

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NEMESIO MORTERO, VIRGILIO YOYONGCO, FAUSTINO IGNACIO,
PEDRO D. MERCADO, PETRONILO MATA, JUAN BALDONAZA, TIRSO
BALA, EL...**

G.R. No. L-10948. May 20, 1960

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PER CURIAM:

By a second amended information, filed, on June 25, 1954, with the Court of First Instance of Tarlac, the provincial fiscal of said province charged Nemesio Mortero, Jose R. Pagaduan, alias Pedro Pagaduan, Agustin Nunug, Faustino Ignacio, Pedro D. Mercado, Juan Baldonaza, Virgilio Yoyongco, Tirso Bala, Eliodoro Mandi, Felix Bautista, Petronilo Mata, Ciriaco Vilorio, Romeo Borromeo and Celso C. Ramento, "and other John Does, whose identities and whereabouts" were said to be "still unknown", with multiple murder. It was alleged in said pleading:

"That on or about the 3rd day of January, 1950, in the municipality of Tarlac, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then officers and enlisted men of the 19th PC Company or attached thereto, stationed at Camp Makabulos, Tarlac, Tarlac, with the exception of Petronilo Mata who is a civilian, confederating; conspiring, helping and aiding one another, with evident premeditation and treachery and with the intent to kill, did then and there, intentionally, feloniously, and criminally fire with their firearms at the civilian houses located at Barrio Panampunan, Tarlac, Tarlac, to avenge the death of one Sgt. Mangino, a member of the said 19th PC Company, thereby inflicting mortal wounds on the bodies of Maria Ortiz and Fortunato Lansangan, a small boy, which caused their instant death, and not contented with firing at the house, the said accused herded the male residents of said barrio, namely, to wit: Juan Escaño, Policarpio Manalo, Pablo Ramos, Eugenio Tañedo, Eugenio Gutierrez, Feliciano Gutierrez, Mateo Magno, Antonio Galang, Felino Ventura, Simeon Lansangan, Filomeno Samson, and Fausto Dizon, and while thus herded and helpless, the said accused opened fire at them with their rifles, inflicting upon their bodies mortal wounds which caused their instantaneous death, and in order to cover up the commission of the crime, the above-named accused carted and scattered the bodies of the slain male persons to the sugarcane field nearby; thereafter the accused, Virgilio Yoyongco with others, returned to their Headquarters at Camp Makabulos, Tarlac, to take helmets and surrendered firearms from the armory, some of which are of Japanese make, and upon securing the same brought them to the place where the dead bodies were scattered in the sugarcane field and placed along side or on the bodies of the slain persons the helmets and rifles, to make it appear as if they were armed Huks killed in an actual encounter. "That in the commission of the crime, the generic aggravating circumstances of abuse of superior strength, taking advantage of their then official positions, use of vehicles, and nighttime, are present."

On motion of the prosecution, the lower court ordered the dismissal of the case as regards defendants Celso Ramento and Romeo Borromeo. Subsequently, defendant Petronilo Mata was discharged from the information, on motion, also, of the prosecution and over the objection of his co-accused, to be used as state witness. After due trial, as regards to the other eleven (11) defendants, said court rendered a decision acquitting defendants Virgilio Yoyongco, Eliodoro Mandi, Felix Bautista, Tirso Bala and Ciriaco Vilorio, with the proportional part of the costs

de oficio, and finding Nemesio Mortero, Faustino Ignacio, Jose Pagaduan, alias Pedro Pagaduan, Juan Baldonaza, Pedro D. Mercado and Agustin Nunug guilty of fourteen (14) murders and sentencing each of them fourteen (14) times to life imprisonment and to, jointly and severally with their convicted co-defendants, indemnify the heirs of each of the fourteen (14) victims named in the amended information in the sum of P4,000.00, and to pay the proportional part of the costs. The case is now before us on appeal taken by these six (6) convicted defendants.

