

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MARCELO ALVAREZ, ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-10650. October 30, 1959*

Ponente: LABRADOR, J.

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This is an appeal against a judgment of the Court of First Instance of Quezon finding Marcelo Alvarez, Alejandro Bordallo, Anacleto Prado, Aurelio Amulong and Federico de Vera, all guilty of murder of a detainee, Esteban Malaluan, and sentencing each and every one of them to reclusion perpetua, and all of them, jointly and severally, to indemnify the heirs of the deceased in the amount of P6,000. The appeal of Alejandro Bordallo has been withdrawn and that of Anacleto Prado dismissed for failure to file a brief.

It appears from the record that in the afternoon of November 29, 1951, a fight took place between two individuals at the railroad station at Barrio Katimo, Tagkawayan, Quezon. Appellant Aurelio Amulong, who was in the company of Sgt. Pauaan, intervened but he thrust his carbine at one of the combatants, so Esteban Malaluan, assistant barrio lieutenant, who happened to be present, asked that he be allowed to settle the dispute between the combatants. Amulong refused to recognize Malaluan's authority or his request and cocked his carbine, so Malaluan set aside the barrel, but Amulong elbowed him. One Antonio Lopez intervened and took away the carbine and gave it to Amulong's companion.

When Amulong and Pauaan returned to their camp at Tagkawayan, they reported the incident to Lt. Alejandro Bordallo, the detachment commander, so the latter ordered 6gts. Federico de Vera and Amulong to organize a small force to bring in those who had participated in the disarming of Amulong. They did so, and proceeded the following day to Katimo and from there they took into custody the persons of Esteban Malaluan, Bernarditio Ana and Inocencio Inuval, bringing them to the army barracks at Tagkawayan.

Malaluan was taken to the office of Lt. Bordallo. Capt. Marcelo Alvarez happened to be there at that time. Sgts. de Vera, Prado and Amulong were also present. Malaluan was asked about the disarming incident at Katimo, and in the course of the investigation, Bordallo, de Vera, Prado and Amulong took turns in beating him giving him blows on the face, and on the stomach with the acquiescence of Capt. Alvarez. Malaluan claimed innocence and asked for their mercy but to no avail. Ana and Inobal, who were in a contiguous room, heard his shouts of pain, Lt. Bordello hit him on the face with the butt of his service pistol So hard was the beating that he received that he fell flat on the floor. At noon of the same day Malaluan's wife brought him food to eat, but Malaluan refused to eat, saying he could not swallow because he felt pain in the neck and throat, and pains also in the chest and back. Malaluan told her that four had beaten him up, Bordallo, Amulong, Prado and de Vera.

That day Alvarez, Bordallo, de Vera and Amulong attended a luncheon. In the afternoon, they attended some games, in which Bordallo acted as starter at the races while de Vera and Amulong as guards. In the evening they attended a dance at the school building. When at about midnight they came back to the barracks, Lt. Bordallo found that Malaluan was found dying at the stockade. Attempts to revive him by artificial respiration failed and

Malaluan died. Capt. Alvarez ordered that he be placed in a cot and covered by a blanket. Then they improvised a coffin and placed him therein; then the corpse was brought in a truck and Malaluan was interred in a place outside the cemetery, without the benefit of any religious ceremony.

Alvarez had reported the death of Malaluan to the Justice of the Peace, who requested the President of the Sanitary Division at Tagkawayan to make an autopsy of the dead body. As Malaluan had already been buried, the corpse was exhumed. Upon examination of the corpse, the President of the Sanitary Division made the following findings:

The body was in a state of partial decomposition, but still there are signs of discoloration of the skin at the head, face, neck, chest, abdomen, scrotum, both legs and at the back. While the body was rigid, the head could be easily bent in any direction. Both eyes were bulging and swollen; the nose depressed and the bones broken. The incisors of the upper jaw were detached from the gums and the upper maxilla was fractured in front. The tongue was swollen and protruding. Face and ears greatly swollen, liquefied blood coming from the ears. The cervical bones showed fracture, because the neck was soft, flabby, and the head could be easily bent in any direction. Contusions were in the breast and abdomen. The testicle was swollen to the size of mango, with signs of contusion on each side. Both legs were dark in color, showing signs of extravation of blood in the tissues.

