

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
WILLIAM J. POMEROY ALIAS BILL ALIAS BERTO ALIAS LANA
ALIAS CARDING ALIAS ROMEO ALIAS DANIEL ALIAS ROBERTO J.
LLAMAS ...**

G.R. No. L-8229. November 28, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal, taken by the prosecution, from a decision of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, defendant Luis M. Taruc is hereby declared guilty, by his own confession in open court, of the crime of rebellion, charged in the information herein, as lastly amended, defined and punished under Articles 134 and 135 of the Revised Penal Code, and in accordance with paragraphs 4 and 6 of Article 64 of the same Code, he is sentenced to suffer the penalty of twelve (12) years of prision mayor, together with the accessory penalties provided for by law, and to pay a fine of P20,000, and his proportionate part of the costs." (Appellant's Brief, p. 81).

Defendant-appellee Luis M. Taruc is accused, together with William J. Pomeroy, Celia Mariano Pomeroy, Casto Alejandrino, Jesus Lava, Mariano P. Balgos, Alfredo B. Saulo, and Alejandro Viernes. The third amended information reads:

"The undersigned accuses Luis M. Taruc alias Enteng alias LMT alias LT alias Tandang Anong alias Apo Iro alias Ipe alias Pern alias Ent alias E alias Apong Pio alias Tandang Ipe alias Juan de la Cruz alias Otay alias Felipe Salvador, Jr., alias Catildo Pio alias Papa alias Horlicks alias Tata Lu alias Ka Lu alias Daily alias Bell alias O alias Don alias Abdon alias 4-0 Kododa alias Pop alias Lizo Amado alias Amado alias June (21), Casto Alejandrino alias Torres alias Guan Yek alias Gy alias G.I. alias Tatang, Jesus Lava alias Pacing alias Balbas alias Noli alias Jessie alias NMT alias Noli Me Tangere alias Pac alias NKVD Lava, Mariano P. Balgos alias Bakal alias Tony alias Tony Collantes alias Bonifacio alias Baltimore alias Eric alias Bull alias Tom alias Taoic alias Mans Racio alias Kapacik alias Bonny, Alfredo B. Saulo alias Elias alias Ato alias Zorro, and Alejandro Viernes alias Stalin alias Miranda alias Armando Villa, of the crime of rebellion with murders, arsons, robberies and kidnappings, committed as follows:

"That on or about May 4, 1946, and for sometime prior thereto and continuously thereafter until the present time in the City of Manila, Philippines, the place which they have chosen as the nerve center of all their rebellious activities in the different parts of the country, the said accused, being then ranking officers and/or members of, or otherwise affiliated with the Communist Party of the Philippines (P.K.P.) and the 'Hukbong Mapagpalaya ng Bayan' (HMB) otherwise or formerly known as the 'Hukbalahaps' (HUKS), the latter being the armed force of the said Communist Party of the Philippines, having come to an agreement and decided to commit the crime, of rebellion, and, therefore, conspiring and confederating among themselves, with William J. Pomeroy alias Bill alias Berto alias Lanao alias Daniel alias Romeo alias Carding alias Roberto J. Llamas alias Bob alias Catalino de la Cruz alias Ricardo Gomez alias Larry and Celia Mariano Pomeroy alias Celia

