the findings of fact of the court of first instance and of its conclusions on the veracity of the witnesses, the case at bar is before us on appeal *by certiorari* from a decision of the Court of Appeals, the findings and conclusions of which, on the aforementioned subjects, are not subject to our review, except in cases of grave abuse of discretion, which has not. been shown to exist. Again, petitioner herein closed his evidence in the court of first instance, long *after* he had invoked the benefits of the proclamation. In fact, the record had already been referred to the amnesty commission, which, however, returned it to the court of first instance for completion of the evidence—the introduction of which had already begun therein—without prejudice to the right of petitioner to request, as he did, upon the conclusion of the trial, that the matter be referred once more to said commission for decision on his alleged right to the amnesty. In other words, petitioner has already had ample opportunity to prove, and did try to establish, that the crime charged was perpetrated in pursuance of the resistance movement, but he has not made good use of this opportunity. It is obvious, therefore, that our decision in the Barrioquinto cases does not militate in favor of petitioner’s contention. It is so ordered.

Wherefore, the decision of the Court of Appeals is hereby affirmed, with costs against the herein petitioner.

*Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.*