

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF and APPELLEE, VS.
AMADO V. HERNANDEZ, ET AL., ACCUSED. AMADO VS. HERNANDEZ,
ET AL., DEFENDANTS and APPELLANTS.**

G.R. Nos. L-6025 & L-6026. May 30, 1964

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is the appeal prosecuted by the defendants from the judgment rendered by the Court of First Instance of Manila, Hon. Agustin P. Montesa, presiding, in its Criminal Case No. 15841, People vs. Amado V. Hernandez, et al., and Criminal Case No. 15479, People vs. Bayani Espiritu, et al. In Criminal Case No. 15841 (G.R. No. L-6025) the charge is for Rebellion with Multiple Murder, Arsons and Robberies; the appellants are Amado V. Hernandez, Juan J. Cruz, Genaro de la Cruz, Amado Racanday, Permin Rodillas and Julian Lumanog; Aquilino Bunsol, Adriano Samson and Andres Balsa, Jr. were among those sentenced in the judgment appealed from, but they have withdrawn their appeal. In Criminal Case No. 15479 (G.R. No. L-6026) the charge is for rebellion with murders, arsons and kidnappings; the accused are Bayani Espiritu, Teopista Valerio and Andres Balsa, Jr.; they all appealed but Andres Balsa, Jr. withdrew his appeal.

The Information filed against defendants Hernandez and others in Criminal Case No. 15481 alleges:

I. That on or about March 15, 1945, and for some time before the said date and continuously thereafter, until the present time, in the City of Manila, Philippines, and the place which they had chosen as the nerve center of all their rebellious activities in the different parts of the Philippines, the said accused, conspiring, confederating and cooperating with each other, as well as with the thirty-one (31) defendants charged in Criminal Cases Nos. 19071, 14082, 14270, 14315 and 14344 of the Court of First Instance of Manila (decided May 11, 1951) and also with others whose whereabouts and identities are still unknown, the said accused and their other co-conspirators, being then high ranking officers and/or members of, or otherwise affiliated with the Communist Party of the Philippines (P.K.P.), which is now actively engaged in an armed rebellion against the Government of the Philippines thru acts theretofore committed and planned to be further committed in Manila and other places in the Philippines, and of which party the 'Hukbong Mapagpalaya Ng Bayani (H.M.B.) otherwise or formerly known as the 'Hukbalahaps' (Huks), is the armed force, did then and there willfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command the 'Hukbong Mapagpalaya Ng Bayan' (H.M.B.) or the 'Hukbalahaps' (Huks) to rise publicly and take arms against the Republic of the Philippines, or otherwise participate in such armed public uprising, for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof as in fact the said 'Hukbong Mapagpalaya Ng Bayan' or 'Hukbalahaps' have risen publicly and taken arms to attain the said purpose by then and there making armed raids, sorties and ambushes, attacks against police, constabulary and army detachments as well as innocent civilians, and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed acts of murder, pillage, looting, plunder, arson, and planned destruction of private and public property to create and spread chaos, disorder, terror, and fear so as to facilitate the accomplishment of the aforesaid purpose, as follows, to wit:

(Enumeration of thirteen attacks on government forces or civilians by Huks on May 6, 1946, August 6, 1946, April 10, 1947, May 9, 1947, August 19, 1947, June, 1946, April 28, 1949, August 25, 1950, August 26, 1950, August 25, 1950, September 12, 1950, March 28, 1950 and March 29, 1950.)

II. That during the period of time and under the same circumstances herein-above indicated the said accused In the above-entitled case, conspiring among themselves and with several others as aforesaid, willfully, unlawfully and feloniously organized, established, led and/or maintained the Congress of Labor Organization (CLO), formerly known as the Committee on Labor Organizations (CLO), with central offices in Manila and chapters and affiliated or associated labor unions and other 'mass organisations' in different places in the Philippines, as an active agency, organ, and instrumentality of the Communist Party of the Philippines (P.K.P.) and as such agency, organ., and instrumentality, to fully cooperate in, and synchronize its activities-as the CLO. . thus organized, established, led and/or maintained by the herein accused and their co-conspirators, has in fact fully cooperated in and synchronized its activities—with the activities of the 'Hukbong Mapagpalaya Ng Bayan' (HMB) and other organs, agencies, and instrumentalities of the Communist Party of the Philippines (P.K.P.), to thereby assure, facilitate, and effect the complete and permanent success of the above-mentioned armed rebellion against the Government of the Philippines.

The information filed against the defendants in Criminal Case No. 154-79, Bayani Espiritu, Andres Balsa, Jr. and Teopista Valerio, alleges:

"That on or about the 6th day of May, 1946, and for sometime prior and subsequent thereto and continuously up to the present time, in the City of Manila, the seat of the government of the Republic of the Philippines, which the herein accused have intended to overthrow, and the place chosen for that purpose as the nerve center of all their rebellious atrocities in the different parts of the country, the said accused being then high ranking officials and/or members of the Communist Party of the Philippines (P.K.P.) and/or of the 'Hukbong Mapagpalaya Ng Bayan' (H.M.B.) otherwise or formerly known as the 'Hukbalahaps' (HUKS), the latter being the armed forces of said Communist Party of the Philippines; ha-ving come to an agreement with the 29 of the 31 accused in Criminal Cases Nos. 14071, 14082, 14270, 14315, 14344 of the Court of First Instance of Manila and decided to commit the crime of rebellion, and therefore, conspiring and confederating with all of the 29 accused in said criminal cases, acting in accordance with their conspiracy and in furtherance thereof, together with many others whose whereabouts and identities are still unknown up to the filing of this information, and helping one another, did then and there willfully, unlawfully and feloniously promote, maintain, cause, direct and/or command the 'Hukbong Mapagpalaya Ng Bayan' (HMB) or the Hukbalahaps (HUKS) to rise publicly and take arms against the Government or otherwise participate therein for the purpose of overthrowing the same, as in fact, the said 'Hukbong Mapagpalaya Ng Bayan' or Hukbalahaps (HUKS) have risen publicly and taken arms against the Government, by then and there making armed raids, sorties and ambushes, attacks against police, constabulary and army detachments, and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, by then and there committing wanton acts of murder, spoilage, looting, arson, kidnappings, planned destruction of private and public buildings to create and spread terrorism in order to facilitate the accomplishment of the aforesaid purpose, as follows, to wit:

(Enumeration of thirteen attacks on Government forces or civilians by Huks on May 6, 1946, August 6, 1946, April 10, 1947, May 9, 1947, August 19, 1947, June, 1946, April 28, 1949, August 25, 1950, August 26, 1950, August 25, 1950, September 12, 1950, March 28, 1950 and March 29, 1950)

A joint trial of both cases was held, after which the court rendered the decision subject of the present appeals.

