

81 Phil. 235

**EN BANC**

**[ G.R. No. L-1034. July 15, 1948 ]**

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HONORATO  
ESPIRITU, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**HILADO, J.:**

Three counts were alleged in the information filed with the People's Court against the instant appellant, a Filipino citizen, on December 1, 1945.

That court dismissed the first count but convicted appellant under the remaining two. The second count charges that on or about October 23, 1944, in Sta. Rosa, Laguna, Philippines, said appellant, acting as informer or agent of the Imperial Japanese Forces in the Philippines, for the purpose of and with, intent to give aid and/or comfort to the said enemy, with the aid of a group of armed men who afforded him impunity and taking advantage of the darkness of the night, did then and there wilfully, unlawfully, feloniously and treasonably lead, accompany and participate in the apprehension, arrest and investigation of one Gonrado Hernandez, suspected of being a guerrilla member, and thereupon the said appellant did brutally maltreat and torture the said Gonrado Hernandez upon the latter's denial of any guerrilla connection.

The third count charges appellant with having in December, 1944t &nd in the municipality of Sta. Rosa, in order to make more effective the aid or comfort which he intended to give the same enemy, voluntarily enlisted and served as member of the Makapili, the military nature and purposes of which organization were described in *People vs. Adriano*,<sup>[1]</sup> G. R. No. L-477, promulgated June 30, 1947, as follows:

“\* \* \* the mere fact of having joined a Makapili organization is evidence of both adherence to the enemy and giving him aid and comfort. Unless forced upon one against his will, membership in the Makapili organization imports treasonable intent, considering the purposes for which the organization was created, which, according to the evidence, were “to accomplish the fulfillment of the obligations assumed by the Philippines in the Pact of Alliance with the Empire of Japan;” “to shed blood and sacrifice the lives of our people in order to eradicate Anglo-Saxon influence in East Asia’, “to collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines;” and “to fight the common enemies.’ “

The third count also charges appellant with having voluntarily joined and evacuated with the Japanese Army in its Retreat to the mountains of Luzon, and with having stayed and remained with said army until he was apprehended and captured by the American and guerrilla forces.

After due trial, the People’s Court in a unanimous decision of the Fourth Division, found appellant guilty of treason and imposed upon him the penalty of 15 years of *reclusion temporal*, with the accessories of the law, and to pay a fine of P5,000.00, plus the costs, “taking into special consideration the degree of malice on the part of the accused in the commission of the offense as may be gleaned from the evidence as well as the extent of the acts of the accused and the low degree of his instruction and education which is apparent”. From that judgment, appellant has taken the case on appeal to this Court.

As appears from the foregoing quotation, we have already held in the Adriano case that mere membership in the Makapili is treason under Article 114 of the revised Penal Code for the following reasons:

“At the same time, being a Makapili is in itself constitutive of an overt act. It is not necessary, except for the purpose of increasing the punishment, that the defendant actually went to battle or committed nefarious acts against his country or countrymen. The crime of treason was committed if he placed himself at the enemy’s call to fight side by side with him when the opportune time came even though an opportunity never presented itself. Such membership by

its very nature gave the enemy aid and comfort. The enemy derived psychological comfort in the knowledge that he had on his side nationals of the country with which his was at war. It furnished the enemy aid in that his cause was advanced, his forces augmented, and his courage was enhanced by the knowledge that he could count on men such as the accused and his kind who were ready to strike at their own people. The practical effect of it was no different from that of enlisting in the invader's army."

The prosecution has clearly complied with the two-witness rule in its evidence supporting the third count, which concerns appellant's membership in the Makapili, and his acts as a member thereof. (Testimony of Conrado Hernandez, t.s.n., pp. 15-17, 18-19, 32-33, February 11, 1946; testimony of Leonarda Gindia, t.s.n., pp. 3-4, February 11, 1946; and p. 4, March 29, 1946.)

This suffices to affirm the judgment appealed from without need of entering into a detailed discussion of the assignment of error presented by appellant's counsel as to compliance with the two-witness rule respecting count No. 2.

Wherefore, judgement is affirmed, with costs against appellant. So ordered.

*Feria, Pablo, Perfecto, Bengzon, Briones, Padilla, and Tuason, JJ., concur.*

*Paras, