

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TEODULO ROGADO, ET AL., DEFENDANTS AND APPELLANTS.***G. R. No. 13025. December 29, 1959*

Ponente: BAUTISTA ANGELO, J.

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On September 25, 1956, Teodulo Rogado, alias Commander Sulit, Isaac Orenia, alias Commander Lawin, Domingo Golfo, alias Eser, Cresencio Arsenal, alias Sako, Pedro Merin, alias Nestor, Maximo Cerebo, alias Maneng, Pio Mercurio, alias Abling, Francisco Racoma, alias Rolando, Nemesio Arsolacia, alias Noli, and Conrado Devesa, alias Donato, were charged with murder before the Court of First Instance of Laguna for the killing of one Salvador Areza. They all pleaded not guilty.

During the trial and after several witnesses for the prosecution have testified, Francisco Racoma and Conrado Devesa were excluded from the information upon motion of the fiscal to be utilized as government witnesses. Later, upon motion also of the fiscal, the charge was dismissed for insufficiency of evidence with respect to accused Nemesio Arsolacia, Maximo Cerebo and Pedro Merin. Then counsel for the remaining accused filed a motion to dismiss on the ground that the killing of the "deceased was accomplished by them in furtherance of the huk movement, but the motion was denied.

Upon resumption of the trial, counsel for Teodulo Rogado and Pio Mercurio moved for separate trial on the ground that their defense is incompatible with the defense of their co-accused, which motion was granted by the trial court. And when both parties have submitted the case for decision, the trial court found the accused Rogado, Orenia, Golfo and Arsenal guilty as principals of the crime charged and sentenced them to suffer the supreme penalty of death, while it found Pio Mercurio guilty merely as accomplice and sentenced him to the penalty of from 8 years and 21 days of prison mayor as minimum to 14 years 19 months and 21 days of reclusion temporal as maximum, with the corresponding accessory penalties provided for by law. Each of the four principals was also ordered to indemnify the heirs of the deceased in the sum of P6,000.00 and the accomplice in the amount of P2;000.00, and all to pay their proportionate share of the costs.

Pio Mercurio having failed to file his brief, this case is before this Court only for the review of the decision rendered against the accused Rogado, Orenia, Golfo and Arsenal which imposes upon them the penalty of death.

On July 12, 1956, Salvador Areza, a farmer residing in Lilio, Laguna, left his house carrying with him a bolo on its scabbard to gather firewood in his farm in barrio Bubukal. When he failed to return home that day, his wife Lydia Nudal went out to search for him. She was accompanied by some armed men, the mayor, and a sanitary health officer, and after a brief search, they found the decapitated body of her husband in an uninhabited place in Bubukal about half kilometer away from the road. The gruesome find revealed that Areza's head was totally severed from his body with his hands tied together. The health officer, Dr. Dominador L. Gomez, found the body to be in a state of decomposition, which led him to conclude that the deceased must have died three to five days prior to his discovery. Areza's bolo and his scabbard were also found near his body.

It appears that on July 12, 1956, Teodulo Rogado, alias Commander Sulit, Isaac Orenia, alias Commander Lawin, Domingo Golfeo, alias Eser Cresensio Arsenal, alias Sako, Pedro Merin, alias Nestor, Maximo Cerebo, alias Maneng, Pio Mercurio, alias Abling, Nemesid Arsolacia, alias Noli, Francisco Racoma, alias Rolando, and Conrado Devesa, alias Donato, were on their way from barrio Sta. Lucia, Nagcarlan, to the municipality of Lilio, Laguna. They lost their way, and as they were looking for someone from whom they should get information as to their whereabouts they met Salvador Areza whom Racoma and Deveza approached. Upon their inquiry, Areza informed them, that they were in barrio Bubukal, municipality of Lilio; that there was an army camp stationed nearby; and that the soldiers occasionally go on patrol to the barrios.

The information was reported to Commander Sulit (Rogado) who in turn ordered that Areza be brought to him. After talking with him, Rogado asked Areza to lead the way for them, but Areza refused saying that he had much work to do, and besides he had a carabao with him. After a brief talk with Orenia, alias Commander Lawin, Rogado told Racoma that they were taking along Areza and that if he should refuse, he should be tied, which instruction Racoma relayed to his two companions. Merin and Arsenal, telling them to be prepared in case Areza would give them a fight. Thereupon, Racoma approached Areza and asked if he could borrow from him his bolo. Areza obliged. When Areza refused to go with them, Pio Mercurio dragged him along, and as he refused, Golfeo struck him with the butt of his gun.

