

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROMAN VILO, DEFENDANT AND APPELLANT.

*G.R. No. L-1656. January 07, 1949*

Ponente: PARAS, J.

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### PARAS, J.:

This is an appeal from a judgment of the People's Court convicting the appellant, Roman Vilo, of the complex crime of treason with murder and imposing upon him the death penalty and a fine of P10,000 with costs.

Appellants attorney de oficio admits that the People's Court correctly found the appellant guilty of the following overt acts: (1). The apprehension and torture on April 15, 1944, in Carcar, Cebu, of Amando Satorre, Ireneo Medel, Maximo Satorre and Eusebio Rezada, and the killing of Amando Satorre, all due to their connection with the resistance movement. (2) The apprehension on April 15, 1944, in Carcar, Cebu, of Laureano Raponoya, suspected guerrilla member, and his delivery to the Japanese who tortured, him. (3) The apprehension, torture and killing of one Segundo in March, 1944, in Pinamungahan, Cebu, because the latter was a guerrilla volunteer guard. And the only plea invoked in behalf of the appellant is that he acted under duress.

In support of this plea, it is alleged that on March 25, 1942, the appellant was inducted into the USAFFE organization; that after four months he was arrested, with forty-two others, by the Japanese who tortured them, as a result of which the appellant was hospitalized for two months; that he was thereafter made to join the puppet Philippine Constabulary, with station at different places in the province of Cebu. Even if these allegations are true, they are not sufficient to show that, when the appellant committed the acts imputed to him, he was acting under any apparent threat of harm from the Japanese, much less from any Filipino superiors. That the appellant had previously been arrested or made to join the Constabulary, did not amount to an order to or threat upon him, leaving him without any choice other than to perform the specific acts of which he was convicted, especially when it is remembered that said acts took place about two years after appellant's alleged torture by the Japanese. Moreover, the way the appellant killed his victims—by bayoneting them and by further slashing the knees of one so as to make the latter's body fit into his grave,—is rather inconsistent with the attitude of one who might have acted reluctantly and under compulsion.

Upon the other hand, it is admitted in the brief for the prosecution that the count regarding the arrest and torture of Laureano Raponoya has not been proved by the necessary two witnesses. Even so, the other two counts warrant appellant's conviction. Adherence to the enemy is of course deducible from appellant's overt acts, particularly from the circumstance that all those apprehended, tortured and killed were members of or suspected of having connection with the guerrilla movement.

The People's Court, however, erred in classifying the crime as treason with murder. The killing of Amando Satorre and one Segundo is charged as an element of treason, and it therefore "becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides." (People vs. Prieto, L-399, 45 Off. Gaz., 3329.[1] See

also *People vs. Labra*, L-886, 46 Off. Gaz., [Supp. to No. 1], 159)[2]. This notwithstanding, the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and less painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to reclusion perpetua.

Eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty, but one Justice disagrees. Under article 47 of the Revised Penal Code, which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death cannot be imposed upon the appellant. The Judiciary Act of 1948 (No. 296), approved on June 17, 1948, however, provides that "whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court", and that, "when eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed" (section. 9), with the result that under this legal provision the death penalty is imposable as long as there are eight Justices voting therefor. The majority of this Court are of the opinion that the new law may be given retroactive effect so as to cover the case at bar involving an offense committed prior to the enactment of the Judiciary Act of 1948. They argue that the matter referring to the number of Justices necessary for the imposition of the death penalty is merely one of procedure, and that unanimity was previously required in view merely of the small composition of this Court,—a reason that has ceased to exist because there are now eleven Justices.

The writer hereof believes, upon the other hand, that the new law should not be given retroactive effect if it is not to be *ex post facto*. After the inclusion of the provisions of article 47 in the Revised Penal Code, no accused could be sentenced to death except when there was unanimity among the Justices as to the propriety of the penalty; and this requisite correspondingly accorded the accused a substantive right. It is plain, and therefore easy to see, that there can be no more substantive legal provision than that which determines the question whether or not an accused will be sentenced to death. The provision can indeed be likened to that referring to mitigating or aggravating circumstances upon which the proper period of the penalty prescribed by the Revised Penal Code is dependent. In my opinion, article 47 required unanimity in order to give the assurance that, when a death sentence is meted out, there can absolutely be no room for any doubt as to the propriety of the penalty, implied from the absence of any dissent. The following may be cited in support of the theory of the writer of this opinion:

"The crime in question was committed prior to the enforcement of Act No. 1773 of the Philippine Commission, which went into effect on the 11th of October 1907. Although the complaint was filed by the fiscal on the 18th of January, 1908, it is not lawful to attribute retroactive effect to the said Act of the Philippine Commission for the reason that, even though it refers to a matter of procedure, it does not contain any clause making it retroactive in its effects, and furthermore, the provisions thereof if applied now are prejudicial to the accused.