Mariano alias Celia B. Mariano alias Rene alias Rene Raquiza alias Alicia alias Silvia alias Alicia Garces alias Nadia alias Lydia alias Ana who have already been convicted and sentenced by this Honorable Court because of their plea of guilty last June 18, 1952 on the original information, and with all of the 31 accused in Criminal Cases Nos. 14071, 14082, 14270, 14315, and 14344 and with all of the accused in Criminal Cases Nos. 15288, 15479, 15744, 15841, 16290, 16291, 16304, 16305, 16306, 16990, 17336, 17630, 17709, 17768, 17927, 18155, 18392, 18438, 18716, 18754, 24957, and 26144 of the Court of First Instance of Manila, with other members, officers, and/or affiliates of the Communist Party of the Philippines and the 'Hukbong Mapagpalaya ng Bayan,' and with many others whose whereabouts and identities are still unknown, acting in accordance with their conspiracy and in furtherance thereof, and helping one another, did then and there wilfully, unlawfully and feloniously help, support, promote, maintain, cause, direct and/or command the 'Hukbalahaps' (HUKS) or 'Hukbong Mapagpalaya ng Bayan' (HMB) to rise publicly and take arms against the Government of the Philippines or otherwise participate in such public armed uprising for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof, as in fact the said 'Hukbong Mapagpalaya ng Bayan' (HMB) or the 'Hukbalahaps' (HUKS), pursuant to such conspiracy, have risen publicly and taken arms against the Government of the Philippines to attain said purpose, by then and there making armed raids, sorties, and ambushes, attacks against police, constabulary and army detachments as well as innocent civilians, and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed wanton acts of murder, pillage, looting, plunder, arson, kidnapping, planned destruction of private and public property, and plotted the liquidation of acting and elected government officials, to create and spread chaos, disorder, terror, and fear so as to facilitate the accomplishment of the aforesaid purpose, among which are a* follows, to wit:

"(1) On May 6, 1946, the 10th MP Co., led by First Lt. Mamerto Lorenzo, while on patrol duty in barrio Santa Monica, Aliaga, Nueva Ecija, was with evident premeditation, ambushed and treacherously attacked by a band of well-armed Huks. Ten enlisted men of the MP Company were killed and First Lt. Mamerto Lorenzo was captured and beheaded by the rebels.

"(2) On August 6, 1946, a group of more than 30 Huks under the leadership of Salvador Nolasco armed with guns of different calibers raided the municipal building of Majayjay, Laguna. They were able to get one Garand, one carbine, one Thompson submachine gun, and one pistol. They also took one typewriter and stationery.

"(3) On or about the month of June, 1946, Alejandro Viernes, alias Stalin, Commander of Joint Forces No. 108, with about 108 men, entered the town of Pantabangan, Nueva Ecija, and raised their Huk Flag for more than twenty-four hours. The municipal officials did not offer any resistance because of the superiority in number of the Huks. After demanding from the civilians foodstuffs such as rice, chickens, goats, and carabaos, they left the town, admonishing the civilians always to support the Huk organization. The MP forces under Capt. Ponciano Halili, S-3, Capt. Federico G. Olares, then Assistant S-3 of Nueva Ecija province, proceeded to Pantabangan with forces of the 112th MP Co. under Capt Nicanor Garcia, to verify the information, but were not able to contact the dissidents at Pantabangan. They proceeded to barrio Marikit, between Pantabangan and Laur, where they engaged some dissidents. When our forces were on their way home, they were pocketed by the dissidents at the zigzag road, but our forces were able to fire their mortars and Cal. 150 and .30 machine guns. Investigations made on the field of battle showed that the Huks suffered heavy casualties.

"(4) On April 10, 1947, 14 enlisted men under the command of Lt. Pablo C. Cruz, while on their way to investigate a holdup in barrio San Miguel na Munti, Talavera, Nueva Ecija, were, with evident premeditation and treachery on the part of the Huks, ambushed and fired upon by Huks armed with .30 caliber rifles, machine guns, and grenades. Lt. Pablo Cruz and Pvt. Santiago Mercado were killed and six other were wounded.

"(5) On May 9, 1947, an armed band of about 100 Huks under Lomboy and Liwayway, taking advantage of nighttime, raided the town of Laur, Nueva Ecija, and forced Municipal Treasurer Jose A. Vilorio to open the treasury safe from which the dissidents took more than P600. Policeman Fermin Sanchez together with one

Springfield rifle was taken away by the Huks. Aside from looting the Municipal Treasury, the Huks also robbed the inhabitants of the town of their money, rice, other personal property, and large cattle.

