

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SOFRONIO GAJO, JULIO NONO, CONRADO GALAPIN, SALVADOR
DIAMA, ROMEO AMBID AND EMETERIO ZARATE, DEFENDANTS AND
APPELLANTS.**

G.R. No. L-2012. June 27, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The six defendants Salvador Diama, Sofronio Gajo, Julio Nono, Conrado Galapin, Romeo Ambid and Emeterio Zarate were charged in the Court of First Instance of Iloilo with triple murder for killing Esperanza Garganera de Nograles and her two sons, Romeo and Agosto, both surnamed Nograles. All of them were, at the beginning, tried together but after the prosecution had rested its case, said defendants on October 10, 1946, moved for the suspension of the trial to enable them to submit their case before the Tenth Guerrilla Amnesty Commission, which motion was granted. By resolution promulgated on May 6, 1947, the said Amnesty Commission denied the petition for amnesty filed by the accused. Upon resumption of the trial however, defendants Ambid and Zarate asked for and were granted a separate trial with the understanding that the evidence already presented by the Government will be considered against all of them, and that the separate trial will be held only with respect to the presentation of evidence for the defense. After the termination of the hearing, one decision was rendered as regards Diama, Gajo, Nono, and Galapin, finding them guilty of triple murder, the first three as co-principals and Galapin as accomplice and sentencing the first three to life imprisonment with the accessories of the law and to indemnify jointly and severally the heirs of each of the deceased in the sum of P1,800, without subsidiary imprisonment in case of insolvency, and Galapin to an indeterminate penalty of from ten (10) years of prison mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, with the accessories of the law, and to indemnify the heirs of each of the deceased in the sum of P200, and all four to pay each one-sixth (1/6) of the costs. In another decision Ambid and Zarate were found guilty as principals of triple murder and sentenced each to suffer the penalty of reclusion perpetua, with the accessory penalties of the law; to indemnify jointly and severally the heirs of each of the deceased in the sum of P1,800, and each to pay one-sixth (1/6) of the costs.

All the six accused appealed to the Court of Appeals, which court subsequently by resolution sent the case up to the Supreme Court because of the nature of the penalty imposed on the five defendants convicted as principals. Appellants Diama, Gajo, Nono, and Galapin reiterate their claim for amnesty in their brief, while Ambid and Zarate in a separate brief insist in their defense of duress. After the filing of the brief for the Government, the law firm Sotto & Sotto filed its appearance as counsel for all the accused in collaboration with the defense counsel and in a memorandum which it was allowed by the Court to file, the benefits of the Amnesty Proclamation issued by President Roxas on September 7, 1946, was invoked for all the six appellants.

The facts in this case which are either not subject to dispute or are amply established by evidence may be briefly stated as follows: In and prior to September, 1944, the six appellants were members of a guerrilla force in the

island of Panay under the Command of Colonel Peralta and were attached to the Chaplain Service under Capt. Macario Ga. Diama was a corporal while his five co-dendants, all under his command were privates, Zoilo Garganera, although a companion and member of the same unit, was not a regular guerrilla soldier but a mere camp follower. Before September, 1944, this unit of the appellants had its command post at Madarag, on the mainland of Panay, midway between the towns of Lambunao and Janiuay, Province of Iloilo. About two weeks before September 18, 1944 the appellants and Zoilo Garganera crossed over to the island of Guimaras and established a forward command post at sitio Bankiling, in the barrio of Suclaran, municipality of Buenavista, for the purpose of gathering food supplies for the guerrillas on the mainland of Panay.

