

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MELECIO AQUINO ALIAS DARNA AND EUGENIO CORTEZ ALIAS RAMON, DEFENDANTS AND APPELLANTS.

G.R. No. L-13789. June 30, 1960

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Melecio Aquino and Eugenio Cortez were charged and found guilty of murder by the Court of First Instance of Batangas and were sentenced each to reclusion perpetua, to indemnify the heirs of the deceased in the amount of P6,000.00, and to pay the costs. In due time, they appealed.

It appears that in the afternoon of August 13, 1953, six armed men dressed in army uniform appeared in barrio Pantay and inquired about the whereabouts of Juan Mendoza, who was then the barrio lieutenant. They first went to his house and inquired from his wife Rita Endaya where they could find him. Rita told them that her husband had gone to the west to attend to his animals. The group then proceeded to the direction indicated until they reached the house of Primo Alvarez whom they saw in his front yard. The armed men asked Alvarez to accompany them to look for Mendoza, to which Alvarez agreed. When they reached the house of Macario Manalo, two of them saw Maximo Endaya sitting on the stairs of the house. The other two were left on the road while still another two went to the house of Ceferino Manalo situated nearby. Among those included in this group were Melecio Aquino and Eugenio Cortez. They asked Endaya for the whereabouts of Juan Mendoza to which he answered that he had not seen him. They asked him where he was working and he replied that he was working west of the house of Macario Manalo.

At about the same time, Ceferino Manalo was in the front yard of his house talking with Juan Mendoza. While they were thus talking, two huks arrived, one of them Melecio Aquino, who was in fatigue uniform. Aquino greeted Mendoza and thereafter the two huks with Mendoza went towards the east. The four huks who went to two separate houses converged at the spot where Primo Alvarez and the two other huks were standing, but the two who came from the house of Ceferino Manalo returned with Juan Mendoza and from there they all proceeded northeast. When Alvarez reached his house, he separated and went home. Maximo Endaya returned to his house and from there saw the huks walking in single file toward northeast with Juan Mendoza in front. Shortly thereafter, he heard a number of gunshots. Maximo and Ceferino Manalo went down from their respective houses and upon reaching the place of the shooting, they saw sprawled on the ground the dead body of Juan Mendoza. The two went to the house of the latter's father to report the incident.

It also appears that at about 4:00 o'clock in the afternoon of the day of the occurrence, certain huk elements in Calaca, Batangas, separated into two groups. One group headed by Mangubat was composed of Rudy, Rogelio, Marcelo, Filomeno Casal and others, while the other headed by Silva was composed of Malaya, Kidlat, Eugenio Cortez, Melecio Aquino and Danilo. The Mangubat group went to barrio Coral while the Silva group went southwest towards the direction of barrio Pantay. The Mangubat group asked food from the people of Coral for

their supper and while they were eating at about 7:00 o'clock in the evening they heard several gunshots from barrio Pantay which made them entertain the fear that some of their companions had an encounter with the authorities. The Silva group later arrived in Coral thus joining the Mangubat group.

At about 9:00 o'clock in the evening of the same day, Filomeno Casal heard Silva and Mangubat talk about the killing of Juan Mendoza. Silva told Mangubat that he ordered Mendoza to lie down and when the latter refused he shot him. He left a letter beside the body of Mendoza. Casal also heard that Mendoza was killed because he reported the huks to the authorities as a result of which the latter were able to surprise the group of Silva.

An autopsy on the body of Juan Mendoza was made by Dr. Antonio E. Platon, President of the 8th Sanitary Division, Lemery, Batangas, who found several fatal wounds which caused his instant death.

Appellants' defense is alibi. Melecio Aquino testified that in the evening of July 25, 1953, he left barrio Payapa, Lemery, Batangas, with Primo Matienzo and Modesto Mercado to bring money to a certain old man in Mt. Banahaw. They arrived there on August 10, 1953. After giving the money to the old man, he and his companions on August 16, 1953 left for Batangas.

Eugenio Cortez declared that the whole day of August 13, 1953 he was in the farm owned by Pedro Palacio in barrio Dao, Balayan, Batangas; that said farm is about one-third of a kilometer distant from his house in the same barrio; that at about 6:00 o'clock in the afternoon of the same day, he returned to his home where he rested and conversed with Mariano Besas and Carlito de Suyu until 9:00 o'clock at night; and that he slept afterwards and woke up at 6:00 o'clock in the morning of the following day.