APPEAL OF AMADO V. HERNANDEZ

After trial the Court of First Instance found, as against appellant Amado V. Hernandez, the following: (1) that he is a member of the Communist Party of the Philippines and as such had aliases, namely, Victor or Soliman; (2) that he was furnished copies of "Titis", a Communist publication, as well as other publications of the Party; (3) that he hold the position of President of the Congress of Labor Organizations; (4) that he had close connections with the Secretariat of the Communist Party and held continuous communications with its leaders and its members; (5) that he furnished a mimeographing machine used by the Communist Party, as well as clothes and supplies for the military operations of the Huks; (6) that he had contacted well-known Communists coming to the Philippines and had gone abroad to the WFTU conference at Brussels, Belgium as a delegate of the CLO, etc. Evidence was also received by the court that Hernandez made various speeches encouraging the people to join in the Huk movement in the provinces.

The court also found that there was a close tie-up between the Communist Party and the Congress of Labor Organizations, of which Hernandez was the President, and that this Congress was organized by Hernandez in conjunction with other Huks, namely: Alfredo Saulo, Mariano Balgos, Guillermo Capadocia, etc.

We will now consider the nature and character of both the testimonial as well as the documentary evidence, independently of each other, to find out if the said evidence supports the findings of the court.

Testimonial Evidence

Amado V. Hernandez took the oath as member of the Communist Party in the month of October, 1947, at the offices of the Congress of Labor Organizations at 2070 Azcarraga in the presence of Guillermo Capadocia, Hamon Espiritu, Pedro Castro, Andres Balsa, etc. As a Communist he was given the pseudonyms of Victor and Soliman, and received copies of the Communist paper "Titis". He made various speeches on the following dates and occasions:

(1) On August 29, 1948 before the Democratic Peace Rally of the CLO at Plaza Miranda, in which he announced that the people will soon meet their dear comrade in the person of Comrade Luis Taruc.

(2) On September 4, 1948 he conferred with Hindu Khomal Goufar at the Escolta, at which occasion Balgos told Goufar that the PKM, CLO and the Huks are in one effort; that the PKM are the peasants in the field and the Huks are the armed forces of the Communist Party; and the CLO falls under the TUD of the Communist Party.

(3) On October 2, 1948 he went abroad to attend the Second Annual Convention of the World Federation of Trade Unions and after arrival from abroad a dinner was given to him by the people of Gagalangin, at which Hernandez delivered a speech and he said that he preferred to go with the Huks because he felt safer with them than with the authorities of the Government.

(4) In April, 1949, he made a speech before a group of tenants in Malabon attacking the frauds in the 1947 elections, graft and corruption in the elections and that if improvement cannot be made by the ballots, they could be made by bullets; and enjoined the people to go to the hills and join Luis Taruc, the head of the dissidents in the Philippines.

(5) On October 2, 1949 he delivered a speech on the occasion of the commemoration of the World Peace at the CLO head quarters at 330 P. Campa. He attacked the city mayor and incited the people to go to Balintawak and see Bonifacio there and thereafter join "our comrades under the leadership of Luis Taruc".

(6) On October 16, 1949 he delivered a speech before a convention of the unemployed at 330 P. Campa. He asked the unemployed to approve a resolution urging the Government to give them jobs. In conclusion he said

that if the government fails to give them jobs the only way out was to join the revolutionary forces fighting in the hills. He further said that Mao Tse Tung, leader of the People's Army in China, drove Chiang Kai Shek from his country, and that Luis Taruc was also being chased by Government forces run by puppets like Quirino, etc.

(7) On January 13, 1950 there was another meeting at 330 P. Campa. In his talk Hernandez expressed regret that two foremost leaders of the CLO, Balgos and Capadocia, had gone to the field to join the liberation army of the HMB, justifying their going out and becoming heroes by fighting in the fields against Government forces until the ultimate goal is achieved.

The above evidence was testified to by Florentino Diolata who was the official photographer of the CLO since August, 1948.

On the tie-up between the Communist Party and the CLO, Guillermo Calayag, a Communist and a Huk from 1942 to 1950, explained:

(1) The ultimate goal of the Communist Party is to overthrow the present government by force of arms and violence; thru armed revolution and replace it with the so-called dictatorship of the proletariat; the Communist Party carries its program of armed over-throw of the present government by organizing the HMB and other forms of organizations such as the CLO, PKM, union organizations, and the professional and intellectual group; the CLO was organized by the Trade Union Division (TUD) of the Communist Party.

(2) A good majority of the members of the Executive Committee and the Central Committee of the CLO were also top ranking officials of the Communist Party; activities undertaken by the TUD - the vital undertaking of the TUD is to see that the directives coming from the organizational bureau of the Communist Party can be discussed within the CLO, especially the Executive Committee. And it is a fact that since a good majority of the members of the Executive Committee are party members, there is no time, there is no single time that these directives and decisions of the organizational department, thru the TUD, are being objected to by the Executive Committee of the CLO. These directives refer to how the CLO will conduct its functions. The executive committee is under the chairmanship of accused Amado V. Hernandez.

