

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FAUSTO CLAMANIA ET AL., DEFENDANTS. FAUSTO CLAMANIA,
DEFENDANT AND APPELLANT.**

G.R. No. L-2095. January 28, 1950

Ponente: TUASON, J.

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TUASON, J.:

The question presented on this appeal is whether the appellant is entitled to the benefits of Guerrilla Amnesty Proclamation No. 8. The truth of the evidence for the prosecution was confirmed in its material aspects by the defendant.

Apolinario Inciso and Modesto Delantar, two witnesses for the prosecution, testified in substance that on the night of September 26, 1942, in barrio Lawaan, Balangiga, Samar, they were forced by the accused at the point of a revolver to accompany him to the beach. At the beach they saw Juan Grafil and Apolinario Gahoy in a boat with their hands tied behind their backs. With Apolinario Inciso at the helm, Delantar and the accused rowed the boat with the victims on board to Can-usod island. There, Grafil and Gahoy were taken ashore and beaten to death by Fausto Clamania with an oar. After Grafil and Gahoy were killed the accused ripped their abdomens to let out the bowels, attached stones as weights to the bodies, tied the bodies to the craft, and then hauled them to deep water where they were released.

As above stated, the defendant admitted the above testimony, except that which says he had a firearm and coerced the prosecution witnesses into following him.

Explaining why and how he slew Grafil and Gahoy, the accused testified that he lived in Barrio Lawaan, Balangiga, Samar. He knew one Manuel Japzon, a constabulary non commission officer stationed in Borongan before the outbreak of the war. In August, 1942, Japzon organized in Lawaan a guerrilla unit which he (accused) joined as a volunteer. According to Japzon, the object of the organization "was to protect the right of the barrio people from the abuses of bad people." Morning and afternoon, the members of the unit drilled and mounted guard "against wrong doing."

On September 25, 1942, the accused saw Grafil and Gahoy in the school building with their hands bound. Having been detailed by Japzon to guard the two prisoners on that date, he came to know that Japzon had ordered six USAFFE men to arrest Gahoy and Grafil: and the proceedings, which he overheard, at the investigation of the prisoners revealed to him that they "had stolen things from the barrio and had caused trouble."

On the following day, he further said, Japzon ordered him, Inciso and Delantar to kill Grafil and Gahoy, who were already in the boat, shackled. Japzon said, "You leave now", and he and the Government witnesses hurried to the seashore and rowed the boat to Can-usod island. He struck the victims with an oar and, in accordance with Japzon's instruction, opened the abdomens before casting the corpses into the sea, in order to prevent them from floating and from being seen by other people. After killing Gahoy and Grafil and disposing of their bodies, he and his companions rowed back to Lawaan where he gave Japzon an account of what he had done.

Japzon did not testify either for the prosecution or for the defense, nor does it appear that any attempt by either side was made to subpoena him. He was said to be still in the Constabulary, stationed in Manila, at the time of the trial.

As stated at the outset, the appellant's sole reliance for acquittal is on the Guerrilla Amnesty Proclamation.

To come within the terms of this proclamation, it is necessary to show that the crime was committed "in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy." Neither of these requisites was present. Granting the two deceased had committed thefts and robberies, these deeds in no way gave aid and comfort to the enemy or impeded the resistance against them. As a matter of fact, as far as the record would show, the Japanese had not yet shown up in Lawaan, and. Grafil and Gahoy had. not had any occasion to help theirs. Officials under the Commonwealth Government, it would. seem, were still in control of the municipality.

The appellant has been sentenced to death. We agree with the Solicitor General that the aggravating circumstances of nighttime, uninhabited place and ensañamiento, found by the trial court, have been erroneously appreciated. Nocturnity is absorbed by treachery by which the killing is qualified; there is no proof that Can-usod island was uninhabited, and the disemboweling of the deceased was not an. unnecessary mutilation or deliberate and wanton augmentation of the suffering of the offended parties. For when the disemboweling was effected, the victims were already dead, and the operation was conceived solely for the purpose of facilitating the sinking of the cadavers and preventing their discovery.

The proper penalty therefore should be reclusion perpetua instead of death. However, two murders have been perpetrated, for each of which one separate penalty of reclusion perpetua should be imposed. The lower court also failed to provide for the payment of indemnity; the defendant should be sentenced to pay P6,000 to the heirs of Juan Grafil and P6,000 to the heirs of Apolinario Gahoy.

With these modifications, the judgment of conviction is affirmed, with costs of this appeal against the appellant.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

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