

## **THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTINO DEL MUNDO, ALIAS COMMANDER SUMULONG, ACCUSED-APPELLANT.**

*G.R. No. L-39051. June 29, 1982*

Ponente: MAKASIAR, J.

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### **MAKASIAR, J.:**

This is a case of kidnapping with murder involving the Huks, members of the Hukbong Mapagpalaya ng Bayan, the military arm of the Communist Party of the Philippines.

Counsel for Faustino del Mundo, alias Commander Sumulong, admits that the said accused ordered the killing of the victim, Marciano T. Miranda, 41, the barrio captain of Barrio Balitucan, Magalang, Pampanga, who was an alleged army informer and who was opposed to the candidacy of Rogelio Tiglao, a provincial board member (p. 11, Brief; p. 140, Rollo).

Del Mundo contends that he should be convicted only of homicide and sentenced to reclusion temporal medium and that the trial court erred in convicting him of the said complex crime and in sentencing him to reclusion perpetua (p. 12, Brief).

For his part, the Solicitor General submits that Del Mundo is guilty of that complex crime and should be sentenced to death.

The evidence shows that between five and six o'clock in the afternoon of October 13, 1969 Felixberto Macalino (alias Commander Berting), Numeriano Cabrera, Bartolome Lacson, Fernando Macasaquit and four other persons, all armed with firearms, were in Barrio Balitucan, looking for Miranda. Not finding him in his house, the armed group, accompanied by Ponciano Salvador, cruised around the barrio in a jeepney driven by Policarpio Avenir.

Near a brook around two hundred meters from Miranda's house, the group saw a truck driven by Miranda. Cabrera talked with Miranda who shortly thereafter instructed Avenir to drive the truck to his (Miranda's) house. The group brought Miranda, whose hands were handcuffed (No. 19, Exh. D), to Barrio Sta. Lucia, Magalang and delivered him to Commander Joe Bombay, Commander Mike and two persons.

The following day, October 14, Faustino del Mundo and Ricardo Pangilinan brought Miranda in a jeepney to Sitio Cauayan, Barrio Pampang, Angeles City. After the jeepney was parked near a bamboo grove, Del Mundo interrogated Miranda in the presence of Maximo Licup, Tomas Licup, Dionisio Angeles, Domingo Ocampo and Bernardo Pineda (son-in-law of Del Mundo, Exh. B-1) who had followed the jeepney upon Del

Mundo's instruction. Del Mundo asked Miranda why he was fighting Tiglao. After Miranda denied that imputation, Del Mundo boxed him. Del Mundo threatened to kill him if he did not tell the truth.

Meanwhile, Angeles, Ocampo, Tomas Licup and Maximo Licup started digging a grave. As Miranda persisted in his denials, Del Mundo directed Pangilinan to bind Miranda and bring him near the grave. Pangilinan complied.

Del Mundo told Miranda to say his prayers.

While Miranda was praying, Maximo Licup, acting on a signal given by Del Mundo, struck Miranda with a pipe. Miranda fell into the grave. Del Mundo told him that he (Miranda) would rot in the grave for not telling the truth. Angeles, Ocampo and the two Licups covered the grave. Then, Del Mundo and his companions left the place.

The kidnapping and killing were politically motivated. Miranda refused to support Tiglao, the candidate for Congressman of the Huks. He supported Rafael Lazatin, the Nacionalista candidate (No. 15, Exh. 1-Cabrera).

More than six months later, or on May 8, 1970, a team of Constabulary soldiers, acting on the information furnished by Pineda, ordered some detainees to exhume the body of Miranda in Barrio Cauayan. Two corpses in an advanced state of decomposition but with the clothes partly preserved were exhumed in the spot where Miranda was buried. The city health officer issued an exhumation report wherein he noted that one of the skulls showed the absence of six upper teeth and a linear fracture in the upper jaw and that the nasal bones were fractured (Exh. A).

Miranda's skeletonized remains were identified by his wife, Eufracia Quiambao, and by his brother, Domingo. Eufracia recognized the cadaver as that of her husband because of his clothes and the fact that his molars were missing. Domingo confirmed the absence of the six molars which, according to him, were removed by the dentist when Miranda was still single.

Domingo also identified the body by means of the hair which was reddish. On the basis of that identification, a death certificate was issued and the Government Service Insurance System paid Miranda's wife P5,000 as the insurance compensation due to the heirs of a barrio captain who was killed.