(3) The CLO played its role in the over-all Communist program of armed overthrow of the present government and its replacement by the dictatorship of the proletariat by means of propaganda - by propagating the principles of Communism, by giving monetary aid, clothing, medicine and other forms of material help to the HMB. This role is manifested in the very constitution of the CLO itself which expounded the theory of classless society and the eradication of social classes (par. 5, Sec. 1, Art. 2, page 18 of the CLO Constitution contained in the Fourth Annual Convention Souvenir Program of the CLO, Exh. "V-1579"). Thru propaganda, the CLO promoted the alms of Communist Party and disseminated Communist ideas by:

(a) The conspicuous display of the portrait or pictures of Crisanto Evangelista (Exh. V-1662), founder of Communism in the Philippines, in the session hall of the CLO headquarters at 2070 Azcarraga and then at 330 P. Campa.

(b) The distribution of foreign communist reading materials such as the World Federation of Trade Union Magazine, International Union of Students magazine, Voice magazine of the marine cooks of the CIO, World Committee of the Defenders of the Peace magazine, Free Bulgaria magazine, Soviet Russia Today magazine and World Federation of Democratic Youth magazine (Exhs.V-911, V-907, V-910, V-899, V-912, V-853, V/996 and V-967);

(c) The publication and distribution of some local subversive publications such as the "Titis", "Bisig", Kidlat", which are Communist Party organs; "The Philippine Labor Demands Justice" and "Hands Off Korea" authored by accused Amado V. Hernandez;

(d) Principles of Communism were also propagated thru lectures, meetings, and by means of organization of committee in the educational department as well as researches in the Worker's Institute of the CLO.

(4) The CLO also helped carry out the pro-gram of the Communist Party thru infiltration of party members and selected leaders of the HMD within the trade unions under the control of the CLO. The Communist Party thru the CLO assigned Communist Party leaders and organizers to different factories in order to organize unions. After the organization of the union, it will affiliate itself with the CLO thru the Communist leaders and the CLO, in turn, will register said union with the Department of Labor; and the orientation and indoctrination of the workers is continued in the line of class struggle. After this orientation and infiltration of the Communist Party members and selected leaders of the 1MB with the trade unions under the control of the CLO is already achieved and the group made strong enough to carryout its aims, they will begin the sporadic strikes and the liquidation of anti-labor elements and anti-Communist elements and will create a so called revolutionary crisis. That revolutionary crisis will be done for the party to give directives to the HMB, who are fight-ing in the country sides and made them come to the city gates. The entry of the HMB is being paved by the simultaneous and sporadic strikes, by ultimate general strikes thru the management of the CLO.

Important Documents Submitted At Trial

1. Documents which prove that Amado V. Hernandez used the aliases "Victor", or was referred to as "Victor" or "Soliman".

(a) Letter dated April 23, 1950 (signed) by Victor addressed to Julie telling the latter of his sympathies for other communists, describing his experiences with Communists abroad, telling Julie to dispose of materials that may be sent by Victor. (Exh. D-2001-2004)

(b) "Paano Maisasagawa, etc." – mentions different groups of labor unions of which Victor heads one group, consisting of the MRRCO, PTLD, PGWU, EMWU and IHWU. (Exh. C-2001-2008) Cadres assigned to different industries. (Exh. V-40-41)

(c) Handwritten certificate of Honofre Mangila states that he knew Amado Hernandez as Victor from co-party members Hugo and Ely. (Exh. LL)

(d) Letter of Ellas to Ka Eto requesting the latter to deliver attached letter to Victor. (Exh. 1103)

(e) Saulo's letter about his escape, asks Victor why his press statement was not published in the newspapers. (Exh. C-362) Letter was however published by Hernandez in the Daily Mirror.

(f) Letter of Taruc to Maclang directing the latter to give copy of Huk Story to Victor. (Exh. D-463-64)

(g) Notes of Salome Cruz, Huk courier, stating that she went to Soliman at Pampanga St. to bring to the latter communications from the Communist Party. (Exh. D-1203) That Soliman was given copies of "Titis". (Exh. D-1209)

(h) SEC directions to Politburo members, Soliman not to be involved with Nacionalista Rebels. (Exh. F-92-93-SEC)

(i) Letter of SEC to Politburo reporting that Saulo be sent out and Soliman has "tendencies of careerism and tendency to want to deal with leaders of the party"; that he should be asked to choose to go underground or fight legally. (Exh. P-562)

(k) Explanation given by Hernandez why he did not join Saulo in going underground. (Exh. V-87)

(1) His election as councilor until December, 1951. (Exh. V-42, W-9)

(2) His election as President of CLO until August of following year.(Exh. V-42, W-9)

2. Letters and Messages of Hernandez.

- (a) To Lyden Henry and Harry Reich, tells Huk still fighting. (Exh. V-80)
- (b) To SOBSI Jakarta - that Filipinos are joining other communist countries of the East. (Exh. V-82)
- (c) Press release on Saulo's disappearance published by Amado Hernandez. (Exh. W-116-120)
- (d) To Hugh and Eddie, July 8, 1949 - Extends greetings to National Union of Marine Cooks and Stewards, states that labor has one common struggle - "the liberation of all the peoples from the chains of tyranny, fascism and imperialism." (Exh. V-259)
- (e) To Kas. Pablo and Estrada - talks of the fight - fight of labor. (Exh. V-85-98)
- (f) Appeal to the Women of Asia. (Exh. V-5-10)
- (g) Letter to Julie (Exh. V-2001-2004)
- (h) Letter to Chan Lieu - states that leaders during the war are being persecuted, like Taruc. Tells of reward P100,000.00 on Taruc's head. (Exh. X-85-88)
- (i) Letter to John Gates of the Daily Worker - condemns Wall Street maneuvers; corruption and graft in Quirino administration, etc. (Exh. V-83)
- (j) Cablegram: CLO join ILWU, commands Harry Bridges, US Communist. (Exh.V-79)
- (k) Communication of Hernandez to CLO at MRRCO - Praises Balgos and Capadocia for joining the Huks. (Exh. V-12-22, V-289)
- (l) "Philippine Labor Demands Justice" -Attacks czars of Wall Street and U.S. Army and Government. (Exh. V-94)
- (m) Letter to Taruc - June 28, 1940. -States solidarity among the CLO, Huks and FKM. Attacks North Atlantic Pact. Praises Mao Tse Tung, (contained in Exh. V-94)
- (n) "Philippines Is Not A Paradise" -States of a delegation to Roxas attacking unemployment. (Exh. V-90-93)
- (o) Article "Progressive Philippines" - (Exh. V-287)
- (p) Article "Hands Off Korea" - (Exh. V-488-494, '495-501, 509-515, 17-25-26)
- (q) "Limang Buwang Balak Sa Pagpapalakas Ng Organisasyon" - (Exh. X-35-38)
- (r) Press statement of Hernandez - opposes acceptance of decorations from Greece by Romulo. (Exh. V-72)