"Hence, in view of the terms of the aforesaid article 433 of the Penal Code, the proceedings instituted by virtue of the complaint filed by the fiscal can not be sustained, as they were brought without the necessary previous complaint of the aggrieved husband, and in violation of the criminal law; therefore, the said proceedings, together with the judgment rendered therein, are decidedly null and void." (*U. S. vs. Gomez and Coronel*, 12 Phil., 279, 282-283.)

To give effect to the view that the Judiciary Act of 1948, should be given only prospective application, the writer hereof is constrained to switch his vote to the imposition of reclusion perpetua upon the appellant who otherwise should have deserved the penalty of death.

With the modification that the appellant is sentenced to reclusion perpetua, the appealed judgment is affirmed. So

ordered with costs.

Pablo, Briones, and Tuason, JJ., concur.

Moran, C. J., Bengzon, and Montemayor, JJ., concur in the result.

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[1] 80 Phil., 138.

[2] 81 Phil., 377.

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## CONCURRING AND DISSENTING

### PERFECTO, J.:

We concur in the findings of fact made, and in the result of the decision penned, by Mr. Justice Paras.

We also agree with his view that the provision in section 9 of Republic Act No. 296 (known as the Judiciary Act of 1948) regarding the required number of votes for the imposition of the death penalty, has no, and can never have, retroactive effect. Otherwise, it would be ex post facto and, therefore, violative of one of the express prohibitions of the Constitution.

We dissent, however, from the pronouncement in the decision to the effect that because appellant committed the crime with the aid of an armed band and with torture, two aggravating circumstances should be considered against him. We are of opinion that the two circumstances just mentioned should not be considered as modifying circumstances but as essential elements of the treason committed by appellant, following the doctrine laid down in our decision in *People vs. Victoria*, (44 Off. Gaz., [7] 2230[3]). We may take judicial notice of the fact, born out by almost all the many treason cases we have considered and decided, that those who committed such a crime used to follow the pattern set by the Japanese in their campaign for the brutal suppression of guerrillas and other members of the resistance movement,—and the aid of armed bands and employment of torture are among the characteristic elements of said pattern.

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[3] 78 Phil., 122.

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## DISSENTING

### FERIA, J.:

I dissent from the decision which, in its pertinent part, reads as follows:

"The People's Court, however, erred in classifying the crime as treason with murder. The killing of Amando Satorre and one Segundo is charged as an element of treason, and it therefore 'becomes identified with the latter crime and cannot be the subject of a separate punishment, or used in combination with treason to increase the penalty as article 48 of the Revised Penal Code provides.' (*People vs. Prieto*, L-399, 45 Off. Gaz., 3329.[4] See, also *People vs. Labra*, L-884, 46 Off. Gaz., [Supp. to No. 1], 159.)[5] This notwithstanding, the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and loss painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to reclusion perpetua.

"Eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty, but one Justice disagrees. Under article 47 of the Revised Penal Code, which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death cannot be imposed upon the appellant. The Judiciary Act of 1948 (No. 296), approved on June 17, 1948, however, provides that 'whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court', and that, 'when eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed' (sec. 9), with the result that under this legal provision the death penalty is imposable as long as there are eight Justices voting therefor. The majority of this Court are of the opinion that the new law may be given retroactive effect so as to cover the case at bar involving an offense committed prior to the enactment of the Judiciary Act of 1948. \* \* \*

"The writer hereof believes, upon the other hand, that the new law should not be given retroactive effect if it is not to be ex post facto. After the inclusion of the provisions of article 47 in the Revised Penal Code, no accused could be sentenced to death except when there was unanimity among the Justices as to the propriety of the penalty; and this requisite correspondingly accorded the accused a substantive right. \* \* \*

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"To give effect to the view that the Judiciary Act of 1948, should be given only prospective application, the writer hereof is constrained to switch his vote to the imposition of reclusion perpetua upon the appellant who otherwise should have deserved the penalty of death.

"With the modification that the appellant is sentenced to reclusion perpetua, the appealed judgment is affirmed. So ordered with costs."

