

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
SALVADOR MALIG (ALIAS RONQUILLO) ET AL., DEFENDANTS.
SALVADOR MALIG (ALIAS RONQUILLO), APPELLANT.**

G.R. No. L-2083. May 30, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Salvador Malig, alias Ronquillo, and Anselmo Malig, alias Sibad, cousins, were charged before the Court of First Instance of Pampanga with the murder of Ricardo Manabat, were found guilty and sentenced each to reclusion perpetua, with the accessories of the law, to indemnify jointly and severally the heirs of Manabat in the sum of P2,000, without subsidiary imprisonment in case of insolvency, and to pay the costs. Only Salvador Malig is appealing from that decision.

The evidence for the Government consists of the testi-mony of several witnesses for the prosecution, the most important of which being that of Maria Singian, widow of the deceased, who testified to the coming of the two accused to her house and inviting her husband to go out with them, which he did; that of Delfin Mendoza who saw the two accused and Manabat leaving the latter's house together, all apparently happy and as friends; that of Bernardo Carlos who witnessed the actual killing; and that of Melecio Pamintuan, one of those ordered by Salvador Malig to bury the deceased, as well as the admissions made by the appellant in his three written statements, whose translations into English are marked as Exhibits A-1, B-1 and B-2, and the photographs Exhibits D to N, showing the reenactment of the killing made by the two defendants. All this evidence, in the opinion of this Court, conclusively show that in the month of July 1945 the deceased Ricardo Manabat was living with his wife, Maria Singian, in barrio Maguiliman, San Fernando, Pampanga; that he was an agent of the United States Army Counter Intelligence Corps (CIC), and in that capacity he had been confiscating fire-arms held illegally or without license, particularly by members of the Hukbalahap organization of which the two defendants, Salvador and Anselmo Malig, were members; that Salvador and Anselmo belonged to the DI section of the Hukbalahap and detailed, among other duties, to apprehend and liquidate the enemies of their organization-that the two accused, in pursuance of the decision arrived at by their organization to liquidate Ricardo Manabat, went to his home at about 2 o'clock in the afternoon of July 5, 1945, but that, because he was keeping a Thompson submachine gun and in order to avoid a fight with him as well as to insure his being killed without danger to themselves, they lured him away from his home by telling him to come with them and go to barrio Gasac of the same municipality of San Fernando to confiscate a gun kept illegally by one Bernardo Carlos, a mechanic of the Bureau of Public Works; that when Manabat proposed to bring with him his submachine gun, Salvador and Anselmo told him that it was too bulky and cumbersome for him to carry around and that, if he wanted a gun, he could have the revolver of Anselmo; that Anselmo's gun was given to Manabat, but the gun was, however, out of order and could not be fired; that at that time, Salvador was carrying with him his .45 caliber automatic pistol; that upon arrival at the house of Bernardo Carlos, Salvador looking through the window from the yard woke him up from his sleep and demanded the surrender of his gun, but when Bernardo vehemently insisted that he had no gun,

Salvador told him to dress up and come with them anyway; that in the meantime, the two accused and Manabat remained in the yard, Manabat engaged in picking guava fruits, Anselmo then carrying Salvador's automatic pistol just behind Manabat, about 1½ meters away, and Salvador standing outside the window of the house at a distance of about 5 meters from Manabat; that Bernardo, while dressing but looking out into the yard, through the window, saw Salvador give a signal to Anselmo by making the sign of a circle with his right thumb and forefinger, upon which signal Anselmo immediately fired two successive shots in the back of Manabat, who immediately slumped forward to the ground face downward; that Salvador then hastened to where Anselmo was, seized his pistol from him and then, at a distance of about a foot, fired a shot into the head of Manabat; that, thereafter, the two accused left in haste, Salvador ordering Bernardo to bury the body of Manabat and enjoining him not to tell anybody what had happened, otherwise they would come back and finish all of them; that about half an hour later, Salvador and Anselmo returned with four men, among them Melecio Pamintuan, whom they had commandeered to help bury the body of Manabat; and that a grave was dug at a distance of about half-a-kilometer from the house of Bernardo and there the body was buried.

Sometime in the year 1947, the crime was discovered by the authorities, Salvador and Anselmo were arrested, and they confessed to the killing, even pointing out the location of Manabat's grave and helping exhume his body or rather his bones, which were duly identified by the widow of the deceased and by Melecio Pamintuan to be that of Manabat.

