

96 Phil. 566

[G.R. No. L-4445. February 28, 1955]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MANUEL BERONILLA, FILIPINO VELASCO, POLICARPO PACULDO, AND JACINTO ADRIATICO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

REYES, J.B.L., J.:

This is an appeal by accused Manuel Beronilla, Policarpo Paculdo, Filipino Velasco, and Jacinto Adriatico from the judgment of the Court of First Instance of Abra (Criminal Case No. 70) convicting them of murder for the execution of Arsenio Borjal in the evening of April 18, 1945, in the town of La Paz, Province of Abra.

Arsenio Borjal was the elected mayor of La Paz, Abra, at the outbreak of war, and continued to serve as Mayor during the Japanese occupation, until March 10, 1943, when he moved to Bangued because of an attempt upon his life by unknown persons. On December 18, 1944, appellant Manuel Beronilla was appointed Military Mayor of La Paz by Lt Col. R. H. Arnold, regimental commander of the 15th Infantry, Philippine Army, operating as a guerrilla unit in the province of Abra. Simultaneously with his appointment as Military Mayor, Beronilla received copy of a memorandum issued By Lt. Col. Arnold to all Military Mayors in Northern Luzon, authorizing them "to appoint a jury of 12 bolomen to try persons accused of treason, espionage, or the aiding and abetting (of) the enemy" (Exhibit 9). He also received from the Headquarters of the 15th Infantry a list of all puppet government officials of the province of Abra (which included Arsenio Borjal, puppet mayor of La Paz), with a memorandum instructing all Military Mayors to investigate said persons and gather against them complaints from people of the municipality for collaboration with the enemy "(Exhibit 12-a).

Sometime in March, 1945, while the operations for the liberation of the province of Abra were in progress, Arsenio Borjal returned to La Paz with his family in order to escape the bombing of Bangued. Beronilla, pursuant to his instructions, placed Borjal under custody and asked the residents of La Paz to file complaints against him. In no time, charges of espionage, aiding the enemy, and abuse of authority were filed against Borjal; a 12-man jury was appointed by Beronilla, composed of Jesus Labuguen as chairman, and Benjamin Adriatico, Andres Afos, Juanito Casal, Santiago Casal, Benjamin Abella, Servillano Afos, Mariano Ajel, Felimon Labuguen, Felix Murphy, Pedro Turqueza, and Delfin Labuguen as members; while Felix Alverne and Juan Balmaceda were named prosecutors, Policarpo Paculdo as clerk of the jury, and Lino Inovermo as counsel for the accused. Later, Atty. Jovito Barreras voluntarily appeared and served as counsel for Borjal. Sgt. Esteban Cabanos observed the proceedings for several days upon instructions of Headquarters, 15th Infantry. The trial lasted 19 days up to April 10, 1945; the jury found Borjal guilty on all counts and imposed upon him the death penalty (Exhibits M to M-2). Pursuant to instructions from his superiors. Mayor Beronilla forwarded the records of the case to the Headquarters of the 15th Infantry for review. Said records were returned by Lt. Col. Arnold to Beronilla on April 18, 1945 with the following instructions:

“Headquarters 3rd Military District
15th Infantry,
USAFIP
In the Field

16 April 1945

Msg. No. 337

Subject: Arsenio Borjal, Charges Against
To: Military Mayor of La Paz,
Abra.

1. Returned' herewith are the papers on the case of Arsenio Borjal.
2. This is a matter best handled by your government and whatever disposition you make of the case is hereby approved.

(Sgd.) R. H. Arnold
Lieut.-Colonel, 15th Inf.,
PA
Commanding

Received April 18, 1945, 10:35 a.m.

(Sgd.) Manuel Beronilla
Military Mayor, La Paz, Abra

(Exhibits 8, 8-a)

and on the night of the same day, April 18, 1945, Beronilla ordered the execution of Borjal. Jacinto Adriatico acted as executioner and Antonio Palope as grave digger. Father Luding of the Roman Catholic Church was asked to administer the last confession to the prisoner, while Father Filipino Velasco of the Aglipayan Church performed the last rites over Borjal's remains. Immediately after the execution, Beronilla reported the matter to Col. Arnold who, in reply to Beronilla's report, sent him the following message:

“Headquarters 3rd Military District
15 Infantry, USAPIP
NL
In the Field

22 April 1945

Msg. No. 398

Subject: Report and information Re Borjal case

To:

Military Mayor Beronilla

1. Received your letter dated 18 April 1945, subject, above.
2. My request that you withhold action in this case was only dictated because of a query from Higher Headquarters regarding same. Actually, I believe there was no doubt as to the treasonable acts of the accused Arsenio Borjal and I know

that your trial was absolutely impartial and fair. Consequently, I can only compliment you for your impartial but independent way of handling the whole case.