We note that the information filed in this case accuses six men as the ones who plotted the killing of the deceased Juan Mendoza, among them, besides the two appellants, were Engracio Barquio and Nicanor Miranda alias Danilo, but apparently separate trials were held as to them. Barquio was acquitted in Criminal Case No. 182 in a decision rendered on February 23, 1956, while Miranda was also provisionally acquitted on the ground that the principal witnesses for the prosecution were not able to identify the said accused. In reaching a verdict of acquittal in the case against Barquio, the trial court failed to give credence to the testimony of the widow, Rita Endaya, who was the star witness, for the prosecution, making on this point the following observation:

"The identification made before the Court by the prosecution witnesses of the accused as one of the six armed men who took and killed Juan Mendoza on August 81, 1953, is put into serious doubt by certain established facts of record. It appears herein that on August 15, 1953 or two days after the incident, Rita Endaya executed a sworn statement before the Municipal Mayor of Calaca, Batangas (Exhibit '3'). In said affidavit Rita Endaya, in answer to a question whether there was anyone among the persons who entered her house whom she knew, declared, 'Wala po' (Nobody) (Exhibit '3-A'). When asked if before the shooting she had noticed armed men in the vicinity of her house, she again replied, 'Wala po' (Nobody) (Exhibit '3-B'). Further, she stated that the two persons who went up her house were dressed in fatigue uniforms' (Exhibit '3-D'). All of these statements materially contradict her subsequent narration that she recognized the accused to be one of the persons who went up her house, and that she saw the six armed men who approached her and asked for her husband before the shooting, and that Engracio Barquio was then dressed in khaki. It appears strange to the Court that Rita Endaya would so declare in her affidavit executed two days after the incident that she did not know anybody among the persons who entered her house, if it is true that, according to her, she already knew Engracio Barquio long before the incident because he had been going to her house to ask for food from her husband and had in fact eaten in her house no less than thirty times."

Since in the instant case the widow appears also to be the star witness of the prosecution whose testimony was given much weight in pinning liability on appellants, we wonder whether this Court would be consistent and would be true to logic and fairness if it would now hold that on the strength of the same testimony which was

discredited by the court insofar as one of the appellants' co-accused in the same case is concerned, would reach a verdict of conviction against said appellants. Of course, it may be said that when the widow executed her affidavit on August 15, 1953 (Exhibit 3), two days after the occurrence, wherein she said that she did not know the men who went to her house on August 13, 1953, she was afraid that if she would disclose their names she might be liquidated by them, as in fact she gave that explanation in open court, but that is no reason for her not to tell the truth because, apart from the fact that she could ask for protection from the authorities, it was her duty to help in the apprehension and prosecution of the killers. In fact, the suspects were only apprehended more than two years after the occurrence.

But who are the other witnesses for the prosecution? One of them is Primo Alvarez who declared that when he accompanied the six men in looking for Juan Mendoza he recognized among them appellant Melecio Aquino who was one of the two who went to the house of Ceferino Manalo and appellant Eugenio Cortez who was one of those who went to the house of Macario Manalo. Another witness is Ceferino Manalo who also pointed to Melecio Aquino as one of those who went near his yard when he was conversing with Juan Mendoza. Another witness is Maximo Endaya who testified that he recognized the face of Eugenio Cortez as one of those who approached him while he was sitting on the stairs of the house of Macario Manalo. It is true that these witnesses testified that they saw appellants as among those who belonged to the group of huks who on the date in question inquired about the whereabouts of Juan Mendoza, but there is nothing in their testimony that would in the least indicate that appellants actually took part in killing or inflicting the fatal wounds upon the deceased. They were merely positive that they heard shots coming from the direction where Juan Mendoza was taken by the huks.

On the other hand, from the very testimony of Filomeno Casal, another witness for the prosecution, it can be gathered that the one who killed or ordered the killing of Mendoza was Commander Silva who, according to Casal, ordered Mendoza to lie down and when the latter refused he shot him. If we are to believe the testimony of this witness the only one responsible for Mendoza's death is Commander Silva for there is nothing to show that his companions who were under his command knew that his design was to liquidate him. At any rate, since it appears that the killing was committed not because of any personal motive, on the part of the accused but merely in pursuance of the huk movement to overthrow the duly constituted authorities, the proper charge against them would be rebellion and not murder, as was properly observed by the trial court:

"The above judgment is based on the evidence presented in this case as applied to the information filed against the two accused. It sufficiently appears, however, that the killing in question was without personal motive on the part of the accused, and that it was merely in pursuance of the movement participated in by them to overthrow the duly constituted authorities of the Government. Properly considered in the light of the rulings of the Supreme Court in the case of 'People vs. Amado Hernandez, et al.,' 99 Phil., 515; 52 Off. Gaz. 5506, as reiterated in subsequent cases, the crime charged against the accused should have been that of rebellion. It is felt, however, that the accused may not be convicted herein for the said crime for obvious procedural and technical difficulties. In order to effectuate the aforementioned doctrine of the Supreme Court and to provide for uniformity in the application of the penalties for the commission of crimes of the same nature as the one presently involved, and in consonance with Article 5 of the Revised Penal Code, the Court hereby orders that this matter be brought to the attention of His Excellency, the President of the Philippines, through the Honorable the Secretary of Justice, for such action as may be deemed proper with a view to mitigating the penalty imposed upon the two accused giving due consideration to the observations stated above."

Considering the surrounding circumstances, we cannot bring our mind to the conclusion that appellants are responsible for the death of the deceased, there being no clear evidence linking them with his death.

Wherefore, the decision appealed from is reversed. Appellants are acquitted with costs de oficio.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ.,

concur.

Padilla, J., took no part.

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