

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELADIO PACATANG, DEFENDANT AND APPELLANT.

G.R. No. L-905. March 09, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

With the testimonies of Valeriana Magallanes, Bernardo Dumoloan, Meliton Bongay and Simeon Lorono, the prosecution has proved that on February 10, 1945, while walking together in barrio Libaong, Panglao, Bohol, Valeriana Magallanes and Lorenzo Baranda were stopped by appellant and another Filipino, both armed, to inquire for the house of the barrio lieutenant. Lorenzo, after telling that it was not far from the place, asked appellant if he was a member of the Nunag Guerrilla. Incensed at Lorenzo, appellant boxed him, and continued with his companion punishing Lorenzo until the latter fell to the ground. Because Lorenzo did not admit that he was a guerrilla, Pacatang took him to a nanca tree and hanged him there and continued torturing him until blood flowed from his mouth. Later, Lorenzo was dragged by appellant and some Japanese soldiers to the woods where a shot was heard. Lorenzo was later found dead in the place.

With the declaration of Balbina Tindoy, Tomas Tenteng, Abundio Dangoy, and Bernardo Bugas the prosecution proved that Balbina Tindoy, her minor son Abundio Dangoy, and Tomas Tenteng were arrested by a Japanese patrol on April 5, 1944 and taken to a coconut grove in barrio Candapog, Baclayon, Bohol where they were met by appellant and Japanese soldiers. A Japanese soldier came with Teofilo Dangoy, Felipe Dangoy and Dodo Erano. Appellant investigated Teofilo and Felipe Dangoy, accusing them of being guerrillas. They denied the accusation, and appellant delivered them to the Japanese exclaiming the fact that then the life of a person had very little value. The Japanese tied together Dodo Erano, Teofilo Dangoy and Felipe Dangoy and brought them to a nearby valley. The Japanese returned without their victims and cleaning their sabers which were stained with blood. Afterwards, the remains of the three persons were found with several wounds.

The prosecution also proved with the declaration of Saturnino Cagadas and Generoso Tagud that a Japanese patrol led by appellant came on July 10, 1944, to the house of Generoso Tagud and questioned him and Saturnino Cagadas for the whereabouts of the radio transmitter of the guerrillas. They professed ignorance about the matter and appellant and a soldier companion Balite, tortured them.

While working in barrio Catarman, Bawis, Bohol, Irene Adoptar, Emiliana Adoptar, and Celerino Miculob were ordered by appellant to follow him to the provincial road where they were met by nine Japanese soldiers. Pacatang ordered them to tell him where the guerrillas were and when they could not give satisfactory answer, they were severely punished by the accused and by the Japanese soldiers. These facts were proved by the testimonies of Aristona Miculob and Facundo Romorosa.

With the declarations of Victoria de Rama, Raymundo Cervas and Eleuterio Ongcog, the prosecution proved that on January 6, 1945, a group of Japanese soldiers led by appellant, went to sitio Puculan, Dawis, Bohol, and arrested Victoria de Rama, and her son Raymundo Cervas, Eleuterio Ongcog and brought them to the Kempetai in

Tagbilaran. The following day appellant questioned them and tortured Raymundo for denying his connection with the guerrillas. Victoria and Eleuterio were released but nothing has been heard again of Raymundo.

Testifying as a lone witness in his behalf, appellant denied the charges against him, but his denials appear to be unmeritorious and the trial court rightly rejected them. Counsel for appellant accepts the findings of fact of the lower court and he raises only this appeal to the main question as to the penalty that should be imposed on appellant.

Finding appellant guilty of the crime of treason, the People's Court sentenced him to death, to pay a fine of P20,000, to indemnify the heirs of Lorenzo Baranda, Teofilo Dangoy, Felipe Dangoy, and Dodo Erano in the amount of P2,000, and to pay the costs.

Counsel contends that the appealed judgment should be modified by sentencing appellant to reclusion perpetua instead of death, which is the penalty imposed by a Division of Three of the People's Court, one of them dissenting against said penalty.

Unnecessary cruelty and superior force were considered by the trial court as aggravating circumstances to sentence appellant to death. While the majority of the Supreme Court are of opinion that said aggravating circumstances should be considered against appellant, there are members that opined that they are among the elements of the treasons committed under the Japanese regime, as shown in many other cases already considered and decided by this Court. In resorting to superior force and cruelty, the adherents to the enemy had just followed the example of the Japanese.

Insufficient votes having been cast to affirm the death sentence, the appealed judgment is modified and, accordingly, appellant is sentenced to suffer reclusion perpetua, to pay a fine of P20,000 and to pay to the heirs of Lorenzo Baranda, Teofilo Dangoy, Felipe Dangoy, and Dodo Erano an indemnity at the rate of P6,000 for each deceased and to pay the costs.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Briones, Montemayor, and Reyes, JJ., concur.

CONCURRING AND DISSENTING

TUASON, J.:

Unnecessary cruelty is an aggravating circumstance but superior force is not. The homicides or murders themselves, regardless of the manner in which they were perpetrated, may and should in this case be taken to aggravate the penalty. With this observation, I vote for the affirmance of the appealed sentence.

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