After walking a short distance, Mercurio tied Areza's hands behind him. Areza protested telling Mercurio that he had not done anything wrong, whereupon Golfeo gave him a fist blow on his stomach. After walking some distance, a command to stop was heard and so they stopped. Racoma then approached Rogado and told him that they should release Areza at night but Rogado told him that Areza should be killed and when Racoma returned to the group he found that Areza was being assaulted by Orenia and Golfeo. At this moment, Racoma heard Rogado saying in the vernacular, "Kill him now so we can proceed."

Areza was then taken to a secluded place quite far from the road, which was thick forest about 20 or 30 meters away from the group, and there Golfeo ordered Areza to lie down. With Areza's bolo and ignoring the plea for mercy of their victim, Golfeo gave him a blow on the neck as he lay face down and with his hands still tied behind. With the same bolo, Arsenal also gave the victim another blow on the neck which completely severed the head from the body.

On September 20, 1956, Pedro Merin, a member of the group who surrendered to the authorities, made a sworn statement before the Justice of the Peace of Nagcarlan, Laguna, stating therein that Salvador Areza was killed by Ezer and Sako upon order of Commander Sulit. Domingo Golfeo also made a sworn statement before the justice of the Peace of Sta Cruz, Laguna, admitting his participation in the killing of Areza upon order of Commander Sulit. On September 21, 1956, Cresencio Arsenal also made a written statement before the Mayor of Sta. Cruz, Laguna, admitting that he was one of those who killed Areza. Both Domingo Golfeo and Cresencio Arsenal, while admitting their participation in the killing of the deceased, claimed in exculpation that they acted under the pressure of an irresistible force in that they merely obeyed the order of their Commander, Rogado alias Commander Sulit, who would have killed them if they disobeyed his order. The other appellants merely contended that the killing was done in furtherance of the huk rebellion.

There is no doubt that the unfortunate victim met his death in the hands of the accused who decided to take his life because of his stubborn refusal to obey their command that he lead their way to the place they wanted to go in order that they may not be exposed and caught by the agents of the law who were stationed in a nearby municipality. The only question to be determined is whether the defense they have set up is sufficient to exonerate them from liability.

As regards accused Domingo Golfeo, the evidence is clear that it was he who first struck Areza with the butt of his gun hitting him on the side of his body, then gave him a fist blow on his stomach, and after he had been taken to a secluded place, it was he who ordered Areza to lie down in the fashion adopted by the Kempetai during the gloomy days of Japanese occupation and in that position gave him a blow on the back of the neck which almost severed his head from the body. His participation in the killing of Areza cannot therefore be doubted. His only defense is that he did so in obedience to the order of his commander, and because he acted under the influence of uncontrollable fear, he should be exempt from criminal responsibility.

This defense of Golfeo is clearly untenable not only because of the well-settled rule that obedience to an order of a superior will only justify an act which otherwise would be criminal when the order is for a lawful purpose, but also because the circumstances under which Golfeo participated in the torture and liquidation of Areza cannot in any way justify his claim that he acted under an uncontrollable fear of being punished by his superiors if he disobeyed their order. In the first place, at the time of the killing, Golfeo was armed with automatic carbine such that he could have protected himself from any retaliation on the part of his superiors if they should threaten to punish him if he disobeyed their order to kill Areza. In the second place, the evidence shows that Areza was brought to a secluded place quite far from that where his superiors were at the time and in such a predicament, he and his companion Arsenal could have escaped with Areza to avoid the ire of their superiors. The fact that he carried out their order although his superiors were at some distance from him and that without pity and compunction he struck his victim in a Kempetai fashion show that he acted on the matter not involuntarily or under the pressure of fear or force, as he claims, but out of his own free will and with the desire to collaborate with the criminal design of his superiors. In the circumstances, we find that the trial court did not err in finding him responsible for the death of Areza as co-principal by direct participation.

The same situation obtains with regard to Cresencio Arsenal. It appears that he was one of those ordered by Rogado to kill Areza and in obedience to such order he had a direct participation in the killing. It was he and Golfeo who brought Areza to a secluded place and once there he helped Golfeo in killing him with the same bolo which was taken from the victim himself. Thus, it appears that after Golfeo had given the first blow on the back of the neck of Areza as he lay face down on the ground, Arsenal took the bolo himself and gave the fatal blow which completely severed the head of Areza from his body. There is therefore no doubt that Arsenal directly cooperated with Golfeo in carrying out the concerted plan of killing Areza because of the hostile attitude he adopted in denying them the help they demanded from him. Since Arsenal took part in the killing under circumstances similar to those existing in the case of Golfeo, his claim of obedience and fear of retaliation if he disobeyed his superiors' order cannot also be entertained.

