

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS
SIMPLICIO MACASO ET ALS., DEFENDANTS. SIMPLICIO MACASO,
MARCOS BISA, IRINEO GUTIERREZ, JUANITO SABLAY, PASTOR
GUTIERREZ...**

G.R. No. L-2275. March 30, 1950

Ponente: TUASON, J.

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TUASON, J.:

The six accused and about thirty others, three of whom are said to have been killed and the rest at large, fired volleys of shots into a house, killing eleven and wounding several others. The firing and the resulting casualties are not denied. What is denied is that the defendants started the shooting. They claimed that they merely returned the fires of Remigio de Veyra and his companions who were inside the house. The main or sole issue boils down to this.

It appears that Remigio de Veyra, a former guerrilla, was authorized by one former guerrilla captain, A. G. E. Cinco, said to be a pacification agent, to confiscate unlicensed firearms. Simplicio Macaso, who heads the list of defendants and a former member of the Philippine Army and also a former guerrilla, was engaged in a similar mission. He said he belonged to the organization of Captain Cinco and was commissioned "as a member of maintenance of peace and order" and "to drive away the bandits and bad elements from places where they were making troubles,"

On July 8, 1946, feast of the patron saint of barrio Wilson, municipality of Dulag, province of Leyte, De Veyra and his men numbering fifteen were guests in Tomas Lazar's house situated right at the public plaza. Between 11 o'clock a.m. and 12 o'clock n. of that day, while the "guests were eating, some at the table and others, including De Veyra, on the porch, the firing broke out.

De Veyra said substantially as follows. He and his fifteen companions came to Wilson on the afternoon of July 7, at 5 o'clock, which was the eve of the Wilson barrio fiesta. At Tomas Lazar's place he met Macaso who talked with him. He told Macaso that he had Cinco's authority "to investigate guns or rifles having no license," and showed Macaso his paper. Macaso, upon reading his appointment, remarked, "You are a spy of the Military Police Command," and handed it back to him. After he answered Yes, Macaso and his men moved on in the direction of the schoolhouse. The next morning Macaso and men "continued passing by." At 11 o'clock, Lazar announced luncheon ready. As there was no more seat at the table, he (De Veyra) picked up a plate and came to the porch. As he and other guests were eating, Macaso reappeared and told De Veyra that he and his men were leaving. De Veyra asked Macaso if he already has his luncheon, and Macaso answered that they were in a hurry because they had to stop at Union to pick up a machinegun. But instead of moving away, Macaso and his men surrounded Lazar's house and the former ordered the latter to fire. They fired into Lazar's house, and a girl named Guining Carmal, who was near De Veyra, was hit. De Veyra jumped out of the house and ran to his barrio, Mayorga, never to come back to Wilson. From Mayorga, he fled two days later to Surigao where he stayed about

one year, but before sailing for Surigao he for two days hid in a ricefield near his home.

De Veyra further said that Macaso had a pistol and the rest were armed with pistols, carbines, and also a sub-machinegun and Garand rifles. He testified that he and his men had confiscated from civilians 16 firearms which he intended to turn over to Captain Cinco in barrio Abuyog. Some of these guns, he said, were under the table and others were standing against the wall when they were attacked, and all of said weapons were left in the house in their flight. He denied that he or any of his men fired at the defendants and their companions.

Tomas Lazar testified as follows: On July 8, 1946, he was at home waiting on the persons who were eating. Some of his guests were Remigio de Veyra and his companions. Some of them were sitting at the table and those who could not be accommodated at the table were seated on the veranda. "While they were eating including the persons who accompanied Remigio de Veyra, Macaso and his men fired into the house. They were around the house, from the kitchen to the veranda. They fired continuously while Macaso was ordering 'Go ahead boys, fire, boys, fire.' " What he did was to lie low. People in the house scampered for safety while he and his wife, being wounded in the feet and unable to run, moved only to a thicket about ten brazas from the house and there lay down and kept quiet. When he returned to the house from the thicket, he saw seven dead men inside and three under the eaves in the kitchen. Because of fear, he went away again and stayed this time under the bridge, where he saw one dead body stretched face down. Those whom he recognized among the dead were his son Nazar and Hilaria Quintana. He was not able to recognize the others as he only counted the bodies, being in a hurry to get away because he was afraid. He did not know where Remigio de Veyra and his men went but some of those who were sitting around the table fled and those who did not were killed. Is to Remigio's and his companions' guns, he said "some were leaning near the wall, some were under the table." When he came back to the house after Macaso and his men had disappeared, he did not see any of these guns. He saw Macaso and his men heading for Capudlusan after the shooting.

