

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PERFECTO CRUZ ET AL., DEFENDANTS. PERFECTO CRUZ, DAVIS
VELASCO AND NICANOR ISON, JR., APPELLANTS.**

G.R. No. L-2620. February 27, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by Perfecto Cruz alias Peping, Davis Velasco and Uicanor Ison, Jr. from a Judgment of the Court of First Instance of Rizal, finding them guilty of murder and sentencing the first to death and the last two to life imprisonment, the three jointly and severally to pay the heirs of Dr. Juan Gabriel, the deceased, as indemnity, the sum of P3,000, and each to pay 1/10 of the costs. Charged with the appellants with the same crime were Leonardo Caneda, Miguel Bernabe, Armando Bernabe, Carlos Tangol and Rudy de Lara, as to whom the case was dismissed by the court *motu proprio* upon the conclusion of the evidence for the prosecution for lack of sufficient evidence.

It is not denied that Dr. Juan Gabriel, Mayor of Paranaque, Rizal, throughout the Japanese occupation, and admittedly a Japanese collaborator, was picked up by the appellants and their co-accused who have been discharged, at the house in Imus, Cavite, where Gabriel and his family had been living since December 2, 1944. There is dispute as to the date of the arrest. The prosecution witnesses said it was on the 15th of February, 1945, while the accused said it was on the 12th. More of this later.

According to the evidence for the prosecution, from Imus Dr. Gabriel was carried off in a motor vehicle and in Paranaque he was blindfolded, his hands were tied behind his back, and he was shot and killed. The deceased was buried in the same place where he was slain and his remains were exhumed sometime in November, 1945, at the instance of National Bureau of Investigation agents. The manner in which Gabriel was killed and the participation of each of the appellants are related by Nardo de la Isla, the only eye-witness to the killing presented by the Government.

Nardo de la Isla, a young guerrilla, testified that he was detailed on February 15, 1945, to clean the guerrilla headquarters in Paranaque, at the foot of the bridge. He said that on that date the accused came in a jitney to the headquarters with Juan Gabriel; that after the jitney had pulled up near the headquarters, Nicanor Ison, Jr., Perfecto Cruz, Davis Velasco and Juan Gabriel got off, Perfecto Cruz entered a bicycle repair shop and Davis Velasco and Nicanor Ison took Juan Gabriel to the other side of it; that when these reached the corner of a small street, Perfecto Cruz fired at Gabriel but the latter was not hit and ran into the headquarters; that Nicanor Ison and Davis Velasco fetched a cord and a handkerchief, Ison bound Dr. Gabriel's hands while Velasco was aiming his gun at the doctor's back; that after Gabriel's hands were thus tied, Davis Velasco blindfolded him with the handkerchief while Nicanor Ison, Jr. held a gun; that afterward Dr. Gabriel was marched to the rear of the bicycle repair shop where Davis Velasco and Nicanor Ison separated from him; that when Gabriel was standing alone Perfecto Cruz, with Gabriel's back towards him, fired at the victim several times; that after Gabriel fell down,

Nicanor Ison untied the dead man's hands and removed his shirt which Ison carried away; that a man named Bienvenido took off and appropriated the dead man's trousers; that Perfecto Cruz ordered him (Isla) and two others to bury the corpse.

The defendants undertook to prove that the arrest and killing of Dr. Gabriel was carried out after he was tried by a legally constituted court-martial and by order of superior guerrilla authorities. The other defense is that this case comes within the terms of Amnesty Proclamation No. 8. We shall first take up the last plea.

The proclamation relied upon extends its benefits to persons who committed acts penalized under the Revised Penal Code in furtherance of the resistance to the enemy or against persons aiding in the war efforts of the enemy, "during the period from December 8, 1941 to the date when such particular area of the Philippines was actually liberated from enemy control and occupations."