"(6) On August 19, 1947, Capt. Jose Gamboa, First Lt. Celestino Tiansec, and Second Lt. Marciano Lising, all from the 115th Co., while riding in a jeep following an armored car, were treacherously fired upon by a group of about 100 Huks armed with automatic rifles, Thompsons, and Garands and lined up on both sides of Highway No. 5 near the cemetery of San Miguel, Bulacan. First Lt. Celestino Tiansec and Second Lt. Marciano Lising were killed.

"(7) On or about January 5, 1949, an armed band of HMBs composing Squadrons 12, 18, 19 and 20, under the overall command of Linda Vie taking advantage of nighttime, with treachery and evident premeditation, attacked and raided Orani, Bataan, resulting in the killing of eight (8) civilians, namely: Gonzalo de Leon, Pablo Rubio, Jacinto Singca, Monico Ocampo, Solidino Macaspac, Jose Reyes, Luis de Leon, and Clara Villafuerte. After gaining control of the situation, said HMBs, with violence and intimidation, took and carried away foodstuffs, supplies and other personal property from the civilians and inhabitants of Orani, Bataan.

"(8) Mrs. Aurora Aragon Quezon and party were with evident premeditation and treachery on the part of the Huks, ambushed at about 10:30 in the morning of April 28, 1949, by an undetermined number of dissidents under Huk Commanders Viernes, Marzan, Lupo and Mulong at Kilometer 62, barrio Salubsob, Bongabong, Nueva Ecija. The PC escort exchanged fire with the dissidents. A patrol of the First Heavy Weapons Company, 1st PC Battalion was dispatched to reinforce the PC escort. The following persons were killed: Mrs. Aurora A. Quezon, Baby Quezon, Mayor Bernardo of Quezon City, Major P. San Agustin, A. San Agustin, Lt. Lasam, Philip Buencamino III, and several other soldiers. Gen. Jalandoni and Capt. Manalang sustained slight wounds.

"(9) On March 28, 1950, a group of more than 100 armed Huks, taking advantage of nighttime, with treachery and evident premeditation, attacked the Headquarters of a detachment of the 111th PC Company then stationed at Montalban, Rizal where four (4) enlisted men, namely: Sgt. Rogelio Cortez, Cpl. Rogelio Javier, Pfc. Exequiel Lopez and Pvt. Teodulo Monte were killed, and the following soldiers, namely: Sgt. Godofredo Estrellero, Sgt. Toribio Marquez, Cpl. Andres Lacban, Cpl. Ramon Pascasio, Pfc. Prudencio Vallo, Pfc. Jivenez Demosticle, Pvt. Enrique Abinal, Pvt. Macario Bombilla, and Pvt. Frisco Marcellana were wounded.

"(10) On March 29, 1950, Captain Luis C. Dumlao and several enlisted men under him were, with evident premeditation and treachery, ambushed, and fired upon by armed HMB soldiers in Arayat, Pampanga. Captain Luis C. Dumlao and four others were killed, and two others were wounded.

"(11) On March 29, 1950, a group of more than 100 armed Huks attacked and raised San Pablo, Laguna. The dissidents exchanged fire with government forces, killing Major Alikbusan. The Huks looted the stores in the town and raised the Huk Flag before they fled.

"(12) On or about March 29, 1950, an armed band of HMBs, taking advantage of nighttime, with treachery and evident premeditation, raided and attacked the Civilian Commando Unit Camp at Manibaog, Pasig, Porac, Pampanga, resulting in the killing of CCU guard, Herminigildo Ignacio, the burning of the CCU barracks and the carrying away of several firearms and ammunitions.

