

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DIOSDADO AVILA, AGAPITO AGRABIO AND AURELIO SILVOZA, ACCUSED, DIOSDADO AVILA AND AGAPITO AGRABIO, ACCUSED-APPELLANTS.

G.R. No. 84612. March 11, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision* of the Regional Trial Court, Tandag, Surigao del Sur, Branch 27, dated 12 July 1988, rendered in Criminal Case No. 1326, finding the accused Diosdado Avila and Agapito Agrabio, herein appellants, guilty of the crime of murder, but acquitting accused Aurelio Silvoza. However, after the trial court had forwarded to this Court the records of the case, by reason of the appeal interposed by the appellants, said court, on 1 August 1988, amended its decision of 12 July 1988 and submitted to this Court said amended decision which found accused Avila and Agrabio guilty of rebellion, not murder. The People interposed objection to the rendition of the amended decision at a time when the trial court had lost jurisdiction over the case.

The records show that on 23 October 1985, the victim Gregorio P. Murillo, then governor of the province of Surigao del Sur, was shot dead allegedly by Diosdado Avila, Agapito Agrabio and Aurelio Silvoza. An information for murder was filed against the above-named accused, which reads as follows:

"That on or about 5:30 o'clock in the morning on October 23, 1985 at the National Highway, municipality of Tandag, province of Surigao del Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, Diosdado Avila, Agapito Agrabio and Aurelio Silvoza, conspiring, confederating and mutually helping one another, without provocation, with treachery, evident premeditation and with deliberate intent to kill, armed with an unlicensed .45 Caliber Pistol and with the use thereof, did, then and there, willfully, unlawfully and feloniously shoot Governor Gregorio P. Murillo, Provincial Governor of Surigao del Sur, thereby hitting and inflicting upon the latter a gunshot wound on his head, x x x.

x x x x x x x x

which wound or injuries caused the instantaneous death of Governor Gregorio P. Murillo, x x x."[1]

Upon arraignment, the three (3) accused pleaded not guilty to the crime charged. The only issue which the trial court found necessary to resolve was whether or not the shooting and resultant killing of the victim by the accused, were done in furtherance of rebellion or of their intention to overthrow or help overthrow the duly constituted government.[2]

On 12 July 1988, after hearing the evidence of the prosecution and the defense, the trial court rendered its decision finding, as already adverted to, the two (2) accused, Diosdado Avila and Agapito Agrabio, guilty of the crime charged (murder) and sentencing them to life imprisonment, while the third accused, Aurelio Silvoza, was absolved from any criminal liability. The dispositive portion of the decision reads:

"WHEREFORE, finding accused Diosdado Avila and Agapito Agrabio guilty beyond reasonable doubt of the

crime of murder as principals, the court sentences both of them to life imprisonment, to be served by them at the National Penitentiary, Muntinlupa, Metro Manila, with costs against them.

They are hereby ordered to pay the heirs of the late Governor Gregorio P. Murillo the sum of P6,000.00 for the marble tomb of the deceased; P10,000.00 for the expenses in the solution of this crime; P30,000.00 for life indemnity; P50,000.00 for actual damages; P25,000.00 for moral damages and P10,000.00 for exemplary damages, without subsidiary imprisonment in case of insolvency.

Accused Aurelio Silvoza is hereby absolved from any criminal liability."[3]

Accused Avila and Agapito timely filed their appeal from said decision. On 3 August 1988, the trial court forwarded (posted) to this Court the records of the case including its decision of 12 July 1988 which were received by the Supreme Court on 26 August 1988. However, the records also show that the trial court issued another decision which is dated 1 August 1988 but forwarded (posted) to the Supreme Court on 15 August 1988 and received by the Supreme Court on 15 September 1988. Its second decision amended its earlier decision of 12 July 1988, ruling this time that Avila and Agrabio are guilty of rebellion, not murder. The dispositive portion of the amended decision reads:

"WHEREFORE, finding the accused Diosdado Avila and Agapito Agrabio guilty beyond reasonable doubt of rebellion, the court sentences them to suffer the penalty of reclusion temporal in its medium period and a fine of not to exceed P20,000.00 or an imprisonment of twelve (12) years and one (1) day to twenty (20) years and an additional imprisonment in case of insolvency to be served by them in the National Penitentiary, Muntinlupa, Metro Manila.

x x x x x

Accused Aurelio Silvoza is hereby absolved from any criminal liability."[4]

It will be observed that the "amended decision", although dated 1 August 1988, was promulgated only after the appellants had timely appealed from the earlier decision of 12 July 1988 and after the trial court had forwarded to the Supreme Court the records of the case.