The evidence for the prosecution tended to establish the following facts. In the evening of January 3, 1950, Sergeants Faustino Mangino, Juan Baldonaza, and Jose Pagaduan, and Corporal Agustin Nunug, all of the 19th PC Company stationed in Camp Makabulos, municipality of Tarlac, province of Tarlac, went to the barrio of Panampunan, which is part of said provincial capital, having been tipped by Petronilo Mata, a PC informer, that one Antonio Galang was sheltering in his house, and giving aid and comfort to Hukbalahaps. It was approximately 8:00 p.m. when said members of the Constabulary and Mata arrived at Panampunan and proceeded to Galang's house. Once in front of it, Sgt. Mangino bade its occupant to come down. As Galang's wife, Maria Mables, appeared at the stairway, ready to come down, Sgt. Mangino told her that it was Galang whom he wanted. Immediately, Galang went down, while Maria remained at the top of the stairs. No sooner had Galang reached the ground than Mangino and one of his companions inquired about the Huks he (Galang) was taking care of Galang denied having any Huks under his care. Mangino kept on pressing his query, but Galang insisted that he had no Huks in his house. After a while, Mangino and his companions began beating Galang, in view of which Maria rushed down, crying and pleading for mercy. Then appellants Baldonaza, Pagaduan and Nunug deployed around the house and started firing at it, while Mangino continued beating Galang. As soon as the fusillade began, Maria asked Mangino that she be permitted to go up the house, for there were two (2) persons therein. Maria was referring to her children, aged one (1) year and two (2) years, respectively, whom she wanted to bring down to safety. Evidently believing that the persons alluded to by her were Huks, Mangino, forthwith, rushed upstairs. In his haste, however, he forgot to tell his companions what he intended to do and, not knowing that he had gone up, they kept on shooting. Maria eventually succeeded in getting permission to enter her house, where she noticed the body of an individual sprawled near the door. Thoroughly frightened, she hurriedly brought her children down. As the companions of Mangino inquired where he was, Maria replied that he must be the person she saw in her house. Thereupon, the soldiers rushed upstairs, and found Mangino already dead.

What transpired in the minds of appellants Pagaduan, Baldonaza and Nunug, at this critical moment, is purely a matter of conjecture. The lower court surmised, and, we feel, correctly, that they must have realized the extremely precarious position in which they were and that, to evade responsibility for Mangino's death, they must have decided to impute it to the Huks. Indeed, soon, thereafter, Pagaduan went to Camp Makabulos and reported that Mangino had been shot and killed by Huks, at the same time calling for reinforcements. The indignation in the camp was such that all men who could be spared, numbering twenty (20), more or less, boarded an armored car and sped towards Panampunan. At about 9:30 p.m., they alighted near the house of Antonio Galang. Captain Eusebio Cabute, commanding officer of the company, who died several months later, inquired about the body of Sgt. Mangino. Appellant Baldonaza replied that it was in Galang's house. Then Cabute, allegedly in the presence of Major Mortero, one of the appellants herein, ordered the soldiers to open fire. Deploying themselves, the soldiers began shooting, some in the direction of Galang's house, and others towards the sugarcane field nearby. The same was, also, peppered with a machine gun, mounted on the armored car. The barrage continued for about thirty (30) minutes. Meanwhile, appellant Faustino Ignacio investigated Galang, then maltreated him and, eventually, shot and killed him.

Thereafter, the adult male residents of the barrio, who were suspected of being in sympathy, if not in connivance, with the Huks, were rounded up and then lined up in the middle of the street, in front of Galang's house. They were Juan Escano, Policarpio Manalo, Pablo Ramos (alias Pablo Magbag), Eugenio Tanedo, Eugenio Gutierrez,

Feliciano Gutierrez, Mateo Magno, Felino Ventura, Simeon Lansangan, Filomeno Samson (otherwise known as Clemente Samson) and Faustino Dizon. The women were, likewise, herded together in a lot, near the house of one Apong Candi, where they were made to lie flat on the ground, face downward, and warned not to move or raise their heads to look around. It was then about 10:30 p.m. The soldiers began investigating the aforementioned men, repeatedly inquiring where their Huk companions were. As the "suspects" insisted that they knew no Huks, the agents of the law began beating them up with the butts of their rifles. Gradually the fury of the investigators mounted until they bayoneted and shot the "suspects", thus killing every one of them.

When their relatives looked for them, the next morning, their mangled bodies were found scattered in the sugarcane plantation, about 200 meters from the spot where they were massacred—some with broken legs, arms, necks and skulls, and others with mutilated toes and fingers, and/or with intestines coming out. Maria Ortiz and her two-year old son, Fortunato Lansangan were, also, found dead, in their house near that of Galang, victims, evidently, of the bullets of the peace officers during the thirty (30) minutes of aimless firing.

The foregoing facts were established by the testimony of Petronilo Mata and that of Rosa Lansangan, Cristina Hernandez, Anastacia Wage, Rosalina Espinosa, Maria Mables and Estela Galang, all relatives of the victims.

The presence of the dead bodies in the sugarcane plantation was explained by the testimony of Basilio Liwanag, a 64-year old farmer, residing in Panampunan. He said that, sometime after the shootings in the barrio had stopped, in the evening of January 3, 1950, three (3) soldiers borrowed from him a cart and a carabao, both of which they took away after telling him to go up his house. About two (2) hours later, they returned the carabao and the cart, which was then spattered with blood. As he washed it at the request of the soldiers, they advised him to use therefor, not his hands, but a broom which he did—because, they said, the cart had human blood. Thereafter, they bade him to go up his house and not to go down whoever called him. Thus, the prosecution tried to prove, and the lower court held, that the soldiers used the cart to load thereon the bodies of their victims and bring them to the plantation, where they were scattered to give the impression that they had been killed in the course of a battle between the peace officers and the Huks.