3. Other Activities of Hernandez.

- (a) Hernandez received clothes from Pres. Lines thru P. Campa, which clothes he sent to the field. Letters show of sending of supplies to Huks. (Exh. S-383)
- (b) Hernandez was asked to furnish port-able typewriter, which he did furnishto Huks. (Exh. C-364)
- (c) Hernandez brought Taruc's letter about facts and incidents about Huks to Bulosan for inclusion In Bulosan's book.(Exh. FF-1)
- (d) Had conference with Kumar Goshal, a Hindu, about the Huks and their armed forces. (Photographs, Exh. X-6, RR-54-55A)

- (e) Supervised taking of pictures of sons of Capadocia and Joven, (Photographs, Exh. T-1, RR-136-138A)
- (f) Had knowledge of the going underground of Capadocia and Balgos and issued press release about their going under-ground. (Exh. F-91)
- (g) Victor mentioned to continue as con-tact for Chino. (Exh. C-362)
- (j) Taruc's letter to Maclang shows that Soliman had sent 7 lessons to Taruc. (Exh. D-451 -451-A)
- (k) Associated with follow ranking Communist leaders.

The Court upon consideration of the evidence submitted, found (1) that the Communist Party was fully organized as a party and in order to carry out its aims and policies established a National Congress, a Central Committee (CC), Politburo (PE), Secretariat (SEC), Organization Bureau (OB), and National Courier or Communication Division (NCD), each body performing functions indicated in their respective names; (2) that in a meeting held on August 1.1, 1950 the SEC discussed the creation of a Military Committee of the Party and a new G-HQ, under which on September 29, 1950 the SEC organized a special warfare division, with a technological division;(3) that on May 5, 1950 a body known as the National Intelligence division was created, to gather essential military intelligence and, in general, all information useful for the conduct of the armed struggle; (4) that a National Finance Committee was also organized as a part of the Politburo and answerable to it; (5) that the country was divided into 10 Recos, the 10th Reco comprising the Manila and suburbs command; (6) that since November1,1949 the CPP had declared the existence of a revolutionary situation and since then the Party had gone under-ground and the CPP Is leading the armed struggle for national liberation, and called on the people to organize guerrillas and coordinate with the HMB on the decisive struggle and final armed overthrow of the Imperialist government; (7) that in accordance with such plan the CPP prepared plans for expansion and development not only of the Party but also of the EMB, the expansion of the cadres from 3,600 in July 1950 to 56,000 in September 1951,the HMB from 10,800 in July 1950 to 172,000 in September 1951, et. seq.

Around the month of January, 1950 it was decided by the CPP to intensify 1MB military operations for political purposes. The Politburo sanctioned the attacks made by the Huks on the anniversary of the HMB on March 25, 1950. The HMB attacks that were reported to the PB were those made In May, 1945; June 1946; April 10, 1947; May 9, 1947; August 19, 1947; August 25, 1950; August 26,1950; October 15 and 17, 1950; May 6, 1946; August 6,19^6; April 10, 1947.; May 9, 1947; August 19, 1947; April 29, 1949; August 25, 1950.; August 26, 1950; September 12, 1950; March 26, 1950; March 29, 1950.

The theory of the prosecution, as stated in the lower court's decision, is as follows:

"The evidence does not show that the defendants in these cases now before this Court had taken a direct part in those raids and in the commission of the crimes that had been committed. It is not, however, the theory of the prosecution that they in fact had direct participation in the commission of the same but rather that the defendants in these cases have cooperated, conspired and confederated with the Communist Party in the prosecution and successful accomplishment of the aims and purposes of the said Party thru the organization called the CLO (Congress of Labor Organizations)."

The Court found that the CLO is independent and separate from the CPP, organized under the same pattern as the CPP, having its own National Congress, a Central Committee (which acts in the absence of and in representation of the National Congress), an Executive Committee(which acts when the National Congress and the Executive Committee are not in session), and seven permanent Committees, namely, of Organization, Unemployment and Public Relations, Different Strikes and Pickets, Finance, Auditing, Legislation and Political Action. Members of the Communist Party dominate the committees of the CLO.

The supposed tie-up between the CPP and the CLO, of which Hernandez was the President, is described by the court below in its finding, thus:

"Just how the CLO coordinates its functions with the Communist Party organ under which it operates was explained by witness Guillermo S. Calayag, one-time ranking member of the Communist Party and the CLO, who typewrote the 'Patnubay sa Education' from a handwritten draft of Capadocia, which is one of the texts used in the Worker's Institute of the CLO. According to him, the CLO plays its role by means of propaganda, giving monetary aid, clothing, medicine and other material forms of help to the HMB, which constitutes the armed forces of the Communist Party. Propaganda is done by lectures, meetings, and the organization of committees of the educational department as well as researches at the CLO Worker's Institute.

"Another way of helping the Communist Party of the Philippines is by allowing the Communist Party leaders to act as organizers in the different factories in forming a union. These Party Members help workers in the factories to agitate for the eradication of social classes and ultimately effect the total emancipation of the working classes thru the establishment of the so-called dictatorship of the proletariat. It is the duty of these Communist Party members to indoctrinate uninitiated workers in the union to become proselytes of the* Communist Party ideology. After the right number is secured and a union is formed under a communist leader, this union is affiliated with the CLO and this in turn registers the same with the Department of Labor. The orientation and indoctrination of the masses is continued with the help of the CLO. The primary objective of the CLO is to create what is called a revolutionary crisis. It seeks to attain this objective by first making demands from the employers for concessions which become more and more unreasonable until the employers would find it difficult to grant the same. Then a strike is declared. But the strikes are only preparation for the ultimate attainment of the Communist goal of armed overthrow of the government. After the workers in the factories have already struck in general at the behest of the Communist Party thru the CLO, a critical point is reached when a signal is given for the armed forces of the Communist Party, the HUB, to Intervene and carry the revolution now being conducted outside to within the city."