Section 7, Rule 120 of the Rules of Court provides that a "judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected". It is thus clear that at the time the trial court rendered the "amended decision", said court had already lost its jurisdiction over the case, the appeal having been earlier perfected. Hence, the "amended decision" has no legal force and effect.

There is no question then that it is the decision of 12 July 1988 convicting the appellants of the crime of murder and sentencing them to the penalty of life imprisonment, which is the subject of the present review.

The main if not the sole question in the appeal at bar is whether the trial court correctly convicted appellants of the crime of murder.

Upon careful consideration of the facts and circumstances surrounding the case, as well as the evidence presented by the prosecution and the defense, the Court, in the exercise of its power to review, revise, reverse, modify or affirm[5] the appealed decision dated 12 July 1988, holds that appellants Avila and Agrabio are guilty of the crime of rebellion, not murder. Hence, we find merit in their appeal.

The undisputed facts[6] of the case show that:

At about 5:30 in the morning of 23 October 1985 along the national highway of Tandag, Surigao del Sur, while the victim was inside his car seated beside the driver, whereas Mrs. Murillo (wife of the Governor) was seated

behind, appellant Avila shot Governor Murillo at the head, using a .45 caliber pistol, resulting to the Governor's death. His only companion then was appellant Agrabio. Aurelio Silvoza (the other co-accused) was not present at the time the crime was committed as he was at the hinterland resting because he was then sick.[7] After the shooting, the two appellants - Avila and Agrabio ran away. On 17 February 1987 Agrabio was apprehended whereas Avila and Silvoza were captured on 18 February 1987 by the members of the Philippine Constabulary.

During the trial of the case, it was the contention of the defense that appellants committed rebellion, not murder, the shooting and killing of the late Governor Murillo being a means to or in furtherance of rebellion or in pursuance of the objectives of the rebels.[8]

However, notwithstanding the aforesaid claim of the defense, the trial court in its decision, dated 12 July 1988, found appellants Avila and Agrabio guilty of the crime of murder (accused Silvoza was acquitted). It ruled that the crime committed could not be rebellion because there was no evidence presented showing that at the time Governor Murillo was fatally shot, an uprising or rebellion was on-going, where the rebels and the armed forces of the government were actually fighting or locked in combat.

But the evidence show that appellants Avila and Agrabio were on a mission to kill and, in fact, they killed Governor Murillo on that fateful day of 23 October 1985. The evidence also disclose that at the time they killed the Governor, they were members of the liquidating squad of the New People's Army (NPA), and that they killed the Governor upon the orders of their senior officer in the NPA, one Commander Celo. According to them, they were ordered to "liquidate" the Governor because of the latter's "corruption" in not giving on time the salaries of the employees in the provincial government, and that, instead, he gave the salaries first to the military whom he maintained as his personal bodyguards.

The killing of Governor Murillo by the appellants Avila (alias Commander Efren); and Agrabio (alias Commander Raymund) who were at the time admittedly and undisputably members of the liquidating squad of the NPA,[9] upon the orders of NPA Commander Celo, appears therefore to be politically motivated and tainted. Hence, this Court is of the view that the appellants committed the crime of simple rebellion, not murder, punishable under Articles 134 and 135 of the Revised Penal Code ("RPC" for brevity) consistent with the ruling in *People vs. Manglallan*,[10] which held that:

"The appellant admits that he was a member of the NPA then operating in the Cagayan Area with Ka Daniel as their leader. He asserts that the NPA is the military arm of the Communist Party of the Philippines. There is no question likewise that the killing of Apolonio Ragual by the appellant and his companions who were also members of the NPA upon the orders of Ka Daniel was politically motivated. They suspected Ragual as an informer of the PC. In fact, after he was killed, they left a letter and a drawing on the body of Ragual as a warning to others not to follow his example. x x x The Court, therefore, sustains the contention of the appellant that the crime he committed is not murder but the crime of rebellion punishable under Articles 134 and 135 of the Revised Penal Code."