This case was brought before the 6th Amnesty Commission and that body found that when the crime charged was perpetrated Paranaque was already under the control of the forces of liberation and that, therefore, the elimination of Dr. Gabriel was not demanded by military necessity. Judge Bienvenido A. Tan, who tried and handed down the appealed decision, concurred in the findings and opinion of the amnesty commission. The evidence material to or shading light on this branch of the case is as follows:

Col. A. G. Gabriel, no relation to the deceased, as far as the proofs would show, certified that "according to the records at the office of the Historical Section, G-2, (of which he was the Chief) the town of Parañaque, Rizal, was occupied by the 511th Parachute Infantry, Regimental Combat Team on 5 February 1945." He certified that the source of this information was the "list of towns liberated by the United States Army during the period 17 October 1944 to 11 August 1945, issued by the Office of the AC OF S, For Intelligence, G-2 Headquarters, Philippines-Ryukus Command, APO 707." This certificate is identified as Exhibit H and Exhibit I. Colonel Adevosio, principal witness for the defense, admitted that "American troops entered Parañaque on February 5" where "they were established when I arrived." He declared he was in his headquarters in that town on February 6 and 7.

Isabel del Rosario, Dr. Juan Gabriel's adopted daughter, 20 years of age at the time of the trial, was sworn to testify that she was living with Dr. Gabriel's family; that on February 15, 1944, between 8 and 9 o'clock in the morning, Dr. Gabriel was seized by the accused; that February 15 was the town fiesta of Imus and in the morning they all went to mass in a jeep; that immediately after Dr. Gabriel was taken, she and Dr. Gabriel's wife went to the municipal building of Imus and requested Epifanio Gabriel to see where Dr. Gabriel was or would be carried; that Epifanio Gabriel called on Col. Saulog, and both Epifanio and Col. Saulog trailed Dr. Gabriel, while she rushed to Paranaque in a carretela accompanied by Atty. Alejandro Cristobal; that at barrio Wakas, (situated at the western or southern edge of Paranaque), they met and joined Epifanio Gabriel and Col. Saulog; that in that section of the town she asked Noli Reyes if Dr. Gabriel had been brought to the guerrilla headquarters and Reyes said no; that Noli Reyes suggested that she go to the Dongalo headquarters (at the foot of the bridge on the Manila side of the town) which she did; that in Dongalo, she went inside the guerrilla headquarters, met Romeo Jose and accused Davis Velasco and asked these if Dr. Gabriel had been brought to that place, and she got a negative answer; that when she came out of the headquarters, she saw in a bicycle shop accused Carlos Tangol whom Romeo Jose asked the whereabouts of Juan Gabriel, and Tangol answered that Gabriel had been taken to the office of the CIC in Pasay; that upon hearing this information, Romeo Jose wrote a letter to Mrs. Juan Gabriel telling her that he would do everything he could to find her husband; that this letter was handed to her but before returning to Imus she rode to Pasay in a carretela and looked for the office of the CIC, which she found on Park Avenue; that in the CIC office she talked to an American sitting at the table and told him the purpose of her visit; that the American accompanied her to a poultry house where some Filipino collaborators were detained and allowed her to identify

Dr. Gabriel; that as Dr. Gabriel was not among the detainees in that place, the American officer took her to Paranaque, where another office of the CIC was located and five Filipinos and one Japanese were detained. The witness said she went alone to Pasay and was not afraid because she knew that town had been liberated. In Parañaque she said she saw men of the 11th Airborne Division quartered in Dr. Gabriel's house near the bridge. She also went to the municipal building.

