

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ESTELITO LUNGASA, DEFENDANT AND APPELLANT.

G.R. No. L-235. August 21, 1946

Ponente: PERFECTO, J.

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PERFECTO, J.:

In a decision rendered on December 13, 1945, the Court of First Instance of Tayabas found Estelito Lungasa guilty for the murder of Pedro Leonor, committed on December 18, 1944, and sentenced him to 17 years, 4 months and 1 day of reclusion temporal, to suffer the accessories of the law, to pay one-fourth of the costs, to indemnify the heirs of the deceased in an amount equivalent to one-fourth of without subsidiary imprisonment, but with the benefit of the preventive imprisonment during his detention in the provincial jail.

Luisa Asajar, wife of Pedro Leonor, testified that one Saturday of December, 1944, her husband was taken from their home by Estelito Lungasa, Andres Barique, and Pedro Par, and since then her husband never returned. Leonor was then on bed afflicted with fever, Lungasa told Leonor that he wanted to take the latter to a meeting, but Leonor wanted to be excused in view of his illness, promising to attend the next meeting. In the meantime Luisa went down to get the medicine wanted by her husband. When she returned an hour later, Leonor and the three visitors were already gone. Leonor was a barrio lieutenant in the municipal government of Calauag.

Andres Barique, the second and last witness for the prosecution, testified that Lungasa invited him to join Lungasa in taking Leonor. Par was already with him. The three arrived at Leonor's house about noon. Lungasa invited Leonor to go to Dauahan, a barrio of Don Tomas. Leonor was lying in bed and was not willing to follow the three individuals because he was feeling ill. Leonor was prevailed upon, and when the four arrived at Dauahan, Lungasa delivered the person of Leonor to Victor Pefany, lieutenant of a guerrilla organization. After talking for a while with Lungasa, Pefany ordered him to bring Leonor to the bank of Dauahan River. Pefany, Par and the witness accompanied him to the place. Upon arrival at the river, on Lungasa's order, Par tied Leonor. Lungasa ordered the witness to kill Leonor, but he answered that he did not want to kill any person and went to a distance of four brazas. When he heard Pefany ordering Lungasa to kill Leonor, but Lungasa called the witness and again ordered him to kill Leonor, the Witness answering that although, they would kill him, he could not kill any person. Lungasa unsheathed a small bolo and stabbed Leonor's stomach. Leonor staggered. Lungasa made a second thrust at the back of Leonor and the latter fell down, and because he ceased to move the witness believed he died. The witness saw much blood, heard Leonor groaning, later to become immobile. The group left Leonor alone in the place, located at about ten meters from the water of the river.

On cross-examination, the witness declared that his house is located near Kabugwang river of the barrio of Mulawin, about three kilometers from the place Leonor was left alone, and that he did not remember when he signed Exh. 1, which was prepared in the municipal building of Calauag, where he, together with accused Lungasa, was being detained for the murder of Pedro Leonor. He signed the affidavit after 13 days of detention in the municipal jail. He had previously been detained four days, in the headquarters of Vera's party, a guerrilla unit, at the time, Lungasa and Par were detained in the same place — all of them, including the witness, "having been

accused as the authors of the murder of Sonor. It was in said headquarters where, for the first time, the murder was imputed to witness who denied having committed it. He even made an outright denial of having taken part in the killing of Leonor or of any knowledge of said killing. For said denial, he was maltreated, having been boxed 7 times in the stomach. A corporal brought him to the municipal building of Calauag and delivered him to Mayor Pareja, who did not investigate him. A brother of Leonor investigated him, and he again denied any participation or knowledge relating to the death of Leonor. The witness was investigated three (3) times — the first on the day of his arrival, the second (6) days later, and the third 13 days thereafter. At the time Leonor was stabbed by Lungasa, Par and he were not armed, but Pefany had a pistol. When Lungasa ordered him to kill Leonor, and afraid of anything that might happen, he (witness) turned his back to the group and remained in the same position when the group left Leonor alone to go to the camp of Pefany on the latter's invitation.