On the basis of the above findings, the court below found Hernandez guilty as principal of the crime charged against him and sentenced him to suffer the penalty of reclusion perpetua with the accessories provided by law, and to pay the proportionate amount of the costs.

Our study of the testimonial and documentary evidence, especially those cited by the Court in its decision and by the Solicitor General in his brief, discloses that defendant-appellant Amado V. Hernandez, as a Communist, was an active advocate of the principles of Communism, frequently exhorting his hearers to follow the footsteps of Taruc and join the uprising of the laboring classes against capitalism and more specifically against America and the Quirino administration, which he dubbed as a regime of puppets of American imperialism. But beyond the open advocacy of Communistic Theory there appears no evidence that he actually participated in the actual conspiracy to overthrow by force the constituted authority.

Hernandez is the founder and head of the CLO. As such, what was his relation to the rebellion? if, as testified to by Guillermo S. Calayag, the CLO plays merely the role of propagation by lectures, meetings and the organization of committees of education by Communists; if, as stated, the CLO merely allowed Communist Party leaders to act as organizers in the different factories, to indoctrinate the CLO members into the Communist Party and proselytize them to the Communist ideology; if, as also indicated by Calayag, the CLO purports to attain the ultimate overthrow of the Government first by making demands from employers for concessions until the employers find it difficult to grant the same, at which time a strike is declared; if it is only after the various strikes have been carried out and a crisis is thereby developed among the laboring class, that the Communist forces would intervene and carry the revolution — it is apparent that the CLO was merely a stepping stone in the preparation of the laborers for the Communists' ultimate revolution. In other words, the CLO had no function but that of indoctrination and preparation of the members for the uprising that would come. It was only a preparatory

organization prior to a revolution, not the revolution itself. The leader of the CLO, therefore, namely Hernandez, cannot be considered as a leader in actual rebellion or of the actual uprising subject of the accusation. Hernandez, as president of the CLO, therefore, by his presidency and leadership of the CLO, cannot be considered as having actually risen up in arms in rebellion against the Government of the Philippines, or taken part in the conspiracy to commit the rebellion as charged against him in the present case; he was merely a propagandist and indoctrinator of Communism, he was not a Communist conspiring to commit the actual rebellion by the mere fact of his presidency of the CLO.

The court below declares that since November 1949 the Communist Party of the Philippines had declared the existence of the revolutionary situation and since then the Party had gone underground, with the CPP leading the struggle for national integration, and that in the month of January 1950, it was decided by the said Party to intensify the HMB military operations for political purposes. The court implicates the appellant Hernandez as a co-conspirator in this resolution or acts of the Communist Party by his mere membership thereto. We find this conclusion unwarranted. The seditious speeches of Hernandez took place before November, 1949 when the GPP went underground. The court below has not been able to point out, nor have we been able to find among all acts at bid-touted to Hernandez, any single fact or act of his from which it may be inferred that he took part in the deliberations declaring the existence of a revolutionary situation, or that he had gone underground. As a matter of fact the prosecution's evidence is to the effect that Hernandez refused to go underground preferring to engage in what they consider the legal battle for the cause.

We have also looked into the different documents which have been presented at the time of the trial and which were confiscated from the office of the Politburo of the Communist Party. The speeches of Hernandez were delivered before the declaration by the Communist Party of a state of revolutionary situation in 1949. Neither was it shown that Hernandez was a member of the Executive Committee, or of the SEC, or of the Politburo of the Communist Party; so NO presumption can arise that he had taken part in the accord or conspiracy declaring a revolution. In short, there has been no evidence, direct or indirect, to relate or connect the appellant Hernandez with the uprising or the resolution to continue or maintain said uprising, his participation in the deliberations leading to the uprising being inferred only from the fact that he was a Communist.

The practice among the top Communists, as declared by the trial court, appears to have 'been for important members, if they intend actually to join the rebellion, to go underground, which meant leaving the city, disappearing from sight and/or secretly joining the forces in the field.

The document Exhibit F-562, which is quoted in the decision, contains the directive of the SEC of September 1, 1950, to Saulo and Hernandez, which reads:

"11. In view of the new developments in the city, send out Elias who prefers to work outside. Present problem of fighting legally to Com. Soliman. If Soliman is prepared for martyrdom, retain him to fight legally. If not, send him out with Elias. Same goes with Com. Mino and other relatively exposed mass leaders."

And the lower court itself found that whereas Saulo went underground and joined the underground forces outside the City, Hernandez remained in the City, engaged in the work of propaganda, making speeches and causing the publication of such matters as the Communist Party leaders directed him to publish.

That Hernandez refused to go underground is a fact which is further corroborated by the following reasons (excuses) given by him for not going underground, namely: (1) that his term of councilor of the City of Manila was to extend to December, 1951; and (2) that he was elected President of the CLO for a term which was to end the year 1951.

As a matter of fact the SEC gave instructions to Hernandez not to be involved with Nacionalista Rebels, and

reported to the Politburo that Hernandez "has tendencies of careerism and tending to want to deal with leaders of the Nacionalista Party instead of following CPP organizational procedures."

The court below further found that Hernandez had been furnishing supplies for the Huks in the field. But the very document dated December 3, 1949, Exhibit D-420-422, cited in the decision (printed, p. 49), is to the effect that clothes and shoes that Hernandez was supposed to have sent have not been received. It is true that some clothes had been sent thru him to the field, but these clothes had come from a crew member of a ship of the American President Lines. He also, upon request, sent a portable typewriter to the SEC or Politburo. Furthermore, a certain Niagara Duplicating machine received by Hernandez from one Rolland Scott Billiard, a crew member of the SS President Cleveland, appears later to have been forwarded by him to the officers of the SEC or the Politburo.

Lastly, it further appears that Taruc and other CPP leaders used to send notes to appellant Hernandez, who in turn issued press releases for which he found space in the local papers. His acts in this respect belong to the category of propaganda, to which he appears to have limited his actions as a Communist.

