

FRANCISCO R. CARINO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND THE HON. COURT OF APPEALS (1ST DIVISION), RESPONDENTS.

G. R. No. L-14752. April 30, 1963

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by way of certiorari from the decision of the Court of Appeals dated October 18, 1958 in the above entitled case, affirming the judgment of the Court of First Instance of Manila finding the accused Francisco Carino guilty as accomplice in the crime of rebellion, and sentencing him to suffer two (2) years, four (4) months and one (1) day of prision correctional and to pay a fine in the sum, of P2,000 with subsidiary imprisonment in case of insolvency.

In an information dated April 28, 1952, filed in the Court of First Instance of Manila, the accused was charged with the crime of rebellion with murders, arson, robberies and kidnappings, for having, as a high ranking officer and/or member of the Communist Party of the Philippines and of the Hukbong Mapagpalaya Ng Bayan otherwise known as the Hukbalahaps (Huks), agreed in conspiracy with 31 other who were charged with the same crime in other criminal cases then pending in the Court of First Instance of Manila, for the purpose of overthrowing the Government and disrupting its activities.

The specific acts of rebellion which the accused is alleged to have committed in conspiracy with other members of the Communist Party, between the period from May 6, 1946 to September 12, 1950, are:

- The ambush on May 6, 1946 of the 10th MPC Company in Barrio Sta. Monica, Aliaga, Nueva Ecija; resulting in the death of 10 enlisted men;
- The raid on August 6, 1946 of the Municipal Building of Majayjay, Laguna;
- The ambush on April 10, 1947 of 14 enlisted men in Barrio San Miguel na Munti, Talavera, Nueva Ecija, during which Lt. Pablo Cruz and Pvt. Santiago Mercado were killed;
- The raid on the poblacion of Laur, Nueva Ecija of May 9, 1947;
- The ambush on August 19, 1947 of a detachment of the 155th Company, in San Miguel, Bulacan, killing two officers thereof;
- The raid on Pantabangan, Nueva Ecija of June 1946;
- The ambush on April 25, 1947 of Mrs. Aurora Aragon Quezon, and party at Barrio Salubsob, Bongaboh, Nueva Ecija, resulting in the death of said Mrs. Quezon and other members of her party;
- The raid on Camp Macabulos, Tarlac, Tarlac, on August 25, 1950;
- The raid on Sta. Cruz, Laguna, of August 26, 1950;

- The raid on Arayat, Pampanga, of August 25, 1950;
- The seizure of September 12, 1950 of an army scout car in Barrio Mapalad, Arayat, Pampanga and the murder of two TPs on the said occasion;
- The attack on the headquarters of a PC detachment of March 28, 1950, at Montalban, Rizal; and
- The raid on San Pablo, Laguna, of March 29, 1950, resulting in the death of Major Alikbusan of the government armed forces.

Although the defendant-appellant expressly admitted the truth of the allegations of the commission of robberies, murders, arsons, kidnappings, etc., in the manner and form alleged and on the dates stated in the information, he vigorously denied any participation therein.

It appears from the evidence, as found by the Court of Appeals, that the accused is a close friend of Dr. Jesus

Lava (a top leader of the Communists and a wanted man with a price on his head) who was his classmate in the high school, and who later on became the godfather of the first child of the accused. Appellant's wife and children were treated successfully by Dr. Lava in 1939 and 1943 for various illnesses free of charge and appellant believed that his wife and children owe their lives to Dr. Lava. One night in the year 1946, Dr. Lava arrived in the house of the accused asking for shelter, stating that he was being persecuted by certain politicians from Bulacan, on suspicion that he had something to do with the killing of Mayor Roxas of Bulacan, Bulacan. Appellant gave Lava accommodation for the night, and early the following morning Lava left. The next time that the appellant heard from Dr. Lava was in May, 1949, when he received a note from the latter asking for some cigarettes, powdered milk and canned goods. The note was brought by a boy of 12 or 15 years, named Totoy, and through him the accused sent the needed supplies. Thereafter, every now and then, the same boy brought to appellant similar notes from Dr. Lava, requesting for food and supplies, which the accused furnished in as small amounts as he could send.

In the first note of Dr. Lava, appellant was instructed to sign "Turko" all notes to be sent by him to the former and to address them to "Pinang" in order to conceal their respective identities. This exchange of notes between them and the furnishing of supplies and foodstuffs by appellant to Dr. Lava lasted from 1949 until April, 1952, when the accused was arrested and detained.

The Court of Appeals also found that appellant, as a ranking employee of the National City Bank of New York was approached by a prominent member of a special unit of the Communist Party, entrusted with the carrying out of raids, hold-ups, etc. for the purpose of raising funds, and through his assistance the amount of \$6,000, part of the, proceeds or loot of said special unit, was changed into pesos and then delivered to the treasurer of the communists; that appellant also assisted on or about October 12, 1950, two top-level communists in opening current accounts in the National City Bank of New York although their initial deposit was below P2,000, the minimum required by the bank. (However it was not shown that the persons helped were known by appellant to be communist and the funds intended to carry out the rebellion.)