Salvador and Anselmo admitted the killing, but claim self-defense, their story in support thereof being that one day in February 1945, while on their way to barrio Maguiliman to contact Hukbalahap soldiers who were encamped near there, they happened to meet Ricardo Manabat, who, without any provocation, proceeded to fire at them with his Thompson submachine gun; that the two defendants ran away and were not hit; that the following day they again took the same way on a pleasure trip or walk, and again met Manabat who, this time provided with a revolver, proceeded to draw his gun in order to shoot them, but that Anselmo, who was not carrying any firearm, went to the right side of his codefendant, drew Salvador's gun from his waist and beat Manabat to the draw, killing him with Salvador's pistol.

The trial court, after analyzing the evidence on the alleged self-defense, rejected the same and gave ten reasons in support of its rejection. We are satisfied that the trial court acted correctly. Among the reasons for not believing this theory of self-defense are that no explanation was given for Manabat's alleged behavior in immediately and without any provocation firing at the two accused on the first supposed encounter; and it is quite strange, if not short of a miracle, that the two accused who had been surprised and unalerted, could have escaped unscathed from the bullets of a submachine gun fired at them in rapid succession and supposedly at close range. Again, if they had really been fired at by Manabat the day before, it is difficult to believe that the two accused would again take the same road without adequately arming themselves for any possible fight. The obvious and logical step for them to take would have been to just notify the Hukbalahap soldiers who according to them were encamped somewhere in the vicinity and liquidate Manabat as an enemy of the organization. Furthermore, it is next to impossible that Manabat, who must have been familiar if not expert in handling guns since he kept a submachine gun and a revolver, could have been beaten to the draw by Anselmo who only acted after Manabat's allegedly making a move to draw his gun and who (Anselmo) then walking or standing on the left side of Salvador, had to go to the latter's right side, draw Salvador's gun which was tucked at his waist but under and inside his trousers, and then point it at Manabat and fire at him.

Since the decision in this case depends in some measure on the credibility of witnesses, we find it pertinent and profitable to quote a portion of the decision of the trial court on this point:

"With regard to the testimonies of the government witnesses, there is absolutely nothing in the record which

would justify this Court to disregard their probatory value. They were given by simple-minded people whose candor cannot be doubted and whose motive cannot be assailed. Their demeanor in the witness-stand leaves nothing to be desired with regard to sincerity." (Page 9, decision of lower court.

Counsel for the appellant claims that, assuming that Salvador fired his revolver into the head of Manabat while in the yard of Bernardo Carlos, he could not be guilty of the crime charged for the reason that at the time Manabat must have already been dead. However, as is well stated by the Solicitor General, this claim is in accordance with the theory of the defense that although Manabat was already dead, Salvador was supposed to have been ordered to shoot him on the head just to prove his loyalty to the Hukbalahap organization. But, according to the evidence for the prosecution, when Salvador shot Manabat on the head, the latter was still alive. Furthermore, whether or not Salvador took part in the actual killing of Manabat, he would nevertheless be guilty as a coprincipal because the acts which he and Anselmo performed in deciding to do away with Manabat,—lure him from his home into another barrio, persuading him not to bring his Thompson sub-machine gun by giving him instead Anselmo's revolver which would not fire, and, once in the yard of Bernardo Carlos, Salvador, making and giving the signal for Anselmo to commence shooting at the unsuspecting Manabat, all show the community of purpose and design which fully prove and establish the conspiracy between the two accused, each one being responsible for the acts of the other. As a matter of fact, there is reason to believe that Salvador was the mastermind in the design to kill and the actual killing of Manabat. He (Salvador) was the one most active in luring Manabat from his home and in persuading him not to bring his submachine gun; he was the one who gave the signal for the shooting of Manabat; it was he who ordered Bernardo Carlos to bury the body and threaten him with death should he tell others what had happened; and it was Salvador who commandeered and ordered Melecio Pamintuan and his companions to come and help Bernardo in digging a grave and burying therein the body of Manabat.

It is furthermore contended by the appellant that he was entitled to the benefits of Amnesty Proclamation No. 8 of September 7, 1946. As correctly contended by the Solicitor General, this proclamation covers crimes committed during the period of the Japanese occupation, namely: from December 8, 1941 up to the date when each particular area of the Philippines was actually liberated from enemy control and occupation. San Fernando, Pampanga, was liberated as early as February 1945, and the murder in this case was committed in the month of July of the same year.

Pending appeal in this Court, the appellant filed a motion for dismissal, invoking the provisions of Amnesty Proclamation No. 76 (series of 1948) of the President of the Philippines. In support of his motion, he submitted his membership certificate in the Hukbalahap organization (Exhibit A), his registration under the proclamation (Exhibit B), and a certificate of the committee in the implementation of the Amnesty Proclamation No. 76, certifying that the appellant is a member of the Hukbalahap organization and, therefore, entitled to the benefits of said Amnesty Proclamation. The Solicitor General vigorously assails this motion for dismissal, on the ground that the appellant has not complied with one of the main requirements of the proclamation, namely: the surrender of his firearms and ammunition.