Anatalio Verona testified that when the shooting commenced he was cooking in his kitchen near Tomas Lazar's house and saw Simplicio Macaso and his men surround and fire at that house; that Macaso was at the edge of the plaza; that he heard a man shouting "Fire boys, fire, advance."

Agustin Mundala testified that he went to Wilson on July 8 to attend the fiesta and stopped at Tomas Lazar's house; that Macaso fired several times into that house; that after the firing, Macaso and his men came up and carried away utensils, firearms, shoes and a wrist watch; that when Macaso and his men entered the house he was downstairs being held by Maglaoay; that he was taken together with Anastacio Roquino, Jovito Daya and Rosendo Jadarón to Palale, Macaso's barrio; that he, Anastacio Roquino and Jovito Daya were hogtied; that Rosendo Jadarón being injured in the thigh was not bound but was shot by Macaso with his .25 caliber pistol.

Macaso, his co-defendants, and other witnesses gave evidence for the defense. There is no need of transcribing each witness' testimony separately. The following statement, mostly taken from Macaso's testimony, epitomizes the theory of the defendants:

Macaso was a pacification agent appointed by Captain Cinco with authority to confiscate firearms. He had been a member of the USAFFE and had been discharged in 1946. He had been authorized by Captain Cinco to lead Cinco's men and given the designation of first lieutenant. Captain Cinco also had ordered Valeriano Maglaoay "to patrol the troubled places in order to pacify them (and) to drive away the bandits and thieves." This order was issued on July 4, 1946. On July 7, Macaso visited his parents in barrio Palale, municipality of Abuyog, near Wilson. He passed the night in Palale and in the morning Valeriano Maglaoay and others arrived and told Macaso that they were going on patrol in barrio Tarragona, Capudlusan, Libas, Wilson and La Paz. At 3 o'clock p.m. Maglaoay and his men went to barrio Wilson and Macaso came along. They were 25 altogether, all armed

because they were after dissident elements. On the morning of July 8, after breakfast, Maglaoay told Macaso that he was going home via Capudlusan, Osmena, Liwayway and Palale. After 10 o'clock they started to go home passing "by these people grouped in a house all armed" and whose leader, Remigio de Veyra, was Macaso's friend "during the guerrilla time." When they were in front of Tomas Lazar's house, De Veyra and his men were standing up in line by the house. Macaso was the last man in his group and was asked by De Veyra, "What, Macaso, going home already?" When Macaso answered "yes", De Veyra asked him, "Did you eat anything," and he said, "We have eaten." After Macaso had walked less than seven meters, with the men of Valeriano Maglaoay ahead of him, on their way to Capudlusan, they were fired upon. Some of Macaso's companions were wounded and three were killed. De Veyra and his men had tommy guns, carbines and Garrand rifles. There was no warning except the word "fire" followed by a burst of shots. The order to fire came from Remigio whose voice he recognized. Because some of Macaso's companions had been wounded and others killed, and because Valeriano Maglaoay, who was the patrol leader, was also wounded, Maglaoay shouted, "Companions, take vengeance of me, I am going to die." So Maglaoay's men fired back. As for Macaso, he took cover because he had only a pistol, and he was far, about 60 meters from Remigio de Veyra. Some of De Veyra's men were also killed and the rest ran away. When Maglaoay told his men to shoot, De Veyra and his men had stopped shooting but they were advancing towards Macaso and the latter's group. After the men of Maglaoay started firing, De Veyra lay flat on the ground and others continued firing. Afterward De Veyra and his men ran away and Macaso proceeded to Palale. The wounded and the dead among Macaso's and Maglaoay's band were carried by their companions; there were three killed and nine wounded, but Macaso was unscathed. Maglaoay died on the way to Palale. The wounded were Marcos Bisa, Eliseo Espada, Irineo Gutierrez, and others. These were not Macaso's men. As to De Veyra's motive, Macaso found it out when he reached Palale, at 5 o'clock p. m. on July 8. Valeriano Maglaoay's wife and his brother, Juan Maglaoay, told him that Valeriano was once in the same company with Remigio de Veyra and that there was ill-feeling between the two men. Macaso personally did not have any grudge against Remigio or his men.

The trial judge found against the defendants. His Honor observed that all the witnesses for the defense are the defendants themselves and men from Palale, barrio of most of the accused, while the witnesses for the prosecution were undeniably eye-witnesses to the crime and were, in his opinion, unbiased. His Honor discovered no reason for De Veyra to "harm the defendants."

The record fully sustains the trial court's conclusions. In contrast to the defendants' evidence, the testimony of the witnesses for the government has the stamp of verisimilitude, is clear-cut, and is more in harmony with well-established facts.

