

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MAXIMO BALTAZAR Y BONDOC, ACCUSED-APPELLANT.***G.R. No. L-30557. March 28, 1980*

Ponente: FERNANDO, C.J.

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The Anti-Subversion Act,[1] the validity of which was sustained in *People v. Ferrer*,[2] was the basis for the prosecution of appellant Maximo Baltazar y Bondoc, the sentence of reclusion perpetua being the penalty imposed. In essence, his plea for the reversal of the conviction is based on the failure to overcome the presumption of innocence.[3] In addition, it was likewise alleged that the two-witness rule had not been satisfied and that the extrajudicial confession should not have been admitted. A detailed scrutiny of the evidence record failed to substantiate the allegations that would call for the conviction being set aside. The initial difficulty incurred by counsel de oficio, Attorney William H. Quasha, who submitted a very exhaustive brief, is the prevailing doctrine that in the appraisal of the evidence, the finding of the trial court is entitled to great weight. The brief of the People of the Philippines submitted by the then Solicitor General Felix Q. Antonio, now a member of this Court, refuted in a convincing and persuasive manner the points raised by appellant. Accordingly, the finding of guilt must be sustained. A careful scrutiny of the record discloses, however, that on the proven facts, a mitigating circumstance could be discerned. The penalty that ought to have been imposed, therefore, is reclusion temporal. The judgment must, therefore, be accordingly modified.

It was on the basis of a report[4] submitted by the barrio captain of Lomboy, La Paz, Tarlac, a certain Inocencio Catalan,[5] to PC Sgt. Buenaventura Baldoz about the presence of an armed stranger,[6] that led to the apprehension of appellant on November 29, 1967. With the help of a constabulary detachment,[7] Catalan was able to effect such surrender. Appellant was caught with a Browning automatic rifle.[8] He did not give up easily. Suddenly, he pushed Catalan forward[9] forcing Sgt. Baldoz to fire at him.[10] resulting in his falling on his face.[11] He was then hit on the right shoulder and stomach.[12] One constabulary soldier, seeing him flat on the ground, grabbed his Browning automatic rifle together with its magazine pouch and 38 rounds of live bullets.[13] Appellant was then taken in custody.[14] He admitted that he had just joined the group of HMB commanders Zaragoza and Torongco.[15] He likewise executed before Municipal Judge Primitivo Adaoag his extrajudicial confession,[16] marked as Exhibit A.[17]

To repeat, an adverse decision was rendered against accused Maximo Baltazar y Bondoc, now appellant. Based on the proven facts of record as appraised by the trial judge, even with due recognition of the valiant efforts of counsel de oficio, who is to be commended for his well-written brief, reversal of the conviction is not justified. Again, as was made mention of, a modification of the sentence is appropriate, a mitigating circumstance being considered in favor of appellant.

1. It is understandable why the brief for appellant should try to discredit the finding of facts. That would be one way by which the cause of his client could best be served. Moreover, the constitutional presumption of innocence, to which reference was made earlier, could be relied upon for reversal.[18] What weakens such an

approach is a long line of decisions, impressive for their unanimity, that speak with one voice, namely, that this Court must give due credence and weight to the conclusion reached by a trial judge, who had the opportunity to listen to witnesses testify and, therefore, could be expected to arrive at a just appraisal unless, of course, there was a failure to take into account a fact or circumstance or significance or, what is worse, ignored the same. As noted in a recent decision, *People v. Tigulo*,^[19] the first case of consequence was a 1910 decision, *United States v. Pico*,^[20] the opinion being penned by justice Moreland.^[21]

2. To be more specific, it suffices, in answer to the assigned error that the two-witness requirement was not satisfied, to quote the brief of the then Solicitor General Antonio Thus: "Prosecution Witness Inocencio Catalan testified that in the evening of November 29, 1967, at around 9:00 o'clock, in Barrio Lomboy, La Paz, Tarlac, one Maximo Soriano, who is known to him, reported that he saw a stranger in the ricefield. Catalan proceeded to the place where he saw this stranger sitting by a pile of palay, holding a Browning automatic rifle (BAR). The stranger asked food from him which he readily promised. The accused introduced himself to be a man of Commander Zaragoza and asked to be accompanied to Barrio Paludpod. Catalan seemingly complied with the accused's request, but they failed to reach their supposed destination because, as they were about to jump over the school fence where the jeep of PC Sgt. Baldoz was, the man suddenly pushed Catalan and Baldoz opened fire, hitting the stranger * * *. Sgt. Baldoz, the other prosecution witness, declared that while he was in ambush position in the evening of November 29, 1967, Barrio Captain Inocencio Catalan reported to him that a stranger with a long firearm was sighted a kilometer away from Barrio Lomboy. He instructed Catalan to contact the stranger, while his men would take ambush position in support of the barrio captain. Catalan told Baldoz that the stranger was armed with a Browning automatic rifle. After a while, Baldoz saw the barrio captain return, followed by another person and still by another (the appellant) who was carrying a long firearm. As Catalan was about to jump over a fence, the appellant pushed him forward. Believing that the armed stranger might shoot first, Baldoz was constrained to shoot him. As the man fell, Baldoz grabbed his rifle. Finally, he was able to take the stranger in custody, who turned out to be appellant herein. After investigating him, Baldoz learned from the appellant himself that he had just joined the group of Huk Commander Zaragoza, after having left Huk Commander Torongco * * *."^[22]

3. There is in theory a persuasive quality in the assigned error as to the non-admissibility of the extrajudicial confession of appellant, considering how of late this Court has been most reluctant to predicate Convictions due solely to such circumstance. Nonetheless, such a commendable approach that lends vitality and emphasis to the non-incrimination clause of the Constitution,^[23] is not relevant in this appeal. As noted in the brief of then Solicitor General Antonio: "Note should be made that appellant has not been convicted on account of his extrajudicial confession alone, but more on the evidence extracted from the prosecution witnesses as to the commission of those overt acts attributed to him. This is obvious from the trial court's statement that the overt acts committed by the appellant were proven in compliance with the two-witness rule which is 'bolstered by the accused's extrajudicial confession * * *.' So also, said extrajudicial statement was admitted by the court only as part of the testimony of the witness who identified it * * *."^[24] It would appear, therefore, that the conviction could be sustained independently of said extrajudicial confession.