"(13) On or about March 29, 1950, an armed band of about 100 HMBs, with treachery and evident premeditation, attacked and raided TP-PC Detachment at Barrio Concepcion, San Simon, Pampanga, resulting in the killing of one TP Captain Pedro Mandap and four (4) others, the wounding of one TP soldier Benjamin Santillan and the carrying away of several firearms and ammunitions belonging to all the victims.

"(14) On or about March 29, 1950, an armed band of about 200 HMBs under Commander Alibasbas, taking advantage of nighttime, and with evident premeditation and treachery, raided and attacked the barrios of Sta. Ines and San Francisco, Mabalacat, Pampanga, resulting in the killing of one (1) civilian, Ana Pasamonte, the wounding of two (2) civilians, Jose Manabat and Jose Hipolito, the capture and torture of Seditio Manabat, a

civilian, and the burning of ten (10) civilian houses, more or less.

"(15) On August 25, 1950, an armed band of Huks, taking advantage of nighttime, with evident premeditation and treachery, attacked, raided and set afire Camp Macabulos, Tarlac, Tarlac. Among the casualties therein were Major D. E. Orlino, Capt. E. D. Cruz, Lt. T. Manawis, Lt. C. N. Tan, Lt. Eusebio Cabute, Sgt. Isabelo Vargas, Sgt. Bernardo Cadoy, Sgt. Bienvenido Dugay, Sgt. Samuel Lopez, Cpl. Vicente Awitan, Cpl. Luis Ponce, Cpl. Eugenio Ruelra, Pvt. Agustin Balatbat, Saturnino Guarin, E. Cabanban, Antonio Monte, Felix Quirin, Gregorio Dacoco, Jose Mojica, Cornelio Melegan, Carlos Bojado, Rodrigo Espejo, and Rosario Sotto, a Red Cross nurse.

"(16) On or about August 25, 1950, an armed band of about 200 Huk officers and men belonging to FC-22, 24 and 25 led by Linda Bie and Vice Commander Sevilla, taking advantage of nighttime, with evident premeditation and treachery, raided and attacked the town of Tarlac, Tarlac, and unlawfully released the following, namely: Domingo Gamurot, Simeon Gabriel, Vicente Mangunay, Alejandro Mahor, Manuel Mercado, Luis Alimurong, Pablo Fabio, Pablo Capulong, Candelario Paderan, Jose Pascua, Alipio Paguirigan, Francisco Laurente, Placido Magtulak, Gregorio de la Cruz, Catalino Cariaga, Graciano Ramises, Anselmo Mahor, Emiliano Mabalot, Emilio Eugenio, Juan Bautista, Dominador Soliman, Ireneo Romero, Pereso Datu, Marcelino Cabili, Alfredo Obiquitero, Federico Plores, Pedro Pangit, Victoriano Dayao, Lorenzo Primeor, Bonifacio Reyes, .Garlos Carlos, Pacifico Quibiuyan, and Marcelino Balete, all prisoners from the provincial jail.

"(17) On or about August 25, 1950, an armed band of about 90 Huk officers and men under FC-21, with evident premeditation and treachery, raided the municipality of Arayat, Pampanga, took by force about P3,108 from the Arayat Post Office, carried away eight (8) typewriters belonging to the municipality of Arayat, and treacherously killed a certain Attorney Samia, in his own dwelling place.

