

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS FERNANDO ALIAS COMMANDER 'BOB',
DEFENDANT-APPELLANT.**

G.R. No. L-24781. May 29, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from the sentence of reclusion perpetua imposed by the trial court on the accused-appellant for the crime of murder.

The accused was charged with the crime of murder before the Court of First Instance of Tarlac under the following information:

"That on or about March 30, 1961, at night time, in the Municipality of Bamban, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Carlos Fernando alias 'Bob', together with Francisco Ronquillo alias Commander 'Manly', (Deceased) and Mario Salonga at large, confederating, conspiring and helping one another, with malice aforethought and the deliberate intent to take the life of Bienvenido Laxamana, did then and there willfully, unlawfully, feloniously and treacherously attack the latter with pistols caliber 45, thereby inflicting upon the said Bienvenido Laxamana, mortal wounds on different parts of his body which directly caused his instantaneous death."

After trial, the trial court found the accused guilty as charged, on the strength of his two confessions, consisting of his 4-page written sworn statement taken on June 16, 1961 by Capt. Pedro Acierto of the First Philippine Constabulary Zone[1] soon after his capture on June 12, 1961 in an encounter in Bar-rio Balibago between Dau and Mabalacat, Pampanga, between PC troops and Huks led by HMB Commander Francisco Ronquillo alias Commander Manly who was killed, and his 3-page testimony at the preliminary examination of the criminal complaint for murder conducted on July 19, 1961 by Judge Pompeyo S. Tiglao of the Municipal Court of Bamban, Tarlac,[2] as well as of his own testimony at the hearing of March 11, 1965 as the lone defense witness on his own behalf, at which he freely admitted his participation in the murder.[3]

The trial court found the facts as follows: "(On the evening of March 30, 1961, at about 7:00 o'clock, Bienvenido Laxamana was inside a store of one Honoria Atienza next to his house on the same side of the street in the poblacion of Bamban, Tarlac. He was then sitting and eating peanuts. While in that position, Mario Salonga alias 'Manding', who is still at large, and the accused Carlos Fernando alias 'Bob', without any warning, suddenly and unexpectedly fired shots with their .45 caliber pistols at Laxamana. The duo then departed, leaving their victim sprawled outside the store.

"Salonga and Fernando were members of the Hukbalahap Organization. Before going to Bamban, Tarlac, on the evening of the incident, they were somewhere within the jurisdiction of Angeles City where they received instruction from one of their commanders, Francisco Ronquillo alias Commander 'Manly', to liquidate Laxamana. The motive was that the latter, while an officer of the civilian guards, had ordered the killing of a relative of

Commander 'Manly' and the beating up of the father of Salonga. Fernando and Salonga went to Bamban from Angeles City by walking all along between sugar cane fields. After the killing of Laxamana, they also decamped together following the same route.

"The victim, Bienvenido Laxamana, was married to Reme-dios L. Laxamana. Two daughters were born out of their wedlock, the elder of whom is 13 years old. Before his death, Laxamana was a member of the Central Azucarera de Tarlac Planters' Association of that province. When his brother-in-law, the late Sinforoso Lomboy, was the Municipal Mayor of Bamban sometime in 1950, he became a member of the civilian guards or the Civilian Commando Unit (CCU) in that town with the rank of captain.

"That evening of March 30, 1961, Mrs. Laxamana came from the Catholic church of Bamban with her elder daughter, Bernadette, While on her way home and when the distance from her house was about thirty meters, she heard the firing of shots. She took cover in one of the stores; and after the firing had ceased, she went out and hurriedly proceeded to her home. In front of the store of Honoria Atienza she saw her husband sprawled on the ground full of blood. She was not able to come close to him because somebody held her back. A jeep arrived where her husband was placed, but not long thereafter, he was brought back already dead."

