

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LT. JG BERGUNIO LUNA, DEFENDANT AND APPELLANT.***G.R. No. 15480. January 28, 1961*

Ponente: BAUTISTA ANGELO, J.

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Lt. Bergunio Luna, Sgts. Dominador Bautista and Victor Lopez, Datu Jainal, Dayani Joe and Christian Luis were accused of triple murder for the death of Mustapha Ilahan, Suyoc Ilahan and Abdulmunap Ilahan before the Court of First Instance of Sulu under a single information. Subsequent to the filing of said information, the provincial fiscal moved to discharge accused Bautista and Lopez to be utilized as government witnesses, followed by another motion seeking the dismissal of the charge against Lopez upon the ground that after a thorough investigation he found no sufficient evidence to secure his conviction. The trial court granted the two motions, ordering the discharge of Bautista so he may be utilized as a government witness, and dismissing the case against Lopez for insufficiency of evidence. As the other accused except Luna, remained at large, the case proceeded only with regard to the latter.

Upon arraignment, Luna entered a plea of not guilty. After trial, he was found guilty of the crime charged and, accordingly, sentenced to suffer reclusion perpetua, to indemnify the heirs of the three deceased in the amount of P4,000.00 for each of them, with the accessories of the law, and to pay the proportionate costs of the proceedings. Luna interposed the present appeal.

As narrated in the government's brief, the case for the prosecution is as follows: About the first week of February, 1954, Datu Ilahan, an octogenarian, went to Lamitan, Basilan City, to visit a son. He was not able to reach the place because on the way the residents of Tabuan Island told him that that place was being attacked by the marines. Hence he went home straight to Bongao, his residence, where he was informed by Datu Wagas that his place was attacked by the marines. He hurried home where he was met by his wife who informed him that their children Mustapha and Suyoc and grandson Abdulmunap, whose ages ranged from 12 to 19 years, were taken by the marines. Abdulmunap who was then living with his mother Dayang Bibi, a widow, together with his uncles Mustapha and Suyoc, asked the permission of Dayang Bibi to go to a neighboring island to buy some food. That was the last time Dayang Bibi saw her son.

When the three boys failed to come home the next day, Dayang Bibi went to Buan and was informed by the residents thereat that they were taken by the marines to Bongao. Two days thereafter, Dayang Bibi proceeded to Bongao and inquired from one Sgt. Kadero about their whereabouts who told her that they were taken by the marines. Subsequently thereafter, Dayang Bibi met Datu Jainal who told her not to waste her time looking for her son because he and his two uncles were taken by the marines who tied stones on them and dropped them into the sea. This information almost tore apart the disconsolate mother.

Meanwhile, Datu Ilahan made the same inquiries in Bongao and was similarly informed by Sgt. Kadero that he has investigated the Ilahan boys and his grandson Abdulmunap and that the trio was taken to a coast-guard cutter

by the marines. While said datu was strolling in Bongao, he met Datu Jainal, son of Datu Maulana, who bore a grudge against him because of land conflict that arose between them when Jainal tried to grab a portion of Ilahan's land. This grudge notwithstanding, Datu Jainal told Datu Ilahan to desist from looking for his children as they were already killed by the marines who tied stones on them and dropped them into the sea near the Island of Bato-Bato. Upon receiving this information, Datu Ilahan reported the same to Captain Tandico who thereupon made an investigation of the incident which culminated in the prosecution at bar.

During the first week of February, 1954, the Philippine Navy, with a complement of marines, was then engaged in a punitive operation against Moro bandits infesting the waters of Sulu. Among the officers engaged in said operation was Sgt. Bergunio Luna who was then in charge of a detachment of marines on board a landing mechanized craft (LCM). He had under him some 30 enlisted men and non-commissioned officers among them Sgts. Dominador Bautista and Victor Lopez. This unit was at first bivouacked in Buan, municipality of Balimbing, province of Sulu. Subsequently, Luna's unit was ordered to proceed to Bongao together with some Moro civilians to act as guides among whom were Datu Jainal, Luis and Dayani Joe, and the three Ilahan boys already mentioned above. On their way to Bongao, they dropped anchor at Bato-Bato Island on orders of Lt. Luna and the Moro guides Luis and Dayani Joe disembarked and picked up some big stones.

Thereafter, they proceeded on their way to Bongao. Then the LCM slowed down on orders of Lt. Luna, and guides Luis and Dayani Joe approached the three Ilahan boys and proceeded to tie their hands and feet, Dayani Joe at the same time telling them in their own dialect, "You killed my younger brother." After they finished tying the trio, Luis and Dayani Joe helped each other in bringing them to the left side of the landing craft where Luis got a piece of electric wire and with it tied a heavy stone to the victims to serve as weight. Thereafter, Luis cold-bloodedly pushed them one after another into the open sea who because of the weight they were carrying went into the bottom and disappeared. While such dastardly act was being undertaken, Lt. Luna and Datu Jainal were inside the craft conversing, the latter categorically assuring the former that the three boys were bandits and that if they would not be killed they (the boys) would certainly kill them. After the trio had disappeared swallowed by the waters of the sea, Lt. Luna assembled his men and told them not to reveal to anybody the killing of the Ilahan boys or else they will be shot, adding that "Dead men tell no tales."