"(18) On or about August 26, 1950, early in the morning, a band of about 400 armed Huks, with evident premeditation and treachery, raided the municipality of Sta. Cruz, Laguna, brought the cashier of the provincial treasury, Vicente Reventar, from his house to the provincial capitol and at gun-point forced him to open the treasury vault from which the Huks took more than eighty thousand pesos (P80,000) consisting of various denominations including 50-, 100- and 500-peso bills. They also took typewriters and other supplies which they found in the provincial capitol. The Huks burned and looted buildings in the town, released the following prisoners: Victorio Ninio, Isaias Alarba, Narciso Dimasaca, Manuel Izon, Delfin Quisoro, Casimiro Saquilan, Victorio Alfonso, Pablo Santia, Elena de los Santos, Teodora Medrano, Antero Seruala, Romulo Bangac, Alejandro Almario, Justo Almario, Marcos Escueta, Federico Binascusa, Virginia Medrano, John Doe, Peter Doe, and Richard Doe from the provincial jail, kidnapped Cpl. Santos Talavis, Jose Salvador, Toribio Poblete, Teofilo Ambrocio, Isauro Velasco, Francisco Agorilla, Ciriaco Viliapando, Sancho Resurreccion, and Ireneo Villarin, all provincial guards therein, and treacherously wounded and/or killed the following civilians, namely: Juan V. Alvarez, Mariano Daracan, Bonifacio Aguilada and Pablo Lactawin, and the following Army personnel, namely: Capt. Gregorio Gutierrez, Pfc. Bienvenido Medina, S/Sgt. Montenegro, T/Sgt. Manuel Cahigay, S/Sgt. Emilio San Sebastian, Capt. Fidel Guinio, Capt. Felicisimo Fulgenio, S/Sgt. Silvino Gatdula, Cpl. Pedro Casio, Cpl. Alejandro Borja, Pfc. Elias Sipin, Pfc. Vicente Hatulan, Pfc. Primitive Traboc, Pfc. Adriano Atienza, Pfc. Jose Cordova, Sgt. Melchor Galiera, Pvt. Maximo Magtibay, Pfc. Añonuevo, and Cpl. Nicosia.

"(19) On September 12, 1950, an armed band of more than 20 Huks dressed in fatigue uniforms of the Philippine Army, with evident premeditation and treachery, seized a scout car of the Armed Forces of the Philippines in barrio Mapalad, Arayat, Pampanga. They rode to town in the same vehicle and treacherously murdered temporary policemen Teodoro Evangelista and Adriano Navarro and thereafter escaped.

"(20) Between October 15 and October 17, 1950, Lt. Jose Velasquez, PC, led three platoons of soldiers to the southwestern slope of Mount Malipuno at Lipa City, upon receipt of a report that about 200 Huks were

gathered in that place. While climbing the mountains they were treacherously attacked and fired upon by the members of the HMBs resulting in the death of John Doe, a PC soldier, and the wounding of Richard Doe, Peter Doe, Francis Doe and George Doe, all PC soldiers.

"(21) On or about March 22, 1951, an armed band of about 200 HMBs, dressed and disguised in fatigue uniforms of the Armed Forces of the Philippines, and with evident premeditation and treachery, raided and attacked the town of Candaba, Pampanga, resulting in the killing of Francisco Silvestre, Cesar de la Peña, Esteban de la Pena, Nonato Muldong, Nicomedez Hernandez, Florencio Ponce, Jose Vargas, Maximo Aronso, Andres Cayan, Tomas Sagun, and Ricardo Suva, all TP members, Policemen Servillano Mallari and Mabini Gallardo and the kidnapping of Jose Menese, Ricardo Magpayo, Pedro Lieu, Pedro de la Pena, Macario Galang, Edie Magpayo, and Eliong Muldong, all civilians of the said municipality. After gaining control of the situation, said HMBs robbed, looted and ransacked the municipal building and carried away office equipments and supplies valued at around P1,800, sixty (60) assorted firearms, and also robbed from civilians foodstuffs, clothing, medicine and other personal properties.

"(22) On or about June 24, 1951, in Sitio Tocan, Bo. Lucapon, Sta. Cruz, Zambales, a group of about 30 heavily armed HMBs, under RECO 2 attacked, ambushed and fired upon the Zambales Transportation Service Truck loaded with more or less 40 civilian passengers, resulting in the death and burning of the following civilians, Lauro Mana, Delfin Magno, Martino Marzan, Celso Echague, Nazario Ordinario, Francisco Mendoza, Julio Gavan, Paulino Patifud, Catalino Daguvas, Jesus Ordenia, Valentin Gabaldon, Jr., Mary Taguid, Mrs. Galand, and Mrs. Bastian, seriously wounding almost all of the other passengers and once gaining control of the situation burned said truck and looted money, foodstuffs, jewelries and clothings from the said passengers.

