

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LORETO BARRIOQUINTO, DEFENDANT AND APPELLANT,***G. R. No. L-2011. June 30, 1951*

Ponente: BENGZON, J.

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In April, 1946, before the Court of First Instance of Zamboanga, Norberto Jimenez and Loreto Barrioquinto, together with others were charged with the murder of Simeon Bernardo committed on December 1, 1943. Because Barrioquinto was still at large, the case proceeded against Jimenez and the others. After trial, the first was sentenced to life imprisonment by a decision dated September 25, 1946. Informed of the Amnesty Proclamation (September 7, 1946) in favor of persons who had committed crimes in furtherance of the resistance movement. Jimenez submitted his case to the 14th Guerrilla Amnesty Commission, together with the petition of Barrioquinto who at that time had already been apprehended. Said Commission refused to extend to them the benefits of the proclamation, principally because neither admitted having committed the offense, their theory being that it was Hipolito Tolentino who had shot and killed the deceased. Consequently it returned the expediente to the court of first instance, wherein Jimenez subsequently filed a motion for new trial and an amended motion praying for an opportunity to prove his defense connected with the efforts of the guerrillas. Both motions were denied, and he appealed in due time.

Immediately after the refusal of the Amnesty Commission, both the above-mentioned defendants instituted here a special civil action of mandamus to compel the said Commission to decide their petition. (Barrioquinto vs. Fernandez, 4 Off. Gaz., 3031.) They maintained the proposition that in order that a person may be entitled to the benefits of the Proclamation it is not essential, nor a condition sine qua non, that he should admit having performed the criminal act imputed to him by the prosecution. This Court upheld their contention in its decision of January 21, 1949.

In the meantime, pursuant to his appeal to this Tribunal, Norberto Jimenez filed a brief (G. R. No. L-2011) contending that the court a quo erred in denying his petitions for new trial involving the Amnesty Proclamation, especially without waiting for this Court's decision in the mandamus proceedings.

It must be observed that when tried in the court below, Jimenez attempted to prove an alibi, which was rejected, but did not submit any evidence as to the "resistance-movement" defense, because at that time the proclamation had not yet been issued or published in Zamboanga. However in his brief as appellant he expressly abandons his alibi, and insists on his motion for new trial to establish connection between the homicide and the underground activities.

On the other hand, Loreto Barrioquinto, tried after the Amnesty Proclamation, had ample opportunity to prove—and submitted evidence—that Simeon Bernardo was an enemy collaborator and had been eliminated to further the resistance plans. Nevertheless he was convicted by the Zamboanga judge. Therefore he appealed to this Court.

At the request of the attorney of both appellants, who are on bail, these two appeals are now considered together. Main question is the application of the Amnesty Proclamation. If the amnesty applies, Barrioquinto should be acquitted; but a new trial should be granted to Jimenez. Otherwise both should be declared guilty as charged.

Simeon Bernardo lived in barrio Maasin, City of Zamboanga together with his family, consisting of his wife Enrica Macapili and several children, among them Clinia and Elena, surnamed Bernardo. Early in the morning of December 1, 1943 the Bernardos were awakened by calls of men allegedly of the "army" (guerrilla). Enrica lighted a kerosene lamp and opened the door, to admit Loreto Barrioquinto and Norberto Jimenez. Some persons—the other co-accused—waited below surrounding the house. According to the prosecution, Barrioquinto immediately pointed his revolver at Simeon Bernardo; but Enrica interceded, saying, "Let us talk first. What is it about?" Somehow the gun was discharged, the bullet piercing the floor. Then Barrioquinto ordered Jimenez to shoot, which the latter did, hitting Simeon Bernardo on the face and causing his instantaneous death.

Again, according to the prosecution, Barrioquinto had been courting Clinia Bernardo, and had urged her to live with him in the mountains; but she rejected his attentions. And her parents, knowing his status as a married man, had opposed his courtship, opposition which he deeply resented. The prosecution also showed that Norberto Jimenez repaired to Simeon's house in November, 1943 to collect certain "contribution" for the guerrillas which Simeon was in the habit of paying; but that time Simeon refused to make payment because he had already delivered it to another guerrillero named Ciriaco Antonio; that Norberto Jimenez resented this fiasco—and the shooting was the pay-off.