Exhibit "J", a joint statement Made by the accused Carlos Tangol and Perfecto Cruz before an agent of the Division of Investigation on November 3, 1945, in the presence of a brother of Tangol who was also an agent of the Division of Investigation, recites that Gabriel was arrested about five days after American forces entered Parañaque and after Tangol received orders to arrest and take into custody Dr. Juan Gabriel; that the defendants having received information that Dr. Gabriel was in Imus, Cavite, at that time, all of them drove to Cavite; that they found Dr. Gabriel, in a carretela about to alight and requested him to come along with them for a certain investigation in the office of the provost marshal of the guerrillas; that upon reaching the guerrilla headquarters in Parañaque, Colonel Terry Magtangol, the commanding officer, told them to take Gabriel to the provost marshal in Pasay, saying he had nothing to do with Gabriel, therefore they moved on to the office of the provost marshal (guerrilla) in Pasay; that in Pasay, Gabriel was found guilty of collaboration by Lt. Col. Daza whereupon they conducted Gabriel back to Paranaque; that when, in front of the headquarters in Paranaque, the jitney stopped, Dr. Gabriel jumped out of the vehicle and ran toward the bank of the river behind the headquarters; that refusing to heed the warning to stop given by Davis Velasco and others, Gabriel was fired upon by Davis and hit at the base of the skull, after which Perfecto Cruz shot him twice in the back.

Eleuterio Adevosio, overall commander of the ROTC Hunters Guerrilla operating in Southern Luzon from January 15, 1942, testified for the defense. He said that on February 6 and 7, 1945, he was in Parañaque, in his general headquarters right across the street from where the 11th Airborne Division headquarters were situated. In his own headquarters, he had no more than 15 armed men performing guard duty. On February 11 to 13, he stated, "we believed then that there were no less than 3 divisions of Japanese infantry not to mention units of marine forces, civilian units and service troops deployed in and around the City of Manila. Worth of the Parañaque River from the Manila Bay beach extending into the Laguna Bay beach were deployed no less than 1 regiment of Japanese infantry supported by units of the marines. That particular area was heavily fortified by concrete pillboxes and dugouts constructed by the Japanese units prior to the landing of the American forces on Nasugbu, so that we can safely state that the defense of the Japanese south of Manila was very well organized and well prepared. On the other hand, on those particular days I believe that there were two battalions of Americans in battalion concentration on the southern part of Las Piñas." He said he was positive that on February 11 to 13, "there were no American Detachments encamped or assigned to Cavite, although there were American troops that passed Tagaytay Road but did not pass Imus."

Macario Peralta, Jr., formerly Deputy Chief of Staff of the Philippine Army with the rank of Brigadier General, was put on the stand as an expert witness. The gist of his opinion, made on the basis of Colonel Adevosio's evidence, is that "From the military standpoint * * * the area north of the Parañaque river, Outline A, could not be considered as militarily secured from the enemy."

It is clear from the evidence, quite apart from what is of public knowledge, that Pasay, Parañaque and Imus had been actually wrested from enemy occupation and control on February 15, 1945. The forces of liberation were in undisputed possession of those places with no hope or intention on the part of the enemy to dislodge the new comers. It is a matter of public knowledge that the Japanese Army and High Command had evacuated several months before to the mountains in the north and the east where they were to make their last stand, leaving in Manila only a suicide force to massacre the people, raze the city, and await their doom in a few fortified spots and

buildings. The celebration of the town fiesta in Imus with the customary masses, the ride of Isabel del Rosario to Pasay in a horse-drawn vehicle, unaccompanied, and the taking of the deceased from Imus to Parañaque, to Pasay and back to Parañaque, all with apparently absolute unconcern, are eloquent testimony to the final disappearance of the enemy and the return of peace and stability in that area. There may have been stragglers in Imus, but the possible presence of snipers did not alter the reality, definiteness and finality of that and neighboring towns' liberation, in the same manner that the existence of underground movements in the Philippines in previous years did not make the Japanese occupation any less actual, real and certain. Under the circumstances, the amnesty commission and the trial court were right in finding that there was absolutely no necessity, as a war measure, for the summary execution of a citizen who, if guilty of past offenses, was not a dangerous criminal and had no opportunity or desire to sabotage and endanger the American position.

