

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FLORENTINO PATERNO, ARADES LAGBAWAN, CERBESA
MALIMBASAO, SARMIENTO PANGANAY, ENRIQUE LEMENTE AND
MANGAPA TALBIN, DEFEN...**

G.R. No. L-2665. March 06, 1950

Ponente: TUASON, J.

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TUASON, J.:

There is little or no dispute as to these facts. The appellants were members of an underground organization called volunteer guards. On February 8, 1943, while they and other volunteer guards were gathered at their camp in barrio Tagabakid, municipality of Mati, province of Davao, they were attacked by a Japanese patrol guided by Primo Jurolan and Demenciano Chavez. On the 12th, the appellants, with Ignacio Vicente, Tranqui Manapos and other volunteer guards, marched to Jurolan's barrio, one or two kilometers distant from their camp, in search of the men who had betrayed them. Finding Jurolan and his wife, Delfina Gatillo, below their house, defendants Cerbesa Malimbacao, Arades Lagbawan and Sarmiento Panganay tied Jurolan's hands behind his back and led him upstairs. Jurolan's wife's hands were similarly bound and she was taken into the house, but the identity of the accused who did this is not disclosed by the record. Inside the house, the couple were stabbed and killed with daggers, the husband by Arades Lagbawan and the wife by Enrique Lemente. When the victims were already dead, Mangapa Talbin set fire to the house with Jurolan's three day-old live infant, as well as its parents' lifeless bodies, inside, as the result of which the child perished in the fire. The accused took Jurolan's two elder children out of the house before burning the house.

The court below found the defendants guilty of murder for the death of Delfina Gatillo and sentenced Florentino Paterno to reclusion perpetua and his five co-defendants to an indeterminate penalty of 10 years and 1 day to 17 years, 11 months and 1 day of reclusion temporal, and to indemnify the heirs of the deceased in the sum of P2,000. For the death of the child (no reference to the burning of the house was made) the court sentenced all the accused to reclusion perpetua and to pay an indemnity of P2,000 to its heirs. The accused were also condemned to pay proportionate shares of the costs. For the murder of Primo Jurolan, the defendants were pronounced entitled, to the benefits of amnesty Proclamation No. 8 for the reason that Jurolan, as the court found, was a Japanese spy.

The defendants' plea on this appeal is that they acted in obedience to direct orders and threats of one Anselmo Onofre. It is alleged that they committed the crimes from fear of that man, fear of being themselves slain if they refused to comply. It is said that Onofre was the recognized overall commander of the defendants organization and that he was the only one who had a firearm, a .45 caliber pistol, the defendants being provided with no more weapons than bolos.

The accused did not introduce any evidence on their behalf to substantiate their plea. They rested their case on the testimony of Ignacio Vicente and Tranqui Manapos, two of their companions who were used by the prosecution as witnesses.

As the Solicitor General says in his brief, these witnesses turned hostile to the prosecution and testified virtually in favor of the appellants. Ignacio Vicente swore on direct examination that Paterno was the leader of the band and was the man who had Primo Jurolan and his wife killed and their house burned with their baby inside. But on cross-examination, in answer to very leading questions, he declared that Anselmo Onofre it was who was their supreme commander and who ordered the slaying of the Jurolan couple and the destruction of their dwelling. The next witness for the prosecution, Tranqui Manapos, in his examination-in-chief declared in the same vein as Vicente did on cross-examination.

It is to be noted that in these two witnesses' affidavits, sworn to before the justice of the peace, and in their testimony before the provincial fiscal, not even a hint was made of Anselmo Onofre. For this reason the trial judge believes that what is contained in Vicente's and Manapos' affidavits is the truth and that in deviating from their previous statements their motive was no other than a desire to free Paterno from punishment. In this we concur. Vicente's and Manapos' explanation for not naming Onofre to the justice of the peace and the fiscal; that is, they were afraid of him, is unconvincing, since Onofre was not around when they made their statements—in fact Onofre's whereabouts was unknown—and particularly since they were already in the custody and under the protection of peace officers. Moreover, the affidavits were made in June, 1946, when the war was over, complete peace and order had been restored and civil government reestablished.

The defendants themselves made written and sworn confessions before the same justice of the peace, and none of them, except Paterno and Lementé, implicated Onofre. More, these confessions were produced by the accused before the Amnesty Commission as the sole evidence on which they relied for their petition for discharge under the amnesty. It is unthinkable that evidence of vital importance to their defense, so vital as to be the sole point stressed by them in the court below and in this instance, should have been forgotten or withheld by all the accused, except two, for no other reason than fear of an absent, or dead, man.

The defendants take exception to the admission of their confessions, introduced in evidence as Exhibits D, E, F, G and I, on the theory that they were mere copies. The objection is not well taken. The impugned exhibits are certified true copies of carbon copies of the original, copies which were kept at the office of the justice of the peace. The non-presentation of the copies which contained the defendants' signatures was explained by the fiscal, who stated that the original had been destroyed by fire.

Exhibit D to I, independent of Vicente's and Manapos' testimony, are in themselves conclusive proofs of appellants' guilt. Their voluntary character has not been challenged. Although Paterno's affidavit (Exhibit D) incriminates Onofre, yet it does not speak of compulsion or duress brought to bear on him or any of his fellow-defendants. So even if we should assume, for the sake of argument, that the crimes at bar were perpetrated by Onofre's order, such order would not serve to justify or excuse appellants' deeds.

It was only Lementé, the accused who, besides Paterno, implicated Onofre, that made a statement which, if true, might exempt him from criminal responsibility with respect to the killing of Delfina Gatillo. Lementé stated in his affidavit that Onofre commanded him at the point of a pistol to kill Jurolan's wife. But no credence can be given to this part of Lementé's statement. There was absolutely no need for Onofre, granting that he was present, to force an unwilling tool to take the life of a defenseless woman when to do the killing himself would require less effort on his part than to threaten and intimidate a comrade.

From the facts set forth in this decision, the appellants have been correctly found guilty of murder with reference to the slaying of Delfina Gatillo, but they had the same degree of participation in the crime and all should be sentenced to reclusion perpetua. For setting fire to the house with the resulting death of the child, they are guilty of arson, not murder, under Article 321, paragraph 1, of the Revised Penal Code. Murder or homicide is absorbed

in arson as defined in this article. Murder or homicide in a juridical sense would exist if the killing were the objective of the malefactor and the burning of a building were resorted to only as the means of accomplishing his purpose. The rule is otherwise when arson, as in this case, is itself the end and death is a mere consequences. However, the punishment imposed by the trial court is correct in view of all the circumstances. The indemnity for Delfina Gatillo's and her baby's death should be raised to P6,000.00 each. With these modifications, the appealed decision is affirmed, with costs of the appeal charged against the appellants in equal share.

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

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