Signs showed use of blunt instruments on various parts of the body, like the nose, the mouth, and the fracture of the base of the skull. The blows that caused the fractures had caused the death of deceased. (Exh. "G"). In the lower court, the judge found that the accused had conspired to inflict the injuries that caused Malaluan's death, so he found all of them guilty. Only the appeals of Marcelo Alvarez, Aurelio Amulong and Federico de Vera need be considered as Alejandro Bordallo has withdrawn his appeal and that of Anacleto Prado dismissed for failure on his part or that of his counsel to file a brief and give satisfactory reasons for such failure. We will now consider, therefore, the appeals of Alvarez, Amulong and de Vera.

It is a fact that defendant-appellant Alvarez, who was the Commanding Officer of the unit stationed at Tagkawayan, with Lt. Bordallo as detachment commander, arrived at Tagkawayan and passed the night at the headquarters, supposedly on his way to Guinayangan; that in the morning of November 30, 1951, Lt. Bordallo reported to him that three civilians had been detained for questioning in relation to the disarming of Sgt. Amulong the day previous; that that same morning, evidently in pursuance of appellant's order to investigate, Bordallo, assisted by Sgts. de Vera and Prado beat Malaluan, giving him blows on the stomach and on his face, while Bordallo beat him on the mouth with the butt of his service pistol.

The defense of Capt. Alvarez argues (2nd assignment of error) that the trial court erred in holding that Alvarez conspired in the mauling of the deceased Malaluan. In the first place appellant Alvarez himself admitted that he gave Lt. Bordallo express order to further investigate Malaluan. As there was no question that Malaluan had disarmed Sgt. Amulong, the supposed order to investigate could have meant nothing more than that Malaluan be beaten to make him recognize his error and compel him (Malaluan) to respect the armed soldiers. The investigators had called Malaluan a tough guy, of which fact Alvarez was informed. His order to investigate could be interpreted in no other light than that he (the tough guy) be punished for his arrogance.

Besides, Alvarez's order was to investigate Malaluan further, which shows he had investigated him already. To such effect is the testimony of Avelino Ripule (t.s.n. pp. 92-101) that while he (Ripule) was in the quarters of Lt. Bordallo at 10:00 in the morning, he saw the three civilians brought to the camp. Of these, two were sent away while one remained with Alvarez to be investigated. This was in the headquarters. As Alvarez investigated Malaluan, who was left because Inobal and Ana were sent out, Alvarez closed the door then called in Lt. Bordallo, who asked for the name of Malaluan. After that witness declared that Alvarez in an angry manner

demanding why Malaluan grabbed the firearm of Sgt. Amulong. Malaluan's answer was not heard, but then witness heard that someone was struck and the one struck fell down, lying on the floor. This witness also heard Alvarez ordering his soldiers to bring Malaluan. to the stockade.

Evidence was also submitted that at noon of that day (November 30) the wife of Malaluan came to bring him food and she saw and heard Malaluan say that he had been beaten and could not eat. The beating Malaluan had received must have been the cause of the swollen face and mouth and neck of Malaluan at noon.

Alvarez admits having directed Bordallo to continue with the investigation of Malaluan. That shows that he had already investigated Malaluan. Note, however, that the supposed investigation directed was not to elicit anything more than that Malaluan had disarmed Sgt. Amulong. Having ordered the investigation, Alvarez is certainly as guilty as the one who actually did investigate because he was the commanding officer, and according to Alvarez himself the practice of the army is "that once a case is submitted to the higher commander, the lower commander has nothing more to do with the case." (t.s.n. 11, Enriquez).

The conduct of Alvarez after he was told that Malaluan had died also discloses his guilty conscience. The following morning, he ordered that the corpse of Malaluan be wrapped, a coffin improvised, and taken near a cemetery there to be buried, without first giving opportunity to the Judge to conduct an inquest and it was only upon exhumation that the wounds causing his death were found. Again when the wife of Malaluan came to visit her husband and saw that he (Malaluan) was not there any more, Alvarez pleaded with her not to file any complaint as she would be amply rewarded.

Counsel for Alvarez claims. that there was no proof of conspiracy. This claim is groundless. Alvarez himself had ordered those under him to continue the "investigation" and report their findings to him. The investigation was not a real investigation as usually meant or understood. It was rather an order to beat Malaluan in revenge for having attempted to wrest a soldier's firearm. This is the finding of the Army Investigator himself (Exhibit "7").

