

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ABUNDIO ROMAGOSA ALIAS DAVID, DEFENDANT AND APPELLANT.

G.R. No. L-8476. February 28, 1958

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This appeal is related to the case of *People vs. Federico Geronimo alias Cmdr. Oscar, et al.*, G. R. No. L-8936, decided by this Court on October 23, 1956 (100 Phil., 90; 53 Off. Gaz. No. 1, 68).

Herein appellant Abundio Romagosa alias David was, in an information filed by the Provincial Fiscal, accused in the Court of First Instance of Camarines Sur of the complex crime of rebellion with murders, robberies, and kidnappings, under three counts that are the last three of the five counts charged against Federico Geronimo, et al., in said case No. G. R. L-8936, *supra*:

"That on or about May 28, 1946 and for sometime prior and subsequent thereto and continuously up to the present time in the province of Camarines Sur, 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 above-named accused being then ranking officers and/or members of, or otherwise affiliated with the Communist Party of the Philippines (CPP) and the Hukbong Mapagpalaya Ng Bayan (HMB) or otherwise known as the Hukbalahaps (HUKS) the latter being the armed force of said Communist Party of the Philippines (CPP) having come to an agreement and decide to commit the crime of Rebellion, and therefore, conspiring together and confederating among themselves with all of the thirty-one accused in criminal case Nos. 14071, 142S2 14315, 14270, 15344 and with all the accused in criminal case number 19166 of the Court of First Instance of Manila with the other members, officers and/or affiliates of the Communist Party of the Philippines and the Hukbong Mapagpalaya Ng Bayan and with many others whose identities and whereabouts are still unknown, acting in accordance with their conspiracy and in furtherance thereof, and mutually helping one another, did, then and there, wilfully, unlawfully and feloniously, help support, promote, maintain, direct and/or command the Hukbalahaps (HUKS) or the Hukbong Mapagpalaya Ng Bayan (HMB), to rise publicly and take arms against the government of the Republic of the Philippines, or otherwise participate in such public armed uprisings for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof, as in fact the said Hukbong Mapagpalaya Ng Bayan (HMB) or the Hukbalahaps (HUKS) pursuant to such conspiracy, have risen publicly and taken arms against the Government of the Republic of the Philippines to attain said purpose, by then and there making armed raids, sorties, and ambushes, attacks against the Philippine Constabulary, the civilian guards, the Police and the Army. Patrols and other detachments as well as upon innocent civilians, and as a necessary means to commit the crime of Rebellion, in connection therewith and in furtherance thereof, have then and there committed wanton acts of murder, pillage, looting, plunder, kidnappings and planned destructions of private and public property and plotted the liquidation of government officials, to create and spread disorder, terror, confusion, chaos and fear so as to facilitate the accomplishment of the aforesaid purpose, among which are as follows to wit:

- That on or about the years 1951 to 1952 in the municipality of Paaacao, Camarines Sur, Philippines, a group of

Armed Huks under Commander Rustum raided the house of one Nemesio Palo, a Police sergeant of Libmanan, Camarines Sur and as a result, said HUKS were able to capture said Nemesio Palo and once captured, with evident premeditation, treachery and intent to kill, stab, shot and cut the neck of said Nemesio Palo thereby causing the instantaneous death of Nemesio Palo.

- That on or about January 31, 1953, at barrio of Santa Rita, Del Gallego, Camarines Sur a group of HMBS with Pederico Geronimo alias Commander Oscar ambushed and fired upon an Army Patrol headed by CPL Bayrante, resulting in seriously wounding of PFC Pancraccio Torrado and Eusebio Gruta, a civilian.

- That on or about February 1954 at barrio Cotmo, San Fernando, Camarines Sur, Abundio Romagosa, one of a group of four HMBS led by accused Commander Oscar with evident premeditation, wilfully, unlawfully and feloniously killed one Policarpio Tipay, a barrio lieutenant."

