

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE TUAZON, ET AL., DEFENDANTS. JOSE TUAZON, ERMITO KIGAO
ALIAS JEREMIAS LEPPAGO, AMADEO DE LA FUENTE, HLLARIO
TABERD...**

G. R. No. L-10614. October 22, 1962

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PER CURIAM:

This is an appeal from a decision of the Court of First Instance of Abra, Hon. Jose M. Mendoza, presiding, finding Jose Tuazon, Amadeo de la Fuente, Ermito Kigao alias Jeremias Leppago, Ayong Taberdo alias Hilario Taberdo, Nemesio Tauro, Manuel Tamo, Antonio Tamo and Mariano Tabaniag, guilty of the crime of murder, qualified by treachery, for the killing of Ballao Hermoso, and Ermito Kigao alias Jeremias Leppago, Nemesio Tauro, Manuel Tamo and Antonio Tamo, also guilty of murder qualified by treachery, for the killing of Masibag Hermoso. Corresponding indemnities for the deaths above mentioned, at the rate of P6,000.00 for each victim, are adjudged to be borne jointly and severally by the said convicts, with the accessory penalties provided by law, and with costs.

The above decision was rendered upon an information charging the accused-appellants with the crime of double murder for ambushing and killing the victims Ballao Hermoso and Masibag Hermoso on June 17, 1954 at Lagangilan, Abra, at an uninhabited place, with the qualifying circumstances of alevosia and the generic circumstance of evident premeditation, and the aggravating circumstances of (a) taking advantage of superior strength; (b) with the aid of armed men and by a band to facilitate the commission of the offense; (c) in consideration of a price, or promise of reward, and (d) in an uninhabited place, and as regards accused Jose Tuazon and Ermito Kigao alias Jeremias Leppago, with having taken advantage of their public offices as municipal mayor and municipal policeman, respectively.

It appears from the evidence submitted at the trial that on June 17, 1954, at sunrise, Ballao Hermoso and his nephew Masibag Hermoso started from Kimpal for Bangued, Abra, to attend the hearing of a civil case involving lands, between the deceased Ballao Hermoso and the accused-appellant Mariano Tabaniag. Ballao and Masibag rode horses. They were accompanied by Felipe Tadeo, who had no horse and had to walk on foot. A companion who had walked ahead was Restituto Barreta, who carried provisions. When they reached the Baay river, barrio Siwasiw, municipality of Bucay, and at a place where there is a path with a fence on both sides, they were suddenly attacked and fired upon by men armed with firearms. Ballao Hermoso was ahead followed by Felipe Tadeo, who in turn was followed by Masibag Hermoso, and when the first shot was heard, he turned his horse back. However, he could not get away because he received a shot at the back, and fell down from his horse into the water. Masibag Hermoso, who was behind, also turned back, but he too was hit by shots and so he also fell down.

The persons who made the ambush were seen by Felipe Tadeo, who upon hearing the first shot, went into the bushes to hide and from there was able to see the persons who fired upon him and his companions. He recognized six of the ambushers but knew the names of only four of them, namely, Naro Talledo, Antonio Tamo, Manuel

Tamo and Ermito Kigao alias Jeremias Leppago. The other two whose names he did not know were identified by him at the trial as Marcelino Artero and Nemesio Tauro.

The ambush as above set forth was testified to by Felipe Tadeo, the pedestrian companion of the victims Ballao Hermoso and Masibag Hermoso. After his two companions had fallen down from their respective horses Felipe Tadeo went back to Kimpal to ask for help.

That same morning of June 17, 1954, the incident was reported to the police. Investigators of the Constabulary went to the scene and found the corpse of Ballao Hermoso on the bank of the Baay river. That of Masibag Hermoso was found approximately 200 meters away from the scene of the ambush. On the opposite side of the river, that is opposite the dead body of Ballao Hermoso, they found many shells of carbine, four of which were presented to the Court at the time of the trial. They also found one carbine slug, and the dead body of a horse a short distance from the corpse of Masibag Hermoso. A sketch of the scene of the crime indicating the places where the dead bodies and the dead horse were found, and the scene of the crime, which is a trail, was presented as Exhibit "M" for the prosecution and Exhibit "8" for the defense.

