

103 Phil. 304

[G. R. Nos. L-11487-88. March 31, 1958]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ALFREDO HUFANA, ET AL., ACCUSED AND APPELLANTS.

D E C I S I O N

MONTEMAYOR, J.:

This is an appeal from the decision of the Court of First Instance of La Union, finding Sabino Flores, Alfredo Hufana, Gregorio Abubo, Antero Rafanan, and his brother Basilio Rafanan, guilty of the crime of murder, and sentencing each of them to thirty years of *reclusion temporal*, later amended and modified as *reclusion perpetua*, and to pay the sum of P3,000.00 to the heirs of each of the two victims, namely, Teofilo Alisangco and his brother, Pio Alisangco.

In an amended information, the above-mentioned appellants, together with Mauricio Recaido and one Aniceto Adona, the last being still at large, were accused of double murder in Criminal Case No. 786 of the Court of First Instance of La Union. Before hearing, at the instance of Sabino Flores, Gregorio Abubo, and Alfredo Hufana, the case was certified to the 2nd Guerrilla Amnesty Commission, sitting at San Fernando, La Union, the criminal proceedings in court in the meantime, being suspended. After hearing the petition for amnesty and receiving evidence, the Amnesty Commission, in a unanimous decision dated November 13, 1950, denied the petition for amnesty, expressly finding that the two Alisangco brothers were ordered executed not in furtherance of the resistance movement but for personal motives, namely, the failure and refusal of said brothers to give and deliver to Sabino Flores, presumably for illicit relations, one Norberta Alisangco, then a school teacher in Santo Tomas, La Union, daughter of Pio Alisangco and niece of Teofilo Alisangco.

Upon the return of the case to the Court of First Instance, with copy of the decision of the Commission, and upon resumption of the criminal proceedings in said court, counsel for Sabino Flores moved to quash the amended information on the ground that it charged two

distinct offenses. By order of the trial court, the information was reamended, resulting in two separate informations for murder, Case No. 786 for the killing of Teofilo Alisangco, and Case No. 1199 for the killing of Pio Alisangco. The two cases were tried jointly, after which the appealed decision was rendered. Defendant Mauricio Recaldo was acquitted on grounds of reasonable doubt.

The following facts are not disputed. Appellants Sabino Flores, Gregorio Abubo, and Alfredo Hufana, during the Japanese occupation, were members of the 21st Infantry, USAFIP-NL, a guerrilla organization operating in northern Luzon. Flores was a second lieutenant and platoon commander, while under him were Alfredo and Abubo, sergeant and corporal, respectively. The other appellants, Antero Rafanan and his brother Basilio Rafanan, residents of barrio Bail of Santo Tomas, La Union, were runners for the guerrillas. The platoon commanded by Lt. Flores operated in the towns of Rosario, Santo Tomas, and Agoon, of the Province of La Union.

In the year 1944, Teofilo Alisangco was a municipal mayor of Santo Tomas, La Union, by appointment. He lived with his family in the house of his brother, Pio Alisangco, in the *poblacion*, together with Norberta Alisangco, a school teacher, daughter of Pio, the latter living in the barrio of Bail of the same municipality. On the night of September 9, 1944, a group of men led by appellants Hufana and Abubo went to the house of Teofilo Alisangco, called him downstairs, and then led him away, tying his hands. The leaders of the group informed him that he was being arrested by order of their commander Flores. Teofilo and his captors went to the house of Gregorio de Gracia, an octogenarian, in the barrio of Bail, which house was then being used as a guardhouse for the guerrillas, guarding the roads and paths used by the Japanese soldiers. About the same time, Pio Alisangco was being arrested at his home in the same barrio and he was taken by his guerilla captors to the same house of De Gracia, where the two prisoners and their captors took their supper. That was about midnight.

