

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PABLO EGUAL ALIAS COMMANDER REYES, ET AL., DEFENDANTS AND APPELLANTS; THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APP...**

*G. R. Nos. L-13469, 14240 and 14209. May 27, 1965*

Ponente: DIZON, J.

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**DIZON, J.:**

Appeals from three separate decisions of the Court of First Instance of Batangas (Lipa City Branch) in Criminal Case No 1147 (now G. R. No. L-13469), Criminal Case No- 1148 (now G. R. No. L-14240), and Criminal Case No. 1153 (now G. R. No. L-14209). On motion of counsel for appellant Pablo Equal in G. R. No. L-13469 and G. R. No. L- 14240, and appellant Marcelo Mendoza in G. R. No. L-14209 and G. R. No. L-142-10, and appellant Sancho Diwa in G. II. No. L-14240, We granted them leave to file a joint brief. Correspondingly, We granted the prosecution leave to file only one brief in answer thereto. Appellant Gaudencio Hernandez in G. R. No. L-14240 and G. R. No. L-14209 filed his own brief to which the prosecution filed its answer. For this reason and the three cases being intimately related to each other, We now decide them jointly. To avoid confusion, however, We shall make a separate statement of each case.

(1) In Criminal Case No. 1147 (G. R. No. L-134G9), Pablo Equal, alias Commander Reyes, and Domingo Encallado, alias Commander Doming, were charged with murder for the killing of Julian Castillo. They entered a plea of not guilty and after the trial court had denied Equal's motion to quash the information on the ground that the crime charged was absorbed by that of rebellion of which he had already been prosecuted and convicted, they were tried. Equal was thereafter found guilty beyond reasonable doubt, as charged, with the aggravating circumstances of armed band and abuse of superior strength, but with the mitigating circumstance of voluntary surrender to the late President Magsaysay, and was sentenced to suffer the penalty of reclusion perpetua, to indemnify the heirs of the deceased Julian Castillo in the sum of P6,000.00, to suffer the accessory penalties prescribed by law, and to pay one-half of the costs.

Domingo Encallado was acquitted on the ground of reasonable doubt, with one-half of the costs declared de officio. Consequently, Pablo Equal is now the only appellant.

(2) In Criminal Case No. 1148 (G. R. No. L-14240), an information for assault against agents of a person in authority, with triple murder, was filed against Pablo Equal, Commander Reyes, Gaudencio Hernandez, Domingo Encallado, alias Commander Doming, Carlos Logti, alias' Commander Mailing, Sancho Diwa, alias Commander Badong, and Marcelo Mendoza, alias Commander Oscar. Their motion to quash the information upon the same ground advanced by Equal in the first case having been denied, they pleaded not guilty, were subsequently tried and found guilty as charged (except (1) Carlos Logti, who was still at large and had not been brought to trial, the case against him having been dismissed, without prejudice and defendant (2) Encallado, the case as against him having been provisionally dismissed—with his conformity—on the ground of insufficiency of evidence, with one-fifth of the costs de officio); and considering the aggravating circumstance of aimed band, without any mitigating circumstance to offset it, each of the defendants was sentenced to suffer

reclusion perpetua, to jointly and severally indemnify each of the victims in the sum of P6,000.00, to pay one-fifth of the costs, and to suffer the accessory penalties prescribed by law.

(3) In Criminal Case No. 1153 (G. R. No. L-14209), an information charging the murder of Ruperto Rublico was filed against Gaudencio Hernandez, Marcelo Mendoza, alias Commander Oscar, and a third person designated therein as John Doe, who was still at large. After due trial upon a plea of not guilty, the defendants were all found guilty as charged, with the aggravating circumstance of nocturnity, without any mitigating circumstance to offset it, and each was sentenced to suffer reclusion perpetua, to jointly and severally indemnify the heirs of the deceased in the sum of P6,000.00, each to pay one-third of the costs, and to suffer the accessory penalties prescribed by law.

## A

In the first case (Criminal Case No. 1147, now G. R. No. L-13469) the prosecution evidence clearly established the following facts.

At about 7 o'clock in the evening of October 10, 1955, Appellant Equal, armed with an automatic carbine, Hilarion Reyes, alias Commander Malvar, carrying a long firearm, together with about twenty other armed persons, arrived in front of the house of Julian Castillo—an overseer of private property at sitio Santo Toribio, Marauoy, Lipa City, Batangas. Upon seeing him, Equal and Reyes grabbed him, tied his hands and led him westward towards the railroad trucks. Lucio Castillo, a fifteen year old son of Julian, tried to follow and help his father, but on being threatened by one of the armed men, he went back to their house, and from one of the windows he saw Equal and his companions fire shots at his father and afterwards at their house, after which they left. Lucio then went to the place where his father was shot and there found him dead with several gun-shot wounds.

Hilarion Reyes was not included among the defendants in this case because he had already been separately prosecuted and convicted for the murder of Julian Castillo (Criminal Case No. 978 of the Court of First Instance of Batangas).

The record further discloses that on February 6, 1957, Equal signed a sworn statement before the Deputy Clerk, Court of First Instance of Batangas, Lipa City Branch, admitting therein that he had participated in the killing of Julian Castillo because he was one of the members of the Hukbalahap organization ordered to kill the latter due to his alleged participation in the killing of Commander Recto.

Equal's main contention is that his motion to quash the information should have been sustained because the offense charged therein was absorbed by that of rebellion of which he had already been convicted on March 28, 1957 by the Court of First Instance of Laguna (Criminal Case No. B-103).

This contention is without merit. Firstly, because the act Equal is now charged with was not among those alleged in the Laguna case as constituting the crime of rebellion. Secondly, because there is no evidence to show that the offense charged in the present case was committed as a necessary means to commit that of rebellion or in furtherance thereof. Thirdly, because while the acts constituting the offense of rebellion covered by the Laguna case were committed in the province of Laguna, the murder of which Equal is charged in the present was committed in the province of Batangas—over which the Laguna court had no jurisdiction. Fourthly, because the deceased Julian Castillo was a mere overseer of a private property, with no established connection with the government at the time; and lastly, because Equal presented absolutely no evidence to show Castillo's connection with the killing of Commander Recto.

We find, therefore, that the defense has failed to prove that the killing of Castillo was a necessary means to

commit the crime of rebellion—of which appellant had already been prosecuted and convicted.

The crime committed was murder, qualified by treachery, the evidence showing that when Julian Castillo was killed, his hands were tied, thus insuring the commission of the crime by his assailants without any risk on their part arising from any defense the victim might offer. The aggravating circumstances of abuse of superior strength and night time duly established by the evidence are deemed absorbed by that of treachery (People vs. Magsilang, 46 O. G. 1557 and People vs. Cespeñe, G. R. No. L-9346, October 30, 1957). There being no aggravating nor mitigating circumstance to be considered, the trial court was right in imposing on appellant the medium period of the penalty prescribed by law, which is reclusion. perpetua.

Modified as above indicated, the decision appealed from is affirmed in all other respects, with cost.

## B

In the second case (Criminal Case No. 1148, now G. R. No. L-14240), the prosecution evidence shows that in the afternoon of September 14, 1953, while Andres Rubico was supervising the harvest of palay in his farm in barrio San Lucas, Lipa City, Batangas, Philippines, he happened to see three persons crossing a coconut trunk bridge. Shortly thereafter he heard several shots. Minutes later, he saw coming from a distance of twenty-five meters several members of the Hukbalahap organization, amongst whom were Gaudencio Hernandez, Marcelo Mendoza and Pablo Igual. After these persons had passed, Rubico went to the place from where the shots came and there found the dead bodies of Benito Pagkaliwangan, Santiago Macatangay, and (Benjamin Yason, subsequently identified as soldiers of the Philippine Constabulary. Barrio Lieutenant Braulio Paltado also testified that while supervising the harvest of palay in his rice field, he also heard the shots; that while on his way to the place from where the shots came, he met a group of thirteen Huks, amongst them being Gaudencio Hernandez, Domingo Encallado, Marcelo Mendoza, Sancho Diwa, Pablo Igual, and Carlos Logti, the first one (Hernandez) having warned him not to reveal to anybody the killing of the three soldiers.

On September 14, 1953, the Municipal Health Officer of Batangas, after investigating the shooting, issued a certificate of the death of the three victims (Exhibit A, B and C found in the record).

On May 26, 1957, Marcelo Mendoza and Sancho Diwa signed separate extrajudicial confessions sworn to before Justice of the Peace Eulalio Chavez, wherein they admitted their (participation in the killing of the three constabulary soldiers (Exhibits D and E).

