

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
SILVESTRE LIWANAG ALIAS LINDA BIE, DEFENDANT-APPELLANT.***G.R. No. L-27683. October 19, 1976*

Ponente: CONCEPCION JR., J.

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Appeal from the judgment of the Court of First Instance of Bataan, finding the accused guilty of violating the provisions of Republic Act No. 1700, otherwise known as the Anti-Subversion Act, and sentencing him to suffer the penalty of reclusion perpetua, with the accessories of the law, and to pay the costs.

It is not disputed that in June, 1942, the accused Silvestre Liwanag alias Linda Bie, Nene, Bets, Apong Iro, Silver, Pet, Apong Pedro, Agustin, and Seniong, then a young man from the farms of Concepcion, Lubao, Pampanga, fired by patriotic fervor, joined the "Hukbo ng Bayan Laban sa Hapon", more popularly known by its acronym "Hukbalahap", an organization whose purpose, as its name implies, was to resist the Japanese occupation forces in the Philippines. He held the position of commander of Squadron 18-E with station in Lubao, Pampanga until 1944, when he was promoted to the rank of military inspector, a position he held until liberation when the organization was disbanded. Before the national elections of 1946, the Hukbalahap was revived. The accused was designated provincial commander for Pampanga and later as vice commander of the Central Luzon Regional Command (CLRC).

Sometime in 1948, the Communist Party of the Philippines (CPP) held a conference in the mountains of Norzagaray, Bulacan, attended, among others, by Luis Taruc, Pedro Taruc, Peregrino Taruc, Castro Alejandrino, Jose and Jesus Lava and the herein accused Silvestre Liwanag. The accused was nominated to the Central Committee (CC), which is the governing body of the Party. In that conference, it was also agreed to change the name of "Hukbong Mapagpalaya ng Bayan" or HMB. Being a member of the Hukbalahap and the Central Committee of the Communist Party of the Philippines, the accused carried over his membership to the HMB. The accused was designated as supervisor and adviser to Squadron 18 of Field Command (FC) 25 of the HMB operating in the province of Bataan until early in 1956. Among his duties were to see to it that orders and directives coming from the Regional Command (RECO) 2, comprising the provinces of Bataan, Zambales, Pampanga, Tarlac, Pangasinan and Bulacan, are obeyed and implemented. The accused upon orders of his superior, planned and effected the capture of Orani, Bataan in 1949 and Camp Makabolos in Tarlac on August 26, 1950.

In the latter part of 1956, the accused was named chief of the RECO Military Department (RMD) of RECO 2, a position he held until March, 1958. His territory included the provinces of Tarlac, Pampanga, Zambales and Bataan. As chief of the RMD, he supervised the armed forces of RECO 2 and gave lectures to members.

In February, 1958, the appellant and his men had an encounter with Government forces in Magalang, Pampanga. The HMB sustained three casualties, while the Government had two, including a P. C. lieutenant. The HMB under the command of the appellant retreated to Telabastagan, San Fernando, Pampanga, where they stayed until about

the last part of March, 1958, when they again had an encounter with the P. C. and had to retreat to Bataan.

After this encounter, the appellant asked for, and was granted, leave to rest and recuperate from his ailment which he spent in the mountain of Bataan. Although on leave, his advice was sought after.

In the evening of June 21, 1960, a PC patrol led by then Major Wilfredo Encarnacion captured the appellant and his wife, Rosita Manuel, in their hideout at Barrio Kalungusan, Orion, Bataan.

Thenceforth, the appellant was charged for violating the provisions of Republic Act No. 1700, otherwise known as the Anti-Subversion Act, in an information filed before the Court of First Instance of Bataan, for having unlawfully and wilfully continued and remained as officer and/or ranking leader of the outlawed Communist Party of the Philippines and its military arm, the Hukbong Mapagpalaya ng Bayan, until his apprehension on June 21, 1960, without having re-nounced his aforementioned leadership and/or membership therein within the period prescribed by law, and, while re-maining as such leader or high-ranking member, has taken up arms against the Government by making and conducting raids, ambushes and armed attacks against civilians, Philippine Constabulary, and local police forces.[1]

Pursuant to the provisions of Section 5 of Republic Act No. 1700, the preliminary investigation was conducted by the Court of First Instance of Bataan. The appellant was present during said preliminary investigation and was re-presented by counsel who extensively cross-examined the witnesses for the prosecution. Finding a prima facie case against the appellant, the Court issued the corresponding[2] warrant for the arrest of the appellant and thereafter set the case for trial.[3]