Appellants Baldonaza, Pagaduan and Nunug did not take the witness stand, whereas their co-appellants Mortero, Ignacio and Mercado, set up alibis. The last two (2) testified that both were on duty in Camp Makabulos, from 9:00 a.m. of January 3rd to 9:00 a.m. of January 4th, 1950, and that they did not leave the place during that period of time. Major Mortero, in turn declared that he went to the barrio of Panampunan when the shootings were over, and that, after investigating the same for twenty to twenty-five minutes, he returned to Camp Makabulos.

In an effort to prove that, in the night of January 3, 1950, there had been, in said barrio, an engagement between the forces of the constabulary, on the one hand, and the Huks, on the other, and that the deceased persons named in the information were killed in the course of the encounter, the defense introduced the affidavits of some witnesses for the prosecution and some records of the Constabulary, as well as reports of officers thereof and of some civil officials who investigated the events of that fateful evening.

The lower court, however, adopted the version of the prosecution and rejected that of the defense, and, upon a review of the records, we find no justification to disturb the view taken by His Honor, the Trial Judge, who observed the behaviour of the witnesses during the trial. Indeed, the prosecution presented seven (7) eye witnesses to the occurrence, who stated positively that twelve (12) of the fourteen (14) victims named in the information—namely: Antonio Galang, Juan Escano, Policarpio Manalo, Pablo Ramos (alias Pablo Magbag), Eugenio Tanedo, Eugenio Gutierrez, Feliciano Gutierrez, Mateo Magno, Felino Ventura, Simeon Lansangan, Filomeno Samson (alias Clemente Samson) and Fausto Dizon—were maltreated, and, subsequently, shot and killed, not in the course of a combat, for there was none, but, while they were, unarmed and defenseless, being

investigated by peace officers, whereas the defense placed on the witness stand none of the members of the Constabulary who took part in the alleged encounter, not even Pagaduan, Baldonaza and Nunug, whose presence at the scene of the occurrence, when the same took place, is not denied. Neither has the defense tried to explain the reason for this omission.

Upon the other hand, we find that the circumstances surrounding the making of said affidavits were such as to strongly indicate that the affiants were then acting under the influence of duress, or, at least, without the freedom necessary to narrate the facts as they saw the same. Moreover, the records of the Constabulary and the reports on the result of the aforementioned investigations are, at best, hearsay proof of the alleged battle between the agents of the law and the dissidents. Then too, said evidence for the defense is incompatible with the badly battered bodies and broken limbs of most of the victims and the mutilated condition of some of them. Again, if the engagement was as fierce and bloody as to result in the death of twelve (12) Huks, armed with firearms, in addition to a woman and a tender child, as the defense would have us believe, why is it that not even a scratch was sustained by Pagaduan, Baldonaza and Nunug or by any of the agents of the law who went to Panampunan in response to the request for reinforcement made by Pagaduan? It is, likewise, significant that the defense has introduced no evidence about the specific nature and location of the injuries sustained, either by Sgt. Mangino, or by the deceased persons named in the amended information, despite the fact that these details would have, in all probability bolstered up the theory of the defense, if the same were true.

It is thus clear, from the evidence of record, that the victims named in the information died, not in consequence of an alleged engagement with the Constabulary, but, in the manner testified to by the witnesses for the prosecution.

The only question that remains to be considered is whether the six (6) appellants herein took part in the killings above referred to.

As regards appellants Baldonaza, Pagaduan and Nunug, who did not take the witness stand, the evidence for the prosecution against them is uncontradicted. In fact, the defense has not even tried to deny, either their presence in Panampunan, or their participation in the occurrence, except by the aforementioned attempt to establish an alleged battle between the Constabulary and the Huks, which, the lower court found, and, we believe, correctly, did not take place. What is more, the very evidence for the defense shows that Pagaduan, Baldonaza and Nunug had actually accompanied Sgt. Mangino to Galang's house, where, according to the prosecution, he was riddled by the bullets of his own comrades in arms. Hence, there can be no doubt about the guilt of these three (3) appellants, who were positively identified by the witnesses for the prosecution as actual participants in the maltreatment administered and the assassinations committed in the night of January 3, 1950.