Before the deliberation of the case at bar, and for the purpose of applying the decision of this Court or the majority thereof to cases coming up to us on appeal or for revision after the approval of the Judiciary Act of 1948 on June 17, 1948, we have discussed and the majority of this Supreme Court has arrived at the conclusion and resolved that section 9 of said Act providing that "whenever the judgment of the lower court imposes the death penalty, the case shall be determined by eight Justices of the Court. When eight Justices fail to reach a decision as herein provided, the penalty next lower in degree than the death penalty shall be imposed," is applicable to criminal cases pending at the time the Judiciary Act was enacted although, the crime had been committed prior thereto, because said provision is procedural in character, and the application thereof to crimes committed before the promulgation of said act would not make the law unconstitutional or ex post facto, in accordance with the almost unanimous decision of the courts of last resort in the States of the Union, after the Constitutions of which ours is patterned.

It is well settled that a law is said to be ex post facto when it penalizes as a public offense an act which was not at the time of its commission; when it aggravates or makes a crime greater than it was when committed; when it changes the punishment and inflicts a greater one than the law annexed to the offense when committed, and when it alters the rules of evidence, and Requires less testimony or evidence than the law required the time of the commission of the offense, in order to make the conviction more easy; in short, when the law, in relation to the offense and its consequences, alters the situation of a party to his disadvantages. (11 Am. Jur., section 348).

But it is also firmly established that the prohibition as to the passage of ex post facto laws has no application to changes which relate exclusively to the remedy or modes of procedure, for a person has no vested right in any particular remedy, can not insist on the application to the trial of his case of any other than the existing rules of procedure. So a change in the law requiring the jury instead of the court to fix the punishment, as well, one which makes the court instead of the jury judge of the law, and a law that makes changes as to the number of judges who

shall preside at the trial and decides the case, is not unconstitutional as being ex post facto. (11 Am. Jur., sections 357, 361.)

In the case of *Marion vs. State*, 20 Neb., 233; 29 N.W., 91; 57, Am. Rep., 825, it was held that "under the principle permitting the substitution of one tribunal for another as triers of questions of law, the legislature may repeal provisions existing at the time of the commission, of an offense which direct that juries shall be judges of the law as well as of the facts, and may require that all questions of law shall, following such repeal, be tried by the judge." In *re Com. vs. Phelps*, 210 Mass., 78; 96 N. C., 346; 37 L. R. A. (N. S.), 567, the Court held that "a statute providing that capital cases may be tried before one judge, instead of two or more as theretofore, is not ex post facto as applied to a prior offense, though it leaves matters of discretion for decision by one presiding judge, where prior thereto such matters were decided by two or more judges." And the Supreme Court of the United States in the case of *Duncan vs. Missouri*, 152 U. S., 377; 38 Law. ed., 485, 14 S. Ct., 570, laid down the ruling that "a statute dividing the Supreme Court of a state into divisions, whereby a person convicted can have a review of his conviction by only part of the judges who constituted the appellate court when the crime was committed, is not an ex post facto law."

The question involved in the present case is substantially identical to that of a law which, after the commission of an offense, changes the previous one by decreasing the number of judges who shall preside and decide the case, whereby instead of the old law which required several judges to concur in the decision, the new law only requires one or less number of judges to decide and convict the defendant, or of a law which divides the Supreme Court into divisions after the commission of an offense whereby the defendant will have a review of his conviction by only a part of the Justices who constituted the appellate court when the crime was committed.

There is nothing wrong in that the writer of the decision has to state therein that he is one of the Justices who dissented from the opinion of the majority, in a resolution previously adopted by this Court, and his reasons to justify his dissenting opinion; but what is wrong is that, notwithstanding the opinion of this Court or the majority as to applicability of the above quoted provision of section 9 of the Judiciary Act of 1948 to cases like the present, because said provision requires only the concurrence of eight Justices for the imposition of death penalty, and according to the decision, "eight Justices, including the writer of this opinion believe that the appellant merits the death penalty," the writer of the decision "switches his vote for the imposition of reclusion perpetua upon the defendant," for the purpose of defeating or thwarting the decision of the majority of this Court, which everybody, from the humblest citizen to the highest magistrate of the nation, must respect in accordance with the express mandate of the Constitution, alleging as reason for doing so that the death penalty cannot be imposed because one of the nine Justices dissented, and the new law should not be given a retroactive effect according to his dissenting opinion.

In the history of the Philippine judiciary, particularly of this Supreme Court, there have been cases in which a Justice who had dissented from the opinion of the majority on the resolution of a legal question, had to act in accordance with the opinion of the majority, out of respect to it, in the resolution of subsequent cases reserving or without waiving his own opinion. But there has not been, up to the present, a case in which a single Justice has so insisted as to make his dissenting opinion prevail over the decision of the majority, as to defeat or thwart said decision in the same case.