Early the next morning, the two prisoners were taken to the barrio of Carunuan, in the municipality of Rosario, to the house of Mariano Estimada, then being used as living quarters of Lt. Flores. After some investigation or conversation with the two prisoners, Lt. Flores, according to Mariano Estimada, owner of the house, ordered his Sergeant Alfredo Hufana to get some of his men, take the two Alisangco brothers away, and have them executed, ostensibly for being pro-Japanese, using the phrase then in vogue, that they were to ride on picks and shovels on their way to Tokyo, meaning liquidation. Hufana called two of his men, one armed with a long bolo and they took the two Alisangco brothers, the latter

with their hands tied, to a wooded spot north of the house, although Hufana himself did not go all the way, but stopped when about fifteen or twenty meters distant from the house, and just waited for the carrying out of the order of execution. Shortly thereafter, the two executioners returned to Hufana, one of them showing to him the bolo smeared with blood, meaning to say that their victim had already been boloed to death. Hufana, however, stoutly denied any participation in the execution.

At the end of the war, and after peace was restored, the NBI (National Bureau of Investigation) duly informed of the killing, sent agents to the place and exhumed the remains of the two unfortunate brothers, which remains were duly identified by their immediate relatives, resulting in the filing of the murder charges involved in their proceedings.

So much for the facts which are not controverted. Starting with the two Rafanan brothers, Antero and Basilio, they are being held criminally liable for the murder of the Alisangco brothers just because they are supposed to have taken part in the arrest of Mayor Teofilo Alisangco in the *poblacion* of Santo Tomas. Assuming that they actually took part in that arrest, there is no evidence to show that they were in connivance or conspiracy with Lt. Flores, who ordered the arrest and liquidation of the said Alisangco brothers. Antero and Basilio were not even regular members of the guerrilla organization. They were merely used as runners. If they were present at the time of the arrest of Teofilo Alisangco on the night of September 9, 1944, they were probably used as guides to point out the residence of Mayor Alisangco, nothing more. But as a matter of fact, there is evidence to show that at the time of the arrest of Mayor Alisangco in the *poblacion* of Santo Tomas, Antero Rafanan was in barrio Bail, in or around the house of Gregorio de Gracia, then being used as a guardhouse for the guerrillas in connection with his guard duties, and that his brother Basilio was in his house in the same barrio and had to be sent for by Gregorio through his son, in order to help in cooking supper for the guerrillas, all this, from the testimony of Gregorio who testified as a witness for the prosecution. There is also the testimony of Eugenio Dacanay, the then barrio lieutenant, who said that he was sent for by Gregorio to help in the cooking; that he arrived at the house of Gregorio between 8:00 and 9:00 o'clock in the evening and there found Basilio Rafanan in the kitchen, helping in the cooking; and that he (Eugenio) stayed in that house until past midnight when the guerrillas arrived with their two captives, and that Basilio had always been in that place cooking.

Now, going to the criminal responsibility, if any, of Gregorio Abubo. It is true that he took part in the arrest of Mayor Alisangco. But what we have already said about the Rafanan

brothers is also applicable to him, namely, that there was no evidence to show that there was any connivance or conspiracy with Lt. Flores as to the execution of the Alisangco brothers. All that he did was to carry out the order of his immediate superior Lt. Flores, to arrest Mayor Alisangco. There was nothing unusual, much less criminal, in arresting by order of a guerrilla officer, persons for supposed collaboration or even cooperation with the enemy, for investigation. In the execution of the Alisangco brothers, Abubo was not mentioned by the prosecution as having taken part.

As regards Alfredo Hufana, he disclaimed all participation in the execution of the two victims. He claims that upon delivering the two prisoners to Lt. Flores that morning, he and Abubo were permitted by Flores to rest and so he went to another house where he slept until 9:00 a.m., and that when he went down to eat, it was only then that he learned of the execution. But even accepting the whole testimony of Estimada, particularly that portion to the effect that following the order of Flores, he, Hufana, called two of his men and accompanied them part of the way to the place of execution, there is no showing that he was in the house of Mariano Estimada where Lt. Flores reprehended the two prisoners, and even assaulted and inflicted physical injuries on them for their failure and refusal to send to him Norberta Alisangco, for which failure and refusal, Flores ordered their execution. Mariano Estimada who related to the court how Lt. Flores scolded, threatened and assaulted the Alisangco brothers did not state that Alfredo Hufana was present and heard and saw all that transpired in said house. All that Estimada said was that after assaulting Teofilo and Pio, Flores called Hufana and ordered him to have the two brothers executed, using the phrase "let them ride on picks and shovels on their way to Tokyo". It is possible that Hufana was called from the house where he said he and Abubo went to sleep earlier that morning. Besides, the phrase used by Lt. Flores about riding on picks and shovels on their way to Tokyo contained the implication, as far as Hufana was concerned, that the Alisangco brothers were being executed for being pro-Japanese (Tokyo). Furthermore, even assuming that Alfredo knew that the two brothers were to be liquidated not for being pro-Japanese but for their failure and refusal to comply with the immoral and lustful wishes of his officer, it is extremely I doubtful whether at the time, he was in a position to disobey the order of Lt. Flores. As one of the members of the Tribunal commented during the discussion of this case, had Alfredo flatly refused to obey the order to have the two brothers executed given by Lt. Flores, the latter, in the state of mind that he was, violently angry, disappointed and frustrated, might have vented his feeling of anger and frustration on Hufana, taken summary and drastic measures against him, and had him liquidated by his men for disobedience of the orders of a superior officer.

