

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
IRINEO BONDOC (ALIAS DICK TRACY), DEFENDANT AND APPELLANT.***G.R. No. L-2278. February 27, 1950*

Ponente: TORRES, J.

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Irineo Bondoc and about eleven others had conspired and resolved to kill Mayor Victor Tizon of Capas, Tarlac and his escort of policemen, while the former was conducting community assemblies in different places in his municipality in the early part of 1946.

Bondoc and his co-accused learned that in the morning of January 19, 1946, Mayor Tizon and his policemen were going to the sitio of Talimundoc, Capas. At about 9 a.m., the mayor, the chief of police, one police sergeant and five policemen, all armed and in uniform, were walking on the road to Talimundoc, and when they reached a place covered on the left with thick cogon grass, about one kilometer from Talimundoc, there was suddenly a volley of shots fired from that place. The mayor and his party returned the fire, but in the exchange of shots which lasted from ten to fifteen minutes, policeman Ricardo Quizon and Candido Dayrit were killed, the first instantaneously, and the latter, before reaching the municipal building.

Mayor Tizon, looking towards the place of the ambush, fired his revolver and saw Irineo Bondoc, without hat and wearing a short-sleeved khaki shirt and short khaki pants, with the group of ambushers firing at him. The mayor, upon coming face to face with appellant, noticed that the latter lay down and, with his carbine, fired several shots at him. Then, when the group of appellant dispersed, the mayor saw Irineo Bondoc again as he was crossing a concrete bridge over an irrigation canal. During the exchange of shots between the two groups, the two policemen who were killed were standing almost behind the mayor.

It appears that policeman Ricardo Quizon met instantaneous death, because a bullet perforated the frontal bone and destroyed and splashed the brain substance; while policeman Candido Dayrit died of profuse hemorrhage caused by two bullet wounds penetrating the upper part of his right knee.

This case, No. 363 of the Court of First Instance of Tarlac, is before us by an appeal entered by Irineo Bondoc from the judgment rendered by the lower court; which found him guilty of two murders and sentenced him in each case to reclusion perpetua, the total of which shall not, however, exceed forty years in accordance with Article 70 of the Revised Penal Code.

The facts stated at the beginning of this decision and which led to the filing of the information for double murder against this appellant were sufficiently proven by the prosecution, not only through the testimony of Mayor Tizon and Dr. Sikat, but also by that given by two other witnesses. Francisco Sanchez testified that he was the justice of the peace of Capas, Tarlac who conducted the preliminary investigation in this case. He identified Exhibit A as the same statement given before him by Irineo E. Bondoc on November 29, 1947. Bondoc made a statement in the Pampango dialect which was translated by the justice of the peace into the English language. The answers of the accused were, according to the witness, given spontaneously and voluntarily without any promise of reward or

immunity, without any intimidation or force having been used, in the presence of many witnesses. In said Exhibit "A" (page 1) Bondoc admitted that he was "one of those who were criminally responsible for the murder," that he did it "in compliance with an order from the director Mr. Ruben Velasco of Squadron 50 of the Hukbalahap."

Another witness, Lamberto Baun, municipal policeman of Capas, testified that he was one of the members of the party of Mayor Tizon on the morning of January 19, 1946, escorting said official who was going to Talimundoc to hold a community assembly. Before the ambushade, Irineo Bondoc was already known to the witness who also was acquainted with other members of the attacking group, such as Pederico Aquino and Atanasio Dayrit. Lamberto Baun described the attack; he said that the two policemen who were killed in the encounter, Ricardo Quizon and Candido Dayrit and another one were close behind Mayor Tizon when they were shot.

The defense, by means of two witnesses, tried to establish an alibi for the accused. Eustaquio Lunga took the stand for that purpose, but upon cross-questioning by the prosecution he admitted his inability to reckon dates. He could not give the date of the town fiesta of his hometown during the year immediately preceding the date of the trial, which made his testimony on the alleged presence of the appellant in his house in Tarlac, the capital of the province, on a much earlier date, January 19, 1946, most unreliable and unconvincing.

Another witness, Modesto Bondoc, gave testimony on his accidental meeting with the wife of appellant, In the house of his parents in Tarlac on the eve of the trial without knowing that he was going to testify, which clearly stamps his testimony as an eleventh hour fabrication.

Considering that this Court has ruled time and again that a defense of alibi which the accused tried to establish by such means must be looked upon with suspicion, it is obvious that it cannot prevail against the explicit and positive identification made of Irineo Bondoc by Mayor Tizon of Capas and policeman Lamberto Baun who, without hesitation, while on the witness stand, testified that they saw him with the group of ambushaders firing his carbine at the party of the mayor and his policemen. (U.S. vs. Olais, 36 Phil. 828.)

