

MANOLO L. MADDELA, PETITIONER AND APPELLANT, VS. JUAN P. AQUINO, ETC., ET AL., RESPONDENTS AND APPELLEES.

G. R. No. L-10867. August 29, 1958

Ponente: REYES, A., J.

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REYES, A., J.:

This is an appeal from a decision of the Court of First Instance of Nueva Vizcaya denying appellant's petition for mandamus.

It appears that appellant Manolo L. Maddela was, together with two policemen of Solano, Nueva Vizcaya, accused of murder for having, while he was governor of that province, caused "the arrest and liquidation" of Juan Duran and Victoriano Jimenez, two young men suspected of having given aid to the Huks in one of their raids. The information was filed by the provincial fiscal; but a special prosecutor from the Department of Justice later intervened and made a reinvestigation of the case, taking down the testimony of several persons, among them, Guillermo Domingo, Paulino Garingan and Hilario S. Dawa, who were listed as witnesses in the information. The testimony of these three confirmed the charge that the arrest and liquidation of Juan Duran and Victoriano Jimenez had been ordered by Maddela as governor of the province. But as the testimony of Guillermo Domingo revealed that the said order was transmitted by him as chief of police of Solano to his subordinates, counsel for Maddela asked that Domingo be also prosecuted, and upon the request being denied he filed a formal petition for a writ of mandamus to compel the prosecution to include Domingo in the information as one of the defendants and, with him, the other witnesses Paulino Garingan and Hilario S. Dawa, it being alleged as to these two that they had concealed the fact that they heard Maddela give the order to kill, and that such concealment made them criminally liable as accessories after the fact.

Answering the petition, the prosecuting officers claimed that they did not find the evidence against Domingo, Garingan and Dawa sufficient to justify their inclusion in the information as additional defendants, explaining that in the case of Domingo, all that could be gathered from the evidence was that this man had merely transmitted to his subordinates Governor Maddela's order "to arrest and liquidate" and that in so doing he was acting under the impulse of an uncontrollable fear, the fear of losing his own life if the order was not carried out. And as to Garingan and Dawa, the prosecutors explained that these two could not be held criminally liable for merely having been present at the conference where the said order was given by Maddela.

After trial, the lower court sustained the prosecuting officers and dismissed the petition for mandamus. From that decision Maddela appealed directly to this Court.

We find no compelling reason for disturbing the decision below.

In the case of Guiao vs. Figueroa, 94 Phil., 1018; 50 Off. Gaz., 4828, we said that the law makes it the duty of prosecuting officers "to file the charges against whomsoever the evidence may show to be responsible for an offense." But we also there said that this does not mean that prosecuting officers shall have no discretion in the matter, for where the law demands that all persons who appear responsible for an offense shall be charged in the

information, it also implies that those against whom no sufficient evidence of guilt exists are not to be included in the charge; and, needless to say, the determination of whether or not there is, as against any person, sufficient evidence of guilt to warrant his prosecution necessarily involves the exercise of discretion.

We cannot say that in the present case the prosecuting officers have not made a legitimate exercise of that discretion. With respect to Guillermo Domingo, the evidence against him is found in his own admission that Maddela's order to liquidate Juan Duran and Victoriano Jimenez was transmitted by him to his subordinates. But the admission is qualified with the explanation that he had to transmit the said order to his subordinates for fear of being himself liquidated if he did not do so and that after the arrest of the victims "their subsequent liquidation was left to the discretion of Isauro Reverente and Sgt. Ambros." The prosecuting officers believed that explanation and so did the trial court. And it would appear that Domingo's fear of mortal punishment was not groundless for we gather from his testimony that, three or four days before, two of his policemen were put to death by the commandos of Governor Maddela for disobeying the latter's order. In the circumstances, we do not think the prosecuting officers could be charged with having abused their discretion in not including Domingo as a defendant in the criminal case.

Much less is there evidence of guilt against the witnesses Paulino Garingan and Hilario S. Dawa. It is true that these two admitted having been present at the conference where Maddela gave the order "to arrest and liquidate." But there is no showing that they have done anything to conceal the crime that resulted from the implementation of that order to the extent of making them criminally liable as accessories after the fact.

We fail to see the abuse of discretion attributed to the appellees. They appear to have done their duty as they saw it. At least it does not appear that in the exercise of their discretion as prosecuting officers they have in this case failed to perform a duty which may be enforced through mandamus.

Wherefore, the decision appealed from is affirmed, with costs against the appellant.

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

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