Colonel Adevosos's testimony relates to conditions on February 13 and before. Even if we should take this testimony at face value, it would not aid the cause of the defendants. The trial court found and the evidence conclusively shows that Dr. Gabriel was apprehended and killed on the 15th. The lapse of two days made a whole lot of difference in a lightning and one-sided battle. In making a strenuous effort to move back the date of the killing, the accused realized the decisive importance of the difference. The American drive towards the city south of Manila was swift and unopposed, till the Japanese reached the prepared positions in the capital from which they could run no farther and had no notion or means of counter attacking. This we can take notice of as a matter of general information.

The farther a town was from Manila within the path or orbit of the American advance, the more secure it was from Japanese infiltrations or counter attacks. Imus was much farther south than Pasay and Paranaque from Manila and Camp Nichols, where the Japanese were pinned down although still putting up an admittedly losing fight on the 15th. And, let it be remembered, it was the military situation in Imus where Gabriel was seized, not the situation in the place where he was slain, by which we have to judge the justification or excuse under the amnesty for the defendants' acts. When Pasay and Paranaque were so safe in American hands and was so peaceful on February 15 as to permit unrestricted travels of civilians and the setting up of CIC offices in those towns and the admittance of relatives to see detainees, there can be no doubt about the security and permanence of Cavite's freedom from Japanese clutches. No amount of theories on military strategy and no amount of denial can blur the overall effect, pictured above, of the direct and circumstantial evidence for the prosecution partly corroborated by that of the defense.

With reference to the allegation that the deceased was court-martialed and was shot only after he was tried, Colonel Adevosos was also a principal witness. He testified that he "organized the court-martial and duly appointed the members thereof;" that Colonel Monford, his supply officer, being the oldest and most matured, was appointed chairman; that his authority to convene a court-martial as overall commander was recognized by the American authorities themselves, particularly, he would, say, General Swing, the Commanding General of the 11th Airborne Division, and General Swing's Chief Adjutant, Major Shummer; that he organized the court-martial because he "was informed that there was a former mayor of Paranaque who was responsible for the arrest, torture and death of some of my members in Paranaque;" that he had heard that "the former mayor was found somewhere in Cavite, so in order to give him a fair trial, I. convoked this court-martial for the purpose of gathering the real facts and also getting a real decision;" that Major Shummer was in the vicinity, that is, in the very headquarters of the 11th Airborne Division across the ROTC headquarters. He declared on cross-examination that Dr. Gabriel was not brought before him in Pasay but saw him "right in my headquarters at Wakas;" that he believed he ordered the creation of a court-martial in writing; later he said the order was issued by him verbally. Regarding the authority allegedly given him by Shummer, he said it was not in writing, adding that, in the first place, he did not need Shummer's authority. Afterward he stated "they talked to us and they did not show any opposition to what we had

done." For this reason, he went on to say, he wanted to modify what he had said before—that he was given authority by the Americans to create a court-martial. Asked if records of the court-martial were taken Adevosos answered he did not know.

