

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDRES MANGLALLAN Y ARDAN ALIAS “KA ELMER”; VIRGILIO BALLESTEROS Y ANDRADA ALIAS “KA FELIX” AND CESAR ALVAREZ ALIAS “KA KARTE”...

G.R. No. L-38538. April 15, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

On September 3, 1972 in Barrio Punti East, Sta. Ana, Cagayan, Ka Daniel who appears to be the leader of the New People's Army (NPA) in the area directed Andres Manglallan, Cesar Alvarez, Domingo Ramos, and Virgilio Ballesteros, members of the NPA to go to Barrio Punti and kill one Apolonio Ragual who was suspected by Ka Daniel to be a Philippine Constabulary (PC) informer. Said four went to the barrio of Ragual, Manglallan carrying a Browning shotgun, Ramos a Thompson, Alvarez a carbine and Ballesteros, a homemade gun called Bulldog. They arrived at Punti at 9:00 A.M. and they saw Ragual at the river bank giving his carabao a bath. Ramos went to him and after a while shot him with his gun. Manglallan also shot him with his Browning followed with another shot by Alvarez, as a result of which Ragual fell down and died. Manglallan then placed on the dead body of Ragual a writing and drawing made by their association warning the people and the PC of their activities.[1] Thereafter, the group returned and reported to Ka Daniel that Ragual was already dead. Dr. Leonides Flores, the Municipal Health Officer of Sta. Ana, Cagayan conducted a post-mortem examination on the remains of Apolonio Ragual at about 4:00 P.M. of the same day, after which he issued an autopsy report[2] showing multiple gunshot wounds suffered by the deceased and finding the cause of death to be severe hemorrhage, shock secondary to multiple gunshot wounds.

An information was filed by the provincial fiscal in the Court of First Instance of Cagayan charging Andres Manalallan, Virgilio Ballesteros, and Cesar Alvarez of the crime of murder. However, upon arraignment on accused Manglallan and Ballesteros were present as Alvarez was at large. Upon motion of the fiscal, Ballesteros was discharged from the information as a government witness. The trial on the merits proceeded as against Manglallan after which a decision was rendered on March 19, 1974, the dispositive part of which reads as follows:

"WHEREFORE, in view of the foregoing considerations, the Court finds the accused Andres Manglallan guilty beyond reasonable doubt of the crime of murder, defined and penalized under Article 248 of the Revised Penal Code, without any aggravating or mitigating circumstance offsetting each other, and hereby sentences him to suffer reclusion perpetua, to indemnify the heirs of the victim in the amount of TWELVE THOUSAND PESOS (P12,000.00) without, however, serving subsidiary imprisonment in case of insolvency; and to pay the costs.

The accused being a detention prisoner and having signed the agreement required of detention prisoners by Article 29 of the Revised Penal Code, as amended by Republic Act No. 6127, is credited with the whole period of his preventive imprisonment in the service of his sentence."

Not satisfied therewith, said accused interposed this appeal alleging that the lower court committed the following assigned errors:

"First Assignment of Error

THE LOWER COURT ERRED IN NOT HOLDING THAT THE CRIME COMMITTED IS NOT MURDER BUT A POLITICAL OFFENSE WHICH GIVES RISE TO THE QUESTION AS TO WHETHER IT FALLS UNDER THE ANTI-SUBVERSION ACT OR UNDER ARTICLES 134 AND 135 OF THE REVISED PENAL CODE.

Second Assignment of Error

THE LOWER COURT ERRED IN NOT HOLDING THAT DEFENDANT-APPELLANT COULD BE HELD LIABLE FOR ONLY MERE MEMBERSHIP IN THE NEW PEOPLE'S ARMY (NPA) WHICH IS PENALIZED BY ARRESTO MAYOR AND NOT FOR A GRAVER CRIME PENALIZED BY PRISION MAYOR TO DEATH. DEFENDANT-APPELLANT HAVING BEEN DENIED OF HIS STATUTORY RIGHT AND THE TWO-WITNESS REQUIREMENT OF THE ANTI-SUBVERSION ACT NOT HAVING BEEN COMPLIED WITH.

Third Assignment of Error

THE LOWER COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF BALLESTEROS AND IN NOT HOLDING, ASSUMING REBELLION AS THE APPLICABLE OFFENSE, THAT DEFENDANT-APPELLANT COULD, IF AT ALL, BE HELD LIABLE MERELY AS AN ACCOMPLICE IN THE CRIME OF REBELLION.

Fourth Assignment of Error

THE TRIAL COURT ERRED IN NOT APPRECIATING VOLUNTARY SURRENDER AS A MITIGATING CIRCUMSTANCE."

After the briefs of the parties were filed, the defendant-appellant filed a motion to withdraw the appeal on October 25, 1977 as he had lost interest in the same and is convinced that the decision appealed from is in accordance with law and the evidence.