Best regards,
(Sgd.) R. H. Arnold
*Lieut.-Colonel, 15th
Infantry, PA
Commanding*

Received April 26, 1945 7:00 a.m.

(Sgd.) Manuel Beronilla
Military Mayor, La Paz, Abra

(Exhibit 21, 21-a)

Two years thereafter, Manuel Beronilla as military mayor, Policarpo Paeuldo as Clerk of the jury, Felix Alverne and Juan Balmaceda as prosecutors, Jesus Labuguen, Delfin Labuguen, Filemon Labuguen, Servillano Afos, Andres Afos, Benjamin Adriatico, Juanito Casel, Santiago Casel, Mariano Ajel, Felix Murphy, Benjamin Abella, and Pedro Turqueza as members of the jury, Jacinto Adriatico as executioner, Severo Afos as grave digger, and Father Filipino Velasco as an alleged conspirator, were indicted in the Court of First Instance of Abra for murder, for allegedly conspiring and confederating in the execution of Arsenio Borjal. Soon thereafter, the late President Manuel A. Roxas issued Executive Proclamation No. 8, granting amnesty to all persons who committed acts penalized under the Revised Penal Code in furtherance of the resistance to the enemy against persons aiding in the war efforts of the enemy. Defendant Jesus Labuguen, then a master sergeant in the Philippine Army, applied for and was granted amnesty by the Amnesty Commission, Armed Forces of the Philippines (Records, pp. 618-20). The rest of the defendants filed their application for amnesty with the Second Guerrilla Amnesty Commission, who denied their application on the ground that the crime had been inspired by purely personal motives, and remanded the case to the Court of First Instance of Abra for trial on the merits.

Upon motion of defense counsel, the case against defendant Jesus Labuguen, who had been granted amnesty by the Amnesty Commission of the Armed Forces of the Philippines, was ordered provisionally dismissed: defendant Juan Balmaceda was discharged from the information so that he might be utilized as state witness, altho actually he was not called to testify; while the case against defendants Antonio Palope (the grave digger) and Demetrio Afos (a boloman) was dismissed for lack of sufficient evidence.

Trial proceeded against the rest of the defendants; and on July 10, 1950, the Court below rendered judgment, acquitting the members of the jury and the grave digger Antonio Palope on the ground that they did not participate in the killing of Arsenio Borjal; acquitting defendants Jesus Labuguen, Felix Alverne, Severo Afos, and Lauro Parado upon insufficiency of evidence to establish their participation in the crime; but convicting defendants Manuel Beronilla, Policarpo Paculdo, Filipino Velasco, and Jacinto Adriatico as conspirator and co-principals of the crime of murder, and sentencing them to suffer imprisonment of from 17 years, 4 months and 1 day of *reclusion temporal to reclusion perpetua*, to indemnify the heirs of Arsenio Borjal jointly and severally in the amount of P4,000 with subsidiary imprisonment in case of insolvency, and each to pay one fourth of the costs. In convicting said defendants, the Court *a quo* found that while the crime committed by them fell within the provisions of the Amnesty Proclamation, they were not entitled to the benefits thereof because the crime was committed after the expiration of the time limit fixed by the amnesty proclamation; i.e., that the deceased Arsenio Borjal was executed after the liberation of La Paz, Abra.

In view of the sentence meted by the Court below, the accused Beronilla, Paculdo, Velasco and Adriatico appealed to this Court.

The records are ample to sustain the claim of the defense that the arrest, prosecution and trial of the late Arsenio Borjal were done pursuant to express orders of the 15th Infantry Headquarters. (Exhibits 9 and 12-a), instructing all military mayors under its jurisdiction to gather evidence against puppet officials and to appoint juries of at least 12 bolomen to try the accused and find them guilty by two thirds vote. It is to be noted that Arsenio Borjal was specifically named in the list of civilian officials to be prosecuted (Exhibit 12-b).

