

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PABLO BLAZA AND FRANCISCO MANGULABNAN, DEFENDANTS. FRANCISCO MANGULABNAN, DEFENDANT-APPELLANT.*G.R. No. 13899. September 29, 1961*

Ponente: PADILLA, J.

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In an amended information subscribed by the Provincial Fiscal and filed in the Court of First Instance of Laguna, Pablo Blaza alias Fernandez and Francisco Mangulabnan alias Ellen were charged with the crime of kidnapping Dorotea Fernandez, Fe Fernandez and Buenaventura Fernandez on 23 April 1953, for the purpose of extorting ransom from them, defined and penalized under the provisions of article 267 of the Revised Penal Code, as amended by Republic Act No. 18 (crim. case No. SC-161). Their alleged confederates are those named defendants in crim. case No. SC-120 of the same court, to wit: Lope Cunanan alias Perla, Ruperto Esquillo aliases Sergio and Alex, Reymundo Abesamis aliases Rading, Reddy, Mike, Manding, Uto, Ben, Pepe and North.[1] Upon arraignment the defendants Blaza and Mangulabnan, assisted by counsel de oficio, pleaded not guilty.

On 5 November 1957 the defendant Mangulabnan by counsel de parte, attorney Emilia C. Saturnino, filed a motion to quash the information against him, claiming that he is one of the defendants in crim. case No. 1940 of the Court of First Instance of Pampanga, *People vs. Guillermo Paguinto et al.*, for "the complex crime of Rebellion with Multiple Murders, Robberies, Arsons and Kidnappings, " on 27 counts of atrocities allegedly committed on different dates in the provinces of Pampanga, Pangasinan, Bulacan, Nueva Ecija, Tarlac and Laguna (Exhibits 1 & 1-A); that in criminal case No. 15909 of the Court of First Instance of Laguna, *People vs. Apolinar Oracion et al.*, for rebellion complexed with multiple murder, robbery, arson, rape and kidnapping, the kidnapping of Dorotea Fernandez, Fe Fernandez and Buenaventura Fernandez on 25 April 1957 (for which the defendant Mangulabnan was separately charged in crim. case No. SC-161) was for the purpose of raising funds for the HMB organization and a necessary means of committing the crime of rebellion (Annex B to motion to quash); that on 17 December 1956 the said court, rendering judgment in the latter case, held that "such act was in furtherance and a mere ingredient of the offense of rebellion" and "cannot be punished separately from the latter (rebellion) or complexed with it" (Annex C to motion to quash); and that the Supreme Court in the cases of *People vs. Hernandez*, 52 Off. Gaz. 5506, *People vs. Geronimo*, G. R. No. L-8936, 23 October 1956 and *People vs. Togonon*, G. R. No. L-8926, 29 June 1957, has held that "the crimes of murders, arsons, kidnappings, etc., when committed as a means to or in furtherance of the subversive ends, become absorbed in the crime of rebellion, and cannot be considered as giving rise to a separate crime;" and contending that the defendant Mangulabnan having been charged with the principal offense of rebellion in crim. case No. 1940 of the Court of First Instance of Pampanga is twice put in jeopardy of being punished for the same offense in crim. case No. SC-161 of the Court of First Instance of Laguna, prayed that the information in the latter case be quashed. After hearing, during which counsel de parte for the defendant Mangulabnan and the Provincial Fiscal appeared and orally argued in support of their motion and objection, on 5 November 1957 the Court denied the motion to quash

and set the case for trial on 29 November 1957 at 9:00 o'clock in the morning. However, the Court cancelled the trial set for 29 November 1957 and reset it for trial on 12 December 1957 at the same time. On 11 December 1957 the defendant Mangulabnan filed a motion for reconsideration of the order denying his motion to quash and 12 December 1957 the Provincial Fiscal, an objection thereto. On the same day, 12 December 1957, the Court denied the motion for reconsideration and set the case for trial on 27 January 1958 at 9:00 o'clock in the morning.

