

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FELIX RIPAS, RAMON ORBISTA, CARMO AGUDES, SANGGUBAN ESTO
AND DUPIGAN ESTO, DEFENDANTS. RAMON ORBISTA, DEFENDANT
AND AP...**

G.R. No. L-6246. May 26, 1954

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Under an amended information dated August 6, 1952, Felix Ripas, Danugan Basilio, Ramon Orbista, Carmo Agudes, Sanguban Esto and Dupigan Esto were, before the Court of First Instance of Capiz, charged with the crime of robbery with homicide for robbing the house of Eduardo Apio and later killing him. Before the trial Danugan Basilio escaped from the custody of the Philippine Constabulary. After trial of the remaining five accused they were all found guilty of murder with the aggravating circumstances of cruelty and sentenced to the penalty of death, to indemnify the heirs of the deceased in the sum of P5,000, and to pay the costs.

The decision was promulgated on October 17, 1952, all the five defendants signing or thumb marking a document attesting to the promulgation. Thereafter, they were confined in the municipal jail of Calibo, Capiz. Two days thereafter, that is to say, on October 19, 1952, there was a mass jailbreak in the course of which, besides other prisoners, the five defendants in question escaped. In the afternoon Ramon Orbista was recaptured but his co-defendants eluded the patrol that went after them.

However, several days later the combined police of two municipalities could make contact with the fugitives but although said fugitives could not be recaptured, one of them, defendant Sanguban Esto was killed.

Under the provisions of Rule 120, section 18, of the Rules of Court, by their escape after promulgation of the sentence of conviction, all the defendant including Ramon Orbista who was recaptured may be considered as having waived or renounced their right to appeal. However, because of the imposition of the death penalty, the case is now before us for review of the case against Damon Orbista under the provisions of Rule 118, section 9, of the Rules of Court.

We have carefully studied the evidence in the case and we agree that the guilt of defendant Orbista has been established beyond reasonable doubt. The facts of the case may be briefly stated as follows. On or before the month of May 1951, members of the Hukbalahap Organization (huk) had infiltrated in the barrios of Luctuga, Taroytoy, Manikan, and other places in the town of Libacao, Capiz. They were led by defendant Felix Ripas. One day Eduardo Apio was captured by these dissidents but he was afterwards released on his undertaking to pay them or their chief Felix Ripas the sum of P100. Apio, however, did not keep his promise either because he did not believe in the doctrines of the huks or could not afford to pay P100 or possibly was afraid to contribute to and support the dissident organization for fear of punishment by the Philippine Constabulary and other law enforcement agencies. Presumably as a measure of protection from the dissidents whom he expected to resent his failure, to pay, he frequented the Constabulary garrison in the neighborhood. This must have aggravated the

resentment of the group of dissidents led by Felix Ripas.

On May 24, 1951, the dissident group in question went on a foraging expedition, according to them, to replenish their supplies and collect contributions from the residents of the different barrios. From the evidence it would appear that the group never paid for anything but merely confiscated supplies and money after torturing and intimidating their owners. On that same day, May 24, 1951, this group of huks and sympathisers composed of Danugan Basilo, Ramon Orbista, Carmo Agudes, Sanguban Esto and Dupigan Esto led by Felix Ripas arrived at the evacuation place of one Enrico Cocoy, a farmer, at about midnight and after tying him up they proceeded to take from his house whatever they needed including one kettle, chickens, articles of clothing and one mat. After questioning him and obtaining the information that he had just come from the evacuation hut of Eduardo Apio, they ordered him to guide them to Apio's place, which he did, with his hands still tied, arriving at their destination early the next morning. Felix Ripas called to Eduardo and when the latter came down he was searched for weapons and his hands were forthwith tied behind him and he was beaten with a piece of wood, Felix demanding the payment of the P100 promised him and asking why it had not been given him. According to Apio's wife Crisanta who came down the house with her husband, defendants Ramon Orbista and Carmo Agudes went up her house and took some cooked rice, 10 dresses, 3 pairs of soldiers' uniforms, P90 in paper currency and P50 in coins and one silver-plated bolo. Crisanta told the court that she and her husband had borrowed some money from her godfather named Ricamonte, used it as capital and had a little business of selling things to their barriomates, thus explaining the presence of dresses and uniforms and some cash in their house. The group thereafter left taking Apio with them. Crisanta, sensing that her husband was being kidnapped, perhaps to be later killed, pleaded with Felix Ripas, who is her uncle, being a brother of her father, to spare her husband's life because he was the only support of their large family, even offering herself to be taken away in his place, but her pleas were all in vain. So, she and her eldest daughter Patria accompanied Apio or rather trailed along despite the admonition of the kidnappers that her coming to accompany her husband would serve no purpose.