Dr. Honorato Navarro, municipal health officer of Bamban, Tarlac made the autopsy of the victim's cadaver on the same night of the murder, and per his necropsy report,[4] the victim died of "hemorrhage, massive, secondary to GUNSHOT WOUNDS, multiple (23) in neck, chest, and back, lumbar region, and upper and lower extremities," many of which were mortal wounds hitting vital organs in the neck such as the carotid artery and the vagus nerve, both lungs, and the liver, kidneys and intestines in the lumbar region.

The trial court rejected the accused's testimony at the trial that he did not fire any shot at the victim but merely stood guard outside the store, and that his role, after Salonga had ceased firing at the victim was to fire three shots in the air as a signal for them to depart, thus: "(T)he Court entertains a very serious doubt on the veracity of the above-mentioned statement of the accused because the same is contrary to what he stated when he was first investigated by the P.C. after his apprehension. Portion of his written statement (Exh. F-1) reads as follows:

"12. 'T-Natupad ba naman ninyo ang iniutos ni Comdr. FRANCISCO RONQUILLO na patayin si BIENVENIDO LAXAMANA?

'S-Opo, napatay namin sa pamapaguitan ng pagbaril sa kanya nuong gabing iyong ng ika 30 ng Marzo 1961.

"13. 'T-Anong clase ng baril ang inyong ginamit sa pagpatay kay LAXAMANA?

'S-Pareho po kaming gumamit ng Pistola calibre 45. Si MARIO SALONGA alias MANDING na aking kasama ay nakapag-paputok ng humigit kumulang sa labing-dalawa at ako naman ay tatlong putok.

"14. 'T-Sinabi mong natupad ninyo ang utos ni Comdr. FRANCISCO RONQUILLO alias Comdr. MANLY, na patayin si Bienvenido Laxamana, natatandaan mo ba kung saan lugar ninyo binaril at pinatay ang taong naturan?

'S-Duon po sa loob ng isang tindahan sa Poblacion Bamban, Tarlac na ang mayari sa naturang tindahan ay hindi ko kilala.'

"The answer of the accused to the above-quoted question No. 13 to the effect that he and Salonga both used .45 caliber pistols in killing Laxamana, with Salonga firing twelve shots and he, three shots, conveys no other idea than that these three shots he fired were directed at the victim and not upwards into the air. The Court is inclined to believe that this statement is the one in keeping with the truth, taking into consideration the determination of the accused to participate in the killing of Laxamana and the number of gun-shot wounds found on the latter's body."

At any rate, the trial court further held, there was no doubt as to the existence of conspiracy between the accused and Salonga, as the accused actively participated in the criminal design of Salonga and acted in concert with him, granting *arguendo* that the accused merely stood guard for Salonga and that Salonga alone inflicted the 23 gunshot wounds on the victim.

The trial court likewise rejected the accused's contention that he should be punished only for the crime of rebellion as the murder was in pursuance of the Huks' rebellion movement, since the motive for the killing of the victim was personal, to avenge the alleged killing of a relative of Commander Manly and the alleged maltreatment of the father of Salonga, supposedly ordered by the victim. The trial court further pointed out that while the victim had been an officer of the civilian guards in Bambang, that was more than ten years ago in 1950, and the victim was an ordinary civilian when he was shot in cold blood.

The trial court found that "(F)rom the testimony of the accused himself on the witness stand, it clearly appears that the firing of the shots which snuffed out the life of Laxamana was sudden and unexpected, without any risk to the assailant which might have proceeded from the defense of the victim. The crime, therefore, committed by the accused is murder, qualified by treachery," and therefore rendered the following verdict:

'IN VIEW OF ALL THE FOREGOING, the Court finds the accused CARLOS FERNANDO alias COMMANDER 'BOB' guilty beyond reasonable doubt of the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code, and in view of the absence of any mitigating or aggravating circumstance attending the commission of the crime, hereby sentences him to suffer the penalty of reclusion perpetua with the accessory penalties prescribed by law, to indemnify the heirs of Bienvenido Laxamana in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency in view of the nature of the principal penalty imposed, and to pay the costs.'

