

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ANTONIO GUILLERMO (alias SILVER) ET AL., DEFENDANTS.***G.R. No. L-2188. May 19, 1950*

Ponente: OZAETA, J.

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An almost unbelievable orgy of bloody executions, reminiscent of the aberrations of the French Revolution, is revealed by the record of this prosecution. The proofs show that on the night of December 15, 1944, in the barrio of Ganagan, Bacarra, Ilocos Norte, the appellant Antonio Guillermo alias Silver, who styled himself as "commanding officer" of the bolomen of said municipality, a guerrilla group affiliated to the "15th Infantry" headed by Major O'Day, beheaded seven helpless citizens whose hands were tied behind their back, namely: Dominador Ballesteros, Donato Luis, Eusebio Luis, Julian Ventura, Esteban Andres, Santiago Gerardo and Alfredo Gerrada. The massacre was motivated by the suspicion of the appellant and his companions (who were not identified and the case against whom was provisionally dismissed) that the said victims were followers or henchmen of Captain Bueno, the head of a rival guerrilla organization against which the group to which appellant belonged was then engaged in a war of extermination. Captain Bueno himself was said to have been killed one or two days after the massacre in question.

The gruesome spectacle is too appalling and sickening to depict in detail. We do not deem that necessary anyway. Suffice it to say that the testimony of the eyewitnesses Tomasa Ballesteros, disconsolate mother of the victim Dominador Ballesteros; Domingo Luis, bereaved son of the other victim Donato Luis; and Leoncio Pedro who, like the first two witnesses, was also apprehended by the men of the appellant and investigated by the latter in the same place where the victims were killed, convinces us beyond reasonable doubt of the guilt of the accused.

The perpetration of the seven murders at the time and place above indicated is not disputed. The main issue raised in this case is the identity of the executioner. One of the distinguishing features of the executioner, according to the witnesses for the prosecution, was that he wore beard and mustache in those days. The appellant tried to prove, and insists before this Court, that on the tragic night in question he was in the barrio of Liptong, Bacarra, and that the brute who executed the seven victims was Lt. Alejandro Bumatnong alias Sagad who, according to appellant, was the one who wore beard and mustache in those days, but who, according to evidence, had since passed to the other world. His Honor B. Quitoriano, trial judge, rejected this pretension (1) because it was easy and convenient to pass the buck to a dead man who could not defend himself; (2) because the witness Iluminada Foronda, common-law wife of Alejandro Bumatnong, swore: "He (Alejandro) had no beard or mustache since the time I met him. He had a long hair, but he had no beard and no mustache"; and (3) because all the witnesses for the prosecution, who knew the appellant and saw him on the night in question, he having investigated them also as suspected followers of Captain Bueno, testified positively that the appellant was the one who wore beard and mustache at that time and that it was he who beheaded the victims.

We find no sufficient basis upon which to reverse or disturb the finding of the trial court. No motive is attributed to said witnesses falsely to implicate the appellant. Two of said eyewitnesses, Tomasa Ballesteros and Domingo

Luis, were related to two of the victims within the first degree of consanguinity. Why should they impute the killing of their beloved to the wrong person. They were more interested than the State itself in having the guilty punished. On the other hand, the witnesses for the defense who were admittedly present also at the scene of the crime, were strangers to the victims and were not as much interested in having their murderer punished. It is less violent to a witness' innate sense of justice to try to save a guilty accused than to help convict an innocent one.

We think therefore that the trial court did not err in giving credence to the testimony of the witnesses for the prosecution rather than to that of the witnesses for the defense. The minor defects and contradictions harped on by counsel for appellant do not, in our view, detract from the veracity of the testimony that the appellant was the executioner, and not the now deceased Sagad.

An issue raised by appellant for the first time in this appeal is whether he is entitled to the benefits of Guerrilla Amnesty Proclamation No. 8. He did not invoke that amnesty before the Guerrilla Amnesty Commission, nor did he plead it as a defense before the trial court; his defense was not confession and avoidance but an absolute denial. Even in discussing his 5th assignment of error that the lower court erred in not extending to him the benefits of said amnesty proclamation, appellant insists that "Lieutenant Sagad and three other companions took away the ill-fated seven, after which seven persons were decapitated and buried in a pit without the knowledge or notice of anyone of the surviving prisoners." (P. 34, appellant's brief.) In the first place, how can the trial judge be charged with error in not sustaining a defense which appellant did not plead and prove before him? In the second place, appellant cannot wash his hands of the crime he imputes to Sagad and at the same time claim the benefits of the amnesty to which, according to him, Sagad should be entitled.

Apparently realizing the inconsistency and untenability of that position, appellant also contends that granting for the sake of argument that the accused was the author of the crime, there is proof "that the ill-starred seven were charged of (with) being spies for the Japanese."

The insincerity and weakness of this last-ditch plea is manifest. Appellant does not claim that he killed the seven victims because he had proof and believed that they were spies for the Japanese. He merely says they were charged (by Sagad) with being spies for the Japanese.

In the case of *Villa vs. Allen* (2: Phil. 436), this Court held that "where the offense charged is a common crime, such as murder, if the defendant desires to obtain the benefits of the amnesty proclamation, he must plead it in defense and the evidence must disclose facts showing that his particular case falls within its scope."

It is rank inconsistency for appellant to justify an act, or seek forgiveness for an act, which according to him he has not committed. Amnesty presupposes the commission of a crime, and when an accused maintains that he has not committed a crime, he cannot have any use for amnesty. Where an amnesty proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of such conditions. The invocation of amnesty is in the nature of a plea of confession and avoidance, which means that the pleader admits the allegations against him but disclaims liability therefor on account of intervening facts which, if proved, would bring the crime charged within the scope of the amnesty proclamation. (*People vs. Llaneta et al.*, supra, p. 219.)

At any rate, the amnesty proclamation now invoked is not applicable. We are satisfied from the proofs that the massacre in question was committed not in furtherance of the resistance movement but in the course of a fratricidal strife between two rival guerrilla units. That was to hinder and not to further the resistance against the Japanese enemy. It was a shame! And it would be adding insult to injury to stigmatize the memory of the unfortunate victims of such lust for power and supremacy as spies and traitors to their country, in the absence of competent proof that they really were. We spurn the baseless suggestion as rank injustice.

The trial court found the appellant guilty of seven murders qualified by treachery, without any aggravating or mitigating circumstances, and sentenced him to suffer reclusion perpetua for each murder and to indemnify the heirs of each of the deceased in the sum of P2,000.

With the modification as to the indemnity which is hereby raised to P6,000 each and with the understanding that the duration of the aggregate penalties shall not exceed 40 years in accordance with article 70 of the Revised Penal Code, the sentence appealed from is affirmed, with costs.

Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

Judgment modified, indemnity raised.

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