Appellant on the other hand, testified as follows in his own defense: That since May, 1953, he was a commissioned officer of the Philippine Navy with the rank of Lieutenant Junior Grade; that he started his military career in the Armed Forces of the Philippines ten years before his commission; that he has never been charged with any violation of army regulations or of the Articles of War except in the present case; that during the months of January and February, 1954, he was assigned to the Sulu Sea Frontier as part of a task force at the head of a detachment of Philippine marines with station at different places of Tawi-Tawi Island group in connection with the apprehension of bandits and the suppression of smuggling and piracy; that his immediate commanding officer then was Captain Liwanag; that sometime in the said months of January and February, while his detachment was bivouacked in Ungos Matata, Tudubas, Sulu, he received an order from his commander to withdraw from the place and report to the headquarters at Bongao; that upon arrival thereat, he was given a new assignment to operate in Dungon for the apprehension of bandits in the area; that in compliance therewith, he and his men took a navy ship to the vicinity of Langoyan proper; that from Langoyan his unit took an overland trail utilizing the services of civilian volunteers as guides to Dungon passing through thick forests to their destination; that from Dungon his unit proceeded to Buan using a landing mechanized craft (LCM) and stayed in Buan for about three days; that from this latter place, his detachment went to Bongao on the same craft negotiating the waters of Sulu sea in a showering and gloomy day; that due to the bad weather condition, appellant stayed for the most part of the trip inside the canvass-covered compartment of the craft; that later on he fell asleep and came to know when he woke up while the craft was nearing Bongao that the same stopped at the Island of Bato-Bato; that as they were

about to land at Bongao, appellant assembled his men to give them the necessary briefing in accordance with standard operational procedure to check them and see if they are all present and accounted for; and that it was only when he was summoned for investigation by a Board of Inquiry of the Philippine Navy that he came to know of the disappearance on board his craft of the three Ilahan boys who were allegedly tied and thrown overboard.

On the strength of the evidence extant in the record submitted by the prosecution, there can be no doubt that the three Ilahan boys were deprived of their lives in a cold-blooded manner in the waters of Sulu sea while they were on board the mechanized landing craft ferrying a marine detachment commanded by appellant who was then the highest officer on board when their hands and feet were tied and their bodies weighted with heavy stones and then pushed one by one into the sea who because of the weight they were carrying immediately sank and disappeared. There is also ample evidence that while the three victims were being prepared to be thrown into the sea, appellant and Datu Jainal who were barely 10 feet away were conversing with each other, the latter assuring the former that those three boys were bandits and that if they would not be killed they (the boys) would certainly kill them. The foregoing facts have not been denied by appellant whose principal defense consists in affirming that he was not aware of such happening because at the time the ugly event was being carried out, he was taking a nap because of combat fatigue. But such defense is so flimsy to merit any credence considering that he was then the highest officer on board and in command of the marine detachment that was then being ferried and as such could not but take notice of such a happening during that trip. Moreover, they find support in substantial testimonial evidence which the trial court found to be trustworthy.

Thus, Sgts. Bautista and Lopez, who were two of the enlisted men under the command of appellant on board the mechanized craft, categorically asserted that it was he who ordered the craft on the way to Bongao from Buan to stop at the Island of Bato-Bato where the two guides Luis and Dayani Joe landed and picked up the heavy stones used as weights on the three victims. Again, these witnesses testified that they saw appellant conversing with his co-accused Datu Jainal while the three victims were being tied preparatory to their being dumped into the sea with Jainal telling appellant that it is better to have said boys killed as otherwise they might kill them and that it was appellant who ordered the slowing down of the craft in the middle of the sea in order that the three boys may be thrown overboard. These two witnesses as subordinates of appellant had no ill motive to testify against him, which makes their testimony worthy of credence. In fact, they were so found by the trial court. There can, therefor, be no doubt as regards his guilt.

Counsel for appellant, however, disagrees with such finding and in his brief assigns 16 errors which in his opinion were committed by the trial court. But, stripped of unnecessary details, and reduced to bare essentials, the same may be boiled down to the following points: (a) questions of credibility of witnesses; (b) correctness of the finding of the trial court that the three victims were the missing Ilahan boys; (c) the corpus delicti has not been established by the prosecution; (d) the discharge of accused Sgt. Bautista from the information to be used as a state witness and the dismissal of the information against accused Sgt. Lopez for insufficiency of evidence, are erroneous; (e) that defense witness Sgt. Million's testimony is adverse to the defense; and (f) conspiracy among appellant and the other accused may be inferred from certain proven facts and circumstances.