4. The conviction, as noted at the outset, must be sustained. Nonetheless, this Tribunal has been troubled by the severity of the penalty imposed. Appellant is faced with a grim prospect; he would be incarcerated for what could prove to be his lifetime. It is true, in the light of the proven and credible facts, that he was unable to explain the possession of a rifle. The acts attributed to him, moreover, were indicative of his taking up arms against the government. He did fall squarely within the explicit terms of the -Anti-Subversion Act. This Court, especially, of late, has been alert to the circumstances that may mitigate the liability of an accused. There is in the Revised Penal Code an adoption of alter-native circumstances, one of which being the degree of instruction, or the lack of it, of

the offender. According to the Revised Penal Code: "Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission." [25] As pointed out in the latest edition of Padilla on Criminal Law: "Lack of instruction is generally mitigating, except in crimes against property and chastity." [26] In a more extensive discussion of such an alter-native circumstance, Justice Aquino, in the latest edition of his work on Criminal Law, pointed out that even in cases of theft and robbery, the court could take into consideration the "lack of instruction and education of the offend where it appears that, under all the circumstances attending the commission of the offense, he should not be held to the strict degree of respon-sibility prescribed in the Code for the ordinary offender." [27] The Anti-Subversion Law was enacted solely for the purpose of remedying a grievous malady to the body politic. That is to be admitted. It should be applied, however, in a manner consistent with the efforts of the Administration to win anew the loyalty and allegiance of the disinfected and the discontented. One way of doing so is to temper strict justice with due consideration of circumstances that may have led the accused into performing culpable acts of subversion. In this case, a close examination of the record is indicative of the lack of instruction of the offender. Then, too, it must not be forgotten that so many persons in the Philippines, where agrarian unrest was then quite prevalent, resulted in their being misled by alien ideologies. There is more than sufficient justification for the finding of the mitigating circumstance of the above character that would lessen the rigor of the Anti-Subversion law and, hopefully, could inspire the belief that it is retorted to only as a just measure of retribution but never for vindictive purposes. It may be added that under the epochal Presidential Decree No. 27, within the first month of the emergency government, there has been a decided improve-ment in the lot of the tillers of the soil.

WHEREFORE, the penalty of reclusion perpetua imposed on appellant is reduced to six years of prison correccional minimum to eight years and one day of prison mayor maximum. As appellant had been confined all the while in the National Penitentiary for a period longer than that covered by the penalty, he is entitled to be released immediately. This judgment is immediately executory.

Barredo, Aquino, Concepcion, Jr., and De Castro, JJ., concur.

Antonio, J., took no part.

Abad Santos, J., on leave.

[1] Republic Act No. 1700 (1957).

[2] L-32613-14, December 27, 1972, 48 SCRA 382.

[3] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[4] T.s.n., Session of November 5, 1968, 31.

[5] Ibid, 32.

[6] Ibid.

[7] Ibid, 33.

[8] Ibid, 35; Exhibit B.

[9] T.s..n., Session f February 12, 1969, 8.

[10] Ibid.

[11] Ibid.

[12] T.s.n., Session of November 5, 1968, 39-40.

[13] Ibid, 38-39; Exhibits B, B-1, and B-2.

[14] Ibid, 44-45.

[15] Ibid, 45.

[16] Ibid, 5.

[17] Ibid, 9.

[18] Cf. *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Barbo*, L-30988, March 29, 1974, 56 SCRA 459; *People v. Castro*, L-33175, Aug. 19, 1974, 58 SCRA 473; *People v. Joven*, L-36022, May 22, 1975, 64 SCRA 126; *People v. Ramirez*, L-30635-6, Jan. 29, 1976, 69 SCRA 144; *People v. Poblador*, L-41129, April 29, 1977, 76 SCRA 634; *People v. Quiazon*, L-44299, Aug. 31, 1977, 78 SCRA 513 and *People v. Sarmiento*, L-46833, December 28, 1979.

[19] L-34334, November 7, 1979.

[20] 15 Phil. 549.

[21] Among the later cases, may be mentioned: *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37184, June 30, 1976, 71 SCRA 593; *People v. Velasco*, L-31922, Oct. 29, 1976, 73 SCRA 574; *People v. Rapada*, L-31243, Oct. 28, 1977, 80 SCRA 63; *People v. Gorgoles*, L-40885, May 18, 1978, 83 SCRA 282; *People v. Conchada*, L-39367-69; Feb. 28, 1979, 88 SCRA 638.

[22] Brief for the Appellee, 3-4.

[23] According to Article IV, Section 20 of the Constitution: "No person shall be compelled to be a witness against himself."

[24] Brief for the Appellee, 7-8.

[25] Article 15, Revised Penal Code.

[26] Padilla, *Criminal Law*, 523 (1979).

[27] Aquino, *The Revised Penal Code*, 417 (1976). His reliance is on *United States v. Maqui*, 27 Phil. 97 (1914).

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