As one of those who are of the opinion that the provision of section 9 of the new Judiciary Act, which superseded the article 47 of the Revised Penal Code by "reducing to eight the number of Justices of this Court as the majority required for the imposition of death penalty, is applicable to offenses committed prior to the approval of said Judiciary Act, I have to dissent from the decision, because to concur even in the result or dispositive part thereof, would be tantamount to concurring with the writer of the decision in the non applicability to the present case of

the said provisions of section 9 of the new Judiciary Act, for the writer of the decision does not disagree with the other seven Justices in that "the death penalty is still imposable upon the appellant in view of the presence of two proven aggravating circumstances, namely, armed band and the use of torture and other atrocities on the victims, instead of the usual and less painful method of execution; but on the ground presently to be stated, said penalty necessarily has to be lowered to reclusion perpetua," that is, although "eight Justices, including the writer of this opinion, believe that the appellant merits the death penalty" as one of the nine Justices disagrees, "under article 47 of the Revised Penal Code which provides that the death penalty shall not be imposed when all the Justices are not unanimous in their voting as to the propriety of the imposition of the death penalty, the penalty of death can not be, imposed upon the appellant," and for that reason he "is constrained to switch his vote to the imposition of reclusion perpetua upon the appellant who otherwise should have deserved the penalty of death." Inasmuch as eight Justices, including the writer of the decision are of the opinion that the death penalty is "imposable upon the appellant in view of the presence of two aggravating circumstances" or "believe that the appellant merits the death penalty," under the provisions of section 9 of the Judiciary Act of 1948, as construed finally by this Court by the votes of the majority of its members before the deliberation of the case at bar, the death penalty must be imposed although one of the nine Justices taking part in the consideration and adjudication of the case dissents from the judgment.

The fact that the writer of the decision has dissented from the majority who have held that the above quoted provisions of section 9 of the new Judiciary Act, and not article 47 of the Revised Penal Code, is applicable to cases like the present, does not authorize him to go against or nullify the result of the deliberation and conclusion reached by the eight Justices including him, on the propriety of the imposition of the death penalty upon the appellant. He can do so only if he dissents from the conclusion that the commission of the offense at bar was attended by mitigating and not by any aggravating circumstances, and therefore death penalty can not be imposed.

The dissenting opinion or vote referred or alluded to in article 47 of the Revised Penal Code and section 9 of the Judiciary Act above quoted, is one based on the ground that, according to the offense charged and the evidence as well as the provisions of Chapter 17 of the Revised Penal Code on the application of penalties, and in view of the circumstances attending the commission thereof, death penalty can not be imposed upon the defendant or appellant. This Court having already and finally decided, prior to the deliberation of this case, that section 9 of the new Judiciary Act is applicable to pending cases for offenses committed prior to the promulgation thereof, the writer of the decision can not, legally and properly, reiterate in the present case his dissenting opinion on that question already decided by this Court, and much less consider it as or legal factor for lowering to reclusion perpetua the death penalty that he himself believes is imposable upon the appellant or the latter deserves, in view of the two aggravating circumstances which attended the commission of the crime of treason of which the appellant is declared guilty. He can not do so because that question is no longer an open but a closed one by virtue of the principle of stare decisis, and it can not be properly raised by a member of this Court, and become involved in the present case, for the purpose of determining the propriety of the imposition of the death penalty upon the appellant. The vote of the writer of the decision for the imposition of cadena perpetua should therefore be considered as of no effect to change his opinion that the appellant deserves to death penalty, and that this penalty is imposable upon the appellant concurring thereby in the opinion of seven other Justices.

Only the vote of the majority of the members of this Court is required to declare that the last paragraph of section 9, Judiciary Act of 1948, is applicable to cases for offenses committed prior to the date said Act became effective, for it is not a case of declaring a law unconstitutional, and said decision must be respected by every body, specially by members of this Court. To support the theory of the writer of the decision in the present case would be subversive to the conclusiveness of this Court's decisions unless and until it is reconsidered and reversed, for any one of the dissenters, like the writer of the decision, might render said decision worthless and ineffective by

invoking his dissenting opinion on the applicability of said section 9 in a clear case in which his vote is necessary for the imposition of the death penalty.

In view of all the foregoing, the death penalty must be considered as imposed upon the appellant, and therefore the judgment of the lower court imposing said penalty must be affirmed, with costs. So ordered.

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[4] 80 Phil., 138.

[5] 81 Phil., 377.

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