Before the trial began the provincial fiscal submitted a motion to discharge the accused Marcelino Artero so that he could be utilized as a witness for the prosecution, as there was no direct evidence available for the identification of many of the accused. The motion was granted and Marcelino Artero testified as follows: On the 15th of June, 1954, Mariano Tabaniag went to his house and asked him to go to Bogbog, sitio of Bucay. At the premises near the house of Celso Bragas he saw many persons gathered together, among whom were Mariano Tabaniag, Nemesio Tauro, Hilario Taberdo, Antonio Tamo, Jeremias Leppago, Manuel Tamo and Mayor Jose Tuazon. Mariano Tabaniag asked Mayor Tuazon if anybody wanted to kill Capitan Ballao for a reward. Tuazon thereupon asked who would be willing to give rewards to the persons who would kill Capitan Ballao. Tabaniag answered "We". Amadeo de la Fuente also promised to give a reward. After Taberdo, Mayor Tuazon and others had promised to give the reward for the killing, the men who were there agreed to carry out the ambush, whereupon Tabaniag said to them "Go and kill Capitan Ballao and you will be given reward."

According to the same Marcelino Artero, Taberdo again came to his house for the second time on June 16, Wednesday, to call for him. Artero went to the place of the meeting and there found Hilario Taberdo, Antonio Tamo, Manuel Tamo, Jeremias Leppago, and Nemesio Tauro. When evening came Mayor Jose Tuazon invited them to his house, where they stayed until dawn. Early in the morning Tuazon woke them up, telling them "Wake up now and go to your posts at Dinglay". Following his words the accused went to the indicated place, where they were supposed to ambush their victim Ballao Hermoso. Those who posted themselves beside the way were Manuel Tamo, Antonio Tamo, Marcelino Artero (the witness), and Nemesio Tauro. Amadeo de la Fuente was posted at a place to look out for the coming of Ballao Hermoso and give notice thereof to the others. When Amadeo gave notice of the coming of their victims, Hilario Taberdo fired, so did Nemesio Tauro. Both Ballao Hermoso and Masibag Hermoso were fired at. Ballao fell into the water and Masibag who turned his horse away, was also felled down farther away from where Ballao had fallen.

Another witness who testified for the prosecution was Patricio Talaga who declared that one day prior to the ambush he went to Bogbog, the place of Celso Bragas, to practice his fighting cock. There he saw Genaro Talledo. Genaro Talledo asked him (the witness) if he was willing to go for an "ambush". The witness understood that the ambush was for wild pigs. That afternoon Genaro Talledo again went to his house in company with Manuel Tamo, Nemesio Tauro and some of the accused, who were outside of the house. Talaga talked with Arong Talledo who invited him to go with them to Kimpal for the ambush of Capitan Ballao, but Talaga answered that he was afraid and that his family was alone so he could not join them. One day he saw Genaro Talledo again. Talledo then asked him to go to Hilario Taberdo and Mariano Tabaniag to get his money. This was the fourth day

after the ambush. The money that he was asked to get was the pay of Arong Talledo for the shooting of Ballao Hermoso. Witness went to Tabaniag who, in answer, said to the witness " * * * tell him (Arong Talledo) to wait because I have not yet sold my carabao." When the witness reported what Tabaniag said to him, Ayong Taberdo said that "he (Arong Talledo) had taken some (money) already."

The autopsy report on the body of Ballao Hermoso disclosed that he had a penetrating-perforating wound the entry of which is at the level of the first thoracic vertebrae (in the back), perforating the apex of the left lung severing the left carotid artery, with exit at the anterior portion of the neck. That of Masibag Hermoso disclosed the presence of a penetrating-perforating wound involving the middle portion of each of the thighs.

The evidence conclusively shows that the reason for the murder is the enmity between Mariano Tabaniag and Ballao Hermoso caused by conflicts over the ownership of some lands. There were certain parcels of land which for a long time were the subject of litigation between them. The documents show that in the year 1935 Ballao Hermoso filed an action against the predecessors in interest or parents of the defendant Mariano Tabaniag for the recovery of a certain parcel of land in the barrio of Tabiog, Bucay, Abra. (Exh. "I") The case was brought to the Court of First Instance of Abra for trial and judgment was rendered on May 29, 1934 declaring Ballao Hermoso owner of the property subject of the litigation. (Exh. "J") The case was appealed to the Court of Appeals and this Court rendered a decision on August 17, 1937 confirming the decision of the court of first instance in favor of Ballao Hermoso. A writ of possession was issued in December, 1937 of said parcel of land in favor of Ballao Hermoso against the predecessors in interest of Narciso Tabaniag. (Exh. "L")