As regards the crime of rebellion and the penalty imposable therefor, Articles 134 and 135 of the Revised Penal Code have been amended several times by a number of presidential decrees and Executive Order No. 187[11] and Republic Act No. 6968.[12]

At the time the crime was committed in the case at bar (i.e., 23 October 1985), the presidential decree in force and effect was P.D. 1834 which amended Article 135 of the RPC, by imposing a penalty of reclusion perpetua to death for those found guilty of rebellion. Felonies being generally punishable under the laws in force at the time of their commission,[13] the imposable penalty, therefore, in the present case is that provided by P.D. 1834. Said Article 135, as amended by P.D. 1834, refers to two (2) groups of persons who may commit rebellion -- the first

group (referred to in paragraph one of Article 135) are those who promote, maintain, or head a rebellion, or who, while holding any public office or employment, take part therein, engaging in war against the forces of the government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated; the second group (referred to in paragraph two thereof) are those who merely participate in or execute the commands of others in a rebellion.

In the instant appeal, while we find the appellants guilty of rebellion, we also find that their case falls under the "second group" referred to in paragraph two (2) of Article 135, the evidence having shown that they belonged to the liquidating squad of the NPA, tasked to operate in Tandag, and that they killed the victim, Governor Murillo, in compliance with the orders of their senior officer, one Commander Celo of the NPA.

However, as far as the penalty imposed is concerned, it would seem immaterial whether the offender falls under the first or second group, for under Article 135, RPC as amended by P.D. 1834, a uniform penalty of reclusion perpetua to death is imposed for the "first group" or "second group" of rebellion.

But we take note that pending the present appeal, R.A. 6968 was enacted and is now in full force, which provides for the penalty of reclusion perpetua for offenders belonging to the "first group", and reclusion temporal only for those falling under the "second group" of rebellion.

Pursuant to Article 22 of the Revised Penal Code^[14] penal laws are given retroactive effect insofar as they are favorable to the offender. Considering that a retroactive effect of RA 6968 to the present appeal would be more favorable to the appellants as said Act imposes a penalty of reclusion temporal, not reclusion perpetua as in P.D. 1834, for offenders belonging to the "second group" of rebels, the Court shall therefore impose the penalty provided for in Article 135 of the RPC, as amended by RA 6968, which is reclusion temporal. There being neither an aggravating nor mitigating circumstance attending the commission of the offense, the proper penalty is reclusion temporal in its medium period, applying rule no. 1 set forth in Article 64 of the RPC.^[15] The range of the penalty of reclusion temporal in its medium period is from fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months.^[16]

As to the award of damages adjudged by the trial court, this Court grants to the heirs of the late Governor an indemnity in the amount of P50,000.00, but the other items for damages granted in the appealed decision are set aside for they are not proper in rebellion cases.

Finally, the Court notes with deep concern the trial judge's attempt to amend his earlier decision of 12 July 1988, after the lapse of 20 days (the amended decision being dated 1 August 1988), totally disregarding the basic doctrine that courts lose jurisdiction over cases after an appeal shall have been perfected therein. This doctrine is too elementary as to have been ignored by the trial judge. Whatever may be the reasons behind the intriguing change in the respondent judge in rendering his amended decision, the Court strictly admonishes him to be more cautious, circumspect and yet decisive in the exercise of his judicial functions.

WHEREFORE, the appealed decision of the Regional Trial Court of Tandag, Surigao del Sur, Branch 27 dated 12 July 1988 rendered in Criminal Case No. 1326 is hereby MODIFIED, by convicting the accused-appellants, Diosdado Avila and Agapito Agrabio of the crime of rebellion punishable under Article 135, paragraph no. 2 of the Revised Penal Code as amended by Republic Act No. 6968, (and not murder), and hereby sentencing them to suffer imprisonment of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of reclusion temporal, and to indemnify, solidarily, the heirs of the deceased former Governor Gregorio P. Murillo in the amount of P50,000.00.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Regalado, and Nocon, JJ., concur.