Upon being arraigned, the appellant, assisted by his counsel, waived the reading of the information and entered a plea of not guilty.[4] In view of the desire of his counsel to file a motion to quash, the court granted the appellant twenty (20) days within which to do so.[5]

On April 14, 1961, the appellant filed a motion to quash the information upon the grounds that the defendant has been previously convicted of rebellion based upon the same overt acts as in the instant case, and that Republic Act No. 1700 is an ex post facto law (bill of attainder) in that it changes the punishment and inflicts a greater punishment or penalty than that annexed to the crime when committed.[6] The court denied the motion on September 11, 1961.[7]

The case was subsequently set for trial, and in the course thereof, the prosecution moved that the testimony of the witnesses presented during the preliminary investigation of this case be adopted as part of the evidence in chief of the prosecution. The trial court granted the motion subject to the condition that the witnesses be further cross-examined by counsel for the accused.[8]

At the trial, the witnesses for the prosecution who testified at the preliminary investigation were recalled and were again cross-examined by counsel for the appellant. To bolster their case, the prosecution presented three (3) additional witnesses. The defense, on the other hand, presented the appellant himself who stated that after his apprehension, he was charged with rebellion before the Court of First Instance of Pampanga and found guilty thereof;[9] and he was also charged with murder before the Court of First Instance of Tarlac and acquitted;[10] and that he surrendered to the PC patrol at Calungusan, Orion, Bataan on June 21, 1960.[11] On being cross-examined by the court, however, the appellant admitted membership in the Hukbalahap, and later in the HMB, from 1948 to 1960, and did not take advantage of the amnesty offered in 1948.[12]

On March 28, 1967, the trial court rendered the appealed decision finding the accused guilty of the crime of subversion, as charged. For security reasons and upon previous request, the decision was promulgated in the Court of First Instance of Rizal, Pasig Branch, since the accused was then confined at the Fort Bonifacio

Stockade, Makati, Rizal.[13]

In seeking a reversal of the decision, the appellant assigned four errors allegedly committed by the trial court. On the fore is his claim that he was deprived of his fundamental right to confront the witnesses against him when the trial court granted the motion of the Fiscal that the testimony of the witnesses presented during the preliminary investigation be adopted and made part of the evidence for the prosecution.

The Constitution guarantees an accused person the right to meet the witnesses against him face to face.[14] This provision "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent the conviction of the accused upon depositions or ex-parte affidavits, and particularly to preserve the right of the accused to test the recollection of the witnesses in the exercise of the right of cross-examination." [15]

Here, the testimony sought to be made part of the evidence in chief are not ex-parte affidavits, but testimony of witnesses taken down by question and answer during the preliminary investigation in the presence of the accused and his counsel who subjected the said witnesses to a rigid and close cross-examination. The inclusion of said testimony was made subject to the right of the defendant to further cross-examine the witnesses whose testimony are sought to be reproduced and, pursuant to said order, the witnesses were recalled to the stand during the trial and again examined in the presence of the appellant. Upon the facts, there was no curtailment of the constitutional right of the accused to meet the witnesses face to face.

The appellant also contends that the "two-witness" rule on the same overt act, as provided for under Republic Act No. 1700, has not been observed and complied with in convicting him. In support thereof, the appellant presented a brief summary of the testimony of the witnesses for the prosecution which would tend to show that no two witnesses testified to the same overt act.

The law adverted to, Section 7 of Republic Act No. 1700, provides that "No person shall be convicted of any of the offenses penalized herein with prison mayor to death unless on the testimony of at least two witnesses to the same overt act or on confession of the accused in open court."

The offense is punishable by prison mayor to death if the offender is an officer or ranking leader of the Communist Party of the Philippines or of any subversive association as defined in Section 2 of Republic Act No. 1700; or if such member takes up arms against the Government.[16]

Appellant's being an officer or ranking leader of the Communist Party of the Philippines and its military arm, the "Hukbong Mapagpalaya ng Bayan" or HMB, is borne out by the testimony of Santos Miguel, Melencio Guevara, Pablo Guintu, and Lazaro Esteban, former associates of the appellant in the Communist Party of the Philippines and the HMB. In addition, there is his sworn statement[17] wherein the appellant admitted membership in the Central Committee of the Communist Party of the Philippines and recounted his prismatic rise in the "Hukbalahap" and later in the HMB, as well as the numerous armed clashes he and his men had with the Philippine Constabulary and police forces. There is also the testimony of Pablo Guintu, Melencio Guevara, and Sgt. Sales Creencia as to the gun battle between a PC patrol and a group of HMB men led by the appellant on June 8, 1960, in Mt. Timak, Abucay, Bataan, and on June 21, 1960, in Calungusan, Orion, Bataan, where the appellant was captured along with his wife. Besides, appellant admitted in court that he was a member of the "Hukbalahap" and later the "Hukbong Mapagpalaya ng Bayan" or HMB and fought against the government.

