

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RUBEN VICTORIANO (ALIAS VICKS) ET AL., DEFENDANTS.***G.R. No. L-2731 and 2732. May 19, 1950*

Ponente: OZAETA, J.

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Appellants Ruben Victoriano alias Vicks and Pacifico Pineda alias Edison, together with Segundo Serrano alias Ferrer, who was still at large, were accused in two separate cases before the Court of First Instance of Pampanga of the murder of Pio Silos, Jr. and Damaso Luanzon, committed on the 22d day of July, 1944, in the sitio of Sibul, barrio of Manibaug-Pasig, municipality of Porac, Pampanga. After a joint trial of the two cases His Honor Judge Antonio G. Lucero found them guilty and sentenced them to suffer reclusion perpetua in each case and to indemnify the heirs of each of the deceased in the sum of P2,000.

In July, 1944, one Pablo Ayson lost certain cawas or vats and suspected Pio Silos, Jr. and Damaso Luanzon as the thieves because they had previously sought to buy said vats but could not agree with him as to the price. Eladio Ayson, son of Pablo, reported to Fernando Tolentino, a Huk chief of the barrio, that Pio Silos, Jr. and Damaso Luanzon had stolen his father's vats and asked for their apprehension. One dark night shortly before July 22, 1944, two unknown men called at the house of Pio Silos, Sr., looking for Pio Silos, Jr. and Damaso Luanzon, who were not then at home.

At about 8:00 p.m., on July 22, 1944, Huk Esteban Basilio alias Rustin and Huk Segundo Serrano alias Ferrer, respectively, brought Manuel Austria and Lucerio Arceo to an isolated spot in the sitio of Sibul, where they were made to dig a grave. Later on the appellants Ruben Victoriano and Pacifico Pineda arrived at the same spot, dragging with them Damaso Luanzon with his hands tied behind his back. They interrogated Damaso Luanzon then and there as to whether he had stolen Pablo Ayson's vats and when he denied the imputation the appellants hit him with their fists. Pulling Damaso to the edge of the pit and telling him to kneel down and pray, Pacifico Pineda again asked him about Ayson's cawas. On receiving the same negative answer, Segundo Serrano by order of Pacifico Pineda, struck Damaso Luanzon at the nape with an iron bar, causing him to fall on his face unconscious. Pacifico and Segundo raised him by the shoulders while Ruben and Pacifico once more asked him about the vats. Damaso still unconscious could not answer; so Segundo, on order of Pacifico, hit him several times on the nape with the iron bar. Afterwards Pacifico and Segundo pushed Damaso into the pit as Ruben Victoriano looked on.

After thus disposing of Damaso Luanzon, Pacifico Pineda whistled and Huks Felix Guevara, Esteban Basilio and Pedro Torres appeared with Pio Silos, Jr. whose hands were also tied behind his back. Pacifico, Segundo and Ruben asked Pio Silos, Jr. also about Ayson's vats and he, like Damaso, denied having stolen them. Thereupon he was boxed repeatedly on the stomach by Ruben, Pacifico, Felix Guevara and Esteban Basilio until he fell. Pacifico Pineda then ordered Ruben Victoriano to drag the limp form of Pio Silos, Jr. to the pit. Ruben asked the help of Manuel Austria and Lucerio Arceo, but as these two were slow in lending assistance, Pacifico Pineda and Segundo Serrano themselves threw the body of Pio Silos, Jr. into the pit. Pacifico Pineda then commanded the

grave-diggers Manuel Austria and Lucerio Arceo to cover the hole, thus burying the two victims who were still breathing at that time. After that Pacifico allowed Austria and Arceo to go home, threatening to kill them should they reveal the incident.

On June 19, 1946, at the indication of Lucerio Arceo the bodies of the victims were exhumed and properly identified by their relatives in company with members of the constabulary.

When investigated by Lt. Felicisirao Mostajo on June 26, 1946, appellant Ruben Victoriano subscribed to an affidavit before the municipal mayor of Porac, stating in substance that in the year 1944 Eladio Ayson complained to Fernando Tolentino that Pio Silos, Jr. and Damaso, Luanzon had stolen his cawas; that by order of Tolentino affiant, with Pacifico Pineda, Pedro Torres, Esteban Basillo and many others, looked for Pio Silos, Jr. and Daraaso Luanzon, whom they found near the small bridge at barrio Manibaug-Pasig and whoa they brought to Sibul by order of Tolentino; that affiants companions took Daraaso Luanzon to a distance of about 100 yards away, while affiant held and retained Pio Silos, Jr.; that while affiant was guarding Pio Silos, Jr., he could hear his companions raining blows on Damaso Luanzon; that later Pacifico Pineda came and told affiant "to bring Pio Silos, Jr. to the spot where they killed Damaso Luanzon"; that on reaching the spot, "they ordered me to hit him also, otherwise they would kill me, so I gave him fistic blows. After that I moved away about 5 meters from them. I heard that they were constantly beating him up * * *. Later I heard Pacifico Pineda ordering the rest to drop Pio Silos, Jr. in the pit. After a lapse of 20 minutes I moved closer to the pit and saw that they had Pio Silos, Jr. covered in the pit already. They told me that Damaso Luanzon's body was also in the same pit."