In truth, the prosecution does not seriously dispute that the trial and sentencing of Borjal was done in accordance with instructions of superior military authorities, altho it points to irregularities that were due more to ignorance of legal processes than personal animosity against Borjal. The state, however, predicates its case principally on the existence of the radiogram Exhibit H from Colonel Volckmann , overall area commander, to Lt. Col. Arnold, specifically calling attention to the illegality of Borjal's conviction and sentence, and which the prosecution claims was known to the accused Beronilla. Said message is as follows:

"Message:

VOLCKMANN TO ARNOLD CLN UNDERSTAND THAT MUNICIPALITIES OF
ABRA HAVE ORGANIZED
JURY SYSTEM PD BELIEVE THAT THIS BODY IS ILLEGAL AND CANNOT TRY
PERSONS FOR
ESPIONAGE OR COLLABORATION NOR METE OUT PUNISHMENTS THEREOF
PD SPECIFIC INSTANCE
IS BROUGHT TO YOUR ATTENTION FOR PROPER AND IMMEDIATE ACTION
ON ONE ARSENIO
BORJAL OF LA PAZ WHO HAS BEEN TRIED CMA CONVICTED AND
SENTENCED TO BE HANGED PD
REPORT ACTION TAKEN BY YOU ON THIS MATTER PD MSG BEGINS CLN"

(EXH. H)

The crucial question thus becomes whether or not this message, originally sent to Arnold's quarters in San Esteban , Ilocos Sur, was relayed by the latter to appellant Beronilla in La Paz, Abra, on the morning of April 18, 1945, together with the package of records of Borjal's trial that was admittedly returned to and received by Beronilla on that date, after review thereof by Arnold (Exhibits 8-8-a). Obviously, if the Volckmann message was known to Beronilla, his ordering the execution of Borjal on the night of April 18, 1945 can not be justified.

We have carefully examined the evidence on this important issue, and find no

satisfactory proof that Beronilla did actually receive the radiogram Exhibit H or any copy thereof. The accused roundly denied it. The messenger, or “runner”, Pedro Molina could not state what papers were enclosed in the package he delivered to Beronilla on the morning in question, nor could Francisco Bayquen (or Bayken), who claimed to have been present at the delivery of the message, state the contents thereof.

The only witness who asserted that Beronilla received and read the Volckmann message, Exhibit H, was Rafael Balmaceda, a relative of Borjal, who claimed to have been, as Beronilla’s bodyguard, present at the receipt of the message and to have read it over Beronilla’s shoulder. This testimony, however, can not be accorded credence, for the reason that in the affidavit executed by this witness before Fiscal Antonio of Abra (Exhibit 4), Balmaceda failed to make any mention of the reading, or even the receipt, of the message. In the affidavit, he stated:

“Q. In your capacity as policeman, do you know of any unusual occurrence that transpired in La Paz, Abra?—A. Yes, sir.

Q. Will you state what is that

event?—A. On April 17, 1945, I was assigned as guard at the Presidencia where Mayor Arsenic Borjal is confined. On the 18th of April, 1945, six bolomen came to me while I was on duty as guard, that Mayor Borjal should be tied, on orders of Mayor Manuel Beronilla. Mayor Borjal wanted to know the reason why he would

be tied, as he has not yet learned of the decision of the jury against him.

Mayor Borjal wrote a note to Mayor Beronilla, asking the reason for his being ordered to be tied. I personally delivered the note of Borjal to Mayor

Beronilla. Mayor Beronilla did not answer the note, but instead told me that I should tie Mayor Borjal, as tomorrow he would die, as he cannot escape. I

returned to the Presidencia, and Mayor Borjal was tied, as that was the order of Mayor Beronilla.”

The plain import of the affidavit is that the witness Rafael Balmaceda was not with Beronilla when the message arrived, otherwise Beronilla would have given him his orders direct, as he (Balmaceda) testified later at the trial.

Moreover, it is difficult to believe that having learned of the contents of the Volckmann message, Balmaceda should not have relayed it to Borjal, or to some member of the latter's family, considering that they were relatives. In addition, Balmaceda was contradicted by Bayken, another prosecution witness, as to the hatching of the alleged conspiracy to kill Borjal. Balmaceda claimed that the accused-appellants decided to kill Borjal in the early evening of April 18, while Bayken testified that the agreement was made about ten o'clock in the morning, shortly after the accused had denied Borjal's petition to be allowed to hear mass.

Upon the other hand, Beronilla's conduct belies his receipt of the Volckmann message. Had he executed Borjal in violation of superior orders, he would not have dared to report it to Arnold's headquarters on the very same day, April 18th, 1945, as he did (Exhibit 20), half an hour after the execution. And what is even more important, if Borjal was executed contrary to instructions, how could U. Colonel Arnold on April 22, 1945, write in reply (Exhibits 21, 21-a) "I can only compliment you for your impartial but independent way of handling the whole case" instead of berating Beronilla and ordering his court martial for disobedience?