The appellant further claims that he had been charged with rebellion and subversion based upon the same overt act, and since he had already been convicted of rebellion, he cannot now be prosecuted for subversion.

Violation of Republic Act No. 1700, or subversion, as it is more commonly called, is a crime distinct from that of actual rebellion.[18] The crime of rebellion is committed by rising publicly and taking up arms against the Government for any of the purposes specified in Article 134 of the Revised Penal Code; while the Anti-Subversion Act (Republic Act No. 1700) punishes affiliation or membership in a subversive organization as defined therein. In rebellion, there must be a public uprising and the taking of arms against the Government;[19] whereas, in subversion, mere membership in a subversive association is sufficient, and the taking up of arms by a member of a subversive organization against the Government is but a circumstance which raises the penalty to be imposed upon the offender.

Anyway, in the rebellion case, the appellant and several others were charged and convicted of rebellion for having risen publicly and taken up arms against the Government for the purpose of removing the allegiance of the Republic of the Philippines or its laws, the territory of the Philippines, and in furtherance thereof, engaged in combat against the forces of the Government, destroyed property, and committed serious violence during the period from May 28, 1946 to June 19, 1957.[20]

In the instant case, however, the accused is prosecuted under Republic Act No. 1700 for having remained a high ranking member of the Communist Party of the Philippines and its military arm, the HMB, from January, 1946 to June 21, 1960, without having renounced his membership in said organizations; and, being a member or officer of said subversive association, has taken up arms against the Government.

Although the information charges the appellant with having taken up arms against the Government, the same is not specific as to the period covered by it. But, since the appellant is prosecuted for violation of Republic Act No. 1700 it is deducible that the period covered is that from June 20, 1957, when the Act took effect, up to June 21, 1960, when the appellant was captured. Inasmuch as the rebellion case covered the period up to June 19, 1957 and the period covered in the instant case is from June 20, 1957 to June 21, 1960, the claim of having been put twice in jeopardy for the same act cannot be sustained.

Finally, the appellant asserts that the decision should have been promulgated in the Court of First Instance of Rizal, Quezon City Branch, considering that he was then detained or confined at Camp Crame, Quezon City, and not in the Pasig Branch of said Court; and that the decision should have been promulgated by Judge Pedro Navarro of the Court of First Instance of Rizal and not Judge Tito V. Tizon of the Court of First Instance of Bataan.

The appellant's contention is premised upon his claim that he was then confined at Camp Crame, Quezon City. The records show, however, that he had been confined at Fort Bonifacio (then known as Fort William McKinley), Makati, Rizal, since November 20, 1962[21] and continued to be detained therein during the continuation of the trial, up to its termination.[22] Appellant's claim is, therefore, without merit.

As to the fact that Judge Tito V. Tizon personally read the decision instead of Judge Pedro Navarro, suffice it to state that the decision was promulgated in the sala of Judge Pedro Navarro of the Court of First Instance of Rizal which has jurisdiction over the place of confinement or detention of the accused, upon the request of the Judge of the Court of First Instance of Bataan, pursuant to the provisions[23] of Section 6 of Rule 120. The reading of a decision is a mechanical act which may be delegated by the court.

UPON THE FOREGOING, the decision appealed from should be, as it is, hereby affirmed, with costs.

SO ORDERED.

Barredo, Antonio, and Aquino, JJ., concur.

Fernando, (Chairman), J., in the result.

[1] p. 6, Original Record.

[2] p. 168, Original Record.

[3] p. 174, Original Record.

[4] pp. 184, 191, Original Record.

[5] p. 191, Original Record.

[6] p. 195, Original Record

[7] p. 235, Original Record.

[8] p. 386, Original Record.

[9] Exhibits 1 and 2.

[10] p. 117, T.S.N.

[11] pp. 118-119, T.S.N.

[12] pp. 120-121, T.S.N.

[13] p. 1013, Original Record.

[14] Article III, Section 1, No. 17, 1935 Constitution.

[15] U.S. vs. Javier, 37 Phil. 449.

[16] Section 4, Republic Act No. 1700.

[17] Exhibit B.

[18] People vs. Hernandez, L-6025-26, May 30, 1964, 11 SCRA 223.

[19] Cariño vs. People, L-14752, April 30, 1963, 7 SCRA 900.

[20] Exhibit 2.

[21] p. 342, Original Record.

[22] pp. 981 987, Original Record.

[23] pp. 1013, 1016, Original Record.

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