That De Veyra started the shooting is untenable. It would have been foolhardy for De Veyra and his men to attack Macaso and his men from a house which was full of people, endangering not only the lives of their hosts and other innocent persons but their own. Macaso and his men were superior in number and armament, and the house, which was of frail construction, not only would not afford De Veyra and his men protection, as they well knew, but would make their escape difficult. Had they wanted to attack Macaso and his men, they could have selected a less vulnerable place where they would not be so dangerously exposed to retaliatory action and whence they could get off easily and safely in the event they were overpowered.

De Veyra, as the trial court said, had no motive to provoke Macaso. Veyra's friendliness towards Macaso was evident from the fact, confirmed by the defendants, that De Veyra asked Macaso why they were leaving so soon, and had they already had their meal? There is no indication or allegation that De Veyra's solicitude was a feint.

Granted that between Maglaoay and De Veyra there was bad blood, such enmity could be used against the defendants more than against De Veyra as proof that the former were the ones who looked for trouble. But the

court believed, and Macaso's remarks to De Veyra show, that Macaso suspected de Veyra of being a spy for the Military Police Command who, the evidence indicates, were after Macaso for reasons not revealed by the record. He also said that "De Veyra was the leader of a band known as 'Bellescotes' which was engaged in looting and committing crimes." If Macaso was commissioned, as he said, to suppress lawlessness, he must have considered De Veyra and his men as elements coming within the realm of his mission.

Macaso, top leader of the group, if there was any other leader, pretends to be absolutely blameless. He and his fellow defendants pin the entire responsibility on De Veyra and Maglaoay. The latter, according to the appellants, was killed but according to prosecution witnesses was uninjured. At any rate, Maglaoay, though included in the information, had not been arrested, making the "passing of the buck" to him uncompromising.

It is significant that except the six appellants, all the men in Macaso's band were at large at the time of the trial, afraid to face arrests and prosecution, a conduct indicative of a troubled conscience. On the other hand, De Veyra from Surigao wrote Secretary Kangleon of national Defense several letters denouncing Macaso and his men for the outrage they had committed. De Veyra fled to Surigao because he was afraid, not of the lawful authorities but of Macaso and members of his band.

The defendants' testimony that De Veyra and his men were on the ground in battle formation is belied by the fact that the dead were in the house. The spots where the corpses were sprawled were revealed not only by Tomas Lazar but by the dead men's relatives who came to identify and claim their bodies. There is evidence that the cadavers had not been touched before the authorities took charge.

There is serious doubt about the testimony that three of Macaso's men were killed and several others wounded. No unbiased witnesses declared having seen any casualties on the assailants' side. Every bit of evidence on this point came from the lips of the accused and their witnesses who, as the court noted, have given clear indication of being untrustworthy. For one thing, there were witnesses who said they saw Maglaoay march away with the appellants and their companions when they left Wilson after the shooting was over. However that may be, the losses on Macaso's side, if there were losses, could very well have been caused by the appellants' own comrades who were on the opposite side of the building. Macaso and his men formed almost a complete circle about the house.

In conclusion, we are of the opinion that the evidence against the appellants is overwhelming, without taking into consideration the written and sworn confessions and pleas of guilty before the justice of the peace of Macaso's five co-defendants, confessions and pleas which they repudiated at the trial, and without taking into account the very damaging statement of their chief counsel in the court below, in his return to the citation for contempt issued by this Court for his failure to appear and file brief for his clients or former clients.

The court properly found that there was conspiracy. It is evident from the circumstances surrounding the shooting that the appellants acted in concert.

The lower court found the accused-appellants guilty beyond reasonable doubt of the crime of "multiple murder," as charged, and "sentences each of them to life imprisonment, to indemnify the heirs of the deceased in the amount of P2,000 for each of the victims, and to pay the costs of the proceedings." The information did not allege physical injuries.

Some members of the Court opine that the proper penalty is death, under the circumstances of the case, but they fall short of the required number for the imposition of this punishment. The sentence consequently is reclusion perpetua; but each appellant is guilty of as many crimes of murder as there were deaths (eleven) and should be sentenced to life imprisonment for each crime, although this may be a useless formality for in no case can imprisonment exceed forty years. The indemnity to be paid the heirs of each of the deceased should be raised to

P6,000 and the liability of the appellants joint and several.

The judgment appealed from is modified in accordance with the tenor of this decision with proportionate shares of the costs of this appeal.

Moran, C.J., Ozaeta, Pablo, Bengzon, Padilla, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Montemayor voted in accordance with this decision.

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