Sometime in 1949, appellant was present at a banquet given by the Communists in honor of Amado V. Hernandez, one of the supposed top-level members of the organization, on which occasion he was introduced as a communist to Florentino Diolata, who posed as a communist but who, in reality, was a person secretly planted by the Constabulary as a spy; that while being introduced the accused stated that he was at the command of his comrades for any assistance for the advancement and promotion of their common purpose.

Article 18 of the Revised Penal Code defines accomplices, thus:

"Art. 18. Accomplices.-Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts.

In the case of *People vs. Tamayo*, 44 Phil. 38, 49, we held as an essential condition to the existence of complicity that there be not only a relation between the acts done by the principal and those attributed to the person charged as an accomplice, but that the latter, with knowledge of the criminal intent, cooperated with the intention of supplying material or moral aid in the execution of the crime in an efficacious way.

So that there are two elements required, in accordance with the definition of the term accomplice given in the Penal Code in order that a person may be considered an accomplice to a criminal act, namely; that: he take part in the execution of the crime by previous and simultaneous acts and that he intend by said acts to commit or take part in the execution of the crime.

The crime of rebellion or insurrection has been defined as follows:

"Art. 134. Rebellion or insurrection.-How committed.-The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said government or its laws, the territory of the Philippine Islands or any part thereof, of any body of land, naval or other armed forces, or of depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives. (Revised Penal Code.)

In the case at bar the appellant did not take up arms against the government. Neither was he a member of the Hukbalahap organization. The Court of Appeals also found that he did not openly take part in the commission of the crime above defined by any other acts without which said crime would not have been committed. (Decision, p. 7) Said the Court of Appeals:

"There is no clear and conclusive evidence that the accused is a member of the Communist Party or of its sister organization, the 'Hukbong Mapagpalaya Ng Bayan', but there can be no doubt that he is a sympathizer of the communists and helped them by giving supplies to Dr. Jesus Lava, and by sending notes to him, knowing that he is a top-level communist with a high price on his head. And not only that. The accused also helped a top-level communist in changing six thousand dollars. (\$6,000) into pesos. in the National City Bank of New York, of which he was a ranking official with the designation of Pro Manager. He also introduced to the bank two top-level communists and helped them in opening checking accounts in the bank where they deposited money used in the activities of the Communist Party.

"By extending such help to well-known members of the Communist Party and knowing that the avowed purpose of said party is to overthrow the government, the accused, by means of overt acts gave them aid, comfort, and assistance and indirectly helped them in their fight against the Government. Of course the accused did not take direct participation in the acts alleged in the information, nor did he directly force or induce the communists to commit such acts; neither did he openly take part in the commission of the acts of rebellion by another act without which the act of rebellion would not have been accomplished. However, the acts done by him as above stated constitute acts of cooperation with the communists in their primordial purpose of overthrowing the government and such acts naturally have contributed to some extent in the advancement and promotion of their purpose. 'By such cooperation knowingly extended by him, he is liable as an accomplice in the crime of rebellion as found by the trial court.'

We cannot agree to the above conclusion of the Court of Appeals that the above-mentioned acts of appellant constitute acts of cooperation in the execution of the acts of overthrowing the government. If appellant's acts may be considered an indirect help or aid in the rebellion, which we positively doubt, the same cannot constitute previous or simultaneous acts of uprising or rebellion. In the crime of treason any act of giving comfort or moral aid may be criminal, but such is not the case with rebellion or insurrection where the Code expressly declares that there must be a public uprising and the taking up of arms in rebellion or insurrection. The acts of sending or

furnishing cigarettes and food supplies to a famous Huk does not prove intention to help him in committing rebellion or insurrection. Neither is the act of having \$6,000 changed to Philippine money or in helping Huks to open accounts, by themselves show an intent or desire to participate or help in an uprising or rebellion. Appellant's work was as a public relation officer of the bank of which he was an employee, and the work above indicated performed by him was a part of his functions as an employee of the bank. These acts by themselves do not and cannot carry or prove any criminal intent of helping the Huks in committing the crime of insurrection or rebellion. The law is to the effect that good faith is to be presumed. No presumption of the existence of a criminal intent can arise from the above acts which are in themselves legitimate and legal. Said acts are by law presumed to be innocent acts while the opposite has not been proved.

But granting, for the sake of argument, that appellant had the criminal intent of aiding the communist in their unlawful designs to overthrow the Government, the assistance thus extended by him may not be considered efficacious enough to help in the successful prosecution of the crime of insurrection or rebellion so as to make him an accomplice therein. (*People vs. Tamayo*, supra.) We, therefore, find that the supposed acts found by the Court of Appeals to have been committed by the appellant do not necessarily and legitimately lead to the conclusion that he performed said acts precisely with the criminal intent of helping in the execution or the carrying out of the rebellion or insurrection.

For the foregoing considerations, we declare that the guilt of appellant as an accomplice in the crime of rebellion or insurrection as charged in the information has not been proved beyond reasonable doubt, his supposed acts not having been shown to be acts of direct cooperation in the execution of the crime, nor have they been induced by a criminal intent, nor were they shown to be sufficiently efficacious to make, appellant guilty as accomplice in the crime charged. Wherefore, the judgment appealed from is hereby reversed and the appellant absolved from the charge contained in the information. With costs de oficio.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes J.B.L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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