

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENITO CRUZ, ET AL., DEFENDANTS. FERMIN TOLENTINO, BENITEZ CRUZ AND PATERNO CRUZ, DEFENDANTS AND APPELLANTS. D E C I S...

G.R. No. L-11870. October 16, 1961

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Rizal convicting appellants Paterno Cruz and Benito Cruz of "rebellion with robbery with homicide", and appellant Fermin Tolentino of "rebellion with arson, with murder and robbery". The case is before us, the penalty imposed upon appellants being life imprisonment.

On or about November 23, 1953, the Provincial Fiscal of Rizal filed with the Court of First Instance of said province an information accusing said appellants, together with Elpidio Gantan (alias Marco Polo, alias Acosta, alias Maralva), Domingo, de la Torre (alias Meding, alias Espiritu), Espiridion Salcedo (alias Lafredo), and Amado Sanchez Cruz (alias Enriquez) of the "complex crime of rebellion, with multiple murder, robberies and arsons", allegedly committed as follows:

"That on or about May 28, 1946, and for sometime prior and subsequent thereto and continuously tip to the present time, in the province of Rizal, Philippines, and within the jurisdiction of this Honorable Court and in other municipalities; cities and provinces and other parts of the country where they have chosen to carry out their rebellious activities, "the said accused, being then ranking officers and/or members of, or otherwise affiliated with the Communist Party, of the Philippines and the 'Hukbong Mapagpalaya Ng Bayan (HMB)' otherwise known as the Hukbalahap (HUK), the latter being the armed forces of said Communist Party, having come to an agreement and having decided to commit the crime of rebellion, and, thereby conspiring and confederating among themselves together with all of the 31 accused in Criminal Cases Nos. 14071, 14082, 14270, 14315 and 14344 (Politburo Cases) in the Court of First Instance of Manila, with other members, officers and/or affiliates of the Communist Party of the Philippines and the 'Hukbong Mapagpalaya Ng Bayan (HMB)' or HUKS and many others whose identities and whereabouts are still unknown, acting in accordance with their conspiracy and in the furtherance thereof, and mutually helping one another, did then and there willfully, unlawfully and feloniously help, support, promote, direct and/or command the 'Hukbong Mapagpalaya Ng Bayan (HMB)' or the Hukbalahap (HUK) to rise publicly and take up arms against the Government of the Republic of the Philippines, or otherwise participate in such public uprising for the purpose of removing from the allegiance to the said government and laws thereof, the territory of the Philippines or portion thereof, as in fact the said 'Hukbong Mapagpalaya Ng Bayan (HMB)' or the HUKS, pursuant to such conspiracy, have risen publicly and taken up arms against the Government of the Republic of the Philippines to attain said purpose by then and there making armed raids, sorties, ambushes and attacks against the Philippine Constabulary, the Civilian Guards, the Police and Army patrols and other detachments constituted and organized by the government of the Philippines, as well as upon ordinary civilians, and as a necessary means to commit the crime of Rebellion in connection therewith and in the furtherance thereof, have then and there committed wanton acts of murders, pillages lootings, plunders, arsons and planned destructions of private and

public properties to create and spread disorders, terrors, confusions, chaos and fear among the population and by the use of force and intimidation, organized different barrio organizations to secure supplies and materials for the support and maintenance of said uprisings. to wit:

I

That on or about March 20, 1951, at about 8:30 o'clock in the evening, in the municipality of Antipolo, province of Rizal, the herein accused Benito Cruz, leading some armed members of the 'Hukbong Mapagpalaya Ng Bayan' including the accused herein Paterno Cruz, with intent of gain and for the purposes of procuring supplies for their organization, entered the residence of John D. Hardie, and with violence and intimidation upon the said John D. Hardie, took and carried away therefrom personal properties of material values consisting of a typewriter, a radio, several pieces of jewelry, books, clothings and other articles belonging to the latter amounting to Five Thousand Pesos (P5,000.00), more or less, and that before leaving the premises, the said Benito Cruz and Paterno Cruz, cooperating' with one another and with the other members of the 'Hukbong Mapagpalaya Ng Bayan' present thereat, tied the hands of John D. Hardie and Donald Capuano and thereafter shot them to death together with Irene W. Hardie.

II

That on March 21, 1951, in the municipality of Pililla, province of Rizal, some 70 armed members of FC 32 of the "Hukbong Mapagpalaya Ng Bayan" led by Comdr. Robert, fought the members of Co "D" of the 14th BCT, Armed Forces of the Philippines under Capt. Conrado Cabague.