* Penned by Judge Martin V. Vera Cruz

[1] Rollo, p. 9

[2] Rollo. p. 11

[3] Rollo, pp. 14-15

[4] Rollo, p.19

[5] Sec. 5, par. 2(d), Art. VIII of the 1987 Constitution

[6] Original Records, pp. 20 and 225

[7] Rollo, p. 14

[8] Ibid., p. 12

[9] Avila, Agrabio and Silvoza were members of the sparrow unit (or liquidating squad) of the NPA operating in Tandag only. Commander Efren (Avila) was then the Team Leader of the group/unit, Commander Raymund Agrabio was Assistant Team Leader, while Commander Boyet (Silvoza) was a member. (Original Records, pp. 225 and 252)

[10] G.R. No. L-38538, 160 SCRA 116, April 15, 1988

[11] Executive Order No. 187 (5 June 1987) repeals Presidential Decree Nos. 38, 942, 970, 1735, * 1834*, [11a] 1974 and 1996, and articles 142-A, and 142-B of the Revised Penal Code. The said Order restores to full force and effect Articles 135, 136, 137, 138, 140, 141, 142, 143, 144, 146, 147, 177, 178 and 179 of the Revised Penal Code as they existed before the amendatory presidential decrees.

[11a]P.D. 1834 (dated 16 January 1981) had earlier amended Article 135 of the Revised Penal Code, when it imposed the penalty of reclusion perpetua to death for those found guilty of rebellion. The decree reads:

"ART. 135. Penalty for rebellion or insurrection. - Any person who promotes, maintains, or heads a rebellion or insurrection, or who, while holding any public office or employment takes part therein, engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of reclusion perpetua to death.

Any person merely participating or executing the commands of others in a rebellion shall also suffer the penalty of reclusion perpetua to death."

[12] REPUBLIC ACT NO. 6968: AN ACT PUNISHING THE CRIME OF COUP D'ETAT BY AMENDING ARTICLES 134, 135 AND 136 OF CHAPTER ONE, TITLE THREE OF ACT NUMBERED THIRTY-EIGHT HUNDRED AND FIFTEEN, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES

x x x x x

SECTION 1. The heading of Chapter One, Title Three of the Revised Penal Code is hereby amended to read as

follows: "REBELLION, COUP D'ETAT, SEDITION AND DISLOYALTY".

SECTION 2. Article 134 of the Revised Penal Code is hereby amended to read as follows:

"Article 134. Rebellion or insurrection. How committed. – 'The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Republic of the Philippines or any part thereof, of any body of land, naval or other armed forces, or depriving the Chief Executive or the Legislature, wholly or partially, of any of their powers or prerogatives.'

x x x x x

SECTION 4. Article 135 of the Revised Penal Code is hereby amended to read as follows:

"Article 135. Penalty for rebellion, insurrection or coup d'etat. - Any person who promotes, maintains, or heads a rebellion or insurrection shall suffer the penalty of reclusion perpetua.

"Any person merely participating or executing the commands of others in a rebellion or insurrection shall suffer the penalty of reclusion temporal.

x x x x x

"When the rebellion, insurrection, or coup d'etat shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, or performed similar acts, on behalf of the rebels shall be deemed a leader of such rebellion, insurrection, or coup d'etat."

[13] Pursuant to Article 366 of the Revised Penal Code which provides that:

"Application of laws enacted prior to this Code. - Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectiveness of this Code shall be punished in accordance with the Code or Acts in force at the time of their commission."

[14] Article 22 reads:

"Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

[15] Article 64 of RPC reads:

"Rates for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x x"

[16] Article 76 of the RPC speaks of the legal period of duration of divisible penalties which shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum, and provides the

table of the duration of the divisible penalties and the time included in each of their periods.

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