"(23) On or about September 21, 1951, at Manuguit Subdivision, Manila, a group of HMBs under Macaria Pangilinan alias Maca, treacherously fired upon members of the Manila Police Department, resulting in the killing of Dts. Florencio de la Paz, Lauro Infante and Pat. Anselmo Candado.

"(24) On or about September 22, 1951, at Otis, Pandacan, Manila, Nicasio Pamintuan alias Commander Nick, CO of the City Command, HMB, treacherously fired upon a combined unit of the Military Intelligence Service, AFP and the Manila Police Department, resulting in the killing of Lt. Jose Reyes, MPD, Lt. Juan Panopio, AFP and the wounding of Sgt. Rafael Redultin of the AFP.

"(25) On or about December 2, 1951, a force of about 200 armed HMBs from Fc-24 under Commander Eduardo Layug and from Fc-23 under Commander Borning attacked, raided and set on fire the FA Detachment Area of the 25th BCT at Infanta, Pangasinan, causing the loss of assorted firearms and equipments and the burning of two (2) MM 105 Howitzers and one (1) .50 caliber machinegun, and simultaneously raided, assaulted and set on fire the Municipal Building of Infanta, Pangasinan, resulting also in the total loss of properties amounting to P28,000 more or less.

"(26) On or about December 6, 1951, a group of 60 heavily armed HMBs from FC-23 under the Borning and from FC-24 under alias Maligaya attacked and raided the municipality of Botulan, Zambales, burning the municipal building, Puericulture Center Building and the houses of Mrs. Isabel Cuaresma, Mr. Florentino Dinoso, Mr. Isidro Dinoso, all valued at P38,000, Philippine currency. Aside from looting the municipal treasury, said HMBs also looted from the civilian inhabitants foodstuffs and other supplies amounting to about P5,000, more or less

"(27) On or about March 21, 1953, a group of around 200 HMBs armed with assorted weapons and led by Commanders Alexander Viernes, Emilio Rey alias Eling Magtapat, Mateo Molines alias Turko, attacked and fired upon an isolated Army Detachment at Barrio Buenavista, Guinayangan, Quezon, resulting in the killing of Cpls. Benjamin O. Galday, Demetrio Ascora, Pfc. Dioscoro C. Borbar, Domiciano Marianas, Melchor Grecia, one (1) policeman, six (6) civilians, forcibly taking with them Cpl. Lorenzo Oaing, who later escaped, burned the barracks and confiscated one (1) .30 caliber machinegun, 2,030 rounds of ammunitions, several

other firearms and ransacked the houses of the inhabitants thereat.

"(28) On or about April 21, 1953, a group of about 15 armed HMBs under Commander Lopez of FC-91, ambushed and fired upon a party of the Engineer Construction Group of the Armed Forces of the Philippines, in the vicinity of Sitio Oriong, Bagabag, Nueva Vizcaya, resulting in the killing of Major Pablo Arevalo, Capt. Roque Peredo, First Lt. Carlos Gallego, M/Sgt. Rogelio Genio and Cpl. Benjamin Perez.

"(29) On or about January 22, 1954, a group of armed HMBs in army fatigue uniforms led by Delfin Lumbrera alias Commander Lumbrera alias Commander Batangas and Benjamin Gomez of FC-103, took and kidnapped one Mrs. Guadalupe Rodellas Vda. de Muijares at her residence in Lipa City, bringing her to their mountain hideout and holding her as hostage for a period of around six (6) days, after the amount of P100,000 was paid to the said HMR group as ransom money.