On 16 January 1958 the defendant Mangulabnan by counsel de parte filed a petition praying that the case be reset for trial on 25 February 1958 on the ground that a petition for certiorari testing the legality of the denial of the defendant's motion to quash would be filed in the Supreme Court after the needed amount for filing and attorney's fees shall have been raised by the defendant.

On 22 January 1958 the defendant Blaza filed a motion praying for separate trial in view of the delay in the trial of the case due to several postponements at the behest of his co-defendant.

On 23 January 1958 the Court denied Blaza's motion and reset the case for trial on 25 February 1958.

On the day set for trial, 25 February 1958, the assistant provincial fiscal and counsel de oficio for the defendant Blaza, attorney Ariston Oblena, appeared but counsel de parte for the defendant Mangulabnan, attorney Emilia C. Saturnino, did not appear despite previous notice. In view thereof the Court entered an order imposing upon the absent counsel a fine of P25, with subsidiary imprisonment in case of insolvency, appointing attorney Tirso Caballero as counsel de oficio for the defendant Mangulabnan, who prayed that he be relieved from his appointment because he is related to the offended parties, setting the case for trial on 3, 4, 5, 6 and 7 March 1958 at 9:00 o'clock in the morning, and appointing attorneys Celso Cablones, Leandro Rebong, Benjamin Agarao and Enrique Villanueva as counsel de oficio for the defendant Mangulabnan, should counsel de parte fail to appear on the first day of the trial.

On 28 February 1958 counsel de parte for the defendant Mangulabnan filed a petition in the trial court explaining that her failure to attend the trial of the case on 25 February 1958 was due to a sudden indisposition that she felt of which there was no material time to notify the Court and prayed that she be excused for failure to attend the trial of the case on that date, and alleging that a petition for certiorari with preliminary injunction to be filed against her client in criminal case No. SC-161 and that she had received subpoenas from the City Attorney of Quezon City, Courts of First Instance of San Pablo and Cabanatuan Cities and the City Fiscal of Manila to appear before them as counsel on 3, 4, 5, and 7 March 1958, prayed that the trial of the case be postponed indefinitely until the Supreme Court shall have decided her client's petition for certiorari with preliminary injunction. On 1 March 1958 the same counsel filed a motion for reconsideration of the order entered by the Court on 35 February 1958 imposing upon her a fine of P25, with subsidiary imprisonment in case of insolvency, reiterating the same reasons stated in her petition filed on 28 February 1958.

On the date set for trial, 3 March 1958, counsel de parte for the defendant Mangulabnan did not appear. Whereupon the Court denied her motion for indefinite postponement of the trial of the case in behalf of her client and proceeded with the trial of the case, the defendants being assisted by their respective counsel de oficio.

On the second day of the trial, 4 March 1958, counsel de parte for the defendant Mangulabnan appeared and prayed for indefinite suspension of the trial of the case against her client and reconsideration of the order imposing upon her a fine of P25. The Court denied the first part but granted the second part of her prayer and proceeded with the trial of the case. After hearing the testimony of the defendant Blaza and his witness Solverio Lintak, the Court entered an order setting the continuation of the trial of the case for 10 March 1958 at 9:00 o'clock in the morning.

After trial, on 14 March 1958 the Court rendered judgment, which was promulgated on 26 March 1958, finding the defendants guilty of the crime charged and sentencing them to suffer the penalty of reclusion perpetua, the accessory penalties provided by law, and to pay the costs.

On 26 March 1958 the defendant Mangulabnan filed a notice of appeal.

On 2 April the defendant Blaza filed a motion for reconsideration. On 8 April the Court denied his motion for reconsideration. On 10 April the defendant Blaza file a notice of appeal. On 14 May his counsel de oficio filed a motion for withdrawal of his appeal. On 16 May 1958 the trial court approved the withdrawal of his appeal.

This appeal is by the defendant Francisco Mangulabnan only.