Even before that exhumation, or on January 24, 1970, a Constabulary investigator filed, in connection with the killing of Miranda, in the municipal court of Magalang a complaint for kidnapping and serious illegal detention against Cabrera, Macasaquit, Lacson, Commander Berting and four other persons. The complaint was based on the statements of Salvador and Avenir (Exh. 1-Cabrera and Exh. 1-Macalino).

On November 4, 1970, another Constabulary investigator filed an amended complaint for kidnapping with murder. Del Mundo and others were included in the amended complaint. Del Mundo (Tanda) was supposed to be the second highest officer of the Huks (No. 9, Exh. C). The case was elevated to the Court of First Instance at Angeles City. On June 18, 1971, the fiscal filed with the Circuit Criminal Court at San Fernando, Pampanga an information for kidnapping with murder against Del Mundo, Pangilinan, Macasaquit, Cabrera, Macalino, Angeles, Lacson, Ernesto Meneses, Leonardo Salas, Domingo Ocampo, Maximo Licup, Tomas Licup and others not identified.

Del Mundo did not testify in his defense. As already stated, the trial court convicted him of kidnapping with murder together with Pangilinan, Macasaquit and Cabrera, sentenced him to reclusion perpetua and ordered him to pay an indemnity of P17,000 to Miranda's heirs. Macalino and Meneses were acquitted. Salas died during the pendency of the case. Only Del Mundo appealed.

His counsel de oficio contends that there was no intention to deprive Miranda of his liberty and no premeditated plan to kill him (p. 9, Brief).

That contention is not well-taken. The fact is that Miranda was forcibly removed from his barrio and deprived of his liberty for several hours and was then brought to another place where he was killed. While under interrogation, his grave was already being prepared. The fatal blow, which was inflicted upon him, caused him to fall into his grave.

We find that there was a conspiracy to liquidate Miranda and that the kidnapping was utilized as a means to attain that objective. From the surrounding circumstances, it may be inferred that Del Mundo masterminded the kidnapping or induced it and that, as observed by the Solicitor General, the killing was intended to terrorize the supporters of Lazatin.

Miranda was a public officer. His kidnapping is covered by Article 267(4) of the Revised Penal Code which imposes the penalty of reclusion perpetua to death for that offense.

The killing of Miranda was murder because his hands were bound when he was mortally assaulted (U.S. vs. Elicanal, 35 Phil. 209 and other cases).

Even without taking into account evident premeditation, the death penalty has to be imposed because Article 48 of the Revised Penal Code requires that the graver penalty for kidnapping, which is more serious than murder, has to be meted out to Del Mundo (Parulan vs. Rodas, 78 Phil. 855; People vs. Parulan, 88 Phil. 615, 624).

This case has some parallelism with People vs. Umali and De la Cruz, 100 Phil. 1095, where the accused, who with 47 companions, kidnapped three persons on the night of September 20, 1948 in Barlis, Cabanatuan City and took them to Barrio Buliran of the same city where they were killed, was found guilty of three separate and distinct complex crimes of kidnapping with murder.

However, inasmuch as Del Mundo is now seventy-eight (78) years old, the death penalty cannot be imposed upon him (Art. 83, Revised Penal Code).

WHEREFORE, the trial court's judgment is modified in the sense that the death penalty imposable on Del Mundo is commuted to reclusion perpetua with the accessory penalties provided in Article 40. In all other respects, the trial court's judgment is affirmed. Costs de oficio.

### **SO ORDERED.**

Fernando, C.J., Teehankee, Barredo, Makasiar, Aquino, Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Relova, JJ., concur.

Abad Santos, J., dissents.

Concepcion Jr., J., is on leave.

Gutierrez, Jr., J., did not take part.

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### **DISSENTING OPINION:**

#### **ABAD SANTOS, J.,**

I dissent. It seems to me that Marciano T. Miranda, a barrio captain, was killed for the purpose of rebellion. It should be noted that the appellant is a Huk Commander and the deceased was killed because he opposed a Huk candidate, Rogelio Tiglao. The main opinion itself says, "The kidnapping and killing were politically motivated." The rebellion absorbs the kidnapping and murder. (People vs. Hernandez, 99 Phil. 515.) The judgment against the appellant should be vacated without prejudice to charging him with rebellion.

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