"(30) On or about March 29, 1954, an undetermined number of HMBs led by Commanders Padilla and Palma of FC-101 treacherously attacked, ambushed and fired elements of "A" Company, 4th BCT, AFP, while enroute to their headquarters, in the municipality of Louisiana, Laguna, resulting in the killing of Silverio G. Dulay, Sgt. Pacio G. Lugo, Pfc. Juanito Ocreto, Pfc. Ruperto F. Corpuz, Pvt. Pedro O. Oria, Pvt. Gregorio Esteban, Sgt. Bulatao, and Cpl. Cotonos, all enlisted men, two (2) civilians, Francisco Benitez and Felicito Ajero, and the wounding of the three soldiers, namely: John Doe, Richard Doe and Peter Doe.

All acts committed contrary to law."

According to the records, defendants Casto Alejandrino, Jesus Lava, Mariano P. Balgos, Alfredo B. Saulo, and Alejandro Viernes are still at large, whereas defendants William J. Pomeroy and Celia Mariano Pomeroy have already been convicted and are serving their respective sentences. The proceedings leading to the rendition of the decision appealed from are set forth therein in the following language:

"The prosecution having reamended the information filed in this case, in compliance with the order of this Court of August 18, 1954, the defendant Luis M. Taruc again appeared this morning with his counsel, for arraignment. When asked if the defendant was ready to be arraigned, defense counsel answered in the affirmative and at the same time manifested that if counts 1 to 6, inclusive, as well as count 8, were suppressed from the amended information, the defendant would plead guilty. After securing assurance from defendant himself, the City Fiscal filed the corresponding petition, suppressing from the amended information the counts referred to, that is, counts 1 to 6, inclusive, and 8. Thereupon, the defendant waived the reading of the information as lastly amended, and manifested that he was already informed of the contents of the same, and that he pleaded guilty thereto." (CFI Decision, 1st Par.)

Thereupon, the Court of First Instance of Manila, presided over by Hon. Gregorio Narvasa, Judge, rendered the decision aforementioned, from which the Government has appealed. The questions raised for our determination are:

1. May the prosecution appeal from the aforesaid decision of the lower court, upon the ground that defendant-appellee Luis Taruc should have been sentenced to a more severe penalty than that meted out therein?
2. In the affirmative case, what penalty should be imposed upon said defendant-appellee?

The first question has already been settled by this Court in cases G. R. Nos. L-6687-6688 entitled *People vs. Ang Cho Kio*.[*] The defendant in said cases was charged with murder, in one case, and with grave coercion with murder, in another case. Having pleaded guilty to both charges, the lower court sentenced him, in the first case, to an indeterminate penalty ranging from 12 years of prison mayor to 20 years of reclusion temporal, to indemnify the heirs of the deceased in the sum of P6,000, and to pay the costs; and, in the second case, to life imprisonment, with indemnity in the sum of P6,000 and costs. The prosecution appealed from the decision thus rendered, upon

the theory that the defendant should have been sentenced, in the first case, to life imprisonment and, in the second case, to the extreme penalty. In dismissing the appeal, we said:

"¿Puede el ministerio fiscal apelar?

"El artículo 2 de la Regla 118 dice así:

'Quien puede apelar.—El Pueblo de Filipinas, sin embargo, no podrá apelar cuando el acusado se viese expuesto a doble Jeopardy. En todos los demás casos, cualquiera de las partes podrá apelar de una sentencia definitiva o de auto dictado después de la sentencia que afecte los derechos esenciales del apelante.'

"Este artículo es reproducción de los artículos 43 y 44 de la Orden General No. 58 tal como fue emendada por el artículo 4 de la Ley No. 2886. La Orden General No. 58 es de origen americano y, por eso, los precedentes anglo-americanos deben tenerse muy en cuenta.