The acts of the appellant as thus explained and analyzed fall under the category of acts of propaganda, but do not prove that he actually and in fact conspired with the leaders of the Communist Party in the uprising or in the actual rebellion, for which acts he is charged in the information. And his refusal to go underground because of his political commitments occasioned by his term of election as president of the CLO, and the impressions caused by his acts on the Communist leaders, to the effect that he was in direct communication or understanding with the Nacionalista Party to which he was affiliated, creates in Us the reasonable doubt that it was not his Communist leanings but his political ambitions, that motivated his speeches sympathizing with the Huks. For which reason We hold that the evidence submitted fails to prove beyond reasonable doubt that he has conspired in the instigation of the rebellion for which he is held to account in this criminal case.

The question that next comes up for resolution is: Does his or anyone's membership in the Communist Party per se render Hernandez or any Communist guilty of conspiracy to commit rebellion under the provisions of Article 136 of the Revised Penal Code? The pertinent provision reads:

"ART. 136. CONSPIRACY AND PROPOSAL TO COMMIT REBELLION OR INSURRECTION. – The conspiracy and proposal to commit rebellion or insurrection shall be punished, respectively, by prison correccional in its maximum period and a fine "which shall not exceed P5,000 pesos, and by prison correccional in its medium period and a fine not exceeding 2,000 pesos."

The advocacy of Communism or Communistic theory and principle is not to be considered as a criminal act of conspiracy unless transformed or converted into an advocacy of action. In the very nature of things, mere advocacy of a theory or principle is insufficient unless the communist advocates action, immediate and positive the actual agreement to start an uprising or rebellion, or an agreement forged to use force and violence in an uprising of the working class to overthrow constituted authority and seize the reins of Government itself. Unless action is actually advocated or intended or contemplated, the Communist is a mere theorist, merely holding belief in the supremacy of the proletariat; a Communist does not yet advocate the seizing of the reins of Government by it. As a theorist the Communist is not yet actually considered as engaging in the criminal field subject to punishment. Only when the Communist advocates action and actual uprising, war or otherwise, does he become guilty of conspiracy to commit rebellion. Borrowing the language of the Supreme Court of the United States:

"In our jurisprudence guilt is personal, and when the imposition of punishment on a status or on conduct can only be justified by reference to the relationship of that status or conduct to other concededly criminal activity (here advocacy of violent overthrow), that relationship must be sufficiently substantial to satisfy the concept of personal guilt in order to withstand attack under the Due Process Clause of the Fifth Amendment. Membership, without more, in an organization engaged in illegal advocacy, it is now said, has not heretofore been

recognized by this Court to be such a relationship. X X X

"What must be met, then, is the argument that membership, even when accompanied by the elements of knowledge and specific intent, affords an insufficient quantum of participation in the organization's alleged criminal activity, that is, an insufficiently significant form of aid and encouragement to permit the imposition of criminal sanctions on that basis. It must indeed be recognized that a person who merely becomes a member of an illegal organization, by that 'act' alone need be doing nothing more than signifying his assent to its purposes and activities on one hand, and providing, on the other, only the sort or moral encouragement which comes from the knowledge that others believe in what the organization is doing. It may indeed be argued that such assent and encouragement do fall short of the concrete, practical impetus given to a criminal enterprise which is lent for instance by a commitment on the part of the conspirator to act in furtherance of that enterprise. A member, as distinguished from a conspirator, may indicate his approval of a criminal enterprise by the very fact of his membership without thereby necessarily committing himself to further it by any act or course of conduct whatever." (Scales vs. United States, 367 U.S. 203, 6 Led 782)

The most important activity of appellant Hernandez appears to be the propagation of improvement of conditions of labor through his organization, the CLO. While the CLO, of which he is the founder and active president, has communistic tendencies, its activity refers to the strengthening of the unity and cooperation between labor elements and preparing them for struggle; they are not yet indoctrinated in the need of an actual war with or against Capitalism. The appellant was a politician and a labor leader and it is not unreasonable to suspect that his labor activities especially in connection with the CLO and other trade unions, were impelled and fostered by the desire to secure the labor vote to support his political ambitions. It is doubtful whether his desire to foster the labor union of which he was the head was impelled by an actual desire to advance the cause of Communism, not merely to advance his political aspirations.

Insofar as the appellant's alleged activities as a Communist are concerned. We have not found, nor has any particular act on his part been pointed to us, which would indicate that he had advocated action or the use of force in securing the ends of Communism. True it is, he had friends among the leaders of the Communist Party, and especially the heads of the rebellion, but this notwithstanding, evidence is wanting to show that he ever attended their meetings, or collaborated and conspired with said leaders in planning and encouraging the acts of rebellion, or advancing the cause thereof. Insofar as the furnishing of the mimeograph machine and clothes is concerned, it appears that he acted merely as an intermediary, who passed said machine and clothes on to others. It does not appear that he himself furnished funds or material help of his own to the members of the rebellion or to the forces of the rebellion in the field.

But the very act or conduct of his in refusing to go underground, in spite of the apparent desire of the chief of the rebellion, is clear proof of his non-participation in the conspiracy to engage in or to foster the rebellion or the uprising.