At his trial Jimenez essayed an alibi. However, Barrioquinto, when tried, presented evidence to show that:

Before the incident Simeon Bernardo was denounced to the guerrillas operating in and around Zamboanga as a Japanese spy and collaborator. Several underground men were captured and tortured thru his help or thru information facilitated by him. Consequently, one day his arrest was decreed by Lieut. Celso Fernandez, and a guerrilla patrol headed by Loreto Barrioquinto, and composed of Norberto Jimenez, Sgt. Teodulfo Molina, Esperato Molina, Ciriaco Antonio, Severe de los Santos and Carlos Antonio, set out to execute the secret military directive. Accordingly they went to Maasin. That night Barrioquinto, Jimenez and Teodulfo Molina entered when the door was opened by Simeon Bernardo. His wife Enrica Macapili wrestled with Barrioquinto for the latter's gun, and Simeon tried to grab the rifle of Teodulfo Molina, even as Hipolito Tolentino, a henchman of Simeon from a distance shot at Barrioquinto, but missed. Instantly, the leader Barrioquinto ordered his men to open fire, and Jimenez downed Simeon Bernardo.

It will be recalled that on September 7, 1946 President Manuel Roxas, with the concurrence of the Congress declared and proclaimed an amnesty in favor of all persons who committed any act penalized under the Revised Penal Code in furtherance of the resistance to the enemy or against persons aiding in the war effort of the enemy, if such act was committed during the period from December 8, 1941 to the date when each particular area of the Philippines was actually liberated from enemy control and occupation; provided however that the amnesty shall not apply to crimes against chastity nor to acts performed for purely personal motives.

In *Barrioquinto vs. Fernandez* supra, we hold that, to enjoy the benefits of the above amnesty, the accused need not openly and expressly admit having committed the deed imputed to them, and the fact that they at first denied responsibility or denied having committed the criminal act, does not prevent the application of the amnesty to them, if and when the evidence shows they are included within its terms, because they did the act in support of guerrilla warfare.

Unfortunately for Barrioquinto that decision was rendered January 21, 1949, almost a year after he had been convicted in the lower court. We say unfortunately because as we read the record and analyze the reasoning of the

appealed decision, we get the general impression that the guerrilla story was discounted by His Honor mainly upon the ground that the accused had maintained inconsistent theories and did not from the beginning openly and sincerely confess to having snuffed out the life of Simeon Bernardo for being a Japanese spy and collaborator. [1]

Suspecting that the amnesty theory was defendant's eleventh-hour effort to evade punishment, His Honor naturally appraised the defendant's evidence with critical eyes, readily perceiving areas of absolute inconsistency and indications of falsity where others could have found plausible explanations.

In this revision we did not start with a misconception of the implications of the amnesty. We examined the record in a spirit of liberality, not only because of the circumstances above mentioned, but also because we have heretofore adopted a liberal interpretation of its provisions, giving the benefit of the doubt to guerrilleros who found themselves in the toils of the law for acts connected with the resistance operations (People vs. Gajo, 46 Off. Gaz., 6093; 84 Phil., 107), absolving members of the underground legions who liquidated persons suspected as traitors to the cause (People vs. Tuason, 47 Off. Gaz., 2345; 85 Phil., 85) or who killed in the belief that their victim had been assisting the Japanese (People vs. Dosal, 46 Off. Gaz., 2500; 82 Phil., 501). There is no question that Loreto Barrioquinto, Norberto Jimenez and the others who raided Bernardo's house were members of a recognized guerrilla unit. On that occasion they presented themselves as "army" men (meaning guerrillas)—thereby indicating they had come on guerrilla business. Barrioquinto declared that about November 27, 1943 : upon orders of Lt. Celso Fernandez of the guerrilla, he set out from Malayal to lead a combat and reconnaissance patrol and to arrest soldiers who had surrendered without orders and Japanese spies; that the aforesaid guerrillas[2] were under his command; that they went to Labuan, Simabung, Rancho Cabonegro, and Capisan where Ciriaco Antonio, one of the party, received a note from Eduardo Montuno saying he had been captured by the Japanese guided by Simeon Bernardo;[3] that they proceeded to Mabuhay, and then on to Kawit interior where they arrested Pedro Santos whom they thought had surrendered voluntarily to the Japanese, but who explained that he had been captured by Simeon Bernardo and his nephew-in-law Hipolito Tolentino; that in order to verify the reports about the treasonable activities of Bernardo he contacted Felix Inclan, his secret operative in Maasin interior; that when he arrived at the latter's house Inclan's wife reported he had been taken to Lamitan by the Japanese, accompanied by Bernardo and Hipolito Tolentino; that they decided to arrest the traitor quietly, and after posting guards in several strategic places they approached the house of Bernardo. The result: for resisting or avoiding arrest, Bernardo was shot down by Jimenez.

