

81 Phil. 238

EN BANC

[G.R. No. 1035. July 15, 1948]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOROTEO ABARINTOS, DEFENDANT AND APPELLANT

D E C I S I O N

HILADO, J.:

Doroteo Abarintos, having been convicted by the people's Court of the crime of treason for which the penalty of *reclusion perpetua*, with the accessories of the law, and a fine of P10,000 plus the costs, were imposed upon him, has appealed to this court, assigning three errors as having been committed in the judgment of conviction. Said errors are alleged in substance to consist in the court *a quo* having given credence to the evidence of the prosecution rather than to that of the defense. The trial was had before the Third Branch of the people's Court composed of Judges Jose S. Bautista, Arsenio P. Dizon and Tiburcio Tancinco. After carefully weighing the evidence for the prosecution as well as that for the defense, we find no ground for disturbing the trial court's findings of fact. the more so when we consider the distinct advantage of said court over this in having heard and seen the witnesses testify and observed their demeanor while testifying. Counts 1 and 3 in the information and under which appellant has been convicted are the only ones involved in this appeal. We shall proceed briefly to state the pertinent facts.

Appellant's citizenship as a Pilipino has been proven, by, the records in Bilibid Prisons consisting of his identification record, Exhibit "A" a certified copy whereof is Exhibit "A-1" and his *Patutoo ng pagkamamamayan*, Exhibit "B", from which it appears that he was born on March 27, 1916, of Filipino parent, in Rosario, Batangas, and that his nationality his Filipino. Virgilio Cuyugan, identification clerk of the Bureau of Prisons, testified without having been contradicted that appellant himself furnished. the data appearing in the said documents.

As to Count 1, it has been established beyond reasonable doubt that appellant adhered to the enemy giving him aid and comfort by joining and working as an Informer of the Japanese *Kempeitai*, a well-known military police organization created by the Japanese army and which had set up a station in Lipa, Batangas. Gregorio Hernandez and Reynaldo Silva declared that appellant was often seen during the latter part of 1944 early in 1945, going in and out of the Headquarter of the *Kempeitai* in Lipa, Batangas, in restaurants, gambling places, and the cockpit with *Makapilis* from Laguna and members of the Japanese Military police. Gregorio Hernandez, Luis Atienza, Reynaldo Silva, Gervasio de Torres, Francisco Loyesa and Primitivo Mea testified that appellant used to carry a pistol. According to Gregorio Hernandez and Reynaldo Silva, he was wearing khaki pants and white shirt on the occasions that they saw him. Gregorio Hernandez and Luis Atienza saw him wearing a badge with Japanese characters on his left breast. Gregorio Hernandez, Luis Atienza, Reynaldo Silva and Gervasio de Torres, saw him wearing a white armband with Japanese characters. Gregorio Hernandez further stated that appellant acted as driver for the Japanese *Kempeitai*, a fact admitted by the appellant himself, although pretending that he was forced to do so.

Upon cross-examination, Gregorio Hernandez further declared that appellant used to go with the Japanese and *Makapilis*, talking about guerrillas whom they wanted to arrest; that appellant was the one who pointed out the guerrillas to the Japanese; that he used to see appellant with one Boromeda, a *Makapili*, and two Japanese go to the house of one Dr. Gonzales, the head of the *Makapilis*, which was used as a *Makapili* rendezvous, to peep through a hole, especially on Sundays, and point out to the Japanese suspected guerrillas as they passed by; and that afterwards the persons thus indicated by him would be arrested. Upon redirect examination, the witness clarified this point by referring to a diagram of the relative positions between his observation point and the house of Dr. Gonzales.

As such informer and spy, appellant accompanied the Japanese *Kempeitai* in raids. On December 4, 1944, Luis Atienza and Reynaldo Silva saw him accompanying Japanese soldiers to the house of Luis Atienza in the barrio of Mataas na Lupa, Lipa, Batangas, and arrested Alfredo Atienza, the son of Luis. The same Luis Atienza implored appellant to intercede but the latter answered that it was not possible because Alfredo was a guerrilla.

