

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LUIS M. TARUC, ET AL., DEFENDANTS. LUIS M. TARUC, DEFENDANT
AND APPELLANT.**

G. R. No. L-14010. May 30, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal by Luis M. Taruc from a decision of the Court of First Instance of Pampanga, Honorable Ladislao Pasicolan, Judge, finding the defendant-appellant Luis M. Taruc, guilty as principal by induction of the murder of Feliciano B. Gardiner, Felipe Yusi, Plaridel Carillo and Pacifico Navarro, and sentencing him to life imprisonment, for the murder of each of aforesaid victims, with the accessories of the law, to indemnify their heirs in the sum of P6,000 for each victim and to pay the costs. The original information was filed on September 4, 1946 and charged Luis Taruc, Mario Samson, Tomas Calma, Ceferino Cabral, Delfin Balagtas, Ricarte Canlas, John Doe alms Montenegro, Richard Doe alias Calvario, Peter Doe alias Fred, and David Doe alias Mar, with the crime of illegal detention with murder committed on the person of Feliciano B. Gardiner. No action was taken on the information until on September 13, 1954, when an amended information for kidnapping with robbery and multiple murder was filed against the same accused. The amended information included three new victims of the crime, namely: Felipe Yusi, Pacifico Navarro and Plaridel Carillo. On July 11, 1956 a second amended information was filed, charging the same accused with kidnapping with robbery and multiple murders for the kidnapping of the four persons already named in the amended information. Robbery is charged in the amended information as it is alleged that the accused divested their victims of all their belongings such as clothes, jewelries, shoes, and cash money and medicine with a total value of P86,000. It is on this second amended information that a trial was held starting on December 12, 1956 and ending in April, 1958. The decision is dated July 11, 1958.

The evidence for the prosecution on record shows that on December 2, 1944 Feliciano B. Gardiner, Governor of Tarlac under the Japanese, went to the City of Manila upon call of his superiors. He went to Manila in a Chevrolet car driven by Pacifico Navarro and accompanied by Felipe Yusi and Plaridel Carillo, Yusi was a government employee and Navarro was sent to Manila to buy medicine.

On December 6 in the morning all of them left Manila in the Chevrolet car, on their return trip to Tarlac. All of them disappeared and their respective families did not, after their disappearance, know what had happened to them.

The detention of Gardiner and his companions and their liquidation is explained in part by Delfin Balagtas, one of the accused, who was discharged to be used as a witness for the prosecution. According to him, in the month of December, 1944, he was a member of the Hukbalahap organization, assigned in the communications division under Mario Samson alias Villasanta as immediate chief. In the morning of December 6, 1944 he and three other Huk companions known as Fred, Mar and Hicarte Canlas were in barrio Gatbuka, Municipality of Calumpit. That morning Ceferino Cabral arrived at their station bringing an order to secure a battery. Cabral informed Fred,

whose real name was Esteban Macalino, the head of the group, of the order that he had to look for a battery, so Macalino and his companions went to the barrio of San Vicente, Apalit, Pampanga. There they stationed themselves at the crossing, near the toll bridge, in barrio San Vicente, and waited for a vehicle to pass. About ten o'clock that same morning a black Chevrolet car arrived and Macalino and his companions stopped it. Four persons were riding in the car one of whom was a fellow who looked like a "Bombay" and who upon being asked to give up the battery of his car refused. Balagtas had then a revolver tucked in his clothes and upon drawing it the hammer got hooked on his jacket and so the pistol fired, hitting the person seated near the driver. Upon refusal of Gardiner to deliver the battery the Huks boarded the car and with the passengers drove it to Apalit, where they looked for a physician to treat the wounded passenger, but as they could not wait for the physician a woman treated the wound and thereafter they motored north until they reached a river. They crossed the river by means of a banca bringing along the four passengers of the car with them. Upon reaching the other side of the river they brought the four passengers of the car to a house. This house was within the jurisdiction of the municipality of San Simon. The four passengers were brought before defendant Tomas Calma, alias Sol, who at that time held the position of chief of the intelligence division of the Hukbalahap. Sol questioned the four passengers of the car in the evening, while Balagtas was resting in the kitchen of the house. Upon waking up the following morning Balagtas found out that the four passengers, together with Calma and his companions, were no longer there.

