

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FEKNANDITO TOGONON, ET. AL., DEFENDANTS AND APPELLANTS.***G. R. No. L-8926. June 29, 1957*

Ponente: REYES, A., J.

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In an information filed in 1952 by the provincial fiscal of Iloilo in the Court of First Instance of that province, 94 persons were accused of "the crime of rebellion with multiple murder, arson, kidnapping, rape, robbery and physical injuries." Only some of the accused were tried, the great majority being still at large. Of those tried some were acquitted and some convicted. Among those convicted were Fernandito Togonon alias Andres Aldeguer and Coronacion Chiva alias Walingwaling.

Togonon was found by the trial judge to have joined the Huks—a group of persons who have risen publicly and taken arms against the Government for the purpose of removing from the allegiance to said Government the territory of the Philippine Islands—and to have participated in their activities in furtherance of that end, especially in the killing of the Dolinog brothers—Juan and Abundio—who, for having denounced the Huks to the Philippine Constabulary, were beheaded by Togonon while they had their hands bound. Being, however, of the opinion that the crime of rebellion cannot be complexed with murder, the trial judge pronounced Togonon guilty of two separate offenses, namely, simple rebellion and double murder, imposing upon him, for the crime of rebellion alone, the penalty of 6 years and 1 day of prision mayor, and, for the crime of double murder, an indeterminate penalty of 12 years and 1 day of prision, mayor to 17 years, 4 months and 1 day of reclusidn temporal, plus indemnity to the heirs of each of the deceased.

Coronacion Chiva, on her part, was found guilty only of simple rebellion—in consonance, obviously, with the manifestation which, as stated in the decision of the Court below, the provincial fiscal made before the commencement of the trial to the effect that he was accusing the defendants, except Togonon, of having committed that crime only— and for that crime she was sentenced to a penalty of 6 years and 1 day of prision mayor.

Both Togonon and Chiva appealed to the Court of Appeals; but that court has certified the case to us, stating that Togonon's appeal raises a question of jurisdiction and that this appellant would have to be sentenced to life imprisonment or death should it be held that the crime of rebellion could be complexed with murder, while the case against the other appellant Chiva "arose out of the same occurrence or occasion as that giving rise to the more serious offense."

As to the appeal of Togonon, the brief filed on his behalf states that he is not appealing from his conviction for rebellion but only from that part of the sentence which

further declares him guilty of murder. That manifestation dispenses with the necessity of our going into the evidence on rebellion and gives finality to appellant's conviction for that crime.

Anent the conviction for murder, the Government presented proof to the effect that some time in April, 1950, Togonon, with other Huks, held a meeting in the house of Eleno Dolinog in the barrio of Oyung, municipality of Libacao, Capiz province, and asked the people there for foodstuff, such as rice, chickens and pigs, at the same time warning them, on pain of having their heads cut off, not to report the presence of Huks in those parts to the constabulary; that disregarding the warning, Eleno Dolinog's two sons—Juan and Abundio—denounced the Huks to the local constabulary detachment, with the result that the Huks were ambushed by the constabulary soldiers; that in retaliation for what the Dolinog brothers had done, a group of Huks led by Togonon returned to the barrio and apprehended them and then with their hands bound, Togonon cut off their heads; that thereafter, Togonon and his companions took everything they could use from Dolinog's house.

Denying the imputation of murder, Togonon disclaimed any part in the killing of the Dolinog brothers. And based on his protestation of innocence and on the further claim that the killing was already absorbed in the crime of rebellion as something done in furtherance thereof, and that, in any event, the said killing was perpetrated outside the territorial jurisdiction of the trial court, the defense now contends that the conviction for murder should be annulled.

After going over the record we find that Togonon's conviction for murder cannot stand. While there appears to be clear proof that it was this accused who beheaded the Dolinog brothers, there is no denying the fact that the act was perpetrated in furtherance of the rebellion and outside the territorial jurisdiction of the trial court.

That court, therefore, had no authority to convict him of murder as a separate crime.

The Solicitor General, however, recommends that Togonon should be convicted of the complex crime of rebellion with robbery and double murder. To this we cannot agree. In line with our resolution in the case of *People vs. Hernandez, et al.*, (99 Phil., 515; 52 Off. Gaz., [10] 4612) we have in the case of *People vs. Geronimo, et al.*, (100 Phil., 90; 53 Off. Gaz., 68) made the following pronouncement:

" * * * As in treason where both intent and overt act are necessary, the crime of rebellion is integrated by the coexistence of both the armed uprising- for the purposes expressed in Art. 123 of the Revised Penal Code, and the overt acts of violence described in the first paragraph of Art. 135. That both purpose and overt acts are essential components of one crime, and that without either of them the crime of rebellion legally does not exist, is shown by the absence of any penalty attached to Art. 134. It follows, therefore, that any or all of the acts described in Art. 135, when committed as a means to or in furtherance of the subversive ends described in Art. 134, become absorbed in the crime of rebellion, and cannot be regarded or penalized as distinct crimes in themselves. In law they are part and parcel of the rebellion itself, and cannot be considered as giving rise to a separate crime that, under Art. 48 of the Code, would constitute a complex one with that of rebellion."