Upon reaching the mouth of the Aibatung Creek about five kilometers away the party stopped. It was then already bright and Felix Ripas made preparations to execute their victim. Crisanta weeping, with her daughter and almost hysterical, renewed her pleas for mercy, reminding Felix that he was her father's brother, even offering her own life for that of her husband, but her uncle and his followers remained unmoved. Felix, bolo in hand, approached Apio whose hands remained tied behind him and slashed him in the stomach. Thereafter, all his five companions followed their leader and each inflicted a bolo blow on the prostrate victim. Not content with all this, Sanguban Esto cut Apio's tongue, saying that it was that member that had given information to the Army soldiers. Ramon Orbista cut Apio's ears and Danugan Basilio cut his lips. Apio was in the agonies of death but since he still moved, Ripas, Orbista, Sanguban Esto, and Carmo Agudes picked up stones and pounded his head with them thereby crushing his skull. Then the group left still with Cocoy as their guide. Later, perhaps realizing that he (Cocoy) was completely under their control, the defendants untied his hands and made him carry their supplies. Much later, upon his promise to pay them P30, he was released.

Cocoy witnessed the killing of Apio and fully corroborated the testimony of Crisanta on the point, including the acts of cruelty performed by the defendants. It is not difficult to form, but yet unpleasant to contemplate a mental picture of that tragic and heart-breaking early morning scene in the forest where a grieving wife and mother, between sobs, pleaded tho vainly for the life of her husband, if not for her sake, at least for that of her six young children, going to the extreme of offering her own life in exchange, only to be ignored and rebuffed by her own uncle who had the heart to cold-bloodedly kill his helpless and innocent victim whose only fault was in failing to contribute P100 to promote outlawry and instead in seeking the protection of law enforcing agencies.

The theory of the defense is that the dissident group in question was led not by Felix Ripas but by one called

"Commander Inday", and that it was the latter who ordered the kidnapping of Eduardo Apio and his subsequent execution, and that although it was Felix Ripas who killed Apio by slashing him four times with a bolo, Felix acted against his will, because Commander Inday threatened to kill him with a gun; that furthermore, some of the defendants including Ramon Orbista did not witness the killing because they were sent ahead to act as scouts and report the presence of soldiers. We are convinced as was the trial court that although Commander Inday may have actually existed and may have been in the Province of Capiz at that time, he never figured in the kidnapping and execution of Apio, much less was he present at the time. In the appreciation of this conflicting evidence, both prosecution and defense, much depends upon the credibility of the witnesses. The trial court which had the opportunity of gauging said credibility has the following to say:

"The court believes the testimony of Crisanta and Cocoy on how and by whom was Apio killed and that in that occasion besides the accused, they did not see other persons. Their testimonies are probable. They answered frankly and promptly the question put to them. In the witness stand they appeared self-composed. They did not exhibit any uneasiness that would indicate that they were not telling the truth. No cause was shown why these two witnesses would declare falsely against the accused. Ripas is uncle and the other accused, cousins of Crisanta. It was admitted by Oteanta and the accused that before the date of the killing, there was no ill-feeling between Apio and his family, on one hand, and any one of the accused, on the other. Cocoy, according to the accused, was also a Huk, so they did not ill-treat him on that occasion. Inday only asked him to guide them to Apio's hut."

Counsel de oficio for Orbista lays stress on the delay in the filing of the complaint, the latter having been filed about a year after the commission of the crime. This was satisfactorily explained by the prosecution to the effect that it was inconvenient, if not impossible, to file the complaint and go to trial earlier because of the deterioration of peace and order; that people were afraid to act as witnesses because of the presence of Huks in the vicinity; that the dissidents were then being attracted by the Government with offers of special considerations for their peaceful surrender, and that if the complaint was filed then, said dissidents instead of surrendering would resort to measures of reprisals. As a matter of fact, before trial, many if not all of the accused in this case surrendered to the authorities, only, as already stated, to escape when they found that they were sentenced to death.

