

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EUGENIO ABENDAN AND PEDRO DE GUZMAN (ALIAS MORO),
DEFENDANTS, EUGENIO ABENDAN, DEFENDANT-APPELLANT.**

G.R. No. L-1481. January 28, 1949

Ponente: PARAS, J.

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PARAS, J.:

The appellant, Eugenio Abendan, was convicted in the Court of First Instance of Pangasinan of the crime of murder and sentenced to an indeterminate penalty of imprisonment ranging from 12 years, prision mayor, to reclusion perpetua, to indemnify the heirs of Enrique Doria in the sum of P2,000, and to pay one-half of the costs. Pedro de Guzman was accused jointly with appellant but, upon motion of the fiscal, the information was provisionally dismissed before the trial as to Pedro de Guzman who was then still at large.

According to the theory of the prosecution, the appellant, chief of police of Manaoag, Pangasinan, during the Japanese occupation, asked Roberto Delfin and Olegario Samson to come to the municipal building on October 28, 1944. After the two had arrived, the appellant, considered a terror of the town, ordered them to bring out Enrique Doria from the municipal jail wherein he was then detained. As this order was not carried out in view of the resistance on the part of Enrique Doria, the appellant and one of his municipal policemen, Pedro de Guzman, themselves entered the jail and, after tying Doria's hands, took the latter out and boarded him in the carretela parked in front of the municipal building. With the five of them in the carretela which was bound for the cemetery, they stopped by the house of Simeon Arzadon, gate-keeper of the cemetery, from whom the appellant asked Olegario Samson to get the key of the cemetery's gate.

Arriving at the cemetery at 3.30 p. m., the appellant and Pedro de Guzman tied Enrique Doria to an acasia tree. After Simeon Arzadon and Olegario Samson had brought the necessary tools which they were ordered by the appellant to get, the two were asked to dig a grave into which the appellant and Pedro de Guzman pushed Enrique Doria who fell face downward. Upon order of the appellant, Roberto Delfin, Olegario Samson and Simeon Arzadon started to pour earth over the grave. As Enrique Doria was still alive and tried to get up, the appellant and Pedro de Guzman bound Enrique's feet with a rope and forced him to lie in the grave. Because Enrique was still trying to stand up, Pedro struck him on the neck with a crowbar, after which the appellant and Pedro stepped upon him and, when Doria still showed life, the appellant and Pedro took turns in chopping off Doria's ears. As soon as the grave was filled with earth upon order of the appellant and Pedro, everybody left.

The appellant denies having taken Enrique Doria to the cemetery and having caused his death in the manner related by the witnesses for the prosecution; and as a defense he alleges that Enrique Doria was taken to the Japanese garrison on the date in question, upon receipt by the appellant of a written order from the Japanese delivered by Pedro de Guzman, a noted spy having considerable influence over the Japanese in the locality; that appellant made representations for the return of Enrique Doria to the municipal jail, but the Japanese told him that Enrique was to be liquidated for being a bad man; that he left the garrison, for the municipal building in the same

carretela in which he, Pedro de Guzman and Enrique Doria rode to the garrison, without knowing what was to happen to Enrique thereafter; that he was later informed by Pedro de Guzman that the latter had killed Enrique Doria.

We are constrained to accept the theory of the defense. The appellant, a college student of the Silliman University, was a member of the USAFFE who was sent to and fought in Bataan. Placed by the Japanese in the Capas Concentration Camp, the appellant was able to escape and to continue resistance against the Japanese. Prevailed to surrender, however, he was made chief of police, although he all the time remained in contact with the guerrillas. There is uncontradicted evidence to the effect that the appellant was instrumental in the release of many persons arrested and detained by the Japanese, and that Enrique Doria was wanted by the guerrillas, and this circumstance is alleged by the appellant as one reason why he detained Enrique in jail and why he wanted the Japanese to return Enrique to appellant's custody.

While the prosecution failed to present as a witness the driver of the carretela that the appellant allegedly used in bringing Enrique Doria to the cemetery, and while Roberto Delfin and Olegario Samson could not even remember his identity, the appellant nevertheless put on the witness stand the driver of the carretela used by him in taking Enrique Doria to the Japanese garrison and in returning from the latter place to the municipal building; and said driver (Liberato Pablo) corroborated appellant's testimony.