III

That on or about April 21, 1951, in the municipality of Moron, province of Bataan, the accused Fermin Tolentino, as the Commanding Officer of FC 25 of the 'Hukbong Mapagpalaya Ng Bayan', leading some 70 armed members of the said organization, attacked, fired at and engaged into a fight the officers and men of a detachment of the Armed Forces of the Philippines, resulting to the deaths and injuries of some of the said officers and/or man, and that during the same year, in the municipality of Hermosa, same province, the said accused Fermin Tolentino, with a group of armed Huks, attacked and engaged into a fight the officers and men of another detachment of the Armed Forces of the Philippines thereat.

IV

That on or about November 15, 1952, in the municipality of San Mateo, province of Rizal, the accused Domingo dela Torre and about 12 other armed men, all members of FC 46, RECO 4, of the 'Hukbong Mapagpalaya Ng Bayan', in support of and/or in furtherance of the movement of the said organization to overthrow the established government of the Republic of the Philippines, while soliciting food from civilians thereat, fought elements of the 7th BCT, Armed Forces of the Philippines and the Civilian Commando Unit of Montalban, Rizal.

V

That on or about April 5, 1951, elements of the Armed Forces of the Philippines had an encounter with about fifty (50) armed Huks under commander Silang at Sitio Malabayas, Sampaloc, Tanay, Rizal, remitting in the death of one (1) Huk, two (2) EM and wounding of another enlisted man.

VI

That on or about December 11, 1951, elements of the Armed Forces of the Philippines had an encounter with about fourteen (14) armed Huks under Commander Aladdin at Sitio Kaulanog, Tanay, Rizal, resulting in the wounding of one (1) enlisted man.

VII

That on or about April 28, 1949, at kilometer 62 at Salubsob, in the municipality of Bongabong, in the province of Nueva Ecija, an undetermined number of HMBs jointly led by Commanders Viernes, Marzan, Lupo and Mulong, treacherously ambushed, assaulted, attacked and fire upon the party of Mrs. Aurora A. Quezon and her PC escort, whom they considered as their enemies, resulting in the death of Mrs. Aurora A. Quezon, Baby Quezon, Mayor Bernardo of Quezon City, Maj. P. San Agustin, Lt. Lasam, Philip Buencamino III and several soldiers, and injuries' to General Jalandoni and Capt. Manalang.

VIII

That on or about August 25, 1950, in the municipality of Tarlac, in the province of Tarlac, an undetermined number of armed HMBs, raided, assaulted and attacked Camp Makabulos and set fire on the buildings and installations therein killing Maj. E. D. Orlino, Capt. E. D. Cruz, Lts. Manacias, N. C. Tan, Eusebio Cabute, and several enlisted men, including Rosario Sotto, a Red Cross Nurse.

IX

That on or about August 26, 1950, in the municipality of Sta. Cruz, in the province of Laguna, about 100 armed HMBs, with intent of gain and for the purpose of procuring supplies and other materials for the support and maintenance of the HMB organization, forcibly brought the cashier of the Provincial Treasury, Vicente Reventar, from his house to the Provincial Capitol and at the point of guns, forced him to open the treasury vault and therefrom, took money amounting to more than P80,000.00 consisting of different denomination including 50-, 100-, and 500 peso bills. On this same occasion, these dissidents took and carried away typewriters and other office supplies belonging to the Republic of the Philippines, which they found in the Provincial Capitol buildings and also burned and looted private buildings in the said municipality.

X

That in the various municipalities of Rizal and other provinces throughout the Philippines, the leaders, members and affiliates of the Communist Party of the Philippines and those of the 'Hukbong Mapagpalaya Ng Bayan' have committed similar acts of murders, arsons and kidnappings."

It appears that in the evening of March 20, 1951, the Hardie Farm in the municipality of Antipolo, province of Rizal, was raided by Huks or members of the "Hukbong Mapagpalaya ng Bayan" (HMB), the armed force of the Communist Party of the Philippines, one of the aims of which is to overthrow by force of arms the Government of the Philippines. After ransacking the place and taking therefrom a typewriter and a radio set, as well as stationary, clothings, foodstuffs and various other articles, the raiders tied the hands of John D. Hardie and his foreman Donald Capuano and shot them to death, together with Mrs. Hardie. Late the month, a combat patrolled by Capt. Conrado M. Cabagui of the 14th BCT, with the assistance of one Tomas Timbresa, as guide, located a Huk camp in the Sierra Madre Mountains. The agents of the law attacked and captured the camp, in which they found, among other objects, the radio set and the typewriter, Exhibits A and B, taken by the dissidents from the Hardies.