Dr. Zosimo Fernandez, his wife Dorotea, daughter Fe and cousin Buenaventura Fernandez, who was also the chauffeur of the family, lived in the town of Pagsanjan, province of Laguna. At dinner time, about 7:00 o'clock in the evening of 23 April 1953, the Fernandez spouses heard a commotion and the barking of dogs in their yard and somebody knocking at the front door of the house. Dr. Fernandez asked Buenaventura to see what the commotion and barking of dogs were all about while Mrs. Fernandez peeped through an opening and saw people in army uniform. Buenaventura told the spouses that somebody who was trying to gain admission to the house wanted to see Dr. Fernandez at the behest of Captain Sebastian and that the house was surrounded by people in army uniform. Afterwards, they heard somebody knocking at the back door. Dr. Fernandez stood up, looked outside the window and asked what the man wanted. The latter answered that Captain Sebastian was sending for the doctor. The man's answer aroused Dr. Fernandez's suspicion that the visitor did not mean well because Captain Sebastian was residing in Cavinti. Dr. Fernandez slipped out of the house to ask aid and protection from the chief of police, who lived nearby, leaving behind his wife, daughter, cousin, and maids. After Dr. Fernandez had left, the inmates of the house heard somebody persistently knocking at the door and trying to force it open. Mrs. Fernandez and her daughter Fe opened the kitchen door to escape but Lope Cunanan alias Captain Mendoza grabbed Fe by the hand. Cunanan went up the house and ordered Mrs. Fernandez, Fe and Buenaventura to go down with him. Downstairs, Mrs. Fernandez saw the companions of Lope Cunanan who were about 17 in number, armed with guns and revolvers, at the stairs of the house, in the backyard and surrounding area. The band forcibly took them along and made them wade through a knee-deep river and walk through coconut groves until they reached the outpost of the band in the mountains at about 3:00 o'clock the following morning. There the three victims were confined for two days guarded by the appellant, Pablo Blaza and their companions. After two days in the outpost of the band they were transferred to the inner part of the mountains where they stayed until they were released on 8 May 1953 after paying to their kidnappers a ransom of P40,000.

Turning back to the night of the incident, 23 April 1953, when Dr. Fernandez returned to his house with some soldiers and policemen and found his wife, daughter and cousin gone, he went to the army headquarters but as he found nobody there, repaired to the old municipal building, to telephone and report on the incident to the army authorities in Camp Nazareth, Pila, Laguna, under the command of Colonel Friedlander. After searching the house, D. Fernandez's uncle found on a table inside the doctor's room a letter signed by Captain Mendoza stating that his wife, daughter and cousin were taken for the purpose of asking ransom from him. Days after Dr. Fernandez received about five or six letter signed by the same person asking for P100,000 ransom, for the release of the three victims, which amount was reduced to P50,000, P60,000 and finally to P40,000 through negotiations with the kidnappers.

On 8 May 1953, after the ransom was finally reduced to P40.000, Dr. Fernandez asked Dionisio Almario, his son Dionisio, Jr., Juan Abaño, Conrado Velasco and one Ruperto to proceed to barrio Anibong. There, as agreed upon, Ceferino Llamas and Eliseo Zafra delivered the money to Dionisio Almario and his companions which they

divided and strapped on their respective bodies. At that juncture Ruperto, whom Dionisio Almario had earlier dispatched together with Juan Abano to the place where the kidnap victims had been confined, arrived and reported to him that he had been assured by the kidnappers that the victims were in safe hands. Ruperto led them to where the victims were. About half an hour after arrival in the mountains, the three victims were produced to Dionisio Almario and his companions by Lope Cunanan and his band numbering about twenty. Among those in the band was the appellant. Dionisio gave the money to Mrs. Fernandez which was counted by some of the members of the band of Lope Cunanan in his presence. After counting, Cunanan took P10,000, gave P6,000 each to Pablo Blaza and one Pepe and distributed P1,000 each to the remaining members of the band. The balance of P4,000 was set aside for expenses of the band. After waiting for 5:00 o'clock in the afternoon, Cunanan allowed them to leave. The victims and the rescue party arrived in town at about 6:30 o'clock in the evening.