In this appeal, the accused-appellant assigns as errors the trial court's rejection of his contentions that his participation in the murder was in furtherance of the Huk movement and that he should have been held by virtue of his Huk membership to have acted under the compulsion of an irresistible force and/or under the impulse of an uncontrollable fear of an 'equal or greater injury'. He further assigns as error the trial court's denial of his motion to dismiss the case filed on November 4, 1963, after the prosecution had rested its case, on the ground of double jeopardy, on the ground of his pre-vious conviction on August 31, 1961 by the Pampanga Court in another case[5] of the crime of simple rebellion, on his entering a plea of guilty.

We find the trial court's rulings to be in accordance with the evidence and the law.

1. Appellant's contention that because he and Salonga as members of the Hukbalahap organization had received from Commander Manly the order to liquidate the victim, the murder committed by them should have been held in furtherance of and absorbed by the crime of rebellion, and that they should have been instead charged for rebellion, is untenable. The record is bereft of any evidence that the murder was committed as a necessary means to commit rebellion or in furtherance thereof. The victim had no established connection with the government at the time.[6] As emphasized in *People vs. Paz*,[7] besides, "(T)hat the kill-ing was in pursuance of the Huk rebellion is a matter of mitigation or defense that the accused has the burden of proving clearly and satisfactorily." Far from discharging the burden, appellant himself revealed in his unrepudiated written confessions that the kill-ing was inspired by personal Motives of avenging the alleged kill-ing of a relative of Commander Manly and the alleged Maltreatment of Salonga's father, as ordered by the victim Laxamana, and cannot be deemed absorbed by the rebellion and should be separately pro-secuted.[8] As held in *Hernandez*, *supra*,[9] the mere fact that the accused is a member of the Hukbalahap organization "is no reason why all his acts and misdeeds should be considered in furtherance of or absorbed by rebellion." Appellant's contention that Commander Manly's personal motive did not apply to him and that he merely obeyed as "a mere 'soldier' of the HMB" is of no avail either in the

face of his awareness of and acquiescence to the personal motivation and the void of any evidence that the murder was necessary to the rebellion or in furtherance thereof.

Accused next asks the Court to "take judicial notice of the fact that the Hukbalahap or HMB organization deal with its members who disobey or refuse to carry out its orders in the most severe manner. A member who disobeys or refuses to carry out its order may be liquidated or given another form of severe punishment." On this tenuous premise, he claims that by virtue of his Huk membership, his participation in the murder of the victim should have been deemed to be an act under the compulsion of an irresistible force and/or under the impulse of an uncontrollable fear of an equal or greater injury as to exempt him from criminal liability.[10]

Justice Moreland long set the norm for the application of these exempting circumstances: "x x x before a force can be considered to be irresistible one, it must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It must be such that, in spite of the resistance of the person on whom it operates, it compels his members to act and his mind to obey. He must act not only without will but against will. Such a force can never consist in anything which springs primarily from the man himself; it must be a force which acts upon him from the outside and by means of a third person. In order that one may take advantage of subdivision 10 of article 8 and allege with success that he acted under the impulse of an uncontrollable fear of an equal or greater injury, it must appear that the threat which caused the uncontrollable fear related to a crime of such gravity and so imminent that it must safely be said that the ordinary run of men would have been governed by it. And the evil threatened must be greater than, or at least equal to, that which he is compelled to cause." [11]

2. Accused dismally failed to show that he acted "not only without will but against will." On the contrary, he testified that he joined the Hukbalahap organization since December 28, 1950 "because it is a good organization." [12] The record is devoid even of any claim of the accused that any threats were made upon him or that he acted under uncontrollable fear. He was not under any physical or moral compulsion when according to his own version at the trial, he freely stood on guard outside the store while his companion Salonga went inside and shot the victim. At his preliminary examination before Judge Tiglao, he further testified that his role as guard was to fight off any persons who might come to the aid of the victim Laxamana. [13] And without any physical or moral compulsion, after the killing, he and Salonga, according to his own testimony at the same preliminary examination, returned to report the same to Commander Manly at Barrio Kutid, Angeles, Pampanga and accept his congratulations and thanks. [14]

3. The last principal error assigned by accused that the trial court should have dismissed the present case by virtue of his previous conviction for rebellion on August 31, 1961 is without merit.