Appellant Amulong disclaims any participation in the manhandling, but he, among the soldiers, had the gravest cause or reason to complain against Malaluan. The wife of the deceased pointed to him as one of the four who did maltreat the deceased. Bernardino Ana, one of those detained with Malaluan, declared categorically that as soon as the three detainees were brought to the head-quarters just after their arrest, they were beaten up by Bordallo, de Vera and Amulong. Amulong himself beat up Malaluan (ts.n. pp. 122-123, Profugo). The effects of the beating were apparent at noon when Malaluan's wife brought him food and Malaluan said he could not eat because of the beating he had received at the hands of de Vera, Amulong and Bordallo. The above testimony of Ana as to the beating of Malaluan by Bordallo, de Vera and Amulong is corroborated by Marcelino Inobal, who declared that after the three had been brought to the Army camp, Malaluan was brought to a neighboring room where he was beaten up, having heard the shouts of pain that Malaluan made while being beaten, (t.s.n. p. 163, Profugo).

The participation Of appellant de Vera on the manhandling of Malaluan is proved by the same testimonies of detainees Ana and Inobal as well as by the testimony of Malaluan's wife. Witness Eduardo Araneta, who happened to be in the quarters of Lt. Bordallo at four o'clock in the afternoon, declared that Lt. Bordallo questioned Malaluan for about half an hour. Bordallo hit him with the butt of his service pistol and Malaluan fell down and lost consciousness. The soldiers, who assisted Bordallo in investigation were Prado and de Vera (t.s.n. pp. 145-146, Profugo). At the beginning of the investigation according to Araneta the mouth of Malaluan was already swollen, thus corroborating the testimonies of Ana and Inobal that in the morning Malaluan had already been beaten by de Vera and Amulong.

The evidence on record, both oral and documentary, has been carefully studied and all together they produce the reasonable conviction that defendant-appellant Alvarez took part in the manhandling the deceased Malaluan and

had directed his subordinates to continue with the said manhandling; that both defendants-appellants de Vera and Amulong have also participated directly in beating the deceased. The trial court also found them all guilty of manhandling the deceased and there is no reason for rejecting its finding in that respect.

We now come to consider the legal nature of the crime committed on the person of the deceased. It is clear that there was use of superior strength, not only because the officers used their weapons but the manhandling' and beating took place with the cooperation of Sergeants, specially de Vera, Prado, and Amulong. The deceased was alone, helpless, without means of defending himself. The qualifying circumstance of the use of superior strength must be considered as having attended the commission of the crime and raises it to murder. On the other hand we find no circumstances that may be considered for or against the defendants-appellants. The crime committed being murder, without any aggravating or mitigating circumstances, the penalty to be imposed is reclusion perpetua. This penalty was imposed by the trial court.

Wherefore, the decision appealed from should be affirmed with costs against defendants-appellants.

Paras, C. J., Bengzon, Bautista Angela, Reyes, J. B. L., Endentia, Barrera, and Gutierrez David, JJ., concur.

CONCURRING AND DISSENTING

MONTEMAYOR, J.,

I concur in the majority opinion finding Aurelio Amulong and Federico de Vera guilty; not so with regard to Marcelo Alvarez. I am not convinced that his guilt has been established beyond reasonable doubt.

No witness has seen Alvarez commit acts of maltreatment or torture on the deceased, Esteban Malaluan. On the other hand, after being tortured and maltreated, when his wife came to bring him food and he refused to eat because he could not swallow because of the pain he felt in the neck, throat, chest and back because of the torture, he told her that the persons who had beaten him up were Bordallo, Amulong, Prado and de Vera. He never mentioned Alvarez as one of his torturers. Furthermore, Alvarez did not try to hide the death of the deceased because he reported said death to the Justice of the Peace.

All the participation of Alvarez was that he was present when the deceased was brought to the constabulary headquarters; that when he came back and was informed that Malaluan would not admit his guilt in trying to disarm a constabulary soldier, Alvarez ordered that investigation be continued. There could be no logical presumption or inference from said order that the prisoner be tortured further. For this reason, I repeat that in my opinion the guilt of appellant Alvarez has not been established beyond reasonable doubt; consequently, he should be acquitted.

Padilla, J., concurs.

Judgment affirmed

RESOLUTION

July 26, 1960

LABRADOR, J.:

In a motion for reconsideration, dated December 26, 1959, submitted by attorneys for defendant-appellant Marcelo Alvarez, claim is made that in the consideration of the evidence, those submitted by the other defendants and appellants have been taken into account as against defendant-appellant Alvarez, notwithstanding the fact that there was a separate trial for Alvarez and the other defendants. Other claims in the motion are made but they are of no moment. The Solicitor General having been asked to answer the motion for reconsideration, he submitted a reply in which, among other things, attention is called to the testimony of Avelino Ripule, witness submitted by defendant Bordallo in the course of his defense.