After a careful study of this point, we agree with the Solicitor General that in order to successfully invoke the provisions of Amnesty Proclamation No. 76, the party concerned must surrender his firearms and ammunition. The appellant herein surrendered no firearm or ammunition. Neither was any surrendered for him or on his behalf. No explanation whatsoever was given why the surrender of his firearms or ammunition was not made. On the other hand, the evidence of record shows that the appellant belonged to that section of the Hukbalahap organization engaged in apprehending and liquidating its enemies, and that, consequently, he must necessarily have been provided with firearms and ammunition. Before the killing of Manabat, there is evidence to show that Salvador had been roaming the barrios of San Fernando, possibly on his mission of apprehending and liquidating the enemies of the Hukbalahap organization, and that he was provided with what the government witnesses called

a long gun, meaning possibly a rifle or a carbine. Then, on the occasion of the killing of Manabat, Salvador was keeping and carrying with him a .45 caliber automatic pistol. In fact, Manabat was killed with this pistol. Then there is evidence that, after the killing of Manabat, Salvador returned to the home of Manabat and took his Thompson submachine gun. There is no explanation given why the appellant or any of his friends or relatives could not surrender a single gun or round of ammunition in order that he could come within the provisions of the proclamation. Of course, during the trial, some information or explanation was attributed to Salvador about how some of these arms were disposed of; but, we are not favorably impressed with such information, apart from the fact that said information was not given in relation with and to invoke the benefits of the Amnesty Proclamation so as to give the Government an opportunity to check up, verify or rebut the same. It is clear that the intention of the Government in issuing the amnesty proclamation in question was not only to get the dissidents back into the fold of law-abiding citizens, but also to gather the loose firearms under their control; for, as long as there are firearms beyond the control and outside the supervision of the Government, specially, if in the hands of irresponsible parties, there will always be lawlessness or temptation to the same, even defiance against Government authorities.

In the commission of the murder of Ricardo Manabat, we find the aggravating circumstance of premeditation to be present. Long before Manabat was shot to death in the yard of Bernardo Carlos, Salvador and his coaccused had already planned the killing, had gone to Manabat's home to lure him to another barrio and there finish him. All this may well be regarded as evident premeditation. The act of luring him from his home into another place and there to kill him, may also be regarded as the employment of craft. (U. S. vs. Campona, 36 Phil., 817.) However, the majority of the members of this Court believe that said aggravating circumstance of craft may well be included in and absorbed by the qualifying circumstance of treachery, because it was used to insure the commission of the crime without any danger or risk to the culprits. We find no mitigating circumstance to offset the aggravating circumstance of premeditation. Consequently, as claimed by the Solicitor General, the penalty should be imposed in its maximum degree,—that is to say, death. However, for lack of the necessary votes to impose this extreme penalty, we hereby impose the penalty of reclusion perpetua. With this modification, the decision appealed from is hereby affirmed, with costs against the appellant.

Ozaeta, Paras, Feria, Pablo, Bengzon, and Reyes, JJ., concur.

MONTEMAYOR, J.:

I hereby certify that Chief Justice Manuel V. Moran voted in favor of this decision.

DISSENTING

PERFECTO, J.:

Upon the facts in this case, we are convinced that appellant Salvador Malig is entitled to the benefits of the Amnesty Proclamation No. 76 (series of 1948) of the President of the Philippines and, therefore, is entitled to be immediately released from confinement, with the dismissal of this case.

The majority deny appellant the benefits of the amnesty upon the sole ground that appellant had surrendered no firearm or ammunition, surmising that, under the circumstances mentioned in the majority opinion, appellant must have been provided with firearms and ammunition. We do not see any fairness in sentencing appellant to life imprisonment on the basis of a surmise.

The majority contend that the purpose of the amnesty proclamation was not only to get the dissidents back to the

fold of law-abiding citizens, but also to gather the loose firearms under their control. Without disputing that the Chief Magistrate had in mind this double purpose in issuing the proclamation, we do not believe that there can be any dispute that the gathering of loose firearms is just secondary to that of bringing dissidents back to a life of peace and order. Having attained the primary purpose of the proclamation, we see no reason why full effect should not be given to the amnesty.

After all, it is not the gathering of loose firearms and ammunition which will restore peace and order, but the law-abidedness of persons who have been causing their disturbance. Firearms or no firearms, there will be peace and order if there are no elements bent on disrupting them, and there will always be lawlessness, if there are persons bent on defying the law. As an outstanding example, the case of high government officials who, according to well publicized evidence, without the use of any fire-arm, have been transgressing the law and jeopardizing peace and order. What had happened many weeks ago in the Senate proper is yet too recent to be forgotten.

TUASON, J. :

I concur in this dissent.

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