

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BASILIO OROBIA, DEFENDANT AND APPELLANT.

G. R. No. L-2966. November 21, 1951

Ponente: JUGO, J.

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JUGO, J.:

Basilio Orobia was accused before the Court of First Instance of Camarines Sur of illegal possession of a Garand rifle. He was found guilty and sentenced to suffer from , five (5) years to seven (7) years imprisonment and to pay the costs. He appealed to this Court, evidently on the ground that only questions of law are involved.

The facts of the case may be briefly stated as follows:

Sergeant Bias Valdez and corporal Eugenio Dado of the Constabulary assigned to Naga, Camarines Sur, having received information that one Basilio Orobia residing at Bucao, barrio San Juan, municipality of Naga, Camarines Sur had in his possession a firearm, went to the defendant's place in order to verify said information. When they arrived there, they found the accused with the help of the barrio lieutenant. During the investigation, the accused at first denied having any firearm, but later he confessed that he had a Garand rifle near his house. The accused led the constabulary officers to the place where he kept the firearm In a hole, about five meters from his residence. The officers found In a sack the Garand rifle with serial No. 3569706, Caliber .30, Exhibit A. The defendant told the constabulary men that in the year 1945 an American soldier gave him the firearm. He did not state that he was a member of the Huk organization or of any other subversive group. He did not have a permit or license to possess the firearm.

At the trial, the defendant did not testify. His counsel presented only Exhibit 1 entitled "Statement of Basilio Orobia taken by Tech. Sgt. 6. P. Tacorda at HQ Cam. Sur Prov. PC Naga Camarlnes.Sur on 27 July 1981" made by the defendant five months after the firearm had been taken from his possession, and sworn to by him before the Justice of the Peace of Iriga on August 13, 19Mty Exhibit 2 which Is a circular of the Constabulary to the Provincial Commanders; and Exhibit 3 which is an affidavit of Celedonlo Bon subscribed and sworn to before the Justice of the Peace of Naga on December 6, 1947. These affidavits were not duly identified in court.

The appellant contends that he is entitled to the benefits of Proclamation No. 76 of the President, granting amnesty to the leaders and members of the Hukbalahap and the PKM. The Secretary of Justice Issued Circular No. 27, entitled "Enforcement of Amnesty Proclamation No. 76."

The question to be determined is whether the appellant comes within said proclamation and circular.

It appears that the appellant has not complied with paragraph 2 of said Circular No. 27, because the certificate required therein has not been accomplished.

He did not prove at the trial that he was a member of the Hukbalahap organization or.of any similar subversive society. Be could easily have testified in court that he was such a member if that was the fact. His affidavit, Exhibit 1, is not sufficient for that purpose; first, because it was not duly identified, notwithstanding the objection

of the Fiscal on that ground; and, second, because it is hearsay evidence, the accused having been present in court. Exhibit 3, the affidavit of Celedonio Bon to the effect that the appellant was a member of the dissident group of Abner is likewise Inadmissible, for the two reasons above stated, and for the further reason that it does not appear that the group of Abner is a part of the Hukbalahap or the PKM organisations.

In view of the foregoing, the judgment appealed from is affirmed, with costs against the appellant. It is so ordered.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason and Reyes, JJ., concur.

Bautista Angelo, J., took no part.

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