The accused, even before his apprehension in the encounter with the PC troops on June 12, 1961, already faced the criminal charge of rebellion in an information filed on October 17, 1960 against him and several others before the Pampanga Court of First Instance. [15] After his apprehension, he entered a plea of guilty to the charge and was sentenced to six years, eight months and one day of prison mayor per the decision handed down by the Pampanga court on August 31, 1961.

The murder of Laxamana for which the accused stands charged in the present case was committed on March 30, 1961. The criminal complaint therefor was filed with the municipal court of Bamban, Tarlac on July 19, 1961 and after the records were forwarded on September 14, 1962 to the trial court, the murder information was filed on November 29, 1962.

There clearly can be no double jeopardy, because the murder of Laxamana on March 30, 1961 could not have been possibly included as one of the specific counts in the information for rebellion filed against the accused on

October 17, 1960, as the murder had not yet been committed then. Furthermore, the acts constituting the crime of rebellion were committed in the province of Pampanga where the accused was charged therefor, while the murder of Laxamana for which the accused is charged in the present case was committed in the province of Tarlac -- over which the Pampanga court had no jurisdiction.[16] Finally, as the murder here had been shown to have been committed not in furtherance of the rebellion but for personal vengeance, it could not be deemed absorbed by the crime of rebellion but had to be separately charged and punished.[17]

In resume, even going upon the accused's own version at the trial that he merely stood guard while his companion Salonga went inside the store and killed the victim, and that thereafter he fired three shots in the air as a signal for them to depart and re-turn to their camp, the trial court correctly held this to constitute more than adequate proof of his participation as conspirator and of his responsibility as co-principal in the murder.[18] In the absence of evidence that the killing, qualified by treachery, was attended by any aggravating or mitigating circumstances, the trial court correctly imposed the penalty of reclusion perpetua. The indemnity to the heirs of the victim is increased to P12,000.00.[19]

WHEREFORE, the judgment appealed from is hereby affirmed, with the modification that the indemnity to the heirs of the deceased Bienvenido Laxamana is increased to P12,000.00. With costs against the accused-appellant.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Fernando, and Villamor, JJ., concur.

Castro, J., on leave.

Barredo, J., took no part.

[1] Exhs. F, F-1, F-2 and F-3.

[2] Exhs. D, D-1 and D-2.

[3] T. S. N., Junio, pp. 75-107.

[4] Exh. A, A-1 to A-22.

[5] Criminal Case No. 4119 entitled "People of the Phil. vs. Filemon David, et al." of the Court of First Instance of Pampanga.

[6] See People vs. Equal, G.R. Nos. L-13469 and L-14240 and People vs. Hernandez, G.R. No. L-14209; May 27, 1965; 14 SCRA 89.

[7] G.R. No. L-17320, May 31, 1965; 14 SCRA 132.

[8] People vs. Regado, G.R. No. L-13025, Dec. 29, 1959, cited in Paz, fn. 7.

[9] Fn. 6.

[10] Art. 12, pars. 5 and 6, Revised Penal Code; Appellant's brief, p. 4.

[11] U. S. Vs. Elicanal, 35 Phil. 209 (1916), emphasis supplied. See also People vs. Cabasa, 85 Phil. 758 (1950); People vs. Semañada, 103 Phil. 790 (1958).

[12] T. S. N. Junio, p. 76.

[13] Exh. D-1.

[14] Exh. D-2.

[15] Supra, fn. 5.

[16] People vs. Equal, supra, fn. 6.

[17] People vs. Kamlon, G.R. No. L-12686, Oct. 24, 1963; 9 SCRA 252; People vs. Geronimo, 100 Phil. 90 (1956).

[18] People vs. Paz, supra, fn. 7.

[19] People vs. Pantoja, G.R. No. L-18793, Oct. 11, 1968; 25 SCRA 468.

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