

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DARIO MARGEN ET AL., DEFENDANTS. ANDRES MIDORANDA,
DEFENDANTS-APPELLANT.**

G.R. No. L-2681. March 30, 1950

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a judgment of the Court of First Instance of Samar convicting appellant of murder and sentencing him to life imprisonment with perpetual absolute disqualification, to indemnify the heirs of the deceased Diego Testor in the sum of P2,000 and to pay costs.

The evidence shows that some time before March 11, 1944, the now deceased Diego Testor was asked by one Ponting to take a quantity of fish to a constabulary detachment in the barrio of Trinidad, municipality of Calbayog, province of Samar. The detachment was made up of seven or eight men with Dario Margen in command. Needing food for his children, Testor traded the fish for camote, and when he was sent for by Sgt. Margen to make him account for this breach of trust, he brought with him to the barracks a quantity of another kind of fish, called kalapion. Irritated by Tester's conduct, Sergeant Margen took hold of the fish and threw them into Testor's face, and then he had Tester's hands tied behind his back and gave him fist blows. Taking their cue from the sergeant, three of the soldiers, namely, Julian Tarrayo, Domingo Ramos (now deceased) and Andres Midoranda, also maltreated Testor by hitting him in different parts of the body. Thereafter, Sergeant Margen forced Testor to eat up two of the kalapions. In this the sergeant was aided by Tarrayo, who shoved the fish into Testor's mouth, and by Midoranda, who held the loose end of the rope with which Tester's hands were tied. After this ordeal Testor was taken to Calbayog where, despite medical attendance, he died the following day, March 12, 1944. The cadaver presented various contusions, but autopsy revealed that death was due to internal hemorrhage resulting from the perforation of the intestines by stiff fish bones.

For the death of Diego Testor, Margen, Tarrayo, and Midoranda were prosecuted for murder. But only Midoranda, the herein appellant, was tried because the other two were able to escape.

There is hardly any doubt as to the essential facts. While appellant would have the Court believe that he did not join Ms companions in maltreating the deceased, alleging that all he did was to stand by and watch, this allegation is belied by the testimony of eye-witnesses whose veracity has not been put in doubt. Indeed, appellant's own witness, Eleuterio Anabeso, admitted on cross-examination that appellant was among those who slapped the deceased in the face. The evidence is, we believe, quite clear that appellant cooperated with his co-defendants in binding and beating up the deceased as well as in the no less inhuman act of making him devour raw fish—flesh, scales, spines, and all.

It is not disputed that the crime of murder was committed in this case, it appearing that the acts which resulted in the death of Diego Testor were performed when the latter, with his hands bound behind his back, was entirely defenseless. But counsel for the defense argues that, in the absence of proof of conspiracy, appellant should not be

held liable for the said crime because he merely obeyed the orders of his superior.

Obedience to an order of a superior gives rise to exemption from criminal liability only when the order is for some lawful purpose (Art. 11, par. 6, Revised Penal Code). Sergeant Margen's order to have the deceased tortured was not of that kind. The deceased may have given offense. But that did not give the sergeant the right to take the law in his own hands and have the offender subjected to inhuman punishment. The order was illegal, and appellant was not bound to obey it. Moreover, it does not appear that in taking part in the maltreatment of the deceased, appellant was prompted solely by his sense of duty toward his superior. What appears is that he and his companions had a common grievance against the deceased, because the latter had misappropriated a quantity of fish intended for their consumption. It was, therefore, but natural that they should all want to teach the deceased a lesson by making him suffer for the fault he had committed.

Having taken direct part in the unlawful acts which resulted in the death of the deceased and nothing having been proved which would exempt him from criminal liability, appellant must be held as co-principal of the crime of murder charged in the information. We do not find in the circumstances attending the commission of the crime anything that should aggravate or mitigate criminal liability, and as the penalty imposed below is in accordance with law, the sentence appealed from is hereby affirmed with costs against the appellant.

Moran, C.J., Ozaeta, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

MORAN, C.J.:

I hereby certify that Mr. Justice Montemayor, who is now in Baguio, took part in the disposition of this case and voted in favor of this decision.

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