The appellant denies complicity in the commission of the crime imputed to him. He claims that he joined the Huk organization sometime in 1948 and was with Basilio Balbos alias Commander Maning now dead; that later on he joined the unit of Tomas Calma as his security guard; that from 1950 to 1951 Calma's unit operated in the Sierra Madre Mountains; that thereafter his unit was transferred to the mountains of Bulacan and Arayat; that during the entire year 1953 his unit operated in the vicinity of San Luis, Candaba and Arayat and never left the jurisdiction of Pampanga; that his unit never operated in the province of Laguna, particularly in Pagsanjan; that he was a member of the unit of Tomas Calma until 1954; that he knows Lope Cunanan alias Commander Perla even before he joined the Huk organization because they lived in the same barrio but that he was never associated with him; and that he came to know Apolinar Oracion only in 1956 when he was brought by the army authorities to Canlubang and confined in the stockade in connection with the Fernandez kidnapping case.

The appellant's denial of complicity in the commission of the crime of kidnapping imputed to him and the members of the band of Lope Cunanan alias Captain Mendoza is ineffective in the face of the clear, direct and positive testimony of Mrs. Dorotea Fernandez, one of the victims, that he and his co-defendant Pablo Blaza were among those who stood guard over her, her daughter and cousin-in-law; that she saw him with the band of kidnappers on the 23rd and 24th days of April 1955; and that he was present while the ransom money was being counted by the members of the band; and of Dionisio Almario that he saw the appellant with the band of kidnappers when the three victims were being led out from the mountains by the band on 8 May 1953 and that he was present when the ransom money was being counted by the band.

The appellant assails the act of the trial court in proceeding with the trial of the case in the absence of his counsel de parte after appointing a counsel de oficio to assist him. Reviewing the various motions filed by his counsel de parte and the orders entered by the trial court thereon, we find that the appellant has no valid reason to complain. The motions for indefinite postponement of the trial of the case filed by his counsel de parte, on the ground that a petition for certiorari to test the legality of the denial of his motion to quash would be filed in the Supreme Court, but which was never filed, were plainly to delay the trial and disposition of the case. Despite receipt of notice his counsel de parte failed to appear on the first day of the trial (3 March 1958). On the second day (4 March 1958) she appeared but all that she did for her client was to reiterate and state that she "will just corroborate for the defense." On the third and last day (10 March 1958) she actively took part in the defense of the appellant, she herself conducting the direct examination of the appellant. The defendant was under detention and it is his constitutional right and the duty of the Court to have a speedy trial and disposition of the case. Moreover, it cannot be said that counsel de oficio who assisted the appellant in the absence of counsel de parte on the first day of the trial was remiss in the performance of his duties. As shown in the transcript of stenographic notes, he had endeavored to safeguard the appellant's rights as a defendant on trial.

As regards the appellant's complaint that he had not been afforded sufficient time to present other witnesses in his

defense, it appears in the transcript of stenographic notes that after the appellant had finished testifying in his behalf, counsel de parte stated that she could not close the evidence for the defense because she wanted to secure the appearance of Apolinar Oracion as a witness. Asked by the Court what his testimony would be about. She answered "that kidnapping for ransom was to secure funds for the functions of the organization." The Court denied the constitution of the trial of the case and ordered the trial closed because the testimony of Oracion would not be of any help to the appellant in view of his denial of complicity in the kidnapping of the victims. Hence, the appellant cannot validly complain and the Court did not err in its last mentioned order. Furthermore, the appellant claims to have known Apolinar Oracion only in 1956 or 1957 when he was brought to the stockade of the Second Military Area in Canlubang. The crime imputed to the appellant was committed on 23 April 1953. Therefore, whatever testimony Apolinar Oracion would give in evidence would not be of much value to the appellant's defense.

