

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. MAXIMO HOLFILEÑA (ALIAS MANING) AND NICOLAS MUYCO (ALIAS COLASING), DEFENDANTS AND APPELLANTS.

G.R. No. L-1727. December 14, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Jesus Fernando Akol fought in Bataan. After the surrender of the Fil-American forces, he took part in the Death March to Capas, where he was concentrated. Months afterward he was released and he sailed for Occidental Negros, his home province. In Panay he was intercepted by the guerrillas and they held him prisoner. On February 4, 1943, he was confined with other sixty or seventy prisoners in the guerrilla concentration camp in the wooded hills of Ibahay, Municipality of Passi, Iloilo, under the charge of warden Maxlmino Hofileña.

The previous day Hofilena instructed Nicolas lluyco, guard of the cave used as concentration camp, to keep good watch of Akol, who was scheduled for the next day. The reticent ambiguity of the instruction was part of the cryptic language used in the place which the concentrated people understood, on the basis of past experience, to mean that Akol was up for execution.

That day, with a clear premonition of his fate, Akol gave his confession to Miguel Tadifa, a Roman Catholic priest who was among those who served in the Pil-American forces and held prisoners in Ibahay. Akol requested Father Tadifa to reveal his fate only to his father, but not to his mother. After the confession, Father Tadifa and Akol remained a good part of that night talking of many things about their respective experiences.

On February 4, 1943, Akol was summoned to the warden's office where Hofilefia told him to pack his things as he was to be released. At about four o'clock in the afternoon of the same day, Nicolas Muyco took Akol from the cave with tied hands, and brought him to a wooded spot. When Muyco was about to blindfold him, Akol refused to be blindfolded, but requested for permission to pray, because he knew he was going to be killed. The request was granted. Akol knelt down and prayed for about three minutes, after which, Muyco shot him on the back with a rifle. With drawn revolver in his hand, Hofilefia appeared after the shot and made a remark that "it seems he is still alive." Upon his order, the dead body of Akol was dumped into a foxhole which had been previously dug. The next day Akol's shoes were seen by Father Tadifa in the possession of Hofileña.

There is no controversy between prosecution and defense as to the killing of Akol on February 4, 1943. Appellants disclaim, however, any responsibility for the killing, alleging that it was Manuel Dequito who brought Akol to the forest to gather firewoods and that while Dequito was fulfilling a physiological necessity, Akol attempted to escape, and Dequito shot him.

The evidence on record is, however, conclusive that the killing took place as narrated by the witnesses for the prosecution. The testimony of Pablo Grecia, the eyewitness to the killing, appears to be strongly corroborated by the testimonies of Father Miguel Tadifa and Lts. Perfecto Tugle and Eduardo Exaltado. The last two are Bataan veterans who were also captured by the guerrillas and confined in the cave like Akol.

The conduct of appellants themselves appears to support the prosecution's theory. Hofilena and Muyco, as testified to by witnesses and supported by documentary evidence on record, made admissions of their respective direct participations in the killing, only making frantic efforts, Muyco to have the case dismissed against him so that he might be used as prosecution witness against Hofileña, and Hofileña to be freed from the information to be used as prosecution witness against Major Imperial, his commanding officer in the concentration camp.

Although several witnesses were called by the defense to show that Dequito was the one who shot Akol, nobody alleged having seen the shooting and all their testimonies are based on the exclusive information given by Manuel Dequito, who happened to be already dead at the time of the trial and, therefore, unable to confirm or belie the defense witnesses. The defense had tried to show that an investigation had been made of the killing, but the testimonies of the witnesses on the matter are highly unconvincing. All relied on the alleged information given by Dequito himself. Not a single person took pain to verify the information or even to have a look at the place where Akol was shot by Dequito and to find out whether Akol was actually killed. On the other hand, Hofileña has not explained his contradictory statement to the effect that, at first, he said he heard a shot about twenty minutes after Dequito and Akol left for the forest, and later he said that he did not hear any shot.

Appellants are guilty of murder beyond all reasonable doubt. The prosecution recommends that the indemnity fixed by the trial court be increased to P6,000.00, in accordance with the doctrine laid down in *People vs. Amansec*, L-927[1]. The recommendation is well taken. Therefore, affirming the appealed decision, as thus modified, appellants are sentenced to reclusion perpetua and the accessories of the law, and to indemnify jointly and severally the heirs of Akol in the sum of P6,000.00, plus the costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

Judgment modified.

[1]80 Phil., 424.

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