During the pendency of this appeal, counsel for appellant moved for the dismissal of this case on the ground that Irineo Bondoc being a Hukbalahap, and having committed the crimes charged against him in furtherance of the aims of such dissident organization, is entitled to the benefits of Presidential Proclamation Mo. 76 issued by the President of the Philippines on the 21st of June 1948, which granted amnesty to the leaders and members of the Hukbalahap and the PKM, "who have committed the crimes of rebellion, sedition, illegal association, assault upon, resistance, and disobedience to persons in authority, and/or illegal possession of firearms; Provided, however, That this amnesty shall apply to those who shall have presented themselves with all their firearms and ammunition to the duly constituted authorities of the Republic of the Philippines within twenty days from the date this proclamation is concurred in by the Congress."

Counsel urges that Irineo Bondoc had made an application for registration under said Amnesty Proclamation No. 76, which is certified to by the provincial warden of Tarlac. But such motion for dismissal is opposed by the Solicitor General on the ground that the petitioner did not comply (a) with the provision of Circular No. 27(a) of the Secretary of Justice, dated July 21, 1948, outlining the procedure to be followed by applicants for amnesty who are presently in jail, either as detention or convicted prisoners; and (b) with the provisions of Amnesty Proclamation No. 76 requiring the surrender of firearms and ammunition.

Amnesty Proclamation No. 76, intended for crimes committed after the liberation by members of the Hukbalahap and PKM who were no longer engaged in the resistance against the Japanese forces, but against the constituted government of the Republic of the Philippines, was issued by the President to bring about "the return of these dissident and recalcitrant elements of our population to their homes and the resumption by them of their lawful pursuits or occupations as loyal and law-abiding citizens will accelerate the rehabilitation of this war-devastated

country, restore peace and order, and secure the welfare and happiness of their communities.

For the enforcement of the provisions of said Proclamation No. 76, Circular No. 27 was issued by the Secretary of Justice prescribing the conditions under which persons applying for the benefits of such proclamation could have the benefits thereof extended to them. According to paragraph 1 of said circular, it is necessary that members of the Hukbalahap and PKM organizations should present themselves, with all their arms and ammunition to the duly constituted authorities of the Philippines, within twenty days from June 25, 1943, when the said proclamation was concurred in by the Congress. Paragraph 2 requires that a person claiming the benefit of the amnesty, must, on or before July 15, 1948 present himself together with all his arms and ammunition to an officer of the law who shall issue to him a certificate in the form prescribed therein.

The record fails to show that this appellant has complied with such requirement as to entitle him to the benefits of the .Amnesty Proclamation No. 76, particularly the fundamental requisite mentioned in said circular re the surrender of firearms and ammunition. Considering that the rebellious attitude of those dissident organizations, the Hukbalahap and PKM and their members, is predicated on the fact that they have in their possession firearms so that without them they cannot maintain their defiant attitude against the government, We believe that this appellant has failed to comply with such requirement and therefore his motion to dismiss lacks merit (*People vs. Santos*, G.R. No. L-1320 and 1821, promulgated on June 27, 1949, Volume 15, No. 1, *Lawyers Journal*, page 21).

It is quite evident that appellant, who confessed his active participation in the ambushade by firing several shots at the mayor and his escort of policemen, did not take the stand, and simply relied on his two above mentioned witnesses in an unsuccessful attempt to establish an alibi, is guilty of the two murders charged in the information. And although in Our opinion, in the light of the facts clearly disclosed by the evidence, this appellant and his confederates have also committed the crimes of (a) assault upon a person in authority—the mayor of Gapas who was then engaged in the performance of his duties—and (b) assault upon agents of an authority—the municipal policemen who were also engaged in the performance of their duties—yet such omission or oversight by the prosecution will not bar us from finding, as We do hereby find, Irineo Bondoc alias Dick Tracy guilty of the murder of each of the two policemen who lost their lives in that ambushade.

In view of all the foregoing, and finding no error committed by the judge a quo in the instant case, the judgment appealed from is hereby affirmed, with costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Montemayor, and Reyes, JJ., concur.

Tuason, J., concurs in the result.

Moran, C. J., Mr. Justice Paras voted for the affirmance of the judgment appealed from, but on account of his being on leave at the time of the promulgation of this opinion, his signature does not appear herein.

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