The appellant raises the question of double jeopardy. He points out the fact that he had been charged with the complex crime of rebellion with multiple murder, robbery, arson and kidnapping in criminal case No. 1940 of the Court of First Instance of Pampanga (Annexes A and A-1, motion to quash); that on 8 January 1959, after pleading guilty to the crime of simple rebellion, the said Court sentenced him to suffer the penalty of one year and five months of prision correccional and to pay his proportionate share of the costs (Annex B to petition to withdraw as counsel); that in criminal case No. 15909 of the Court of First Instance of Laguna, *People vs. Apolinar Oracion et al.*, for rebellion complexed with multiple murder, robbery, arson, rape and kidnapping, the kidnapping of Dorotea Fernandez, Fe Fernandez and Buenaventura Fernandez on 23 April 1957 was alleged to be for the purpose of raising funds for the HMB organization and a necessary means of committing the crime of rebellion (Annex B, motion to quash); and that on 17 December 1956, the said Court held that "such act was in furtherance and a mere ingredient of the offense of rebellion" and "cannot be punished separately from the latter (rebellion) or complexed with it" (Annex C, motion to quash). He now contends that the crime of kidnapping imputed to him being a necessary means of committing and in furtherance of the crime of rebellion, the said crime is absorbed by rebellion and that, having been convicted of simple rebellion, he is now put twice in jeopardy of punishment for the same offense. The appellant's contention is untenable. A reading of the information filed in criminal case No. 1940 of the Court of First Instance of Pampanga (Annexes A and A-1; motion to quash) shows that the kidnapping of Dorotea Fernandez, Fe Fernandez and Buenaventura Fernandez had never been mentioned as an over act of rebellion and a scrutiny of the information filed in criminal case No. 15909 of the Court of First Instance of Laguna and the judgment rendered therein discloses no mention of the appellant as a defendant therein. The appellant, therefore, had never been put in jeopardy of punishment for the crime of rebellion and cannot maintain that he is being twice put in jeopardy of punishment for the same offense.

In the instant case, the amended information filed in court against the appellant and his co-defendant was for "kidnapping with ransom" under the provisions of article 267 of the Revised Penal Code, as amended by Republic Act No. 18. The information filed in the Court of First Instance of Laguna against Lope Cunanan et al. (SC No. 120) was also for the same offense. On appeal by Raymundo Abesamis, this Court found "that the kidnapping was made by Huks under the command of 'Capt. Mendoza', or Lope Cunanan, and Abesamis admittedly belonged to the Huk detachment under such command." Nevertheless, this Court affirmed the judgment of the Court of First Instance finding Raymundo Abesamis guilty of the crime of kidnapping of the purpose of extorting ransom and sentencing him to suffer the penalty of reclusion perpetua. The herein appellant cannot be entitled to a penalty lighter than that imposed upon his confederates.

The pronouncement of this Court in the case of *People vs. Raymundo Abesamis et al.*, G. R. No. L-13007, 23 December 1960, that the head of the band, Lope Cunanan, having been sentenced only to the penalty of reclusion perpetua, the same penalty should be meted out to the appellant therein, despite the presence of the aggravating

circumstances of nighttime, with the assistance of armed men, and band, is equally applicable to the herein appellant.

The judgment appealed from is affirmed, with costs against the appellant.

Bengzon C. J., Labrador, Concepcion, Reyes, J. B. L., Paredes, and De Leon JJ., concur.

Barrera and Dizon, JJ., took no part.

[1] On 30 August 1957 the Court of First Instance of Laguna found them guilty of the crime charged and sentenced each of them to suffer the penalty of reclusion perpetua the accessory penalties, to indemnify jointly and severally the spouses Zosimo Fernandez and Dorotea Fernandez in the sum of P40,000, without subsidiary imprisonment in case of insolvency and to pay the costs proportionately. Only the defendant Abesamis appealed. On 23 December 1960 the Supreme Court affirmed the judgment of the trial court (G. R. No. L-13007).

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