The above testimony of Delfin Balagtas is corroborated by that of Numeriano Borja. Borja testified that in the morning of December 6, 1944 he was in the barrio of Gatbuka, Calumpit, Bulacan, in the company of Delfin Balagtas, Macalino and Canlas, all members of the communications division of the Hukbalahap. While in Gatbuka another Huk arrived with orders to look for a battery, so they went to the crossing of the road to Apalit. This was about nine thirty o'clock in the morning. At about ten o'clock a black Chevrolet car arrived and was stopped by Delfin Balagtas. There were four persons seated in the Chevrolet car, one of whom appeared to be an Indian "mestizo" (Mestizong Bombay). The demand was made for the battery of the car but as the owner refused they boarded it and drove towards Apalit. There they looked for a doctor to treat the person who had been hit by the shot of the pistol of Balagtas. From that place they went north, then crossed a river and then went to a house where the four passengers of the car were given to the custody of Tomas Calma, who was then the chief of the intelligence division of the Hukbalahap.

Another witness for the prosecution is Leoncio Santos, who declared as follows: He knows the accused Luis Taruc and Tomas Calma, a native of Sta. Rita, San Luis, Pampanga. He belonged to the Huk organization and occupied the position of post, his work being to guide anybody who wanted to see Luis Taruc. On December 7, 1944 he was in barrio Sta. Monica performing his duty as post. On that day Tomas Calma, Calvario, Montenegro and Villasanta came to him with four captives whose hands were tied to one another, between eleven and twelve o'clock in the morning. Tomas Calma asked him to guide them to Hog a Metung, where Luis Taruc had his barracks. Santos guided Calma and his companions and their captives to the barracks of Luis Taruc, to the place where he held his office. These barracks were in the place known as Hog a Metung, municipality of San Luis, Pampanga. When the captives were brought to Tame the latter immediately addressed one of the captives, Fiscal Gardiner, and immediately accused him of causing the sufferings of the socialists and of having persecuted the Timbol brothers who had been helping the poor. When Gardiner heard the accusation he asked for his life and promised that he would repay to the best of his ability, but Taruc answered that because of the sufferings that he (Gardiner) had caused to the socialists, the corresponding penalty for him was death. Taruc also ordered the companions of Gainer to be put to death. After that Taruc and the Huks brought their captives to a school house where for about fifteen minutes more or less afternoon and upon reaching that place Tomas Calma ordered the clothes of Gardiner to be removed or taken off he was undressed Tomas Calma hit Upon the back of the neck with a piece o receiving the blow Gardiner fell on the ground and once in the position Calma continued clubbing him

until died. Alias Calvario also undressed another captive and clubbed him to death, and so did alias Montenegro, as well as Villasanta, each clubbing a captive to death with pieces of bamboo.

Still another witness for the prosecution is Magno Maniago who testified as follows: He was a vice-chief of the division of intelligence, Regional Command No. 3 in the Huk organization. On December 7, 1944 he was in barrio Hog a Metung, San Luis, Pampanga, because he was studying at the intelligence school of the Hukbalahap at that place. In the afternoon of December 7 while he was in the school, and between four and five o'clock in the afternoon, Tomas Calma and companions brought four captives one of whom was Fiscal Gardiner and another a mestizo. When Calma brought the four captives Taruc introduced Fiscal Gardiner to the students calling him capitalist and imperialist and charging him with having indicted and prosecuted the Timbol brothers. Fiscal Gardiner and his companions stayed in the school for about twenty minutes. When he and his companions went to eat their dinner, they met Sol with a watch, which he alleged to be from a person who had been previously taken to the schoolhouse.

The above witnesses proved the stopping of the car of Governor Gardiner, at the crossing of the road, and the fact that he was brought to Apalit and later to a house where he was investigated by Tomas Calma, from which house Calma and his companions brought the four passengers of the car to Taruc and the latter gave orders for their liquidation.

Taruc testified on his behalf and declared that while he had information about the execution of Governor Feliciano Gardiner and his companions, said execution was ordered by the corresponding regional command having Sdiction over the territory wherein his captives were arrested. The regional command in question was regional command No. 7, headed by regional commander "Sol". He further testified that he was commander of the forces and was a member of the supreme military committee to which appeals regarding executions ordered by the regional commands could be made, but that no such appeal had reached the said military committee.

Further asserting his lack of knowledge and participation in the execution of Governor Gardiner and his three companions, he testified that on December 7, he had gone to visit Pedro Abad Santos and he was not, therefore, in barrio Ilog A Metung as claimed by the witnesses for the prosecution. A witness, an old woman, was introduced by him to support his alleged alibi. The old woman testified that she was sent by Pedro Abad Santos to fetch Taruc on the day mentioned. The trial judge refused to believe this claim of the defense. We have read both the testimony of Taruc on the alibi and that of his witness and the facts testified to are so general and devoid of concrete details as to produce conviction of their truth. And we agree with the trial judge that this defense (of alibi) is not sufficient to overcome the positive testimonies of the witnesses for the prosecution on the arrest of the victims, their being brought to the barracks where Taruc was holding his classes and the fact they were finally liquidated upon direct orders from Taruc. The witnesses who testified to the kidnapping and execution are admitted to have belonged to the Hukbalahap organization on the dates when the arrest of Gardiner and his companions was effected and there has been no circumstance indicated which would tend to destroy their credibility.

