

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SILVINO GUERRERO, ET AL., DEFENDANTS,***G.R. No. L-9559. May 14, 1958*

Ponente: LABRADOR, J.

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Appeal from a judgment of the Court of First Instance of Zambales, Hon. Lucas Lacson, presiding, finding Silvino Guerrero and Justo Ebid, defendants-appellants, guilty of the murder of Candido Disengañó under Article 246 of the Revised Penal Code and of kidnapping of one Paulo Disengañó under Article 267 of the same Code, and sentencing each of them to suffer for each of the above offenses the penalty of reclusion perpetua, to indemnify jointly and severally the heirs of the deceased Candido Disengañó in the amount of P6,000.00, and to pay the costs.

It appears that on or about September 28, 1951, nine Huks named Commander Murphy, Commander Silang, Berling, Claro, Violeta, Gabriel, Silvino Guerrero, Justo Ebid and Felipe Eclarino, were in the mountains of Cabangan, municipality of Cabangan, province of Zambales, foraging for camotes, rice and other kinds of food. In the morning of September 28, they left the place in the direction of the mountains east of the municipality of Botolan. While on their way they met two individuals, Candido Disengañó, father, and Paulo Disengañó, his minor son, who were then looking for a lost carabao. Candido and Paulo were residents of the barrio of Panan, municipality of Botolan. Thereupon Commander Murphy asked Candido if he knew any Huk, to which Candido replied that he did, pointing to defendant-appellant Silvino Guerrero, who was one of the group of nine Huks that had come from Cabangan. Commander Murphy then asked Guerrero what kind of persons the two whom they met were, upon which Guerrero, according to the witnesses for the prosecution, replied that Candido was or could be a spy, as he had a son in the navy and another in the army. (Witnesses for the prosecution who testified on this point were Felipe Eclarino, one of the Huks whose case was dismissed for the purpose of utilizing him as government witness, and Justo Ebid, one of the defendants-appellants).

Upon hearing what Guerrero stated regarding Candido Disengañó, Murphy ordered that Paulo, the minor, be left at the foot of the mountain, guarded by two Huks, while all the other Huks brought Candido with them up the mountain. This mountain is known as Yamut Bancal. Once they reached a place in the mountain, Murphy tied the hands of Candido at the back and ordered Guerrero to dispose of him. Guerrero took a piece of wood about two feet long and two inches thick, and began beating Candido at the nape and at the back, while the latter had his hands tied at the back and could offer no resistance or defense. The appellant delivered the blows until Candido fell and died. Thereupon one of the Huks named Violeta got hold of Candido's own bolo and used it in severing the head from the already lifeless body of Candido. The pants which Candido wore were taken away, his corpse and his head then abandoned, the Huks went down to the place of their companions, who were left at the foot of the mountain, and thereafter proceeded on their way to a caingin. (gasak), where they passed the evening. They brought Paulo along with them. There they stayed for two days and two nights, but early at dawn on the second night, Paulo was able to escape.

When Candido and Paulo failed to return to their barrio, a party headed by his son Teodoro began looking for them in the mountains where they thought they had gone looking for their lost carabao. This was on September 29. The first day yielded no result, but on the second, that is on September 30, in the afternoon, they found the dead body of Candido Disengañó on top of the mountain, with his severed head a few feet away. The corpse and the head were brought down to the barrio and there interred.

It further appears that defendant-appellant Silvino Guerrero surrendered to the Philippine Army in Porac, Botolan, Zambales on December 2, 1952. The Constabulary report regarding him was that he had escaped from the provincial jail where he was detained for robbery and was suspected for the killing of Candido Disengañó. Soon after the surrender of Guerrero, many of the surrenderees were gathered at the Philippine Army headquarters at Botolan, Zambales, and there Paulo Disengano was able to identify Silvino Guerrero, Justo Ebid and Felipe Eclarino, as among those who formed the band of Huks who had taken him and his father and who had caused the disappearance of the latter on September 26, 1951.

The criminal complaint against the defendants-appellants and others was filed on February 5, 1953, and it charged Silvino Guerrero, Jus to Ebid and Felipe Eclarino, etc. with kidnapping and murder of Candido Disengañó and the kidnapping of his son Paulo Disengañó. Upon petition of the prosecution, because of the absence of any direct evidence against the accused, the accused Felipe Eclarino was discharged and made a Government witness.

The defendants-appellants do not dispute the fact that they were members of the band of nine Huks headed by Commander Murphy, and that they took along with them Candido Disengañó and Paulo Disengañó and caused the death of the former. Defendant-appellant Justo Ebid corroborated the testimony of Felipe Eclarino that upon orders of Commander Murphy defendant-appellant Guerrero beat Candido Disengañó to death with a piece of wood at the back of the head and at the nape, but he claims that he could not be made responsible for the killing of Candido Disengañó because he did not take part therein. For his part Silvino Guerrero denied having informed Commander Murphy that Candido Disengañó was a spy and that two of his sons were serving in the navy and in the array. He asserted that he told Murphy that Candido was a good man and that first he refused to comply with the order of Commander Murphy to beat Candido; that upon his refusal to do, so Commander Murphy struck him (Guerrero) on the head with a revolver and he lost his senses; that thereupon for fear of his own life he beat Candido, but that he did not beat him to death as testified to by Eclarino and Ebid.