Before going further, it must be noted that the case was dismissed provisionally as against Domingo Encallado on October 4, 1957, on the ground of insufficiency of evidence, while defendant Carlos Logti did not undergo trial because he remained at large until the case was decided below.

Testifying in his own defense, appellant Sancho Diwa admitted that he was a member of the Hukbalahap, an organization Unit aimed at correcting the wrong administration of the government; that he was one of the group of thirteen links who killed three PC soldiers on September 14, 1955, claiming, however, that he did not know at that time that the victims were PC soldiers because they were in civilian clothes; that because the soldiers drew their guns, his companions also fired at them, although he himself fired shots in the air.

For his part, appellant Mendoza denied participation in the commission of the offense and claimed that he signed his extrajudicial confession without even reading it because he was repeatedly hit and maltreated. He admitted, however, that while confined in the Municipal jail of Lipa City, he was not maltreated at all by the police and that he swore to the truth of the contents of his confession before Justice of the Peace Eulalio Chavez.

Appellant Igual, on the other hand, after denying participation in the commission of the crime, testified that he

was a member of the Hukbalahap organization for eight years; that in January 1957 he surrendered to the late President Magsaysay in order to live a peaceful life, but after his surrender he was charged of rebellion in the Court of First Instance of Laguna (Criminal Case No. B-103), and was sentenced to suffer an imprisonment of one year and six months; that as a link he had several encounters with PC soldiers whom he considered his enemies; that inspite of his not having participated in the commission of the crime, he signed a statement regarding the killing of Julian Castillo incriminating himself.

Egual also invokes double jeopardy by reason of his prosecution and conviction of rebellion in the Court of First Instance of Laguna on March 31, 1957.

Appellant Gaudencio Hernandez did not admit his membership in the Hukbalahap organization.

Appellant Diwa contends that the offense charged in the present case was absorbed by that of rebellion of which he was found guilty in Criminal Case No. 774 of the Court of First Instance of Batangas, the information filed in the latter having charged that the crime of rebellion alleged therein was committed between June 30, 1950 and August 11, 1954—a period which includes the date of the commission of the crime subject matter of the present case.

For his part, appellant Mendoza contends that the proper charge against him should have been rebellion and not assault against persons in authority, with triple murder.

In the case of Diwa and Equal, it appears that the murder of the three PC soldiers was net mentioned at all in the rebellion cases filed against them, and the acts constituting rebellion of which Equal was found guilty were committed in the province of Laguna. Furthermore, the defense evidence does not show that the killing of the PC soldiers was in furtherance of the crime of rebellion. As a matter of fact, according to Diwa the victims were wearing civilian clothes at the time they were ambushed.

Upon the other hand, the mere denials of appellants can not overcome the positive testimony of Braulio Paltado and Andres Rubico linking them with the killing of the three PC soldiers mentioned heretofore, their testimony having been substantially corroborated by the extrajudicial confessions of Diwa and Mendoza themselves. True these appellants tried to repudiate the voluntariness of said confessions, but after an examination of the record, We are satisfied that they were freely made and sworn to later before Justice of the Peace Eulalio Chavez. In fact, in Criminal Case No. 1153 (now G. R. No. L-14209), appellant Mendoza testified that he had voluntarily executed his extra- Judicial confession (Exhibit E, which is marked as Exhibit A in Criminal Case No. 1153, p. 45 of the record said case).

The evidence does not show that the killing, qualified treachery, was committed with the attendance of any aggravating or mitigating circumstance. Consequently, the penalty of reclusion perpetua imposed by the trial court is correct. However, the provision in the appealed decision that indemnity shall be paid to the victims should be modified by making the indemnity payable to their heirs.

Modified as above indicated, the decision appealed from in this second case is affirmed in all other respects, with costs.

### C.

In Criminal Case No. 1163, now G. R. No. L-14209, the prosecution evidence has established that at about eight o'clock in the evening of August 22, 1953, while Ruperto Rubico, Barrio Lieutenant of Barrio San Lucas, Lipa City, and his family were sleeping in their house in said barrio, somebody shouted: "Ka Perto, Ka Perto". This awakened his daughter, Lilia and his wife, Teodora Marasigan, who in turn woke him up telling him that

somebody wanted to talk to him. Thereafter, Ruperto, followed by his wife and daughter, went downstairs where, without warning, he was fired upon by Gaudencio Hernandez and Marcelo Mendoza, this causing his instantaneous death.