The truthfulness of Simeon Arzadon, Olegario Samson and Roberto Delfin is doubtful, since they had every reason to be hostile to the appellant. The appellant ordered the detention of Olegario Samson and Roberto Delfin because of certain criminal charges. Simeon Arzadon had been investigated by the appellant for theft of cement belonging to the municipality of Manaoag. Indeed, the appellant once slapped and kicked Roberto Delfin in view of his admission that he had committed illegal acts. Moreover, it is improbable that the appellant would have utilized said individuals in perpetrating a heinous crime, without a showing that they were of his confidence.

Upon, the other hand, it is not improbable that Pedro de Guzman, who admittedly had connection with the Japanese garrison, was responsible for the death of Enrique Doria; and his disappearance lends support to that probability. As a matter of fact, the prosecution has implicated him in this case as a co-principal. And where there are two likelihoods, that which is consistent with the presumption of innocence will be adopted.

Even admitting, however, that the appellant was responsible for the death of Enrique Doria, appellant's participation must have had connection with his undisputed guerrilla activities, since Enrique was, according also to uncontradicted-evidence, wanted by the guerrillas. Hence, he would properly come under the benevolent provisions of the Amnesty Act. Indeed, the appellant had previously applied for amnesty; and if he failed it was only because he refused to accept the condition that he had first to admit the killing of Enrique Doria.

The appealed judgment is therefore reversed and the appellant, Eugenio Abendan, acquitted with costs de oficio. So ordered.

Moran, C. J., Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur.

DISSENTING

TUASON, J.:

I dissent. The evidence which is set out and ably discussed in the appealed decision is so conclusive and airtight as to satisfy the most fastidious mind. The witnesses were all simple folks and gave simple, flawless narration of the murder. None of them, especially the sexton, have been shown to have sufficient reason to lie. On the question

of exonerating circumstances, there was no angle in the case from which the killing could be justified, excused, or the penalty mitigated. On the contrary, in perpetrating unnecessary cruelty, burying the deceased alive, the accused forfeited all claims to sympathy and leniency and made himself deserving of the severest punishment.

I reiterate what I said in my dissenting opinion in *Barrioquinto et al., vs. Fernandez et al.*, supra, p. 642:

"Amnesty presupposes the commission of a crime. When an accused says that he has not committed a crime he cannot have any use for amnesty. It is also self-evident that where the amnesty proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of those conditions. A petition for amnesty is in the nature of a plea of confession and avoidance. The pleader has to confess the allegations against him before he is allowed to set out such facts as, if true, would defeat the action. It is a rank inconsistency for one to justify an act, or seek forgiveness for an act of which, according to him, he is not responsible. It is impossible for a court or commission to verify the presence of the essential conditions which should entitle the applicants to exemption from punishment, when the accused and his witnesses say that he did not commit a crime. In the nature of things, only the accused and his witnesses could prove that the victim collaborated with the enemy; that the killing was perpetrated in furtherance of the resistance movements; that no personal motive intervened in the commission of the murder, etc., etc. These, or some of these, are matters of belief and intention which only the accused and his witnesses could explain."

Murders, rapes and other common crimes committed by guerrillas, even though in furtherance of the resistance movement, are not proper subject of an amnesty and the amnesty proclamation covering these offenses must be regarded in the nature of a pardon. (*Villa vs. Allen*, 2 Phil., 436.)

"This brings us to the differences between legislative immunity and a pardon. They are substantial. The latter carries an imputation of guilt; acceptance a confession of it. The former has no such imputation or confession. It is tantamount to the silence of the witness. It is noncommittal. It is the unobtrusive act of the law given protection against a sinister use of his testimony, not like a pardon, requiring him to confess his guilt in order to avoid a conviction, of it." (*Burdick vs. United States*, 236 U. S., 79; 59 L. ed., 476, 482.)

"At the English common law, where the pardon is obtained before issue joined, it must be pleaded as other matters in confession and avoidance, under the particular jurisdiction." (*Villa vs. Allen*, supra.)

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