We, therefore, find that the court below correctly found Taruc guilty of the execution of the four victims mentioned in the amended information, and that Taruc had given orders to his subordinates for their execution.

We will now consider the errors assigned by counsel for defendant-appellant before us. The first error to the court below is in allowing the prosecution to Delfin Balagtas as its state witness, without first charging him from the information. We find no merit in this claim of counsel for defendant-appellant. Witness Delfin Balagtas was discharged from the original information. This discharge affected not only the original information but also all the subsequent amended informations. The amended informations are not new informations; hence, the discharge of a

witness under said original information continues as regards these subsequent informations, because the amended informations are a continuation of the original proceeding. As Delfin Balagtas was one of the accused in the original information, he also should be included in these amended informations subsequently filed. The filing of the subsequent informations did not affect his discharge already granted upon the first information. As already stated, amended informations are not new informations but a continuation of the previous one, so that a discharge under the original information is just as binding upon the subsequent amended informations.

In another assignment of error it is claimed that there is absence of proof of corpus delicti. It is argued under this supposed error that there was failure on the part of the prosecution to prove the corpus delicti, for the identities of the victims and the fact of their death were not clearly established. This is an incorrect assertion. Witness Leoncio Santos described in detail how the victims were first stripped of their clothes and thereafter attacked one by one with bamboo sticks, first while standing and later, while already lying on the ground, until each of them died. There could not be any better proof of corpus delicti.

In the third assignment of error it is argued that the trial court erred in allowing the prosecution to propound additional direct questions to witness Leoncio Santos. When Leoncio Santos was permitted to answer additional questions the prosecution had not yet closed its evidence and the case was not yet submitted to the court for final judgment, and neither was there a final judgment rendered which would make the recall of a witness a violation of the rule in jeopardy. This supposed error is, therefore, without any legal foundation.

In his fourth assignment of error counsel for defendant-appellant claims that the testimony of Leoncio Santos against Luis M. Taruc was brought out as a consequence of a cross-examination made by counsel for Esteban Macalino. The record does not support this claim because Santos testified on direct examination how Taruc, upon being presented with Fiscal Gardiner and his companions, and despite the fact that Gardiner asked that his life be spared, gave direct orders that he and his companions should be put to death (t.s.n., pp. 110, 111, 112, Lagdameo).

In the fifth assignment of error it is claimed that the trial court committed error in giving weight and credit to the testimony of Leoncio Santos, in spite of its inherent and manifest improbability. However, we find his testimony to be simple, concrete and positive and a mere reading thereof discloses its truthfulness. The supposed error is, therefore, unfounded.

In the sixth assignment of error, counsel for defendant-appellant argues that the latter's crime was extinguished by Proclamation No. 8 of the late President Roxas. In the first place, there is absolutely no evidence in the record to prove that Governor Gardiner and his companions were guilty of unjustifiable collaboration with the Japanese. Gardiner held the position of governor, but by such fact alone he did not become a collaborator in the sense that his suppression by the guerrillas would be justified. Besides, the liquidation of Gardiner and his companions was evidently due to the activities of Gardiner in relation to the prosecution and conviction of the Timbol brothers, who were sympathizers or protectors of the poor. It was not, therefore, because of any act of collaboration with the Japanese that the liquidation of Gardiner and his companions was ordered. The defense of amnesty may not, therefore, be claimed.

Having disposed of the errors assigned before us on this appeal, we will now proceed to determine the correctness of the penalty imposed by the trial court.

In the commission of the crime the qualifying circumstance of evident premeditation was clearly present. So was the aggravating circumstance of abuse of superior strength, because the victims were tied by the hands and their captors were provided with the necessary arms, as well as clubs to carry out the execution, so that the victims were entirely and absolutely defenseless when their liquidation took place.

There must, however, be considered in favor of the appellant the mitigating circumstance of his voluntary surrender which took place in May, 1954. Under these circumstances, the penalty that should be meted out to the accused-appellant is that of reclusion perpetua, the same penalty imposed by the court below.

For all the foregoing, the decision appealed from is hereby affirmed, with costs against the appellant Luis M. Taruc.

Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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