We will briefly discuss these points.

With regard to the question of credibility, the same is merely predicated on alleged inconsistencies and contradictions apparently incurred by the principal witnesses for the prosecution, Sgts. Bautista and Lopez, which, it is claimed, tend to destroy their entire testimony. On this point, the trial court, considering its opportunity for observation, is in a better position to evaluate the evidence. It said on this matter: "The defense cited alleged contradictions of witnesses for the prosecution as a ground, of acquittal. A careful examination however, of their testimonies reveals that said testimonies agree on material points. While it may be true that there were certain

contradictions in the testimonies of witnesses for the prosecution, yet the Court believes that they were not the result of deliberate falsehood." To the same effect is the following observation of the Solicitor General: "While it is true that these two witnesses who were admittedly noncommissioned officers serving in the same marine detachment under appellant on board the LCM during the open-sea triple killing at bar, may have enmeshed themselves in contradictions on some minor and inconsequential matters as pointed out by the appellant, said inconsistencies, trivial as they are cannot affect their positive and categorical assertions in their testimony in chief as regards the manner the killing took place and appellant's active participation as co-conspirator therein. Besides, the testimony alone of said witnesses is not the sole basis for appellant's conviction." We agree to the foregoing observations both of the trial court and of the Solicitor General.

The argument that there was no sufficient evidence to show that the three Moros were dumped into the sea were the Ilahan boys has no merit. A careful examination of the voluminous evidence on record submitted both by the prosecution as well as by the defense points unmistakably to the unremitting conclusion that said three Moros were the Ilahan boys who were investigated by Captain Liwanag for complicity in the commission of banditry in the region but who were later released because they were proven to be too young to be involved in such depredatory activities. That such is the fact is also implicit from the mocking attitude of Datu Jainal who, upon being inquired by his former enemy Datu Ilahan as to the whereabouts of said boys, made the sarcastic remark that he was wasting his time looking for them because they were already dumped into the sea by the marines while on board of a mechanized landing craft. And while such is the contribution of the prosecution, the defense did not help any in dispelling the alleged doubt, for it merely contended itself with stating that appellant was not in any way aware of the disappearance of the three boys because he was deeply asleep.

The foregoing also disposes of the claim that the corpus delicti has not been proven for it is an undeniable fact that the three Ilahan boys were dumped into the sea and since then were seen no more. Evidently, they are dead. The defense did not present any proof to the contrary.

It is true that there is no clear showing of any motive on the part of appellant to deprive the three boys of their, lives, but such is not necessary if there is enough evidence to establish guilt. Nevertheless, here it may be said that what may have impelled appellant to conspire with his co-accused to kill the boys or give his assent thereto is the friendly influence exerted upon him by his civilian guide Datu Jainal who was actuated by revenge against Datu Ilahan, father of the two victims and grandfather of the third. This grudge was engendered when before the last war a land conflict arose between them when Datu Jainal tried to grab a portion of the land of Datu Ilahan, a matter which among Moros is serious enough to give rise to a bloody incident.

As regards the contention that the trial court erred in ordering the discharge of Sgt. Bautista to be used as a state witness and the dismissal of the information against Sgt. Lopez for insufficiency of evidence, suffice it to state that we see no error in such action because such matters devolve exclusively upon the public prosecutor. The trial court merely acted upon a motion filed by the provincial fiscal who must have taken such move after having found that there are sufficient reasons in law to have Sgt. Bautista utilized as a state witness and the charge against Sgt. Lopez dismissed for lack of sufficient evidence. There is no showing that said official has failed to do his duty.

The trial court properly found that there was conspiracy for it is evident from the mass of evidence appearing in the record that the killing of the three boys was committed by appellant and his co-accused in a manner that shows a concerted action on their part. The fact that the landing craft stopped at Bato-Bato Island to get heavy stones to be used on the three victims and that thereafter the craft stopped in the middle of the sea where the victims were tied, weighted and dumped into the sea, while appellant and his co-accused Datu Jainal were conversing as regards the character of the three victims, can point to no other conclusion than that they acted in unison in the

accomplishment of their unholy purpose. Such establishes conspiracy.

The crime of which appellant was found guilty is punishable by reclusion temporal to death for each of the three murders. Considering that the crime was committed with the aggravating circumstance of evident premeditation, with no mitigating to offset it, the penalty should be imposed in its maximum period, or death. However, for lack of sufficient number of votes, the Court decided to impose upon appellant merely the penalty of reclusion perpetua.

Wherefore, the decision appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Labrador, Concepcion, Reyes, J. B. L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

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