The claim of innocence by the defendant-appellant Silvino Guerrero is not corroborated by any witness or by any other circumstance. Had it been true that Guerrero had assured Commander Murphy that Candido Disengañó was a good man and was not a spy, Commander Murphy would not have ordered that Candido be killed. We take judicial notice of the fact that Huks had always tried to be on good terms with people provided they would not spy on them or would not cause them trouble, and that on the other hand, they ordered the killing of those who would spy on them or who would report them to the authorities. The testimony of Eclarino that Guerrero informed Murphy that Candido Disengañó was a spy is corroborated by a statement of Paulo Disengañó and that of Justo Ebid. And the order of Murphy to liquidate Candido would not have been given had not someone told him that Candido was an enemy or a spy.

The claim of Guerrero that he was forced to beat Candido because of fear of Murphy and because Murphy had assaulted him with a revolver, finds no corroboration either in the testimony of any of the witnesses or in the facts and circumstances of the case. When the dead body of Candido Disengañó was examined, after it was taken down from the mountains, it was disclosed that the skull at the nape was broken; and so were the bones at the back which show that defendant Silvino Guerrero must have beaten Candido to death and not merely hit him as he claims. The above findings also refute the claim of Guerrero that when Violeta cut the head of the victim, the latter was not yet dead. We have read the transcript of the record and we are fully satisfied that the crime was

committed by the defendant-appellants as members of the Huk band in the manner indicated by the witnesses for the prosecution.

On this appeal, counsel for Justo Ebid argues that the trial judge erred in not dismissing the case against his client, upon the presentation by him of a motion for dismissal after the evidence for the prosecution had been submitted. We find no merit in this argument. Eclarino and Paulo Disengañó testified that Justo Ebid was a member of the band that caused the detention of Paulo Disengañó and the death of Candido Disengañó. As before the motion for dismissal was filed no evidence had been submitted that Justo Ebid was not a member of the Huk band, or did actually refuse to take part or objected to the detention of the two, or resisted the killing of Candido Disengañó and the detention of Paulo Disengañó, his motion for dismissal could not have been granted.

On this appeal, it is again urged on his behalf that as he took no part in the killing of Candido Disengañó, or in the detention of Paulo Disengañó, he should not be held responsible therefor. We also find no merit in this contention. We may take judicial notice of the well-known practice of Huks to kill people spying on them, as a necessary means to protect their organization. We can, therefore, presume that Ebid, as a member, was agreeable to such practice and adhered thereto. As a member of the Huk band, it was his duty to eliminate spies and to destroy all those who hamper their activities. As he showed no signs that he did actually object to the detention and the killing or refused to take part therein he is presumed to have agreed or conformed to the killing of the deceased and the kidnapping of his son and be jointly responsible therefor with the other members of the band (U.S. vs. Bundal, et al., 3 Phil. 89; U.S. vs. Diris, 26 Phil. 133; People vs. Timbol, et al., G.R. Nos. 47471-73, Aug. 4, 1944; People vs. Villamora, et al. L-2054, prora. Aug. 29, 1950.)

The court a quo found the defendants-appellants guilty of the murder only of Candido Disengañó and of the illegal detention of Paulo Disengañó. As the court a quo has correctly held, appellants cannot be convicted of the complex crime of kidnapping with murder under Article 48 of the Revised Penal Code, for the reason that kidnapping was not a necessary means to commit the murder. Candido was detained and brought to a mountain to be killed this we have held may not be considered as kidnapping with murder but mere murder (People vs. Camo, G.R. No. L-4741, prom. May 7, 1952; People vs. Remalante, G.R.No. L-3512, 4o O.G. pp. 3331-3833; People vs. Villapa et al., G.E. No. L-4259, prom. April 30, 1952.) The conclusion of the trial court that defendants-appellants are also guilty of serious illegal detention under Article 267 of the Revised Penal Code is also correct, in view of the fact that the person detained, Paulo Disengañó, was a minor, about fourteen years old at the time of the detention.

The crime of murder was committed with the qualifying circumstance of alevosia, as the victim was hog-tied at the time he was beaten to death, with no aggravating circumstance, as it is not disclosed in the record how many in the band were armed. The penalties imposed by the trial court in the murder case and in the case of kidnapping are in the medium period and we find them to be correct. The sentences appealed from are therefore affirmed, with costs.

Paras, C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J.B.L., Edencia, and Felix, JJ., concur.

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