Teodora's testimony shows that she had known Hernandez and Mendoza for sometime before this incident. She even testified that the motive for the killing was Hernandez' desire, to take the place of her husband as overseer of a piece of land in the barrio and her husband's refusal to give Hernandez five hundred coconut fruits for the guerrillas.

The prosecution also presented as witness Francisco Beltran, another resident of the same barrio, who testified that after he had heard shots on the evening of the incident, he brought the members of his family to a dugout from where he saw around seven persons conversing near his house; that amongst them were his "compadre", Gaudencio Hernandez, and Marcelo Mendoza, he having heard the former making the remark that he had first shot Ruperto Rubico on the leg; that as the group approached him, Hernandez recognized him and told him, "Compadre, do not be afraid of me, we killed Ka Perto."

Leoncio Pagcaliwangan, also of Lipa City, testified that at about 7 o'clock in the evening of the incident, Marcelo Mendoza, with two armed companions, went to his house and asked him whether Gaudencio Hernandez had already arrived. In reply he said that Hernandez had not yet arrived, but a little while later, Hernandez actually came; that a short while after the group had left his house, Pagcaliwangan heard shots from the direction of the house of Ruperto Rubico.

In connection with this case, it appears that on May 25, 1957, after PC Corporal Torres had investigated him, Mendoza made an extrajudicial confession (Exhibit A, p. 45 of the record in Criminal Case No. 1153, and Exhibit E, p. 151 of the record of Criminal Case No. 1158) wherein he admitted his participation in the killing of Ruperto Rubico in company of Igual, Hernandez, one Faustino Rochas and others, and stated further that it was Gaudencio Hernandez who ordered the killing of Rubico because of his desire to replace him as overseer and because of Rubico's refusal to give coconuts to their organization.

In his defense, Mendoza testified that although he had been a member of the Hukbalahap since June 1950, he surrendered in 1953 to Tarciano Rizal in Calamba, Laguna; that as a result of the investigation to which he was submitted by PC soldiers, he made the sworn statement Exhibit A, claiming, however, that the killing of Rubico was in furtherance of rebellion.

Mendoza's contentions are without merit. Although Rubico was a barrio lieutenant, the record contains no evidence at all that his murder was absolutely necessary to carry out the purpose of the rebellion. That Mendoza was a member of the Hukbalahap organization is no reason why all his acts and misdeeds should be considered in furtherance of, or absorbed by rebellion.

Moreover, appellant Mendoza has not shown that he had even been prosecuted and convicted of rebellion. On the other hand, the prosecution evidence is sufficient to establish that Rubico was killed by Mendoza and his companions upon orders of Gaudencio Hernandez who had a strictly personal grudge against the victim.

For his part, appellant Hernandez claims that the testimonies of Teodora Marasigan and Lilia Rubico are not worthy of belief and that the extrajudicial confession of appellant Mendoza should not affect him adversely, it being admissible only as against the latter. He also tried to establish an alibi, claiming that at the time of the commission of the crime, he was in his house attending to a sick child, and that when he went to the house of Rubico, he saw the latter already dead and sprawled on the ground near the stairs.

After going over the record, we found nothing sufficient to show sufficient ill motive on the part of Teodora

Marasigan and her daughter to induce them to testify falsely against appellants, nor any other factor sufficient to discredit their testimonies. Both witnesses knew appellants well and long before the incident, and they positively testified that they were the ones who killed Ruperto. Moreover, their testimony is strongly supported by Francisco Beltran's uncontradicted testimony to the effect that Hernandez was his "compadre", that, on the night in question, he had heard Hernandez telling Mendoza that he had first shot Ruperto on the leg, and that later Hernandez even told him not to be afraid as they had already killed Ruperto.

In all these cases it is true that the witnesses for the state failed to reveal and disclose the identity of the perpetrators of the crime for almost three years, but we give to this circumstance little importance considering that at the time of the commission of the crime and for some time thereafter, the bands of Huks roaming in the locality were still strong and ruthless, and it was natural for said witnesses to be afraid to tell the truth about what they knew until they felt that it was safe for them to do so.

The crime committed by appellants Mendoza and Hernandez is also that of murder, without the attendance of any aggravating or mitigating circumstance. Consequently, We find the penalty imposed by the trial court to be correct. Wherefore, the appealed decision is affirmed in toto, with costs.

Bengzon, C. J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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