Sometime in 1945, Cenon Macasaet and several persons were eating at a certain place when suddenly they heard women screaming and shouting that the Japanese were coming and that he and one Alfredo Aguilera were caught and tied, told to fall in line and taken to the Japanese garrison in the house of Dr. Patid, with appellant at the head of the line and

leading the arrested persons. Witness Leonardo Rodelas testified that on February 17, 1945, appellant led another Japanese patrol to the barrio of Paguilingan Bata, Lipa, in which expedition appellant took a very active part. The Japanese soldiers with the accused arrived early in the morning and went to the house of Rodelas and ordered the men to go down. Once they were down, their hands were tied and they were taken to a place about 100 meters away from the house. More captives were brought by the Japanese. Thereupon, appellant approached a woman and asked her, "Why did your husband run away? We are here to hold a meeting and give you passes." Appellant then went around and told the women to call their husbands. The barrio was afterwards burned and several persons were killed. Thereafter, the Japanese with appellant left between 12:00 noon and 1:00 o'clock in the afternoon of that day. All these facts were originally covered by count 2 but at the conclusion of the evidence, the prosecution requested that the same be considered as part of the evidence supporting Count 1.

As to Count 3, it has been established beyond reasonable doubt that early in the afternoon of February 13, 1945, appellant armed with a revolver and a bolo and three other spies accompanied Japanese soldiers in the barrio of Santo Niño, Lipa, Batangas, and told the people there to leave their barrio because their houses would be burned, as a result the barrio people fled to the bank of the Calamias River. When they were already on that spot, their houses were burned. After that they were surrounded by the accused, other spies and Japanese soldiers and taken to the Kicordon River about one kilometer from the Calamias River. With the people, about 200 in number, gathered on the bank of the Kicordon River, those who had passes were segregated from those who had none, and the hands of those in both groups were tied behind their backs and in pairs with torn blankets by appellant, other spies and Japanese soldiers. Those who had passes were first taken to the upper bank of the Kicordon River and killed. Appellant helped his above-mentioned companions in bringing the people two by two from the place of assembly to the place of execution. After the killing of those who had passes, those who had none were murdered. Among the unfortunate victims of that butchery, forty were known by names by the witnesses. Among the witnesses who testified were Gervasio de Torres, Francisco Leyesa and Primitivo Mea, fortunate survivors of the heinous massacre.

The facts of record fully established that appellant is guilty of treason as found by the trial court. The Solicitor-General, disagreeing with the trial court, contends that appellant is guilty of the complex crime of treason with multiple murder, to sustain his charge of murder against said appellant, he points to appellant's participation in the apprehension of about 200 barrio people mentioned in appellee's brief and in the tying of the hands of said people

while they were on the bank of the Kicordan River. It is not pretended that appellant took a direct part in the actual killing of any of those persons, and considering the well-known practice of the Japanese Army of tying people's hands when making arrests, we do not see sufficiently clearly from the evidence that appellant knew when helping the Japanese tie the hands of those individuals, that the Japanese intended to kill them. On the contrary, from the admitted fact that those individuals were civilians, it would be far-fetched to suppose that appellant thought or believed that the Japanese were going to kill them, instead of merely holding them under custody. At any rate, we entertain reasonable doubt as to this point.

It is an established doctrine of this Court (U.S. vs. Tamayo, 44 Phil., 38) that immediate participation in the criminal design entertained by a slayer is essential to the responsibility of one who is alleged to have taken a direct part in the crime as a principal but who has not himself inflicted a wound really contributing to the death; and that his criminal participation in the criminal resolution of the slayer is a substantive fact that must be clearly deducible from all the circumstances taken together. Consequently, we hold against the Solicitor-General's contention that the crime committed is the complex one of treason with multiple murder.

The element of adherence to the enemy has been clearly established from the very overt acts committed by appellant, acts which in themselves constitute treason. This adherence becomes the more pronounced when we consider that appellant committed the acts alleged in count 1 in December, 1944, when the Army of Liberation had already been on Philippine soil (Leyte) for two full months before, and were rapidly advancing and expanding to other parts of the archipelago, and those charged in count 3 were committed when powerful elements of the same Army had already entered the City of Manila ten days before, with the invader in full retreat, thus making the latter's defeat clear and imminent.

The judgment appealed from is therefore affirmed, with costs against. So ordered.

Parás, Actg. C. J., Feria, Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

Paras, Actg. C.J., I Certify that Mr. Chief Justice Moran also voted for affirmance.