Moreover, on July 26, 1951, appellants Paterno Cruz and Benito Cruz, who are brothers, were apprehended in the barrio of San Rafael, Montalban, Rizal, together with several other persons, by a group of soldiers, under the command of Capt. Jose Carandang, 19th BCT. Upon investigation, said appellants made the affidavits Exhibits V, X, AA and Y in which they admitted being Huks. Benito Cruz further admitted having risen to the rank of Huk Commander and being known as Commander Saling, with 12 men under him, which was confirmed by Paterno Cruz in his statement Exhibit Y. Moreover, Benito Cruz and some of his men indicated the place in the mountains whereas they allegedly defected from the HMB—they hid their arms, which were, accordingly, recovered by the authorities. Again, Nicolas Lipunan and Tomas Timbresa testified that they were formerly members of the HMB; that, as such, they were detailed as "cargadores" to transport the goods and effects looted from the Hardie Farm,

when it was raided by the Huks on March 20, 1951; that Benito Cruz and Paterno Cruz participated in said raid as members of the HMB; and that (according to Lipunan) Benito Cruz was one of the three (3) Huks who shot Mr. and Mrs. Hardie, and their manager Donald Capuano.

Benito Cruz and Paterno Cruz claimed, however, to have made and signed their aforementioned affidavits (Exhibits X and Y) under duress. Furthermore, Paterno Cruz denied having participated in the raid of the Hardie Farm or having any knowledge about the Huks. Said appellants, likewise, introduced the testimony of several residents of Montalban, who vouch safed for them as peaceful and law abiding citizens.

His Honor, the Trial Judge, found this evidence insufficient to offset the "overwhelming evidence for the prosecution including the confession" of said appellants. Indeed, the latter did not identify the soldiers who allegedly maltreated them and they showed no visible signs of maltreatment, apart from the fact that their aforementioned affidavits contain some exculpatory statements which are inconsistent with the allegation of duress. Besides, nothing in the records before us indicate a possible motive for any of the witnesses for the prosecution to falsely inculcate appellants Benito Cruz and Paterno Cruz. In short, we find no justification whatsoever for disturbing the conclusion reached by the lower court with respect to the participation of Benito Cruz and Paterno Cruz in the aforementioned raid of the Hardie Farm.

Upon the other hand, appellant Fermin Tolentino admitted being a Huk, although he denied having held any rank or responsible position in the organization or having adopted the name "Commander Caviteño". Furthermore, Onofre de Jesus—a member of the HMB from 1943 to 1953 when he surrendered, who had held responsible positions in the organization until he became commanding officer of FC-23—testified that Tolentino had been Commanding Officer (Co) of the Flying Squad of FC-18 in 1948, CO of the Security Force under Linda Bie in 1949, CO of FC-25 in 1950, G-3 of FC-25 in 1951 and again CO of FC-25 in 1952; that during the raid of Orani, Bataan, on January 5, 1949, by the Huks, Tolentino was one of the officers who ordered the burning of houses therein; and that said appellant took part, also, in the Huk attack at Camp Makabulos, Tarlac, in August 1950.

Similarly, Pablo Guinto, another former Huk, whose wife is Tolentino's aunt, testified that he (Guinto) formed part of the band of Huks led by Tolentino that attacked Culis, Hermosa, Bataan, on January 11, 1951; that a store was looted on that occasion; that a Chinese was then shot and killed by Tolentino; that he (Guinto) was likewise with the group of Huks, under the command of Tolentino, that raided Orani sometime in 1948 or 1949, Morong, Rizal, on April 21, 1951, and Hermosa, Bataan on December 2, 1951; and that Tolentino was the person responsible for the killing of one Valeriano and his son in the raid of Hermosa.

Again, Capt. Julio Dimagiba, commander of the detachment stationed at Dinalupihan, Bataan, in August, 1949, related how he recovered the dead bodies of Baldomero Simbulan, Antonio Cruz and an unidentified hunchback, who were victims of the Huk attack in said municipality on August 23, 1949, and found each corpse with a tag reading "Ako ang pumatay, Commander Caviteño", the alias of appellant Tolentino, who was apprehended at an army check point in Grace Park, Caloocan, Rizal, on May 27, 1953. He then had a gunshot wound on the breast, and tried, at first, to hide his identity by giving a name different from his. Upon investigation, he later confessed to having been a Huk and made the statements Exhibits BB, CC, HH, II and JJ, in which he admitted having been the Commanding Officer of FC-25 and being known as Commander Caviteño. While under detention, in connection with this case, he escaped, but was recaptured somewhere in Pampanga.