As in the case of Federico Geronimo, appellant Romagosa, upon arraignment, entered a plea of guilty to the information. In view of the voluntary plea of guilty, the prosecution recommended that the penalty of life imprisonment be imposed on the accused, on the ground that the charge being a complex crime of rebellion with murders, robberies, and kidnappings, the penalty provided for by law is the maximum of the most serious crime which is murder. Counsel for the accused, on the other hand, argued that the proper penalty imposable upon the accused was only prision mayor, since there is no such complex crime as rebellion with murders, robberies, and kidnappings, because the latter being the natural consequences of the crime of rebellion, the crime charged against the accused should be considered only as simple rebellion.

On October 13, 1954, the lower court rendered judgment finding accused Romagosa guilty of the complex crime of rebellion with murders, robberies, and kidnappings; and giving him the benefit of the mitigating circumstance of voluntary plea of guilty, sentenced him to suffer the penalty of reclusion perpetua; to pay a fine of P10,000; to indemnify the heirs of the two persons killed named in the information, in the sum of P6,000.00 each; and to pay the costs of the proceedings.

From the judgment accused Romagosa appealed to this Court, insisting that there is no crime of rebellion with murders, robberies, and kidnappings, and that he should have been convicted only of simple rebellion and imposed the penalty of prision mayor in its minimum period, in view of his voluntary plea of guilty.

The question of whether there is a complex crime of rebellion with murder, robbery, and kidnapping under Art. 48 of the Revised Penal Code, is exactly the same question raised and decided in the cases of *People vs. Hernandez, et al.*,* 52 O.G. No. 11, 5506, and *People vs. Geronimo, supra*. None of the members of this Court has found reason to change his respective stand on the matter as expressed in the Geronimo case, wherein the majority of this Court held that where the crimes of murders, robberies, and kidnappings are committed as a means to or in furtherance of the rebellion charged, they are absorbed by, and form part and parcel of, the rebellion, and that therefore, the accused can be convicted only of the simple crime of rebellion. Consistently with that precedent, we hold that the lower court erred in holding appellant Romagosa guilty of the complex crime of rebellion with murders, robberies, and kidnappings, and in imposing upon him the penalty for such crime.

As in the Geronimo case, there is the further question of whether, in view of appellant's plea of guilty to the information, he should be deemed to have admitted the commission of the simple crime of rebellion alone, or of rebellion and other separate crimes, if any of the counts of the information charges crimes independent of and not constituting essential acts or ingredients of the rebellion charged. As already stated, the three counts of the information against herein appellant Romagosa are exactly the same as the last three of the five counts charged against Federico Geronimo (G. R. No. L-8936). As ruled by the majority in the preceding case, the first count under the present information (the third count against Geronimo) does not charge appellant's participation and can

not, therefore, be taken into consideration in this case; the second (the fourth count against Geronimo) alleges an essential act of rebellion and is absorbed by that crime; while the third (the fifth count against Geronimo) charges the murder of one Policarpio Tibay, a barrio lieutenant, which killing, though committed within the jurisdiction of the lower court, does not appear to be related to the rebellion and hence constitutes an independent offense in itself.

The same majority of six justices of this Court maintain their view expressed in the Geronimo case that by his plea of guilty, appellant has admitted the commission of the independent crime of murder alleged in count 3 of the information, the averment that said crime was perpetrated "in furtherance" of the rebellion being a mere conclusion and not a bar to appellant's conviction and punishment for said offense, appellant having failed, at the arraignment, to object to the information on the ground of multiplicity of crimes charged. Therefore, appellant must be held guilty, and sentenced for the commission, of two separate offenses, simple rebellion and murder.

Wherefore, the decision appealed from is modified in the sense that appellant Abundio Romagosa alias David is convicted of the crimes of simple rebellion and murder; and considering the mitigating effect of his plea of guilty, appellant is sentenced for the rebellion: to suffer 8 years of prision mayor and to pay a fine of P10,000.00 (without subsidiary imprisonment pursuant to Art. 38 of the Revised Penal Code), and for the murder: to an indeterminate sentence of not less than 10 years and 1 day of prision mayor as minimum and not more than 18 years of reclusion temporal as maximum; to indemnify the heirs of Policarpio Tibay in the sum of P6,000.00 solidarily with Federico Geronimo, alias Commander Oscar (G.R. No. L-8936), and others adjudged guilty of having participated in the slaying of said deceased; and to pay the costs. So Ordered.

Paras, C.J., Bengzon, Reyes, A., Bautista Angelo, and Felix, JJ., concur.