Esperanza Garganera de Nograles, her two sons, Romeo and Agosto, her daughter Estela and the latter's husband, Claro Binaje had been living in the Japanese Garrison area in the barrio of Sto. Rosario in the same municipality of Buenavista. After the first American bombing of Iloilo, they left said barrio of Sto. Rosario which was no longer safe as a residence having become a military objective, and transferred to barrio Suclaran, arriving there on September 17, 1944. In the afternoon of September 18, Corporal Diama summoned his five co-defendants, Gajo, Nono, Galapin, Ambid, and Zarate, including Zoilo Garganera and told them to get ready for they were going out on a mission, but without informing them of the nature thereof. He issued arms to his men—Gajo, Ambid and Zarate, a bolo each; Galapin, a .32 pistol; Nono, a double-barreled shotgun; and Garganera, another shotgun, while and he (Diama) carried a .38 revolver, and they started for that part of the barrio of Suclaran, where the Nograles family as previously stated had transferred their residence from barrio Sto. Rosario. After some delay, in the course of their march and when nearing the house of Esperanza Garganera de Nograles, Diama asked his men if they knew whom they were going to arrest and when they expressed their ignorance thereof, turning to Zoilo Garganera, he said: "Zoilo, don't get offended because we are going to arrest your aunt Esperanza and her two sons." According to the evidence for the prosecution, Zoilo protested, saying that those persons were guiltless, but Diama answered saying that he had to carry out superior orders from Capt. Ga. According to the evidence for the defense, however, Zoilo instead of protesting, heartily approved of the idea of arresting his aunt and her two sons because they were really Japanese spies.

On reaching the house of the Nograles family, by order of Corporal Diama, his companions surrounded the house while Zarate going up the house, repeatedly called Esperanza in a loud voice and on being admitted, he explained to her that she and her two sons were wanted for investigation by an officer who was waiting at the beach several hundred meters away. Obeying the summons, Esperanza and her two sons, Romeo and Agosto, went down the house and were conducted by Corporal Diama and his men toward the beach. Esperanza carried a lamp to light their way but soon the light of the lamp was extinguished or was blown out by the wind and, presumably, as a measure of precaution, Diama ordered the hands of Romeo and Agosto to be tied behind their backs, which was done. When nearing the beach, Diama told his men that he would investigate the three prisoners one by one at the beach and he actually proceeded to take Agosto with him to the shore for investigation, but the three prisoners expressed their desire to be investigated together and all at the same time. Then, Diama told his men that it was better to kill the three prisoners because they were really Japanese spies and upon hearing this suggestion or command, his men acted immediately. Gajo boloed Esperanza and then Agosto. Esperanza was felled by the blow but Agosto, though wounded, ran toward the water's edge, Diama shouted to his men that none of the prisoners should be allowed to escape. Zarate pursued Agosto and finished him with his bolo. Nono and Ambid went after Romeo who was running away. Ambid boloed him but as he continued to run Nono shot him down with his shotgun. The bodies of Esperanza, Romeo and Agosto were placed side by side on the beach. By order of Diama, Zoilo and Galapin secured a boat and Gajo and Zarate placing the bodies in it, rowed out to deep water and there dumped them. The following day, the three bodies were found near the shore where they had been evidently washed up by the waves.

After a careful and comprehensive review of the evidence, our view and conclusion is that this whole case of the six appellants can and should be decided on the sole issue of amnesty invoked by them. It should be stated that although the evidence with regard to the actual killing of the three deceased as well as the participation in it of the appellants herein is more or less clear, the evidence as to the events preceding said killing, particularly the reason therefor, is highly conflicting, the conflict, lying not only as between the testimonies of witnesses for the prosecution on one side and those of the defense on the other but in the evidence for the defense itself. For Instance, there is evidence for the prosecution to the effect that prior to July, 1943, there was a dispute over a land boundary between Captain Ga and Leon Nograles, father of Romeo and Augusto, which led to a quarrel on July 29, 1943, but which ended in a temporary settlement or understanding that neither of the parties will work on the land under dispute until the courts could decide the title thereto. In August, 1943, Leon Nograles was captured by the Japanese forces and was taken to the house of Captain Ga, where he was investigated. The mother, a brother, and a sister-in-law of Captain Ga were also arrested by the Japanese and investigated. They were later killed while Leon Nograles was released. In January, 1944, an unknown person shot at Leon Nograles but did not hit him. However sometime later in the same month, a second attempt was made upon the life of Leon Nograles and he was killed. Another piece of evidence for the prosecution is to the effect that sometime in September, 1944, the two brothers Romeo and Augusto Nograles told Emilio Garganera, a cousin of their mother Esperanza that they knew that it was Capt. Ga who was responsible for the death of their father and that they would avenge his death that Emilio who was a member of the Chaplain Service under Capt. Ga immediately warned the latter to be on his guard. All this evidence was obviously intended to show that the decision and order to liquidate Esperanza and her two sons came from Capt. Ga; that he had ordered Corporal Diama and his men to arrest and later kill the three deceased not because they were Japanese spies as contended by the defense but due to purely personal motives, either because he suspected that Leon Nograles, the father of Augusto and Romeo, was responsible for the death of his mother, brother and a sister-in-law, or as a precautionary measure to forestall the possibility of the two brothers carrying out their plan of revenge and reprisal. This theory is in some measure supported by the testimony of Ambid and Zarate in their separate trial that in the morning of September 18, 1944, they were present at a conference between Capt. Ga, Corporal Diama and Zoilo Garganera in the course of which, Zoilo told Capt. Ga that his aunt Esperanza and cousins Romeo and Augusto had planned and instigated his (Zoilo's) arrest by the Japanese and so he wanted the Captain to have these people arrested because they were Japanese spies, and that Capt. Ga had instructed Corporal Diama together with his men to arrest Esperanza and her two sons and investigate them if they were really Japanese spies.