Consistently with the above pronouncement, the recommendation to convict Togonon of rebellion with robbery and double murder must be rejected, as must also the view taken by the trial court that this appellant could, in addition to his conviction for rebellion, be furthermore declared guilty of murder despite the fact that the latter offense was proved to have been committed in furtherance of the former, with the further circumstance that the court below had no jurisdiction to try him of that separate offense because the same was committed outside its territorial jurisdiction. It should here be recorded, however, that the dissenting justices in the cases of *Hernandez* and *Geronimo* see no reason for altering their opinion on the question of whether or not the crime of rebellion may be complex with murder and other crimes and that they sign the present decision in so far as it is not inconsistent with the view expressed by them in those cases.

As to the case against Coronacion Chiva, it is established by the testimony of the witnesses Francisco Galilea, Alfonso Hernaez, Igmedio Digidigan and Crispulo Fabillon, four surrendered Huks who testified for the prosecution, that this appellant was with them in the mountains of Lambunao, Iloilo in 1950; that she became an

officer of the Section Organization Committee (SOC) of the Huk organization in that region and that as such she collected supplies from the barrio people for the support of the Huks; that she later became chairman of the Huk medical corps and in that capacity devoted herself to the cure of wounded Huk soldiers; that she later became treasurer; that she became the common-law wife of her co-appellant Fernandito Togonon and that she used to go around armed with a revolver given her for her personal protection; but that she did not participate in the raids conducted by the Huks.

The testimony of the said witnesses is objected to on the grounds that as declarations of co-conspirators it is not admissible against her as proof that she was in the conspiracy without that conspiracy being first established by other evidence. In support of this objection, counsel cites section 12 of Rule 123, which says that "the act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration." But the objection is without merit, because, as already held by this Court, the section refers to an extrajudicial declaration of a co-conspirator—not to his testimony by "way of direct evidence (*Gardiner vs. Magsalin*, et al., 73 Phil. 114).

Testifying in her own behalf, this appellant claimed that she was not herself a Huk; that what happened was that in 1950 she was kidnapped from her barrio and brought to the mountains by Alfonso Hernaez alias Atila and then delivered to Huk Commander Nery Oti; that thereafter she lived maritally without benefit of marriage with her co-appellant Togonon; that being already under his power she came to love him by force of circumstances; that she could not return to her barrio because she was under constant surveillance; that as the constabulary forces were conducting continued raids against the Huks and she was considered as one of these although in reality she was not, she decided to give herself up and so in April, 1952 she surrendered together with her companions Deogracias Casipe and Francisco Castigador, she giving up her revolver and they their carbines.

It may well be true that this appellant, as she herself has testified and as the trial court has found, had been kidnapped by the Huks from her barrio and taken to the mountains. But even then, the evidence leaves no room for doubt that she thereafter became a real Huk by joining the Huk organization which had taken up arms against the Government for the purpose of overthrowing it, held important offices therein and took active part in some of its activities, such as the gathering or commandeering of supplies for the maintenance of the organization and the holding of meetings in different barrios for the purpose of winning the country people to the Huk cause. This is sufficient to make her guilty of rebellion. Considering, however, that, as testified to by one of the government witnesses, she did not take part in the raids conducted by her fellow-Huks, and taking also into account the circumstances under which she became identified with the Huks, we are inclined to yield to counsel's plea that she is entitled to the mitigating circumstance mentioned in paragraph 13 of the Revised Penal Code in that she "had no intention to commit so grave a wrong as that committed." This, together with the circumstance of voluntary surrender, which was appreciated by the lower court and amply supported by proof, entitles her to a penalty next lower in degree to that prescribed by law, which is prison mayor.

Wherefore, the judgment below, in so far as the appellants Fernandito Togonon and Coronacion Chiva are concerned, is modified as follows: Fernandito Togonon stands convicted only of simple rebellion and to suffer the corresponding penalty imposed by the lower court for that crime, that is, 6 years and day of prison mayor; but his conviction for double murder is annulled and set aside. Coronacion Chiva is likewise convicted of simple rebellion, and considering the presence of two mitigating circumstances, not offset by any aggravating circumstance, the penalty imposed upon her is reduced to 2 years, 4 months and 1 day of prison correctional with a fine of P5,000.

Without costs in this instance.

Paras, C. J., Bengzon, Bautista Angelo, Conception, Reyes, J. B. L., and Felix, JJ., concur.

DISSENTING OPINION

Montemayor, J.:

I concur as regards appellant Chiva. But with respect to appellant Togonon, I dissent, believing that he is guilty of the complex crime of rebellion with murder etc. according to my dissenting opinion in the case of People vs. Hernandez, (99 Phil., 515).

DISSENTING OPINION

Labkadok, J.:

I dissent for the reason stated in the dissenting opinion of Mr. Justice Montemayor in the case of People vs. Hernandez, G. R. No. L-602S, in which dissent I concurred.

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