We next consider the question as to whether the fact that Hernandez delivered speeches of propaganda in favor of Communism and in favor of rebellion can be considered as a criminal act of conspiracy to commit rebellion as defined in the law. In this respect, the mere fact of his giving and rendering speeches favoring Communism would not make him guilty of conspiracy, because there was no evidence that the hearers of his speeches of propaganda there and then agreed to rise up in arms for the purpose of obtaining the overthrow of the democratic government as envisaged by the principles of Communism. To this effect is the following comment of Viada:

"CUESTION 10. El que hace propaganda entre sus convecinos, induyendoles a que el dia que se anunciara la subasta de consumos se echaran a la calle para conseguir aunque fuera preciso acudir a la fuerza, el reparto entre los vecinos ricos solamente, sera responsable de un delito de conspiracion para la sedicion? - El Tribunal Supremo ha resultado la negativa al casar cierta sentencia de la Audiencia de Valencia, que entendio lo contrario:

'Considerando que, con arreglo a lo que dispone el art., 40 del Código Penal, hay conspiración cuando dos o más personas se conciertan para la ejecución de un delito y resuelven cometerlo; y no constando que existiera ese concierto en cuanto a los hechos que se refieren en la tercera pregunta del veredicto, pues en ella solo se hable de los actos de inducción que el procesado realizó, sin expresar el efecto que la misma produjo en el ánimo de las personas a quienes se dirigían, ni si estas aceptaron o no lo que se les propuso, resulta evidente que faltan los elementos integrantes de la conspiración, etc.'" (S. de 5 de Julio de 1907, Gaceta de 7 de enero de 1909.)" (Viada, Tomo I, Código Penal, p.152)

In view of all the above circumstances, we find that there is no concrete evidence proving beyond reasonable doubt that the appellant (Hernandez) actually participated in the rebellion or in any act of conspiracy to commit or foster the cause of the rebellion. We are constrained, in view of these circumstances, to absolve, as we hereby absolve, the appellant Amado V. Hernandez from the crime charged, with a proportionate share of the costs de oficio.

APPEAL OF OTHER DEFENDANTS-APPELLANTS

All the other defendants were found guilty as accomplices in the crime of rebellion as charged in the information and were each sentenced to suffer the penalty of 10 years and 1 day of prisión mayor, with the accessories provided by law, and to pay their proportionate share of the costs.

Legal Considerations. - Before proceeding to consider the appeals of the other defendants, it is believed useful if not necessary to lay down the circumstances or facts that may be determinative of their criminal responsibility or the existence or nature thereof. To begin with, as we have exhaustively discussed in relation to the appeal of Hernandez, we do not believe that mere membership in the Communist Party or in the CLO renders the member liable either of rebellion or of conspiracy to commit rebellion, because mere membership and nothing more merely implies advocacy of abstract theory or principle without any action being induced thereby; and that such advocacy becomes criminal only if it is coupled with action or advocacy of action, namely, actual rebellion or conspiracy to commit rebellion, or acts conducive thereto or evincing the same.

On the other hand, membership in the HMB (Hukbalahap) implies participation in an actual uprising or rebellion to secure, as the Huks pretend, the liberation of the peasant and laboring class from thralldom. By membership in the HMB, one already advocates uprising and the use of force, and by such membership he agrees or conspires that force be used to secure the ends of the party. Such membership, therefore, even if there is nothing more, renders the member guilty of conspiracy to commit rebellion punishable by law.

And when a Huk member, not content with his membership, does anything to promote the ends of the rebellion like soliciting contributions, or acting as courier, he thereby becomes guilty of conspiracy, unless he takes to the field and joins in the rebellion or uprising, in which latter case he commits rebellion.

In *U.S. vs. Vergara*, *infra*, the defendants organized a secret society commonly known as the "Katipunan", the purpose of which was the overthrow of the government by force. Each of the defendants on various times solicited funds from the people of Mexico, Pampanga. The Court held that the defendants were guilty of conspiracy and proposal to commit rebellion or insurrection and not of rebellion or insurrection itself. Thus, the Court ruled that:

"From the evidence adduced in this case we are of the opinion that the said defendants are guilty, not of inciting, setting on foot, or assisting or engaging in rebellion, but rather of the crime of conspiring to overthrow, put down, and destroy by force the Government of the United States in the Philippine Islands, and therefore we find that said defendants, and each of them, did, together with others, in the months of February and March, 1903, in the Province of Pampanga, Philippine Islands, conspire to overthrow, put down, and to destroy by force the Government of the United States in the Philippine Islands," (*U.S. vs. Vergara*, et al., 3

Phil. 432, 434.)

JUAN J. CRUZ

The court found him to be a Communist with various aliases, a member of the Central Committee of the CLO, member of the Central Committee of the CPP and as such committed to the establishment of the dictatorship of the proletariat. To the same effect is the testimony of Guillermo Calayag.

There Is no evidence to connect him with the rebellion or to the conspiracy to commit rebellion. He should therefore be absolved of the charges contained In the in-formation.

AMADO RACANDAY

The trial court found him guilty as a Communist, a Secretary and Executive Committee member of the CLO, a communications center of the Communist Party, having been found in possession of letters from Federico Maclang to Salome Cruz, and solicitor of contributions for the Huks.

Racanday admits being a member of the Executive Committee of the CLO, Editor of the Kidlat of the Government Workers Union, receiving copies of the Titis. Calayag testified that he was a member of the Central Committee of the Communist Party entrusted with the duty of receiving directives of the Regional Committee of the Communist Party.

The letters found in his possession are dated February 14, 1950, before the Communist Party went underground. We have been unable to find the evidence upon which the court bases its conclusion that he received contributions for the Huks. With these circumstances in mind We are not convinced beyond reasonable doubt that as a Communist he took part in the conspiracy among the officials of the Communist Party to take part and support the rebellion of the Huks.

We are, therefore, constrained to absolve him of the charges filed against him.

GENARO DE LA CRUZ

The court found him to be a Communist since 1945, an officer of an organized Communist branch in Pasay City, a member of the Central Committee and treasurer of the CLO. He admitted his membership and his position as member of the executive committee and treasurer of the CLO, these facts being corroborated by the witness Guillermo Calayag.

His membership in the Communist Party dates as far back as the year 1945. As a communist, Genaro de la Cruz received quotas and monetary contributions coming from the areas under his jurisdiction, and one time he made a receipt from a member from Caloocan at the CLO headquarters at 2070 Azcarraga signing the receipt as "Gonzalo" which is one of his aliases. He also distributed copies of the "Titis" magazine.

While his membership in the Communist Party plus his having received contributions for the party indicate that he is an active member, it was not shown that the contributions that he received from Communist Party members were received around the year 1950 when the Central Committee of the Communist Party had already agreed to conspire and go underground and support the Huk rebellion. Under these circumstances We cannot find him guilty of conspiracy to commit rebellion because of the lack of evidence to prove his guilt beyond reasonable doubt.