Emilio Cañete, whose name appears in the information as one of the witnesses for the prosecution, although the fiscal explained that the insertion was due to clerical error, was called to testify by the defense. He declared that at about 7 o'clock, one morning of December, 1944, he went to Dauahan river or rivulet to fish. While fishing he heard persons talking loudly. He stopped fishing to observe said persons for they might destroy part of his plantation. There were 6 persons, the witness knowing only Pefany, Juan Pasis and Pedro Leonor. Lungasa, who "was known to him, was not present in the group. Pefany said to Leonor "Repent from your sins and pray." Leonor did not answer and appeared to be praying. After praying, Leonor addressed the other persons; "I ask you to forgive me, and if you cannot forgive me for what I have done, please tell my family to pray for me." Pefany answered "Yes, even ten (10) prayers." Then Pefany ordered one of the soldiers "tie him," and he unsheathed his balisong and stabbed Leonor. Leonor fell down, and Juan Pasis delivered another thrust at the left side of the chest with a Balisong. Then the people went away. The witness observed the group at a distance of ten (10) meters, hidden by a lañaray tree. Although there were vines and tall grass, nothing obstructed his sight. At the time Leonor was wounded by Pefany, the latter's back was turned to the witness, who went later to the place where Leonor was lying, recognizing him. After recognizing Leonor, he went home, about forty (40) meters away from the place. After taking his breakfast, he went to the camp of Pefany where he found the five individuals talking about the way they killed Leonor. Lungasa was not there. He returned to his home, attended to some domestic tasks and went to clean his kaingin. Feeling somewhat tired, he remembered having left his fishing hook near the river and went to fetch it. To fetch it, he had to pass where Leonor fell down. It was about 11 o'clock in the morning, and he was surprised because the body of Leonor was not there. There were blood stains, but little blood in the place. He recovered his fishing hook. When he went to the municipal building to pay for his certificate of residence, he happened to learn that the death of Leonor was being investigated and he saw Lungasa being detained in the municipal jail. As he knew how Leonor died, he offered voluntarily to be a witness. Santiago Tañada investigated the witness, who signed Exhibit A. The witness noted that Leonor was not tightly tied. The individuals who left him alone in the spot where he fell did not approach or touch him to verify whether he was dead or not. He saw the left eye of Leonor half-closed. Although Leonor was still moving, the witness did not talk with him because he was afraid of the guerrillas. Leonor was moving his hands and feet although his arms were tied to his back. Witness saw also his fingers moving. The witness went to Pefany's camp to hear what happened and to request that the body of Leonor be removed because it was lying near his house, but Pefany and his companions just laughed, as they had. Laughed when they were talking about the killing of Leonor, and Pefany said: "it is better for you, because you will have a companion." The witness remained in the camp for about one hour.

Pedro Par testified that he happened to know Lungasa when the latter came to see him at his house for the purpose of inviting him to enlist in a guerrillas unit. In December, 1944, Lungasa invited him for a mission. They were accompanied by Andres Barique and went to the house of Leonor. Lungasa told Leonor that he went there to take him by order of his commander, Pefany. Leonor answered that he could not follow because he was sick, Lungasa

countered that he essayed by order of his commander and that Leonor must follow him. They arrived at the house of Leonor at about 11 o'clock in the morning, and went out after lunch at noon, after delivering the person of Leonor to Pefany at Dauahan, we went away, the three (3) of us," Barique, Lungasa "and myself." Seven other soldiers also went away. Pefany ordered Lungasa "to accompany said soldiers up to because said soldiers did not know the way. Lungasa and the witness accompanied said soldiers and they arrived at Katabangan after a trip of two days. Immediately after, Lungasa and the witness returned to their homes, Lungasa's being located at Polo, Calauag. At the return trip they employed also two days. The witness was arrested by a soldier belonging to the Vera guerrilla organization, in connection with the death of Leonor. Barique and Lungasa were also arrested. The witness was maltreated, and he saw soldiers giving Lungasa fist and firearm-butts blows. The witness, "Lungasa and "Barique were detained for 4 days in Kapaluhan, where Vera's guerrilla organization was located, when they were transferred to the municipal jail of Calauag. During the three investigations to which the witness was subjected in the municipal building, he was asked about the death of Leonor, and whether Lungasa, Barique and he were the authors of said death. The witness answered that he was with the party which took Leonor from his house, but neither Lungasa, Barique nor himself was present when Leonor was killed. While in the municipal jail, Lungasa was almost daily maltreated and given blows by military men. Each day a soldier would come to the jail to maltreat him. The witness denies having made the declaration appearing in Exh. 3. He recognized his signature therein, but he does not know its contents, it not having been read to him before he signed it. "I signed because they promised me that after signing will be given freedom. I know how to write my name, but do not know how to read." It was Sergeant Crispulo Abila who made him sign the paper. The witness was also maltreated in the municipal jail. He received blows with a broom and fist blows.