Our conclusion is that Lt. Col. Arnold, for some reason that can not now be ascertained, failed to transmit the Volckmann message to Beronilla. And this being so, the charge of criminal conspiracy to do away with Borjal must be rejected, because the accused had no need to conspire against a man who was, to their knowledge, duly sentenced to death.

The state claims that the appellants held grudges against the late Borjal. Even so, it has been already decided that the concurrence of personal hatred and collaboration with the enemy as motives for a liquidation does not operate to exclude the case from the benefits of the Amnesty claimed by appellants, since then "it may not be held that the manslaughter stemmed from purely personal motives" (People vs. Barrioquinto,^[*] G.R. Nos. L-2011 and 2267, June 30, 1951). Actually, the conduct of the appellants does not dispose that these appellants were impelled by malice (dolo). The arrest and trial of Borjal were made upon express orders of the higher command; the appellants allowed Borjal to be defended by counsel, one of them (attorney Jovito Barreras) chosen by Borjal's sister; the trial lasted nineteen (19) days; it was suspended when doubts arose

about, its legality, and it was not resumed until headquarters (then in Langangilang, Abra) authorized its resumption and sent an observer (Esteban Cabanos, of the S-5) to the proceedings, and whose suggestions on procedure were followed; and when the verdict of guilty was rendered and death sentence imposed, the records were sent to Arnold's headquarters for review, and Borjal was not punished until the records were returned eight days later with the statement of Arnold that "whatever disposition you make of the case is hereby approved" (Exhibit 8), which on its face was an assent to the verdict and the sentence. The lower Court, after finding that the late Arsenio Borjal had really committed treasonable acts, (causing soldiers and civilians to be tortured, and hidden American officers to be captured by the Japanese) expressly declared that "the Court is convinced that it was not for political or personal reason that the accused decided to kill Arsenio Borjal" (Decision, p. 9; Record, p. 727).

It appearing that the charge is the heinous crime of murder, and that the accused-appellants acted upon orders, of a superior officers that they, as military subordinates, could not question, and obeyed in good faith, without being aware of their illegality, without any fault or negligence on their part, we can not say that criminal intent has been established (U.S. vs. Catolico, 18 Phil., 507; Peo. vs. Pacana, 47 Phil., 48; Sent. of the Tribunal Supremo of Spain, 3 July 1886; 7 January 1901; 24 March 1900; 21 Feb. 1921; 25 March 1929). *Actus non facit reum nisi mens sit rea.*

"To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequences, as, in law, is equivalent to criminal intent. The maxim is, *actus non facit reum, nisi wiens rea-a* crime is not committed if the mind of the person performing the act complained of be innocent." (U. S. vs. Catolico, 18 Phil., 507).

But even assuming that the accused-appellants did commit the crime with which they are charged, the Court below should not have denied their claim to the benefits of the Guerrilla Amnesty Proclamation No. 8 (42 Off. Gaz., 2072) on the ground that the slaying of Arsenio Borjal took place after actual liberation of

the area from enemy control and occupation. The evidence on record regarding the date of liberation of La Paz, Abra, is contradictory. The Military Amnesty Commission that decided the case of one of the original accused, Jesus Labuguen, held that La Paz, Abra, was liberated on July 1, 1945, according to its records; and this finding was accepted by Judge Letargo when he dismissed the case against said accused on March 15, 1949. On the other hand, Judges Bocar and Hilario, who subsequently took cognizance of the case, relied on Department Order No. 25, of the Department of the Interior, dated August 12, 1948, setting the liberation of the Province of Abra on April 4, 1945, fifteen days before Borjal was slain. The two dates are not strictly contradictory; but even if they are, we believe these appellants should be given the benefit of the Presidential directive to the Amnesty Commissions (Adm. Order No. 11, of October 2, 1946) that "any reasonable doubt as to whether a given case falls within the (amnesty) proclamation shall be resolved in favor of the accused" (42 Off. Gaz., 2360), as was done in *People vs. Gajo*, 84 Phil., 107, 46 Off. Gaz., (No. 12) p. 6093.

For the reasons stated, the judgment appealed from is reversed and the appellants are acquitted, with costs *de officio*.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo and Concepcion, JJ., concur.

Judgment reversed.

^[*] 89 Phil., 414.