And it is conceded that in view of the consideration of other evidence in favor of the defendants as against the defendant Alvarez, there may have been a mistrial and if said evidence (submitted by the other defendants) were eliminated, a doubt would exist as to the existence of a proof beyond reasonable doubt of the guilt of defendant-appellant Alvarez.

In all sincerity it must be stated that when the study of the transcript of the stenographic notes was made, and the testimonies of the witnesses grouped under the following heads: "Evidence for the Defense," "Rebuttal," the writer of the opinion overlooked the fact, stated at the beginning of the trial, that the prosecution would present its evidence against all the accused at the same time and that the latter would, in turn, present their respective evidence separately from each other. So the testimony of witness Avelino Ripule was inadvertently taken into account against the defendant-appellant Alvarez. In the decision the undersigned made the following statement:

"Besides, Alvarez's order was to investigate Malaluan further, which shows he had investigated him already. To such effect is the testimony of Avelino Ripule (t.s.n., pp. 92-101) that while he (Ripule) was in the quarters of Lt. Bordallo at 10:00 in the morning, he saw the three civilians brought to the camp. Of those, two were sent away while one remained with Alvarez to be investigated. This was in the headquarters. As Alvarez investigated Malaluan, who was left because of Inobal and Ana were sent out, Alvarez closed the door then called in Lt. Bordallo, who asked for the name of Malaluan. After that witness declared that Alvarez in an angry manner, demanded why Malaluan grabbed the firearm of Sgt. Amulong. Malaluan's answer was not heard, but then witness heard that someone was struck and the one struck fell down, lying on the floor. This witness also heard Alvarez ordering his soldiers to bring Malaluan to the stockade."

But witness Avelino Ripule, whose testimony appears on the third volume of the transcript of stenographer Enriquez (pp. 92-98), was submitted by defendant-appellant Alejandro Bordallo. So that the aforecited testimony of said Ripule was inadvertently considered against defendant-appellant Alvarez when it should not have been so considered.

After discarding the testimony of Avelino. Ripule as against the defendant-appellant Alvarez, the question that presents itself is: After such elimination of direct evidence would the evidence still be sufficient to prove the guilt of Alvarez beyond reasonable doubt. The participation of Alvarez may be briefly summarized as follows: As commanding officer of the unit stationed at Tagkawayan, Alvarez passed the night at Tagkawayan in the headquarters; in the morning of November 30, 1951, Lt. Bordallo, detachment commander in the town, ordered the arrest and detention of three civilian for disarming Sgt. Amulong on the previous day; Alvarez ordered the investigation of Malaluan, one of the civilians, and by reason of such order Bordallo, with the assistance of De Vera and Prado, beat Malaluan, giving him blows on the stomach and the face while Bordallo beat him on the mouth with the barrel of his service pistol.

There is no question that Alvarez, as commander, had directed the investigation of Malaluan and his companions and that in pursuance of such order Bordallo and his non-commissioned officers beat Malaluan to such an extent that he afterwards died in consequence thereof. Otherwise stated, the legal question for us to resolve is: If by

reason of the order of investigation which Alvarez gave, his subordinates beat the civilian to such an extent that he died, may Alvarez be held criminally responsible for the death of the said civilian? The order given by Alvarez was to investigate; but the officers went beyond merely questioning the civilian, by beating him severely as a result of which he died. The Revised Penal Code provides that a person may participate in the commission of a crime as principal, by direct participation or by provocation or cooperation. (Art. 17, Rev. Penal Code.) The acts of Alvarez were limited to ordering the investigation of civilian Malaluan; he seems to have meant that Malaluan should be subjected to some punishment for his insolence against and resistance to the police officers, but there is nothing beyond that; there is nothing to show that his orders were to beat Malaluan to such an extent as to produce his death. In order that Alvarez may be considered as principal by induction, it would be necessary for the prosecution to prove that he actually directed, whether directly or indirectly, the beating of Malaluan, which evidence does not exist in the case at bar.

Under the circumstances already indicated, namely, that the testimony of Avelino Ripule should not be taken into account against defendant-appellant Alvarez and that the order of Alvarez was limited to the investigation of Malaluan without a clear direction that he be beaten, we are forced to agree with the conclusion of the Solicitor General that the participation of defendant Alvarez in the killing of Malaluan has not been proved beyond reasonable doubt.

Wherefore, the decision should be reconsidered and defendant-appellant Marcelo Alvarez is hereby, as he should be, acquitted, with the costs chargeable against him proportionately de oficio. So ordered.

Paras, C. J., Montemayor, Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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