The Solicitor General believes that in the commission of the crime of murder the mitigating circumstances of lack of instruction and voluntary surrender should be considered, but compensated by those of cruelty and evident premeditation. We agree with Government counsel as to voluntary surrender but not on the existence of the mitigating circumstance of lack of instruction. It is for the trial court rather than for an appellate tribunal to find and to consider the existence of this alternative circumstance, which the lower court failed or declined to do. The fact that Orbista thumb marked the document attesting of the promulgation of the decision, a sign that he did not know how to write, is not sufficient to prove the existence of this alternative circumstance. Not illiteracy alone but also lack of sufficient intelligence are necessary to invoke the benefit of this circumstance. A person able to sign his name but otherwise so densely ignorant and of such low intelligence that he does not realize the full consequences of a criminal act, may still be entitled to this mitigating circumstance. On the other hand, another unable to write because of lack of educational facilities or opportunities, may yet be highly or exceptionally intelligent and mentally alert that he easily and ever realizes the full significance of his acts, in which case he may not invoke this mitigating circumstance in his favor.

As to the existence of the aggravating circumstance- of premeditation, we are not in a position to agree with Government counsel. There is no evidence to show when the dissident group, particularly Felix Ripas, decided to kill Eduardo Apio. As already stated, they were then on a foraging expedition, and it was only when they came upon Cocoy who could guide them to the place of Apio that they decided to go to the latter's place. Anyway, Orbista as a mere follower was not making the decisions; it was Felix Ripas as their leader. It is possible that it

was only at the last moment as they were on their way to or when they arrived at Apio's place, when his failure or refusal to pay the P100 angered Felix, that his liquidation was decided upon, to set an example to the rest of the barrio residents, as to the fate awaiting anyone who did not fulfill his commitments with the Huks. That leaves only the aggravating circumstance of voluntary surrender. Following the recommendation of the Solicitor General the penalty of death imposed by the trial court should be reduced to reclusion perpetua. With this modification, the decision of the lower court is hereby affirmed, with costs.

This occasion is a good as any to say something about the escape of prisoners accused or convicted of serious crimes. Of late, there would appear to have been too many mass jailbreaks altogether, resulting in the escape of many prisoners, due either to laxity in vigilance, negligence in custody of dangerous prisoners or inadequacy of local jails. The apprehension of persons accused of serious crimes like robbery with homicide, kidnapping, murder, etc. is a difficult and hazardous enough task for peace officers. Their trial which involves the subpoenaing and maintenance sometimes of indifferent or unwilling witnesses during a protracted and tedious hearing, affording them full protection from reprisals all the while, is another task for the judiciary and its officers. All this work, expense, and labor should not be rendered in vain by making it possible for prisoners to so easily escape. Before a person committing a crime is apprehended and formally charged, his arrest and confinement may not be the direct concern of the judiciary; but once arrested and accused before the courts, the latter have jurisdiction and custody over him, and until the case against him is dismissed or otherwise terminated by acquittal or final conviction by the trial court or an appellate tribunal, his safe confinement in prison must needs be and is the immediate concern of the Judiciary because he is under its jurisdiction. In the present case, of the six persons originally accused and of the five finally convicted and sentenced to death, only Ramon Orbista was recaptured in order to have his case reviewed by this Tribunal. One defendant is dead. So, four remain at large. Have measures been taken to apprehend these four or have they been recaptured, we do not know. What is worse is that not infrequently, the most guilty are the ones that escape punishment. In the present case, Felix Ripas, the leader, sentenced to death is still at large, while his follower Ramon Orbista is in jail to serve a sentence of life imprisonment. Not many people can agree that at least in this case, there is real and full justice. A more strict custody of prisoners especially those accused or convicted of serious crimes particularly involving a sentence of death, would minimize the evil. In municipal and provincial jails where due to lack of facilities, measures of security are not so favorable, perhaps the Philippine Constabulary could help. And drastic disciplinary action on erring or negligent jail wardens or guards would go a long ways in discouraging escapes of prisoners in the future. Let a copy of this decision be furnished in the Office of the Chief Executive, the Secretary of Justice and the Secretary of National Defense.

Paras, C. J., Pablo, Bengzon, Reyes, A., Jogo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[1] U. S. vs. Elicanal, 35 Phil., 209 and U. S. Estorico, 35 Phil., 410.

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