MONTEMAYOR, J.:

I concur and dissent for the same reasons given in my concurring and dissenting opinion in the case of People vs. Geronimo, (100 Phil., 90; 53 Off. Gaz. [1.], 68).

LABRADOR, J.:

I dissent for reasons contained in the dissenting opinion of Mr. Justice M. R. Montemayor in the Hernandez cases.

ENDENCIA, J.:

I stand on my dissenting opinion expressed in the Geronimo and Hernandez cases.

DISSENTING

PADILLA, J.,

I am of the opinion that the judgement appealed from should be affirmed for the same reasons stated in my opinion in the case of People vs. Geronimo, 100 Phil., 90; 53 Off. Gaz., 68, 92.

CONCURRING AND DISSENTING

CONCEPCION, J.,

In the information herein, it alleged:

"That on or about May 28, 1946, * * * in the province of Camarines Sur, Philippines, * * * the above-named accused being then ranking officers and/or members * * * of the Communist Party of the Philippines and the Hukbong Mapagpalaya Ng Bayan (HMB) having come to an agreement and decide to commit the crime of rebellion and * * * conspiring together and confederating among themselves with all the * * * accused in criminal cases Nos. 14071, 14232, 14315, 15344 and * * * 19166 of the Court of First Instance of Manila, * * * acting in accordance with their conspiracy and in furtherance thereof, * * * did then and there, wilfully, unlawfully and feloniously, help support, promote, maintain, direct and/or command the Hukbalahaps * * * to rise publicly against the Government of the Republic of the Philippines, * * * for the purpose of removing the territory of the Philippines from the allegiance to the government and laws thereof * * * and as a necessary means to commit the crime of rebellion, in connection therewith and in furtherance thereof, have then and there committed wanton acts of murder * * * and plotted the liquidation of government officials, * * * so as to facilitate the accomplishment of the aforesaid purpose, among which are as follows:

'3. That on or about February at barrio Cotmo, San Fernando, Camarines Sur, Abundio Romagosa, one of a group of four HMBS led by accused Commander Oscar with evident premeditation, wilfully, unlawfully and feloniously killed one Policarpio Tipay, a barrio lieutenant.'" (Underscoring ours.)

In the light of the specific allegation in said information to the effect that the killing of Policarpio Tipay, a barrio lieutenant, was committed by Abundio Romagosa, "in accordance with" his conspiracy with other persons "to commit the crime of rebellion" * * * and "as a necessary means to commit the crime of rebellion in connection therewith and in furtherance thereof * * * so as to facilitate the accomplishment of the aforesaid purpose." I find it difficult, not to say impossible, to conclude that said killing is "not related" to the charge of rebellion and constitutes in itself an "independent offense." Besides, there is nothing, absolutely nothing, in the record before Us, to show that this allegation of the information is inaccurate. What is more, inasmuch as appellant is being sentenced upon his plea of guilty, we should confine ourselves, strictly, to the allegations of said Information, in the determination of the crime or crimes committed by him and in the imposition of the corresponding penalty.

In fact, had he entered a plea of not guilty, appellant would have been entitled to object to any evidence tending to prove that the killing of Policarpio Tipay was "independent" of and "not related" to the crime of rebellion charged in the information. Indeed, had he moved to quash the information upon the ground that it charges more than one offense, it would have been proper to deny the motion for the reason that only one offense was meant to be, and is actually, alleged in said information. In other words, appellant had never been advised that he is being accused of more than one (1) offense, and, hence, his conviction for murder of Policarpio Tipay, as if it were a completely distinct offense, independent and separate from that of rebellion, would be a denial of due process of law, one of the most fundamental rights guaranteed in our Constitution.

Although, evidently, the decision in the case at bar merely adheres to the view of the majority in *People vs. Geronimo* (100 Phil., 90; 53 Off. Gaz., 68)—which was not shared by five (5) members of this Court (Chief Justice Paras and Justices Bengzon, Alex. Reyes, Concepcion and Reyes, J.B.L.)—I am constrained, to dissent, therefore, insofar appellant is convicted of murder, and sentenced accordingly, in addition to simple rebellion.

*99 Phil., 515.

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