In a well prepared brief for the Government, the Solicitor General after analyzing the evidence, came to the conclusion that the six appellants come within the terms of the amnesty grant. Bearing in mind that the Amnesty Commission had previously denied the appellants' petition for amnesty, and that the trial court had equally declined to extend to them the benefits of said amnesty proclamation, believing that the liquidation of the deceased was motivated by personal motives, we took special pains and care in examining and scrutinizing the evidence on this point. After said scrutiny, we are inclined to agree with the Solicitor General that the appellants herein if not clearly entitled to the benefits of the Amnesty Proclamation should at least be given the benefit, of the doubt and should be freed from the charge of triple murder.

Assuming for a moment as correct the theory of the prosecution, which we are not prepared to accept, that Capt. Ga had issued the order for the arrest and killing of the three deceased because of his belief that Leon Nograles was responsible for the death of his mother, brother and sister-in-law, there is reason to believe that Esperanza and her two sons were really Japanese spies and had on several occasions helped the enemy not only in getting food supplies but also in rounding up, torturing, and otherwise harrassing guerrilla members and guerrilla suspects, and what is more, that Capt. Ga knew and believed all this. In such a case, there would be mixed motives for the

killing, namely, in furtherance of the resistance movement as well as personal, in which case, the appellants would still come under the benefits of the Amnesty Proclamation which excludes from its benefits crimes committed from purely personal motives. In the second place, in carrying out the order of Capt. Ga for the arrest and liquidation of Esperanza and her two sons, it is hardly Just that appellants herein be hold answerable for the alleged personal motives of Capt. Ga. The captain was their superior officer» They were not supposed to be aware of his personal motives. If he told them that a certain party or parties were to be killed because of their pro-Japanese connections and spying activities, it was not for them to investigate and decide whether any personal motive of their officer was involved. It was enough, under a liberal interpretation of the provisions of the Amnesty Proclamation, and their application, that the order given was ostensibly based on the Nograles family being Japanese spies, and what is more important, that the appellants, before carrying out the order, had received information from various sources and believed said information totiie effect that Esperanza and her two sons were really aiding the Japanese, From an analysis of the evidence there is strong reason for the belief that Cpl. Dima and his co-defendants had been reliably informed when they crossed over to the island of Guimaras and during their stay there prior to September 18, 1944, that Esperanza and her two sons were really Japanese spies and that their presence in the same barrio of Suclaran where they had evacuated from the barrio of Sto. Rosario would be a constant menace not only to the success of the mission of Dima and his men in gathering supplies but also to their very lives.