We agree with the trial judge and the Solicitor General that the guilt of the appellants has been proved beyond reasonable doubt. Aside from Ruben Victoriano's confession, the testimony of the grave-diggers Manuel Austria and Lucerio Arceo has not been overcome by the evidence for the defense.

The appellants admitted being members of the Hukbalahap organization. Appellant Ruben Victoriano claimed before the trial court that he was merely a passive spectator at the killing of Pio Silos, Jr. and that it was the accused Segundo Serrano alias Ferrer (who was still at large) that did the killing.

Appellant Pacifico Pineda admitted that, as a Huk, Fernando Tolentino alias Berting alias Magellan, was his chief, but denied having taken part in the arrest and killing of Pio Silos, Jr. and Damaso Luanzon, claiming that on July 22, 1944, he was in his house, sick with malaria; and in that he was corroborated by his co-appellant Ruben Victoriano.

We think the trial court committed no error in not believing appellants' pretensions.

As a last resort, appellants invoked Guerrilla Amnesty Proclamation No. 8 of September 7, 1943» and Huk Amnesty Proclamation No. 76 of June 21, 1948.

In overruling the defense based on Amnesty Proclamation No. 8, Judge Lucero said:

"A careful scrutiny of the evidence shows that the espionage activities ascribed to the two victims are totally incredible. There is direct proof to the fact that the deceased and their families continued to reside in Manibaug, Porac, Pampanga, up to the time they were kidnapped. If the deceased were Japanese spies, their elemental instinct of self-preservation would counsel them to move their residence to places within reach of the protection of their Japanese masters, but they did not. Tomas Poy Lorenzo, first cousin to Pacifico Pineda, declared that the two deceased apprehended him sometime in 1943 in company with Japanese soldiers as a result of his refusal to sell the steel rails which formed part of his dugout. Having been released on November 1, 1943 and having joined the guerrillas thereafter it appears peculiar why that Tomas Poy Lorenzo had failed to report these two spies to the guerrillas. The testimony of Bernardo Pañgilinan, who accused the victims of being Jap spies and of being "buy and sell" men, also failed to convince us for he could not mention the name

of even one individual from whom the victims bought war materials even by hearsay information. It may be mentioned that these two witnesses are very close relatives of Pacifico Pineda. On the other hand the testimony of Mr. Dominador Chantengco, occupation mayor of Porac and at present a Civilian Investigator of the U. S. Army, carries weight and conviction. There is probative value in his statement to the effect that, if the victims were "buy and sell" men, he would not fail to notice their collaboration activities for he was an intelligence officer of the USAFFE guerrillas since August 5, 1942, aside being the town mayor of Porac. In a small community like the town of Porac those persons who engaged in the buying and selling of war materials were easily identified for the nature of their trade compelled them to contact people and to search for the necessary articles. Mr. Chantengco mentioned in Court the names of several living people who engaged in this kind of business during the Japanese occupation in Porac, but the names of the herein victims were conspicuous by their absence. It is a matter within the judicial cognizance that the town of Porac and its barrios were under the full control of the Huks during the occupation and these two victims, had they been engaged in this nefarious trade, would certainly not remain in a place where the environment was not propitious for their safety and security, especially so after their having executed Huks guerrillas Aurelio Manalese and Modesto Gigante and their having arrested and tortured Tomas Poy Lorenzo. Having accepted the evidence for the prosecution to the effect that the victims were not Japanese spies nor collaborators, it must of necessity follow that the accused are not entitled to amnesty under Proclamation No.8."

Upon consideration of the proofs and briefs of both parties, we are satisfied that the foregoing findings of the trial court are correct and find no justification to disturb the same.

With regard to Amnesty Proclamation No. 76, we hold that the crimes in question are not comprehended therein. Said proclamation declared amnesty "in favor of the leaders and members of the association known as Hukbalahap and Pambansang Kaisahan ng mga Magbubukid (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." Appellants have not been prosecuted for any of said crimes. Moreover, in the case of *People vs. Dizon Ramos*, (84 Phil., 97) which is similar to the case at bar, we held:

"Amnesty Proclamation No. 76 was not intended for crimes committed during the enemy occupation, which were already covered by Amnesty Proclamation No. 3, but for crimes committed after the liberation by members of the Hukbalahap and the PKM who were no longer engaged in the resistance against the Japanese enemy but against the constituted authorities of the Government of the Republic of the Philippines, the purpose of said amnesty being 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' in order to 'accelerate the rehabilitation of this war-devastated country, restore peace and order, and secure the welfare and happiness of their communities.' "

With the sole modification as to the amount of the indemnity which is hereby raised from P2,000 to P6,000 in each case, and with the understanding that the duration of the aggregate penalties shall not exceed forty (40) years, the sentence appealed from is affirmed, with costs.

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

OZAETA, J.:

I hereby certify that Chief Justice Moran voted for the affirmation of the sentence of the trial court with the modification above indicated.

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