

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE LUMANLAN ALIAS MORADA ET AL., DEFENDANTS,

G.R. No. L-2631. May 31, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

This is the story of another Huk atrocity.

In July, 1944, Alipio Baluyut, an old man whose son Eloy was a USAFFE guerrilla officer, incurred the displeasure of some members of Hukbalahap organization in Barrio Del Carmen, Lubao, Pampanga, where he peacefully resided.

On the third day of that month, Simplicio Gonzales, alias Filipinas, called the Huk Central D-Is to an assembly in Barrio Kabankalan, Lubao, to receive a vital communication from Silvestre Liwanag, alias Linda Bie, a well-known Huk Commander. The message was a petition signed by the herein accused Jose Lumanlan, alias Morada, Romulo Aguilus alias Douglas, Francisco Bartolo alias Hitler, Jose Danan alias Luyus and a certain Roosevelt asking for the liquidation of Alipio Baluyut, upon the ground that he was not sympathetic with the organization. As the signers were trusted partymen, orders were given by the meeting for the elimination of the recalcitrant resident.

Several armed members proceeded to his house that evening. In the quietness of the night, the aged man and his daughter Jovita heard repeated calls for "Apung Lipio". He woke up and stood on the alert, without responding. Moments later two armed individuals, (Filipinas and Morada) entered through the window, and the first threw his arm around Alipio attempting to drag him to the door. Jovita embraced her father struggling to retain him inside their dwelling. Presently the door opened and several armed men appeared. Among the trespassers, Jovita recognized Francisco Evangelista, the accused Jose Lumanlan alias Morada, and Francisco Bartolo alias Hitler. At gun point the last two pulled her away, and Evangelista ordered her to lie down. She did as directed, but even as the persons were hauling her father downstairs she overheard them ominously inform him that his end had arrived. She also identified among the intruders, Jose Danan alias Luyus, Romulo Aguilus alias Douglas, Felix Evangelista and Leonardo Fernando alias Nelson. That was the last time she looked upon the figure of her father; because although she immediately attempted to follow the snatchers, her efforts were in vain.

The next day, as Morada was her second-degree cousin, Jovita repaired to his farm nearby and found him plowing a corn-field. She inquired what had happened to her father; but he disclaimed all knowledge of the captive's fate.

The times were dangerous then; life was uncertain. So no complaint was filed during the occupation against the kidnappers.

But in 1946, when Eloy Baluyut became the mayor of Lubao, he managed to capture some of the culprits, namely, Romulo Aguilus, Francisco Evangelista, Francisco Bartolo, Felix Evangelista and Jose Danan; and they indicated the spot where the body of Alipio Baluyut had been interred. It was in the same place that Jose Lumanlan was

plowing that very morning he was interviewed by Jovita. The bony remains of the deceased were found there.

How did Alipio Baluyut actually meet his death?

In 1947, Jose Lumanlan was arrested. He related to Mayor Eloy Baluyut the story of the kidnapping, in the document Exhibit A, which he voluntarily signed before the justice of the peace of Lubao, Pampanga. In that document he confessed in part:

"x x x We took the old man (Alipio) downstairs and followed the road up to the barrio chapel and then we proceeded westward in the direction of my house leading to Acle. After crossing the creek Jose Danan fetched a spade for digging a grave. When Jose Danan arrived he was bringing a spade and he began digging. He and Francisco Evangelista took turns digging; while they were digging they were asking questions to the old man and the old man did not know of anything to say; Nelson (Diosdado Fernando) got mad, he got the spade and hit the old man with the edge of the spade. He was hit at the back of the head; he fell down face forward; I held his legs while Francisco Bartolo and Jose Danan held his hands and we threw him into the pit. Jose Danan, Francisco Bartolo and I took turns covering the pit. But before all these happened Douglas and Francisco Bartolo took off his clothes. When the pit was covered we left; and before we parted from one another Jose Danan said, 'You plow the grave tomorrow morning Joe so that they would not recognize it'. x x x".

It appears from the record that on January 6, 1947, proceedings to punish the kidnapping killers were initiated by the presentation of the corresponding information. As Jose Lumanlan had not yet been arrested, trial was had for the others, who were in due course convicted. After his arrest, however, the case proceeded against him before the Hon. Antonio G. Lucero, Judge, who found him, upon the evidence presented, guilty of murder and sentenced him to reclusion perpetua with the accessories, to indemnify the heirs of the deceased in the sum of P5,000.00, and to pay the costs. Hence this appeal.

Declaring before the trial court, Jose Lumanlan practically admitted the facts herein-above recounted. His excuse, however, was that he had merely acted under orders of the Hukbalahap organization, and that he had been forcibly brought along by the other members against his better judgment and will.

The trial judge rejected this defense, citing various reported acts of this appellant that were inconsistent with the plea of involuntariness. We agree with His Honor. The accused was chief of the Huks in the barrio, and could very well have voted the petition for the liquidation of Alipio Baluyut. More, he had plenty of opportunities to escape, if as he says, he was opposed to the "execution". Yet instead of decamping, he took active part therein.

He may not be extended the benefits of Amnesty Proclamation No. 76 because it is not shown that he surrendered with all his arms and ammunition, and there is evidence that he had a firearm.

Neither may he validly invoke the proclamation granting amnesty [1] to all persons who committed acts "in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy", because he failed to make that specific claim in the lower court, and because the decision of that court implies that the slaying was not in line with the purposes mentioned in the amnesty, when it said:

" x x x In the instant case, it appears that the reason why the death of Alipio Baluyut was called for by the accused was not the suspicion of Japanese espionage but the activities of his son who, being a ranking USAFFE guerrilla officer, was considered by the Huks to be an enemy of their organization. The Court takes judicial knowledge of the fact that in the province of Pampanga the USAFFEE guerrillas were the mortal enemies of the Huks so much so that there were more encounters between the two groups than between the Huks and the Japanese. Could it be accepted that, a man of so advanced an age (more than 60 years) whose son was engaged in fighting the Japanese would be capable of spying for the enemies of his own son? The truth was that, if Alipio Baluyut was killed, it was because the affiliation of his son to the USAFFE has converted him automatically into an enemy of the Huks. x x x".

Wherefore, the conviction for murder of this appellant should stand unreversed. And as the penalty meted out to him is in accordance with law, the appeared judgment is hereby affirmed, with costs. So ordered.

Ozaeta, Actg. C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Proclamation No. 8, September 7, 1946.

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