Jaime Ferrer declared that he was a lieutenant colonel assigned as Adjutant General of the ROTC Hunters Guerrilla. He said that in view of the reported activities of Dr. Gabriel which were detrimental to the cause for which they were fighting, Dr. Gabriel was court-martialed in absentia sometime in September, 1944, the charges being collaboration, treason and murder. The members of this court-martial, he declared, were Captain de Leon, as chairman, and Captain Ramos and Lt. Gutierrez as members. He said the decision of the court-martial was to shoot Dr. Gabriel, and he knew this because the decision was referred to him by the court-martial. He testified that he went over the papers and, having personal knowledge of all the activities of Dr. Gabriel, he approved the verdict. A group of boys, he said, were sent out to look for Dr. Gabriel—but they came back because there was a notice from the Japanese MP that if Dr. Gabriel were shot at that time they would commit reprisals against the inhabitants of the town. So the order was not carried out. In February, 1945, a new court-martial was convoked by the commanding officer, Colonel Adevosos, when they arrived from Batangas. He continued substantially as follows: "There were reports submitted to us about the activities going on three kilometers from our advance command, post headquarters. The report was that there were Japanese discovered in the house of Dr. Gabriel and that below the house Japanese ammunition was stored. All around the area there were Japanese snipers. We went to find out where he was, and an order was issued against him sometime in February, 1945. On February 12, 1945, Dr. Gabriel was taken to our headquarters and I advised the detachment commander who was in charge of his arrest to take him to the provost marshal of our outfit, one Colonel Daza. Col. Daza went back to our headquarters informing that Dr. Gabriel refused to talk. So I reported the matter to the commanding officer and I suggested that a court-martial be convoked to try Dr. Gabriel, and I convoked the court-martial. The members of the court-martial were Lt. Col. Monford, who was the chairman, Lt. Col. Atienza, Lt. Col. Daza and myself. The prosecuting officer was Captain Noriel of the Judge Advocate Service of the unit. The formal charges against Dr. Gabriel were collaboration, treason and murder of which Dr. Gabriel was formally informed. Records of the court-martial were kept but when our unit applied for recognition all these records were taken by the PHILRYCOM and as a fact we have been trying to get those records. We even protested, to the PHILRYCOM, but we can not get them back. The accused, Dr. Gabriel, was informed of his right to have counsel, and he replied that he was going to be his own counsel. I asked Dr. Gabriel if he had witnesses and he said yes. Major Shummer being the highest ranking officer, I consulted him. After the trial, Major Shummer concurred with us in our decision for the execution. The trial of Dr. Gabriel took place on February 12, 1945. It began, at 12 o'clock and lasted at noon of February 13. Dr. Gabriel was present throughout the trial. The vote was unanimous for his conviction. After the decision, the chairman of the court-martial issued the order to execute Dr. Gabriel. It was transmitted to lit. Trinidad by the chairman of the court-martial. Trinidad was the detachment commander of the provost marshal. Trinidad was authorized to make arrests and execute orders. The following morning, Lt. Trinidad reported to me that the order had been executed."

The trial court did not believe that there was any court-martial. In this we concur. Adevosos's and Ferrer's statements contradict each other in important points and both are inconsistent, incoherent, highly incredible, and belied by indisputable facts. Adevosos's testimony, moreover, is conspicuous for its vagueness, suggestive of lack of tangible conception of what he wanted to express. The absence of any document pertaining to the alleged court-martial has not been explained away by Ferrer's explanations.

What is more, Ferrer's and Adevosos's testimony refers to February 12 and 13 as the dates of the arrest and trial. It has been seen that the defendants have not successfully challenged the prosecution's evidence that Dr. Gabriel was apprehended on the 15th, between 8 and 9 o'clock in the morning, and was executed at noon or a little later on the

same date. Nardo de la Isla, the guerrilla who was cleaning the barracks of the guerrillas at the foot of the Paranaque bridge at the time of the killing, stated that it was between 12 and 1 o'clock p.m. when the accused brought Dr. Gabriel to the headquarters in a jitney and executed him in the manner set forth at the outset of this decision. Before February 15, Dr. Gabriel had never been molested.

The point is that a trial such as that described by Ferrer could not have been concluded in half a day. Yet Gabriel was shot five hours, at the most, after he was apprehended. If we take into account the fact that according to Exhibit J, the joint statement of Perfecto Cruz and Carlos Tangol, Gabriel was taken to Pasay before he was executed in Parañaque, it becomes plain that there was no time left for a court-martial to try in the required manner, deliberate, and pass sentence on the prisoner.

The testimony of Isabel del Rosario shows beyond doubt that there was no court-martial and there was no trial. This girl made inquiries about her father at the only places in Paranaque where such trial could have taken place but the now deceased was not there. Several friends of the family, one of whom was a guerrilla colonel, also made frantic efforts to locate Gabriel to no avail.