In December, 1938, Ballao Hermoso charged Nicolas Tabaniag and his wife with contempt for entering the land which was the subject of litigation between Ballao Hermoso and Narciso Tabaniag. In December, 1938, Teodoro alias Nicolas Tabaniag was sentenced to one year imprisonment. (Exh. "J-10") On February 5, 1941 Mariano Tabaniag and others were charged with the crime of theft for entering the fenced estate of Ballao Hermoso and stealing palay worth P125.00, and on June 17, 1941 Mariano Tabaniag, Felix Tabaniag and Elino Tabaniag were convicted and each sentenced to three months and one day of aresto mayor; the other accused were acquitted. (Exh. "J-11" and "J-12", respectively)

The land subject of the above civil and criminal cases was also the subject of an application for free patent by the predecessors in interest of Narciso Tabaniag. Decision was rendered in their favor by the Lands Office on January 5, 1938 but upon learning that a decision was rendered in the Court of Appeals in favor of Mariano Tabaniag, the said office reversed and cancelled its decision. On July 12, 1951 the free patent issued in the name of Patricia Torqueza was also cancelled it having been found that the said land had been adjudged the private property of Ballao Hermoso.

On May 3, 1954 a notice of hearing of case G. L. R. O. No. 2744, Ballao Hermoso vs. Mariano Tabaniag, et al., was sent, notifying the parties of a hearing of the above case on June 17, 1954, at 8:00 a.m. in Bangued, Abra. The case, which is originally case No. 7 of the Court of First Instance of Abra, is an application of Ballao Hermoso for the registration of a parcel of land. Mariano Tabaniag, Esperanza Bribon and Silvestre Tabaniag opposed the application. (Exh. "H-1"). The record of the case in said court shows that the case was called at 9:00 a.m., but the attorney for the petitioner, Atty. Brillantes, asked that the case be called later because his clients were not yet there. The case was again called at 11:17 but his clients did not appear. (Exh. "H-2") In that same registration case an order was entered which reads as follows:

"On petition of Atty. Agripino Brillantes, counsel for the applicant, on the ground that the herein applicant BALAO HERMOSO had been ambushed on his way to this town for the hearing of this case according to information he has just received, the hearing is hereby ordered postponed until further assignment.

"SO ORDERED.

"Bangued, Abra, June 17, 1954."

As to the accused Jeremias Leppago, evidence was submitted that although he was supposed to be on guard in the municipal building in the morning of June 17, 1954, he did not report for duty and only appeared in the afternoon of that day. This is the substance of copies of the police blotter submitted at the trial and the testimony of the chief of police of Lagangilang, Abra.

Through the testimony of Felipe Tadeo, the following accused defendants were identified (by him) as present at the time of the ambush, namely: Genaro Talledo, Antonio Tamo, Manuel Tamo and Ermito Kigao alias Jeremias Leppago, as well as Marcelino Artero and Nemesio Tauro. Witness Marcelino Artero testified that the persons who were actually present in the ambush were Arong Talledo, Antonio Tamo and Nemesio Tauro. This same witness declared that the following persons were present in the evening of June 16, 1954 at the house of Mayor Jose Tuazon: Nemesio Tauro, Arong Talledo, Antonio Tamo, Manuel Tamo, Jeremias Leppago and Jose Tuazon, the mayor. At the meeting held in the afternoon of June 16 at the premises of Celso Bragas were Mayor Jose Tuazon, Mariano Tabaniag, Arong Talledo, Manuel Tamo, Antonio Tamo, Nemesio Tauro and Amadeo de la Fuente.

From all the above it was sufficiently proved that the defendants-appellants participated in the ambush of the victims in the following manner: Mariano Tabaniag, by offering a reward of money amounting to P400.00 to those who would ambush and kill Capitan Ballao Hermoso; Mayor Jose Tuazon, by cooperating with Mariano Tabaniag in making the offer, and further making the ambushers sleep in his house on the eve of the ambush, and waking them up at dawn of June 17 and urging them then to proceed with the ambush.

Jeremias Leppago alias Ermito Kigao was also present at the house of Mayor Tuazon and was among those who actually ambushed the victims and fired at them.

Amadeo de la Fuente was present at the meeting when the decision was made to ambush the victim Ballao Hermoso and acted as a lookout for the coming of the victim.

Ayong Taberdo, Nemesio Tauro, Manuel Tamo and Antonio Tamo were present in the meeting on June 16; at this meeting the decision was made to carry out the ambush of the victim upon the promise of reward from Mariano Tabaniag. Those who promised to give reward were Mariano Tabaniag, Hilario Taberdo and Mayor Jose Tuazon.