With respect to appellants Faustino Ignacio and Pedro D. Mercado, their version to the effect that they were on duty in Camp Makabulos from January 3 at 9:00 a.m. to the next day, without interruption, was sought to be corroborated by the testimony of Filomeno Rombaoa and Francisco Ferrer and official records of their detail as guard and "charge of quarters", respectively, during said period of time. However, Ignacio was positively identified by Anastacia Wage, Maria Mables, Rosalina Espinosa and Petronilo Mata, as one of the peace officers who took active part in the maltreatment and killing of Antonio Galang, Policarpio Manalo, Pablo Ramos, Eugenio Tanedo, Eugenio Gutierrez, Mateo Magno, Felino Ventura, Simeon Lansangan, Filomeno Samson and Fausto Dizon. The participation of Mercado in such acts was, likewise, established by the testimony of Petronilo Mata, who did not implicate all of the defendants and had no possible improper motive to incriminate said appellant. Moreover, the testimony of Francisco Ferrer reveals that Mercado was actually on duty, on January 3, from 7:00 to 9:00 p.m. and, on January 4, from 1:00 to 3:00 a.m. Apart from showing that Mercado was not truthful when he claimed to be on duty for twenty-four (24) hours, without interruption, from January 3 at 9:00 a.m., it is apparent from Ferrer's testimony that Mercado could have been, consistently with his duties, in

Panampunan from 9:00 p.m. of January 3 to 1:00 a.m. of January 4, 1950, as testified to by the witnesses for the prosecution.

It may not be amiss to note that Mercado, as well as his co-defendants Ignacio, Baldonaza and Nunug withdrew their appeal, on September 24, 1956, with the approval of this Court, although, subsequently, they sought permission to withdraw said withdrawal of appeal, upon the ground that their counsel, Capt. Pedro V. Malit of the Judge Advocate's Office, detailed in San Fernando, Pampanga, had induced them to affix their signatures, on the request for withdrawal of their appeal, stating that they had "no chance whatsoever" in this case, and "would all be sentenced to death penalty", and that they signed the request without deliberating thereon judiciously and without consulting their co-accused and relatives. In the light of the foregoing circumstances, we are fully satisfied that the guilt of Ignacio and Mercado has been established beyond reasonable doubt.

Referring to Major Mortero, His Honor the Trial Judge had the following to say:

"As to the accused Nemesio Mortero, his identification as one of the officers who led the punitive expedition is complete and positive. He came with Capt. Cabute in the armored car that brought the twenty or more men to Panampunan. He was present when Capt. Cabute ordered the firing that lasted for about half an hour. He, in company with Ignacio and Baldonaza, went up the house of Fausto Dizon to get him. He was present and he saw Sgt. Ignacio maltreated and killed Galang. He was present and he saw when seven soldiers, including Ignacio and Mercado, maltreated, tortured, and finally killed the unarmed, defenseless, and unresisting eleven persons taken forcibly from their houses. During all this, the accused Nemesio Mortero never raised a finger or uttered a single word by way of preventing, or dissuading, or stopping the soldiers from committing the atrocities which resulted in the killing and death of innocent persons. His acquiescence in the commission of the heinous acts done by the soldiers in his presence proves beyond all peradventure of doubt that he was, although passively, acting in unison and in cooperation with the soldiers who were actually doing the dirty work. Morally and legally speaking, his guilt is greater than that of the soldiers, excepting perhaps Capt. Cabute, who is now dead."

Appellant Mortero would have us believe that there were no more shootings when he arrived at the barrio of Panampunan, and that all he did there was to investigate the occurrence for less than thirty (30) minutes, after which he returned to Camp Makabulos. Felipe Romero, his own witness, testifies, however, that he (Romero) drove the jeep that brought Major Mortero to Panampunan at 9:30 p.m., which, pursuant to the evidence for the prosecution, is the very time at which the armored car bringing twenty (20) angry members, more or less, of the Constabulary, reached said barrio, in response to the request, for reinforcements made by appellant Pagaduan. Thus, the testimony of Petronilo Mata and Anastacia Wage, to the effect that Mortero was in Panampunan when the fourteen (14) persons named in the information were killed in the manner therein described and that he performed the acts referred to in the above-quoted portion of the decision appealed from, was, impliedly, corroborated by the aforementioned witness for the defense.

In short, appellants are guilty of the acts charged in the above-quoted information. The qualifying and aggravating circumstances therein alleged and established by the evidence of record, require that the penalty prescribed for the crime of murder be imposed in its maximum period, which is death, no mitigating circumstance having been present in the commission of the offense. Inasmuch, however, as appellants Mortero, Ignacio and Mercado were misled by their co-appellants Pagaduan, Baldonaza and Nunug into believing that the latter and Sgt. Mangino had been the victims of an attack by Huks, and that the death of Sgt. Mangino should be avenged by acts of reprisal upon Huks and their sympathizers, it is apparent that the first three appellants are morally less guilty than the last three, for which reason the number of votes necessary to impose the aforementioned penalty upon appellants Nemesio Mortero, Faustino Ignacio and Pablo D. Mercado is lacking.

Wherefore, appellants Jose R. Pagaduan, alias Pedro Pagaduan, Juan Baldonaza, and Agustin Nunug should be, as

they are hereby, sentenced to the extreme penalty, and the decision appealed from is affirmed, in all other respects, with costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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