"En una larga lista de decisiones después de decidida en casación la causa de *Kepner* contra Estados Unidos, 195 U. S. 100; 11 Jur. Fil., 689, se ha establecido invariablemente por este Tribunal la doctrina de que, la acusación no puede apelar contra una sentencia en que se absuelve al acusado, por la razón de que por segunda vez se le pone en peligro de ser castigado por el mismo delito. 'El derecho común americano prohibía también un segundo juicio por el mismo delito hubiera el acusado sufrido o no algún castigo, o sido absuelto o condenado en una causa anterior.'

"En la causa de Estados Unidos contra *Sanges*, citada en la de *Kepner*, se dijo: 'Desde la época del Lord Hale hasta la fecha del caso de *Chadwick* que acabamos de citar, los libros de texto, con raras excepciones, 6 dan por supuesto 6. afirman que el acusado, (o su representante), es el único que puede obtener un nuevo juicio 6 recurrir en casación en causa criminal, y una sentencia en su favor es definitiva y concluyente. (Véanse 2 Hawk., c. 47, sec. 12; c. 50, secciones 10 y siguientes; Bac. Ab. Trial, L. 9; Error, B; 1 Chit, Crim. Law, 657, 747; Stark. Crim. Pl. Segunda Edición 357, 367, 371; Archb. Crim. Pl., (Duodécima Edición Inglesa y Edición sexta americana) 177, 199, Segunda Edición, 357, 367, 371; Archb. Crim. P. I.)

"* * * No se ha dado ningún caso de recurso de casación contra una sentencia en favor del acusado, después de absuelto.'" (Archbold Cr. Pl. & Pr., Pomeroy's Ed., 199.)

'No error, however flagrant, committed by the court against the estate, can be reserved by it for decision by the supreme court when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed. (*State vs. Rook*, 49 L. R. A. 186, 61 Kan. 382, 59 Pac. 653.' (1 L. R. A. 242.)

"Este Tribunal nunca ha resuelto una cuestión parecida a la causa presente en que el acusado fue condenado por una pena menor que la señalada por la ley y el ministerio fiscal, en apelación, pide que de acuerdo con el Código Penal Evisado, se imponga al acusado una pena mayor. Si el fiscal—como el acusado—puede apelar para corregir un error de ley, entonces será forzoso imponer al acusado la pena de reclusión perpetua. Después de haber sido ya—por error—condenado por el tribunal inferior a la pena de 12 años de prisión mayor a 20 años de reclusión temporal, ¿no es poner otra vez al acusado en peligro de ser condenado a mayor pena por el mismo delito? Si el acusado fuese el apelante, no tendría derecho a quejarse si se le impusiera una pena mayor; en el caso presente el que apela es el ministerio fiscal, y dicha apelación pone en peligro al acusado de recibir otra condena mayor. Creemos que en el caso presente se pone al acusado en doble jeopardy, esto es, en el peligro de recibir la condena de reclusión perpetua después de haber sido condenado ya por el juzgado inferior a una pena menor. Por este peligro, el ministerio fiscal no puede apelar, de acuerdo con el artículo 2 de la Regla 118 y siguiendo la garantía constitucional de que 'No se pondrá a una persona en peligro de ser castigada dos veces por la misma infracción' o en jeopardy."

The prosecution in the case at bar urges a reexamination of the question decided in the *Ang Cho Kio* cases and a

reconsideration of the view therein expressed by this Court. To our mind, however, the reasons advanced by the Solicitor General in support of his pretense are not sufficiently weighty to warrant a reversal of said view which is a mere corollary of the practice established in the Philippines and in the United States, for so long a time as to form part and parcel, not merely of the settled jurisprudence, but, also, of the constitutional law, in both jurisdictions.

Inasmuch as the prosecution cannot appeal from the decision against herein defendant-appellee, the propriety of the penalty therein meted out to him is beyond our power to review.

Wherefore, the appeal is dismissed, without special pronouncement as to costs. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

[*] 50 Off. Gaz., (8) 3563, 95 Phil., 475.

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