For instance, there is evidence introduced for tte defense to the effect that beginning January, 1944, Esperanza Garganera and her chidren resided within the Japanese Garrison area at barrio Sto. Rosario; that during the Japanese occupation, those Filipinos living within the protection of the Japanese Garrison area were considered traitors by the Filipinos living outside, and that some of the former were sometimes killed by the guerrillas on mere suspicion that they were pro-Japanese merely because they were living within the Garrison area. During their residence in Sto. Rosario, the members of the Nograles family were on friendly terms with Japanese soldiers and officers, often seen in their company, entertaining them in their house and giving them food specially rice. At a fiesta in January, 1944, a daughter of Esperanza Garganera was elected and crowned muse with the help of Capt. Hamamoto, who later in April, acted as one of the sponsors at the marriage of Estela, another daughter of Esperanza, Romeo and Agosto sometimes rounded up laborers to dig trenches for the Japanese forces and they acted as foremen of those laborers. These two brothers in conversation with some Filipinos, discoursed on the futility of further resistance to the Japanese, telling them that the Americans will never come back, Romeo and Agosto used to accompany Japanese soldiers in boats to intercept guerrillas crossing the strait between Guimaras island and the mainland and on one or two oocasions, helped Japanese forces capture guerrilla soldiers.

On one occasion Esperanza at the suggestion of her son Agosto, went to the Japanese garrison to transmit information received from her cousin Luis Garganera regarding the presence of guerrilla soldiers in the barrio of San Roque. Acting upon this information the Japanese forces sent a punitive expedition to barrio San Roque. On another occasion, Esperanza and her cousin Luis Garganera reported to the Japanese garrison commander that one, Sotero Goles, was supporting guerrillas in barrio Suclaran, later Goles and his family were arrested by the Japanese. According to the testimony of Estanislao Ferrer, Japanese soldiers accompanied by Romeo and Agosto and some members of the Japanese sponsored Coastal Defense Corps (CDC) conducted a raid in barrio Taminla. On that occasion, Agosto beat up a soldier named Bartolonie Casirairo who, together with others was later killed. With the aid of the Nograles brothers the Japanese set fire to the houses in the same barrio. This same 62 year old witness Estanislao Ferrer according to him had testified before the War Crimes Commission in Manila to the same effect relative to the raid conducted in barrio Taminla. There is also evidence to the effect that Filipino forces engaged in the resistance movement used to receive information from various agents regarding the traitorous activities of the Nograles family.

It is of course possible that as already stated, Esperanza and her two sons were killed by order of Capt. Ga due to purely personal motives. It is equally possible, however, that assuming that the order originated from Capt. Ga, that along with his personal motives he also had his belief based on reports received from the men under him and from persons who came to know the pro-Japanese activities of the deceased, that they were Japanese spies. It is also possible if not probable that Capt. Ga had nothing to do with the plan to kill Esperanza and her two sons and that it was Corporal Diama and his men who, after crossing over to Guimaras island and during their two weeks stay there while gathering supplies and making observations as to the activities of the enemy had become convinced of the traitorous of the deceased and so took it upon themselves to liquidate them not only as a measure of punishment but also for the protection of the guerrillas in the barrio of Suolaran. In this connection, it is significant to note that prior to the actual killing of the three deceased, Corporal Diama had signified his intention to investigate the three prisoners and actually began questioning Esperanza at the beach, and that he later issued the fatal order saying it was better to kill the prisoners because they were Japanese spies. And, according to three of the accused, Diama ordered the killing only after Zoilo Garganera had whispered to him that Romeo and Agosto were trying to escape.

Moreover, in case of doubt the same should be resolved in favor of those invoking the benefits of the Amnesty Proclamation, Administrative Order No. 11 issued by President Roxas on October 2, 1946, creating the Guerrilla Amnesty Commission, particularly that portion referring to the manner the amnesty commissions were to study and decide the cases set before them, contains this admonition and advice: "any reasonable doubt as to whether a given case falls within the proclamation shall be resolved in favor of the accused," (Adm. Order No, 11, 40 Off. Gaz., 2360, October, 1946).

In view of the foregoing and considering the recommendation of the Solicitor General, and on the basis of our review of the evidence in this case, we hereby find and declare that the appellants herein are entitled to the benefits of the Amnesty Proclamation, and reversing the decision appealed from, the information filed in this case is hereby dismissed, with the costs of this instance, de officio. The defendants and appellants will be set free immediately. So ordered.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Tuason, and Reyes, JJ., concur.

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