During the trial, he testified that members of the army had maltreated him and then forced him to sign several statements. Besides, he denied the inscription found in the tags aforementioned, as well as having assumed the "alias Commander Caviteño" or having been with any raiding party of the HMB. Lauro David and Remigio Soliman were, also, placed on the witness stand by appellant Tolentino, to corroborate the latter part of his

testimony.

Commenting thereon, the lower court had the following to say:

"The denial and explanation proffered by the accused and his witnesses cannot prevail over the clear and positive testimony of the State witnesses regarding his role in the several raids staged by the HUKs in the province of Bataan, but more particularly in the Makabulo massacre. On top of all these, the record is replete with at least eight confessions made by the accused Fermin Tolentino on separate occasions. In Exhibit 'BB' taken by Sgt. Rejualos on May 27, 1953 and interpreted by Sgt. Quiambao, the accused declared that he joined the HMB as a private, then promoted to squad leader and later to staff officer, G-3 until he became commander FC No. 25, Reco 2 from October, 1952 to December of the same year; that he was armed with a revolver, caliber 38; that his men were armed with thirty Garands and automatic carbines. Three days later, he gave another statement Exhibit 'OO' before Atty. Jose de la Fuente wherein he explained how his unit operated in ambushing the enemy; that during his membership, FC No. 25 had an encounter at Moron, Bataan in 1950 and at Pajo between Zambales and Bataan in 1951; that FC No. 25 had 100 men or 12 squads with Bataan as the area of operation. On June 3, 1953 the accused gave another statement, Exhibit 'PP', wherein he admitted having joined the HMB as member in 1946 at Lubao, Pampanga; that his reason for joining: was his disgust at his father's refusal to allow him to go to places like Manila; that he began his career under Commander Alexander of FC No. 18 (converted into FC No. 25). On July 14, 1963, he gave another statement, Exhibit 'HH', before Lt. Estoque and interpreted by Roque Lapuz wherein he re-counted offices held, the encounters mentioned in Exhibits 'BB' and 'OO' and added that in 1950, he studied two months in Reco 2 under Linda Bie as instructor; that he was G-8 of FC No. 25 from July, 1951 to August, 1952. He reiterated his previous statements in an other confession on August 18, 1953, Exhibit 'II'."

We are fully in accord with this view. Needless to say, apart from his bare testimony, appellant Tolentino has not introduced any evidence on this alleged maltreatment by agents of the law, aside from the fact that the same is refuted by the exculpatory details contained in his afore-mentioned statements.

As stated in the brief for the Government, appellants herein are guilty of simple rebellion (People vs. Nava, L-9483, January 30, 1960; People vs. Hernandez, 52 Off. Gaz., 4612), inasmuch as the information alleges, and the records show that the acts imputed to them were performed as a means to commit the crime of rebellion and in furtherance thereof, although as Huk Commanders, appellants Benito Cruz and Fermin Tolentino fall under the first paragraph of Article 135 of the Revised Penal Code, which prescribes the penalty of prision mayor and a fine not exceeding P20,000, whereas appellant Paterno Cruz comes under the second paragraph of said article, which prescribes the penalty of prision mayor in its minimum period. Accordingly, the penalty noted out to appellants Benito Cruz and Fermin Tolentino should be reduced to ten (10) years of prision mayor, with the accessory penalties prescribed by law, and to pay each a fine of P10,000, and appellant Paterno Cruz should be sentenced to six (6) years, eight (8) months and one (1) day of prision mayor, with the accessory penalties prescribed by law.

Thus modified as to the designation of the crime committed and the penalties the decision appealed from is hereby affirmed in all other respects, with the proportionate part of the costs against said appellants. It is so ordered.

Bengzon, C. J., Bautista Angela, Labrador, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

DISSENTING OPINION

PADILLA, J.,

I dissent on the point of law only for the reasons stated in my concurring and dissenting opinion in the case of People vs. Geronimo, 100 Phil., 90; 53 Off. Gaz., 68, 92.

Judgment modified as to the designation of the committed.

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