Those present at the ambush, according to Felipe Tadeo, were Genaro Talledo, Antonio Tamo, Manuel Tamo, Ermito Kigao alias Jeremias Leppago, Marcelino Artero (witness for the prosecution) and Nemesio Tauro. According to Marcelino Artero, the accused present at the ambush were Genaro Talledo, Antonio Tamo, Jeremias Leppago, Nemesio Tauro, Manuel Tamo and Amadeo de la Fuente.

The court below found Jose Tuazon, Amadeo de la Fuente, Ermito Kigao alias Jeremias Leppago, Ayong Taberdo alias Hilario Taberdo, Nemesio Tauro, Manuel Tamo, Antonio Tamo and Mariano Tabaniag guilty of the killing of Ballao Hermoso; on the other hand, it found the accused-appellants Ermito Kigao alias Jeremias Leppago, Nemesio Tauro, Manuel Tamo and Antonio Tamo guilty of the killing of Masibag Hermoso. We find this conclusion of the court to be correct; since Mariano Tabaniag, Jose Tuazon and Hilario Taberdo induced their co-conspirators to make an ambush of Ballao Hermoso, without mentioning the latter's companion, such as Masibag Hermoso; since there is no evidence that they ordered the killing of the companion of Ballao Hermoso, they stand guilty for the death of Ballao Hermoso alone. On the other hand, those who actually participated in the ambush and in the killing of both Ballao Hermoso and Masibag Hermoso, are guilty of homicide for the killing of these two victims. They are Jeremias Leppago, Nemesio Tauro, Manuel Tamo and Antonio Tamo. One of the

participants in the assault namely Genaro Talledo, could not be indicted and he is still at large. The other is Marcelino Artero who served as a prosecution witness.

The circumstances attending the commission of the crime as to all of the accused are the qualifying circumstances of evident premeditation and abuse of superior strength and/or alevosia. The inductors of the crime, namely, Mariano Tabaniag, Jose Tuazon and Ayong Taberdo, are guilty as principals by induction, having induced their co-accused to commit the crime by offering to give reward therefor; while the others, who had actually participated in the ambush and in the assault are guilty as principals by direct participation.

The defendants-appellants Jose Tuazon and Ermito Kigao alias Jeremias Leppago, who are represented in the appeal by Atty. Ernesto P. Parel, deny having participated in the conspiracy or in the ambush, and testified personally to their defenses. Jose Tuazon submitted the municipal treasurer of Laganglilang, Abra, as a witness on his behalf, who testified that he saw Mayor Tuazon in his office in the municipal building on June 15 at day time and in the afternoon at four o'clock; that he again saw him on the following day in the municipal building. Another witness testified that he worked in the house of Mayor Tuazon for six days beginning June 14, 1954 and that he saw no other person in the said house except Mayor Tuazon, the members of his family and the witness and his companions.

Jeremias Leppago denied the testimonies of Felipe Tadeo and Marcelino Artero, principal witnesses for the prosecution, as false and fabricated; denied having participated in the meetings and gatherings in which the ambush of Ballao Hermoso was agreed upon; and claimed that it was only on June 17 at 8:30 in the morning that he learned of the ambush when a lieutenant of the Constabulary went to the house of Mayor Tuazon. Leppago submitted a witness in the person of Laureano Testado who declared that he saw Leppago on June 15 and 16, and that on the 16th the witness launched at the house of Leppago and stayed there until 1:00 p.m. Another witness corroborated this statement and further testified that Leppago was in a certain harvest, and on the night of June 16 Leppago slept in his house and that when he woke up on the following morning of July 17 Jeremias Leppago was still sleeping, and thereafter went to guard.

Two eyewitnesses declared as to the participation of defendant-appellant Leppago in the ambush, namely, Marcelino Artero and Felipe Tadeo. The record of the police of the municipality of Lagangilan shows that Leppago absented himself in the morning of June 17, when he should have reported for duty early in the morning. So in the presence of this evidence and the fact that two witnesses for the prosecution could not be assailed in their credibility, we find the defense offered by Leppago unavailing. As to Mayor Tuazon, we find that the testimony of the municipal treasurer of his having seen Tuazon in the municipal building in the afternoon at four o'clock, does not prove that Mayor Tuazon was not with the group that made the agreement to ambush Ballao Hermoso because the gathering in the fields took place later in the afternoon or in the evening. As to Tuazon's denial of the fact that the ambushers slept in his house, said denial cannot overcome the strength of the declaration of witness Marcelino Artero that the ambushers slept in the house of Tuazon and went together early in the morning to carry out the ambush. It would have been difficult for the ambushers to have been together early in the morning of June 17 unless they were together in the evening and slept at the same place, taking into account the fact that they did not live together in the same house or place. The only reasonable conclusion is that they must have been together, if not the night before, at least very early at dawn.