The other defense of appellants refers to their theory that they killed Areza not for personal motive but in furtherance of the huk rebellion and so, if any liability they have, it is only for rebellion and for murder as they are charged. And having already been prosecuted and convicted of the crime of rebellion in Criminal Case No. SP-137 of the Court of First Instance of Laguna, their prosecution in the instant case would constitute double jeopardy.

To begin with, it should be stated that while this Court ruled in *People vs. Hernandez*, 99 Phil., 515, 52 Off. Gaz., No. 11, p. 5506, that there is no complex crime of rebellion with murder because the latter offense is absorbed by the former, however, a distinction was made in the case of *People vs. Geronimo*, 100 Phil., 90, 53, Off. Gaz., No. 1, p. 68, where we held that if the killing is inspired by personal motive such killing is not absorbed by the rebellion but may be the subject of separate prosecution. In the second place, we find that the acts with which appellants now charged do not appear included in the information for rebellion in Criminal Case No. SP-137, for in that case they were merely accused of having risen and taken up arms against the Philippine constabulary,

Armed Forces of the Philippines, police forces and other military detachments of the government, without specifying the particular acts committed against private persons or civilians which may be said to have been undertaken in furtherance of the huk rebellion. It is not, therefore, correct to say, as appellants now claim, that the act in question is already included or absorbed in the rebellion charge filed against them in said criminal case.

On the other hand, the pretense that the killing of Areza by appellants was done in furtherance of the huk rebellion is preposterous considering the fact that Areza was a mere farmer who had no connection whatsoever with any lawenforcement agency of the government. The pertinent question that arises is: Why was he then killed and brutally beheaded by appellant?

The answer is well given in the following interesting observation of the trial court:

"According to the testimony of the prosecution witness, Francisco Racoma, Salvador Areza was maltreated, tied and killed because the latter refused to lead and guide the group of Rogado to the road when he was asked by the latter to do so. Rogado's men were lost in the mountains of Lilio and they needed somebody to help them find the way out of the place. They came upon Areza working in his farm. Rogado asked him to lead the way and Areza refused saying that he had much work to do and he could not leave his carabao. Angered and irked by such stubborn refusal, Rogado after conferring with his co-defendant Orenia gave the order to take Areza along and to kill him. The killing of Areza was done solely to satisfy the anger of the leader, Rogado, who being used to the blind obedience of his men could not tolerate the refusal of Areza to carry out his wishes and desires. The rebellious movement of the group had nothing to gain by Atienza's death. On the contrary, Rogado and his group needed Areza alive in order that they could utilize him as their guide while they were in the mountains of Lilio. There is no question that they could have easily at the point of their thompsons, carbines and garands, forced Areza to lead the way. But they did not do so, because at that time Rogado was not so much interested in finding the path to the road; what concerned him most was to teach a lesson and a hard one at that, to Salvador Areza for having the temerity of saying "no" to his wish and request. Surely, to kill a person under those circumstances is obviously outside of the political intent of the Hukbalahap movement. The huks rise up in arms because they mistakenly believe that by doing so they can have desired changes in the political, social, and economic life of this country. But to accomplish such a purpose, the death of innocent civilians like Salvador Areza is unquestionably unnecessary. When the killing is done solely for the purpose of answering the lust to kill or of satisfying angered feelings, thwarted desires of leaders and followers of the Hukbalahap movement, such a killing must receive its due punishment at the hands of our courts which are called upon to do justice not only to the living but just as well to the dead."

An attempt was made by appellants to show that Areza was killed because he threatened to inform the Army of their presence in the neighborhood where he met them. Such attempt, however, is ridiculous, for Areza, being then alone and confronted with a group of armed men, could not have hurled such a threat without catering immediate death. As the trial court aptly observed: "This Court cannot believe that Areza would have been such a fool to tell that band of armed Huks that he would give them away to the Army. It is reasonable to presume that any sane person would have seen the danger of making such a statement under the circumstances, for that would have been sure death."

The trial court found that the crime was committed with the qualifying circumstances of treachery, aggravated by abuse of superior strength and the fact that it happened in an uninhabited place, for which reason it imposed upon appellants the supreme penalty of death. While some members of the Court agree to the existence of the above aggravating circumstances, others however doubt if they could be entertained in the case of appellants who, as members of the Hukbalahap organization, rightly or wrongly, were of the belief that they were justified in doing what they had done because Areza committed something inimical to the purposes of their organization. At any rate, the requisite number of votes for the application of the supreme penalty not having been obtained, the only alternative is to impose upon them the penalty of reclusion perpetua.

With this modification, we affirm the decision appealed from in all other respects, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Endencia, Barrera and Gutierrez David, JJ., concur.

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