The Solicitor General was required to comment on this motion and he recommended the denial of the motion to withdraw the appeal in view of the recommendation in the People's brief that accused-appellant should be convicted of the lesser offense of simple rebellion which is more favorable to the appellant. The counsel de oficio for the appellant, in reply to the said comment stated that he agrees with the said comment of the Solicitor General and asked that the appeal be decided at the earliest possible time. Appellant filed a separate manifestation and motion stating his interest to pursue the appeal. The motion was granted by the Court on January 25, 1982.

Under the first assigned error, the appellant contends that the crime he committed is not murder but a political offense which gives rise to the question as to whether the same falls under the Anti-Subversion Act or under Articles 134 and 135 of the Revised Penal Code. The appellant admits that he was a member of the NPA then operating in the Cagayan area with Ka Daniel as their leader. He asserts that the NPA is the military arm of the Communist Party of the Philippines.[3] There is no question likewise that the killing of Apolonio Ragual by the appellant and his companions who were also members of the NPA upon orders of Ka Daniel was politically motivated. They suspected Ragual as an informer for the PC. In fact, after he was killed, they left a letter and a drawing on the body of Ragual as a warning to others not to follow his example.[4]

In the case of *People vs. Agarín*,^[5] which was a prosecution for murder, like the present case, where the accused Huk member with his companions killed the victim because he was a PC informer, this Court held that the crime

committed is simple rebellion and not murder, as follows:

"The offense perpetrated by appellant is murder, qualified by abuse of superior strength. Considering, however, the fact that the killing was committed as a means to or in the furtherance of the subversive ends of the Hukbalahaps (HUKS) because the said appellant and his companions. Commander Manaing and Commander Vida suspected the deceased to have acted as a spy and had informed the BOT and Government agencies regarding the presence of the Huks in that region, we find the said Federico Agarin alias Commander 'Smith' guilty of the crime of simple rebellion only (People vs. Hernandez, et al., 99 Phil. 515; 52 Off. Gaz. [12] 5506; Secs. 4 and 5, Rule 116; People vs. Melencio Aquino, et al., 108 Phil. 814; 57 Off. Gaz. [51] 9180)' [People vs. Agarin, 109 Phil. 430, 436]"

The Court, therefore, sustains the contention of the appellant that the crime he committed is not murder but the crime of rebellion punishable under Articles 134 and 135 of the Revised Penal Code.

The Court does not agree, however, with the allegation of the appellant that he could be held liable only for being a member in the NPA punishable under the Anti-Subversion Act. More than being a member of the NPA, which is a subversive organization, the appellant took up arms against the government by committing murder, as in this case, which thus holds him liable for the graver offense of rebellion.

Nor can the argument of the appellant that he should be held liable as an accomplice be sustained. The records show without doubt that together with his companions, they killed the victim, the appellant being among those who shot him and thereafter they placed the letter and drawing on top of the body of the deceased as a warning against others. His participation in the commission of the offense is obviously that of a principal and not that of a mere accomplice.

Under the fourth assigned error, the appellant claims that he should be credited the mitigating circumstance of voluntary surrender. Evidence has been adduced by the appellant that after several months of hiding after the killing, he voluntarily surrendered to Lt. Lee Barnes.[6]

The elements of the mitigating circumstance of voluntary surrender are:

- (a) The offender had not actually been arrested;
- (b) That the offender surrendered himself to a person in authority or the latter's agent; and
- (c) The surrender was voluntary.[7]

All the above elements are present in the case. The appellant should thus be credited this mitigating circumstance.

WHEREFORE, the judgment appealed from is hereby modified by convicting the accused-appellant of the crime of rebellion punishable under Article 135 of the Revised Penal Code and not of murder. Considering that the commission of the offense was attended by the mitigating circumstance of voluntary surrender, and applying the Indeterminate Sentence Law, appellant is hereby imposed an indeterminate penalty of imprisonment of Two (2) Years and Four (4) Months of prision correccional as minimum to Six (6) Years and One (1) Day of prision mayor as maximum, to pay a fine of P10,000.00 and to indemnify the heirs of the deceased Apolonio Ragual in the amount of P30,000.00. As the accused-appellant is a detention prisoner in the New Bilibid Prisons and he appears to have been under detention for a period beyond the period of the penalty herein-above imposed on him, he is hereby ordered Released immediately from detention unless he is being held for some other charges. This Decision is immediately executory.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Grino-Aquino, JJ., concur.

[1] Exhibits A & B.

[2] Exhibit C.

[3] Presidential Proclamation No. 1081 [1972]; *People vs. Ferrer*, 38 SCRA 382, 405.

[4] TSN, February 18, 1974, p. 6; February 20, 1974, pp. 5-6; Exhibits A & B.

[5] *People vs. Agarin*, 109 Phil. 430: see also *People vs. Aquino and Cortes*, 108 Phil. 814.

[6] TSN., February 20, 1974, pages 13-15.

[7] *People vs. Hanasan*, 29 SCRA 534.

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