With respect to Lt. Flores, we are fully convinced that he ordered the execution of Teofilo and Pio, not because he believed that they were aiding and collaborating with the Japanese in that area, but because they failed and refused to send to him for immoral purpose Norberta Alisangco, daughter of Pio and niece of Teofilo. There is even evidence to the effect that the Alisangco brothers, at least Pio, far from being pro-Japanese, made efforts to help and protect his barriomates by telling them to take their animals to the mountains so that the Japanese soldiers could not find and get them for food.

Lt. Flores claims that he and other guerrilla officers were authorized even by Col. Volckmann, the over-all commander of that region, to execute all spies, traitors, and those who had been with the Japanese. We gravely doubt that Col. Volckmann who, before he turned guerrilla, was a high officer in the U.S. Army, would authorize a mere second lieutenant to execute without the benefit of court martial, or at least, an investigation, persons suspected of being pro-Japanese, without giving said persons an opportunity to face their accusers, cross-examine them, and present evidence in their own behalf.

In an attempt to justify his act in ordering the execution of the Alisangco brothers, Flores presented in evidence Exhibit "14", which is a note addressed by Lt. Soriano to Lt. Peralta, asking why Teofilo Alisangco, the Mayor of Santo Tomas, had not yet been arrested. Inasmuch as Lt. Peralta had no jurisdiction over the territory of Santo Tomas, which was under the jurisdiction of Lt. Flores, said note was sent through a runner to Flores. It will be noticed, however, that the note called only for the arrest of Teofilo Alisangco, no one else. However, Flores went further, much further, for he ordered arrested not only Teofilo, but also his brother Pio, and then, without the benefit of investigation, trial or court martial, had them executed.

The crime committed by Sabino Flores is double murder, or rather, murder for the killing of each of the two brothers. Contrary to what the Solicitor General suggests, that the qualifying circumstance in each killing was premeditation, we believe that it was treachery. In our opinion, there is no sufficient proof of evident premeditation in the sense that at the time that Flores ordered the arrest of the two victims, he had already decided to have them killed. It is possible that he merely wanted to threaten them with death and place them under extreme pressure so they would send and deliver, though against their will, Norberta Alisangco to him, but when they ignored the death threat, resisted the pressure and even defied him to do what he wanted with them, it was then that he decided to have them liquidated.

In view of the foregoing, appellants Antero Rafanan, Basilio Rafanan, Alfredo Hufana and Gregorio Abubo are hereby acquitted with their proportionate part of the costs de oficio. Sabino Flores is hereby sentenced to *reclusion perpetua* for the death of Teofilo Alisangco; he is equally sentenced to *reclusion perpetua* for the death of Pio Alisangco. He will indemnify the heirs of Teofilo Alisangco in the amount of Six Thousand Pesos (P6,000), and the heirs of Pio Alisangco in the same sum of Six Thousand Pesos (P6,000), without subsidiary imprisonment in case of insolvency, and to pay his proportionate part of the costs. With the above modifications, the appealed decision is hereby affirmed.

Paras, C. J., Bengzon, Padilla, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

FELIX, J., with whom BAUTISTA ANGELO, J., concurs, concurring:

I concur but I think that appellant Sabino Flores should be sentenced to death, in each of the two Judgment affirmed with modification.