JULIAN LUMANOG

The court found him to be an organizer of HKB among the mill workers, solicited contributions for the HMB and Central Committee member of the CLO as per testimony of Guillermo Calayag.

He admitted that he joined the Communist Party because he was made to believe that the Party is for the welfare of the laborers. He also admitted being a member of the Central Committee of the CLO. Calayag testified that Lumanog organized the HMB units of the Communist Party in the Lumber Unions and attended a Communist meeting held by Maclang.

Domingo Clarin testified that he (Julian Lumanog) used to give the money collected by him to one Nicasio Pamintuan, one of the members of the HMB Special Unit (Trigger Squad) in Manila for the use of the said unit.

Considering that the HMB was engaged in a rebellion to overthrow the government, it is evident that by giving his contributions he actually participated in the conspiracy to overthrow the government and should, therefore, be held liable for such conspiracy, and should be sentenced accordingly.

FERMIN RODILLAS

The trial court found that Fermin Rodillas was a member of the CCP and the CLO; that his activities consisted in soliciting contributions, in cash and in kind, from city residents for the use of the HMB, turning over said collections to the Party; that he has also given asylum to a wanted Hukbalahap at his house at Juan Luna St. Gagalangin, which house was used as Military post. The above findings of the court are fully supported by the testimony of Domingo Clarin.

Considering that while he has not actually taken part in the rebellion, he has shown sympathy with the cause by soliciting contributions for it and had given shelter to the Huks. We feel that the court was fully justified in finding him guilty, but We hold that he should be declared liable merely as a co-conspirator in the crime of conspiracy to commit rebellion, and should be sentenced accordingly.

BAYANI ESPIRITU

This appellant was found by the court to be a Communist, he having admitted membership in the Communist Party since 1945; that his duties as a Communist was to help in the office of the national Finance Committee, assorting papers and written documents; that sometimes he accompanied the purchaser of medicines, shoes, papers, foodstuffs and clothing to be given to the Huks; that he is a member of the Communication Division of the CPP in Manila, in charge of distribution of letters or communications; that he admits having written to Salome Cruz, courier of the Communist Party, when he asked for his necessities, such as money and shoes, etc.

The facts found by the court are sufficiently supported "by the communications and evidence submitted by the prosecution. The exhibits show that he was in constant communication with the Communists, serving them as courier. His oath as a member of the Communist Party was submitted in court and in it he admits obedience to all orders of the Party and to propagate the stability of the PKP .

Considering that the PKP was engaged in an actual uprising against the constituted Government and that Bayani Espiritu was in constant communication with the Communist Party and served it as courier, We believe that the court was fully justified In finding him guilty. However, We believe that not having actually taken up arms in the uprising he may only be declared guilty of conspiracy to commit rebellion.

TEOPISTA VALERIO

The court below found that this appellant joined the Communists in 1938 in San Luis, Pampanga, under Casto Alejandrino, who later became her common-law husband; that her aliases are "Estrella" and "Star"; that she was found in possession of various documents written to top Communists like Aiejandrino, Lava and Romy, as well as a letter from Taruc congratulating her for the delivery of a son.

Jose Taguiang testified that she was a member of the Provincial Committee of the CPP In Nueva Ecija, later Chairman of the Finance Department, and then promoted to Finance Officer of the Central Luzon Committee, Alicia Villegas, a Huk courier, testified that she delivered letters from the mountains to Teopista Valerio, who was in turn also a courier.

Without considering the close relationship that she had with top Communist Casto Alejandrino, We are satisfied that she herself was aside from being a Huk courier, also a Huk, a member of the HMD from 1942 to 1951. As she was a Communist and at the same time a member of the HMB, and considering that the HMB was engaged in an uprising to uproot the legitimate government, there cannot be any question that she was in conspiracy with the other members of her Party against the constituted government. We hold, therefore, that the evidence proves beyond reasonable doubt that she is guilty of conspiracy to commit rebellion.

DEFENDANTS NOT INCLUDED IN DECISION

In Crim. Case No. 15841 (G.R. No. L-6025) the charge against Guillermo Capadocia, Mariano P. Balgos, Alfredo B. Saulo and Jacobo Espino was dismissed because they have not been apprehended at the time of the trial.

PEOPLE VS. EVANGELISTA, 57 PHIL., 354 AND REPUBLIC ACT NO. 1700, DISTINGUISHED

In the case at bar the prosecution is for actual rebellion which consists in rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippines, or any part thereof, etc., a crime defined in Article 134 of the Revised Penal Code; whereas Evangelista was charged and convicted for inciting to rebellion under Art. 138, Revised Penal Code (formerly Sec. 2, Act No. 292). As the specific charge against appellants is that of rising up in arms in actual rebellion against the Government, they cannot be held guilty of inciting the people to arms under Article 138, which is a different offense.

On the other hand, Rep. Act 1700, known as the Anti-Subversion Act, which penalizes membership in any organization or association committed to subvert the Government, cannot be applied to the appellants because said t was approved on June 20, 1957 and was not in force at the time of the commission of the acts charged against appellants (committed 1945-1950); the Anti-Subversion Act punishes participation or membership in an organization committed to overthrow the duly constituted Government, a crime distinct from that of actual rebellion with which appellants are charged.

CONCLUSION

Wherefore, in Criminal Case No. 13341 (G.R. No. L-6025) defendants-appellants Amado V. Hernandez., Juan J.Cruz, Armado Racanday and Genaro de la Cruz are absolved from the charges contained in the information, with their proportionate share of the costs de oficio. The defendants-appellants Julian Lumanog and Fermin Rodillas in Criminal Case No. 15841 (G.R. No. L-6025) and the defendants-appellants Bayani Espiritu and Teopista Valerio in Criminal Case No. 15479 (G.R. No. L-6026) are hereby found guilty of the crime of conspiracy to commit rebellion, as defined and punished in Article 136 of the Revised Penal Code, and each and everyone of them is hereby sentenced to suffer imprisonment for five years, four months and 21 days of prison

correccional, and to pay a fine of P5,000.00 with subsidiary imprisonment in case of insolvency and to pay their proportionate share of the costs. So ordered.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, and Makalintal, JJ., concur.

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