Accused Lungasa, 22 years old, a member of the "Philippine Army and of the guerrilla organization known as Mata's party since 1942, testified that in December, 1944, Reymundo Chavez and lieutenant Pefany, Lungasa's superiors, ordered him to take Leonor, and he, accompanied by Barique and Par, complied with the order, Leonor asked the reason, and the accused answered, "I do not know, I was only" ordered to take you." Leonor said that he could not follow because he was sick, and the accused replied that he had to follow them because if not, "we will be punished by our commander." Leonor followed. When they arrived at the house of Pefany, the accused found Juan Pasis and other soldiers well known to him. When the accused reported to Pefany the arrival of Leonor, Pefany told him! "it is good, you may deliver to me his person, and I will deliver him to Raymundo Chavez when the latter arrives." After delivering the person of Leonor, Pefany ordered the accused to accompany some of his soldiers to Xatabangan, Camarines Sur. With the accused were 7 soldiers besides Par and Barique. They had to walk two days to arrive at their destination. The accused was arrested by soldiers belonging to Vera's party, after arresting him in his house, they tied him and gave him firearm-butts and fists blows. He was brought, with Barique and Par, to the camp at Kapaluhan. Upon arrival, he was hanged to a tree, although the tips of my feet were touching the ground." They gave me fists blows and rifle-butt blows." After four days they were transferred to the municipal jail of Calauag where soldiers and police officers maltreated the accused. He was given as food sometimes just two camotes a day. Almost, everyday police officers and soldiers entered his cell to maltreat him. During the four days the accused was in Vera's fist blows and rifle-butt blows after 4 days they were transferred to the municipal Jail of Calauag where soldiers and police officers maltreated accused. He was given as food sometimes just two camotes a day. Almost everyday police officers and soldiers entered his cell to maltreat him. During the four days the accused was in Vera's party camp at Kapaluhan, he was not given any food nor even a glass of water, and while hanging from the tree he was given blows at two hours intervals. The accused does not remember whether it was Sergeant Abila who investigated him while he was in the municipal jail of Calauag, because then "my mind was always confused, because I was continuously being maltreated by soldiers and police officers. I was almost unconscious, because they maltreated me continuously." During the thirteen days in which the accused was detained in the municipal jail, he was given food only "once in a while." There were days "when

I was not given any food at all. Sometimes they were giving me a camote in the morning and oanother at night." The accused signed Exhibit C. but he did not know what was written in it.

As a rebuttal witness for the prosecutor, Crispulo Abila and Avelino Layco testified to contradict the declarations of Pedro Par and Estelito Lungasa concerning Exhibits B and C, and the maltreatment they suffered in the municipality jail of Calauag. No rebuttal evidence was presented as to the tortures suffered by the accused at Vera's party camp in Kapaluhan.

The Evidence in this case does not need offer ground enough to pronounce Lungasa guilty beyond all reasonable doubt of the crime of murder imputed to him. Barique is the lone witness, interested and uncorroborated, by whose testimony the prosecution tried to show that it was Lungasa who, at the Dauhan River, wounded twice and killed Leonor. His testimony is not basis enough to brand a citizen who, like the appellant, rendered services in the Philippine Army and later in the guerilla forces, for his country's freedom, with unerasable stigma of infamy and keep him vegetating and languishing for the best part of his life in a penitentiary. Barique was arrested, having been pointed out as one of those responsible for the death of Leonor. After his arrest, he was tortured and later signed the statement Exhibit A, which later became the basis of his testimony. Without any hesitation, he admitted that during his first investigation, either at the kapaluhan camp of Vera's party, or when he was detained in the municipal jail of Calauag, he denied not only participation but even any knowledge as to Leonor's death or killing, thus admitting having made in court as to the act and circumstances surrounding the killing of Leonor. Although he is the only witness the prosecution was able to testify about the alleged killing of Leonor, it is significant that his name was not included in the information among the witnesses for the prosecution. The omission can not be interpreted otherwise than that the prosecution itself was not sure to count on Barique's testimony.

Besides, the fact that Barique's testimony regarding the alleged killing of Leonor appears absolutely unsupported by any corroborative evidence, it is overwhelmed by the contrary testimony, not only of Lungasa himself, but of two unbiased and disinterested witnesses, Pedro Par and Emilio Cañete. Both Lungasa and Par, in declarations that ring with truth testified that, after delivering the person of Leonor to Pefany, they were sent home and order to proceed the next day to Katabangan, Camarines Sur, to accompany seven soldiers, the trip lasting two days in going and two days in returning. Neither they nor Barique, who went with Katabangan, were present at nor saw the killing of Leonor. In this testimony, they are supported by the testimony of Emilio Cañete who actually saw what happened to Leonor when he was wounded by Pefany and Pasis at the Bank of Dauahan River, where Pefany and four companions left alone the body of Leonor bleeding. The fact that when, after a few hours, Cañete returned to the place in the same morning he did not see again the body of Leonor, coupled with the fact that immediately after it was left by Pefany and his four companions, the hands and feet of Leonor were still moving, makes the death of Leonor at least doubtful.

According to Cañete, Pefany and Pasis were the persons who killed Leonor, and the fact that the prosecution included Juan Pasis in the information among the authors of the killing of Leonor, tend to support the testimony of Cañete that Pasis wounded also Leonor with a Balisong, disbelieving the testimony of Barique which excludes Pasis.

The appealed decision is reversed and appellant Estelito Lungasa is acquitted of all criminal responsibility, with costs de officio.

Moran, C.J., Paras, Fera, Pablo Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

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