

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FORTUNATO BUCO ALIAS RAMSEY, ET AL., DEFENDANTS, FORTUNO
BUCO ALIAS RAMSEY, DEFENDANT-APPELLANT.**

G.R. No. L-19831. September 05, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

An information for murder was filed on November 1, 1959 in the Court of First Instance of Pampanga against Fortunato Bucu alias Ramsey and six others, designated as "Does",* for the killing of Conrado G. Dizon. A complaint filed earlier included two other accused, Tomas Calma alias Commander Sol and Cornelio Caparas alias Eden Lee, but these persons subsequently died and were dropped from the charge. All the remaining accused were at large except Fortunato Bucu who was arrested in 1956. Bucu was arraigned, pleaded not guilty and proceeded to trial.

The prosecution, thru Dr. Elpidio G. Yumul's testimony, established the fact of the killing, thus:

At around 7:30 to 800 P.M. of the 17th of May, 1955 in Sta. Ana municipality, Pampanga, Dr. Yumul, municipal health officer, and his wife were passing by the market. They saw their municipal mayor, Conrado G. Dizon, standing near the market, Dr. Yumul's wife asked him to inquire from the mayor whether he could join the rigodon dance for a forthcoming (May 22) celebration. As the doctor approached the mayor, his wife left for home.

Dizon told Dr. Yumul that he was too busy and could not join. As it was Dr. Yumul who was supposed to supervise the rigodon practice, the mayor told him to go home lest he would be missed thereat. As Dr. Yumul turned to go, he saw a blaze of gunfire cut down the mayor who was 1-1/2 to 2 meters from him. Scampering for cover, he hid in a house near the church. After 20 or 30 minutes, when shouting had subsided, Engineer Maglalang passed by and told him that it was probably over. They went to the spot where the mayor fell and found him dead, lying flat on the cement, with nine gunshot wounds. Dr. Yumul later performed the autopsy at the hospital.

Philippine Constabulary Staff Sgt. Reny Hechanova investigated Francisco Bucu after his arrest. And before him, Bucu signed a statement on February 6, 1956 (Exhibit B) admitting, that Eden Lee and he killed Conrado G. Dizon with an automatic carbine and a garand rifle, respectively; he further identified his other companions.

Salud Dizon, the deceased's widow, testified inter alia that her husband was administrator of the 90-hectare land of his father. This point, as will be seen later, has a bearing on the question of why Dizon was killed.

The defense sought to prove that the act of killing Dizon was but part of the crime of rebellion for which the accused had already been charged on August 17, 1954 in the same Court of First Instance of Pampanga (Crim. Case No. 1940); that on July 16, 1959 Bucu pleaded guilty to said rebellion charge and was sentenced, thus:

"IN VIEW OF THE FOREGOING, the court finds the sad accused Fortunato Bucu guilty beyond reasonable

doubt of the crime of simple rebellion, as defined and penalized under Art. 135, paragraph 2, of the Revised Penal Code; and considering the mitigating circumstances of (1) plea of guilty (Art. 13, par. 7); (2) that he acted under the impulse of an irresistible force (Art. 12, par. 5); and (3) lack of instruction (Art. 15, par. 1), which were admitted by Fiscal Kayanan, the court hereby sentences said Fortunato Bucu, on recommendation of Fiscal Kayanan, to suffer the straight penalty of one (1) year and six (6) months of prison correccional and to pay his proportionate share of the costs.

"Considering the fact that Fortunato Bucu was apprehended on February 3, 1956, and has been detained up to the present, the provincial warden is hereby authorized and directed to release said accused from further confinement, in so far as this case is concerned, it appearing, that he had been under detention for a period at least double the penalty herein imposed; provided, that there are no other pending charges against him in any of the two branches of this court.

"SO ORDERED."

And from this the defense argued that the prosecution for murder constitutes double jeopardy for the same offense.

As to the statement (Exhibit B) taken by the PC, with is in English, Fortunato Bucu testified that he does not know how to read English; that Sgt. Reny Hechanova asked him to sign it, saying that after his signing it, he can go home; that for this reason he signed it tho said statement was not made by him; that after signing it, he was not sent home but to the provincial jail instead.

Ruling that Dizon's killing accomplished on May 17, 1955, was an act of murder not included in the charge of rebellion which covered the period from May 28, 1946 to August 17, 1954, the Court of First Instance on March 15, 1962 rendered judgment rejecting the plea of double jeopardy, finding Bucu guilty of murder and sentencing him to reclusion perpetua to pay P6,000.00 as indemnity to the heirs of the deceased, and proportionate costs.

Appealing therefrom to Us, Bucu contends that (1) the killing of Dizon was absorbed in the rebellion for which he had been charged and sentenced; and (2) that he was not sufficiently identified as one of the killers.

The act of killing Dizon, which appellant is now charged with, is not among those acts alleged in the previous case as constituting the offense of rebellion. Said act could not have been so charged since it was committed after the filing of the rebellion charge. Not having been included in the rebellion charge, said killing is not absorbed in the rebellion offense therein charged. (People v. Igual, G.R. Nos. L-13469, L-14240, L-14209, May 27, 1965)

Appellant has also failed to establish that the reason for the killing of Dizon was to further or carry out rebellion. True, Dizon was a mayor, and true, at the time of said killing, Bucu was still a Huk and at large, as the dates may be outlined, thus:

August 17, 1954 - charge of rebellion

May 17, 1955 - murder was committed

February 3, 1956 - accused was apprehended

1956 - ceased to be a Huk

July 16, 1959 - conviction for rebellion

November 1, 1959 - information for murder

Yet the record shows that Dizon was ordered killed not because of said position or the functions of said office but because of a private matter having to do with his capacity as administrator of his father's 90-hectare land. As the

court a quo found, and as related in de-fendant's statement (Exhibit B), Tomas Calma alias Commander Sol was moved by a certain Luna, a mere civilian, to cause Dizon to be killed because, according to said Luna, Dizon "was not good when it comes to the land" re-ferring to 90-hectare land administered by Dizon and in which Luna was believed privately interested.

Apellant's identification as among the killers is found only in his statement (Exhibit B), which was first explained to him in Tagalog, but also in his testimony in court wherein he admitted the truth of the answers given said statement to the effect that he and Eden Lee actually killed Dizon, using a garand rifle and carbine, respectively; and that Luna, a civilian who wanted to join Huks "ordered" the killing of Dizon because the latter was "not good when it comes to the land." This negates appellant's contention that Dizon was killed because he was responsible for the killing of so many Huks.

As to the penalty, We notice that the lower court took defendant's admission during the trial that he killed Dizon as mitigating circumstance of plea of guilty to offset the aggravating circumstance of evident premeditation, af-ter considering treachery as a qualifying circumstance. Considering that the admission of the killing took place after the presentation of the evidence for the prosecution, the mitigating circumstance of plea of guilty cannot be considered (Art. 13, No. 7, Revised Penal Code; People v. Quijano, 74 Phil. 225). However, for lack of the required number of votes to impose the death penalty, the penalty next lower in degree thereto, that is, reclusion perpetua, has to be imposed on the accused (Sec. 9, Republic Act 296).

WHEREFORE, the judgment appealed from is herby af-firmed. Costs against appellant.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

*Peter Doe alias Sampaguita, Paul Doe alias Miranda, Robert Doe alias Totoy, John Doe, Richard Doe and Jack Doe.

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