Finally, Exhibit J gives no insinuation of a proceeding before a court-martial. What the affiants Perfecto Cruz and Carlos Tangol stated was that "upon reaching Paranaque in the office of the Commanding Officer at the headquarters, Col. Terry Magtangol (Adevoso), our Commanding Officer, told us to take Dr. Gabriel to the office of the Provost Marshal at Pasay because he had nothing to do with Dr. Gabriel. So we proceeded to the office of the Provost Marshal at Pasay."

All that Isabel del Rosario's evidence and Exh. J, pieced together, do reveal is that Dr. Gabriel was taken to Colonel Mevoso in Wakas, Parañaque; Adevoso washed his hands, telling the accused that he had nothing to do with the prisoner and to take him to the provost marshal in Pasay; Gabriel was transported to Pasay and presented to Daza, the provost marshal; Daza without any ceremony decided. Gabriel was guilty of collaboration and Gabriel was taken back to Parañaque and slain there.

Helping to discredit the idea that a court-martial was organized and a trial was held are the followings (1) A court-martial has Jurisdiction only over offenses committed by officers and men in the military service. Juan Gabriel was a civilian, never a member of the guerrilla or of the Philippine Army, and his supposed crime was committed before the Japanese were driven away from the area where Colonel Adevoso's men were detailed as supporting and intelligence unit. (2) Adevoso did not have supreme command in the area comprising Imus, Parañaque and Pasay. He stated that the job of liberation was mainly the job of the 11th Airborne Division; that the guerrillas were only employed as supporting units and to deliver information to the Americans. He made it clear that his authority was derived from the American authorities—Major General Swing and General Swing's Adjutant, Major Shuncner. This was confirmed by defendant Perfecto Cruz, who testified that the guerrillas were attached to the United States Army. By inference, he said that Colonel Adevoso did not have a separate or detached command. (3) There was a proclamation of General MacArthur dated December 29, 1944, and there was Circular No. 13 dated February 11, 1945, issued by order of the Supreme Commander, both of which directed that collaborators should be held in restraint for the duration of the war and turned over to the Philippine Government thereafter, with express injunction that they should not be tried by military courts. Colonel Adevoso admitted that the first order came to his notice during the liberation campaign and that he became aware of the circular during the latter part of February. It was highly improbable that any responsible American army officer would, in the face of or even without the above orders, sanction, much less authorize, the trial and execution by guerrillas of a prisoner for past collaboration, a man who at the time was living peacefully in what was already a peaceful municipality. Even if there was martial law, Gabriel had not committed any crime against, nor was he a menace to, the new order.

Having reached this conclusion, it is superfluous to discuss the power of Colonel Adevosio, as a legal proposition, to convoke a court-martial, further than to say that the subordinate status of his position as a guerrilla officer did not confer upon him power to convene a court-martial, general or special, or to create military courts or commissions under the Rules of war or the National Defense Act. There was a United States Regular Army commander of the area, a general officer, of whom Colonel Adevosio was at most a junior officer.

In fairness however to the accused, it may be said that we do not believe they or any of them had any rancor against Dr. Gabriel, as Mrs. Gabriel supposed, and slew him of their own volition. Recognized members of the ROTC Hunters Guerrilla of which Daza was provost marshal, their conduct and movements lead to the conclusion that they acted in obedience to orders of superior officers of their organization, failing to comprehend in their ignorance of law the bounds of their superiors authority. This circumstance should compensate the aggravating circumstance of the accused having committed the crime by means of a motor vehicle—the only aggravating circumstance we have found.

Wherefore, the sentence of death imposed on Perfecto Cruz is hereby reduced to reclusion perpetua and that of reclusion perpetua imposed on, Nicanor Ison, Jr. and Davis Velasco is affirmed. The indemnity to the heirs of the deceased is increased to P6,000, and the appellants will pay the costs of appeal.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.
Paras, J., took no part.

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