Captain Celso Fernandez (then Lieutenant) confirmed his orders to Barrioquinto and his men. He added that Simeon Bernardo and Tolentino armed with rifles helped Japanese soldiers when the latter attacked his headquarters at Capisan, Zamboanga, on November 1, 1943.

Eduardo Montuno related his arrest on October 23, 194-3, accomplished by Japanese soldiers with Simeon Bernardo's guidance; and he ratified the contents of his note to Ciriaco Antonio, which he had sent thru Panglima Lala.

Candido Eabugsa, also a guerrilla operative, under Captain Fernandez swore that in the month of October, 1943, he was seized at the place called Sabana at Cabigan by Japanese soldiers led and helped by Simeon Bernardo, who told the Japanese that he was a member of a group of "bandits" (guerrillas); that he was imprisoned until he was compelled to join the outfit of Miguel Moreno, a wellknown and powerful Japanese collaborator.

Delfin Molina, brother of Teodulfo and Esperato Molina declared that sometime in October 1943 some Japanese soldiers guided by Simeon Bernardo apprehended him near Kawit, the latter having told the Japanese that he was the brother of Teodulfo Molina, a "bandit."

Other witnesses, like Pingli Sala, Moro Jakaria, Luciano Makiling and Nicasio Salomon described instances of

service rendered by Bernardo to the Japanese, and his personal association with them.

In the face of this array of witnesses it is not hard to believe the report that Simeon Bernardo had treasonably aided the Japanese invader. In fact, the prosecution and the court below make little effort to demonstrate wherein these witnesses had departed from the truth in the matter of Bernardo's pro-Japanese inclinations.

Yet the prosecution insists that appellant's plea should be rejected, (a) because, contrary to the defense's theory, it is incredible that Simeon Bernardo and his wife should dare to struggle when the party entered their dwelling; (b) because appellant and his witnesses gave conflicting versions of the actual shooting; and (c) because Barrioquinto was prompted by purely personal motives, his purpose having been to seek revenge on the family that had spurned his love and affection.

As to the first, it is quite probable that seeing Barrioquinto with a raised gun, Enrica Macapili, impelled by wifely devotion, attempted to deflect the gun's aim—not to fight or wrest it from Barrioquinto. At any rate, supposing there was no actual struggle, appellant would, just the same, be entitled to acquittal, if, as he has shown, he took punitive measures because Bernardo had been denounced as a Japanese spy and collaborator.

As to the second point, the contradictions relate to the person who actually shot Simeon Bernardo; but the question becomes immaterial, because granting it was Norberto Jimenez, by order of appellant,—as is the prosecution's theory—inasmuch as the shooting was prompted by Bernardo's treasonous conduct, a reversal of the decision becomes inevitable.

And now as to the "spurned-suitor" proposition, Barrioquinto denied having made love to Clinia. We believe it is not impossible that he had set covetous eyes on that young lady. But it is also possible that his advances and the incidents thereof had been embroidered or enlarged to strike back at Barrioquinto, who was responsible for the untimely death of Bernardo.

Anyway supposing that Barrioquinto nurtured a grudge against the family for his frustrated immoral designs, still, such frustration merely furnished additional incentive to carry out the liquidation. The verdict would then be: Simeon Bernardo was done to death because Barrioquinto hated him and also because he was a Japanese informer and collaborator.

Hence it may not be held that the manslaughter stemmed from purely personal motives, and that Loreto Barrioquinto is excluded from the benefits of the aforesaid decree of amnesty.

Wherefore we have to reverse the judgment of conviction and to direct the exoneration of said appellant Loreto Barrioquinto.

As to Norberto Jimenez, a new trial shall be had to afford him a chance equally to enjoy the advantages of that Presidential Proclamation. So ordered.

Paras, C. J., Feria, Pablo, Padilla, Montemayor, Reyes and Jugo, JJ., concur.

Jugment reserved and exoneration directed fro Barrioquinto; new trial ordered for Jimenez.

[1] Of course there is the "rejected-suitor" angle. On that, we shall comment later. The non-payment of fees to Norberto Jimenez, even if true, could not have been so serious an offense as to induce a cold-blooded murder.

[2] Teodulfo Molina, Esperato Molina, Ciriaco Antonio, Severo de los Santos, Carlos Antonio.

[3] He also swore that he received in October the note exhibit 6 from his operative Santiago Alivio: "Simeon

Bernardo tell soldiers to surrender. The Japanese paid him P40 for one soldier surrendered by him."

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