The defendants-appellants Manuel Tamo and Antonio Tamo are represented in this appeal by Atty. Ernesto P. Parel. Attempt was made to destroy the value of the confessions that said defendants-appellants had executed, namely, Exhibits "D" and "E". But we are fully satisfied that these were voluntarily executed as certified to by the justice of the peace before whom they were made. There is no credible proof of the alleged maltreatment that they suffered in the hands of the police as a result of which they executed the confessions.

But even without the confessions, the testimonies of the two witnesses Marcelino Artero and Felipe Tadeo conclusively show that they actually participated not only in the conspiracy to make the ambush in the meetings had for that purpose, but also actually participated in the assault and in the ambush made against the deceased Ballao Hermoso and Masibag Hermoso. As to them, their defense of alibi is certainly unavailing.

The other defendants-appellants, who are represented by Paredes & Paredes, assail the credibility of the witness Marcelino Artero, pointing out to the alleged discrepancies made in his testimony. We have carefully read and studied the testimony of this witness and we do not agree with counsel that his credibility has been successfully impeached. The only flaw in his testimony is a certain confusion, induced by a very tiresome cross-examination, as to whether or not it was Monday or Tuesday when the meeting was held at which the ambush of the victim was agreed upon. In some part of Artero's testimony he said it was Monday, in another he said it was Tuesday. But the fact is, prior to the meeting on the evening of June 16, a meeting was held to decide upon the ambush. Whether that meeting was held in the evening of Monday or in the evening of Tuesday, the fact remains that there was a meeting held. Witness asserted clearly this fact without doubt. It is true that evidence was submitted to the effect that prior to becoming a witness for the Government, Marcelino Artero had denied participation. This is natural, as it is for a man to evade his criminal responsibility. But later on he made a clean-breast confession, admitting his participation in his own confession, Exhibit "F", and thereafter agreed to become a witness for the Government. He was subjected to a barrage of cross-examination questions but he did not budge an inch from his assertion that he was present at the meeting when the agreement to carry out the ambush was made, indicating the persons who actually participated in the meeting as well as to the persons who participated in the ambush. We are satisfied that he told the truth when he identified the persons who were present at the meeting, and declared the offers of reward made by Mariano Tabaniag and some of his colleagues, and the conformity of the others to carry out the plan to ambush.

With the above considerations we believe that the evidence submitted by the prosecution proves beyond reasonable doubt that all the defendants-appellants had participated in the commission of the crime, the conspiracy to make the ambush and the actual ambush itself, in the form and manner already described above.

The penalty imposed upon the accused-appellants except Mariano Tabaniag, of reclusion perpetua, is proper taking into account that the only aggravating circumstance against them was that of having accepted to commit a crime in consideration of a monetary reward, and it appearing that these appellants live in barrios, without any apparent education. The penalty meted by the lower court would seem to be commensurate with the nature of the crime and their personal circumstances.

As to the accused-appellant Jose Tuazon, it does not clearly appear that he took advantage of his position as mayor of a municipality to induce the commission of the crime, or that his position was the main consideration why they committed the crime. He acted merely like his co-accused Mariano Tabaniag, and Hilario or Ayong Taberdo, in inducing the co-conspirators to commit the crime.

As to the defendant-appellant Ermito Kigao alias Jeremias Leppago, who was a policeman at the time of the commission of the crime, it also appears that there has been no abuse of his position, he voluntarily absented himself from his hours of duty on the morning of June 17, 1954, to take part in the ambush.

With respect to the defendant-appellant Mariano Tabaniag, we find that he should be meted a more severe penalty, because it was he who promised the principal reward and he was not satisfied with securing the services of only one or two individuals but had to get those of a group of more than six, all of them fully armed with firearms in order to better insure the execution of his illegal purpose to eliminate his antagonist in his land troubles, as a result of which not only was his antagonist killed but also the latter's nephew, an innocent party.

Considering the manner in which he effected his diabolical purpose to eliminate his enemy, the number of the persons who were employed by him to carry out his purpose, and the number of arms with which they were provided, the Court believes that he should be meted out a penalty more severe than that imposed upon those who actually carried out the murder desired by him. The Court believes that he deserves the supreme penalty of death, the highest, justified by the great number of persons and firearms he had engaged to carry out his criminal intent and design.

Wherefore, the decision appealed from is hereby modified in the sense that the defendant-appellant Mariano Tabaniag should receive the supreme penalty of death instead of that of reclusion perpetua given by the lower court. In all other respects, the sentence imposed upon the defendants-appellants is affirmed. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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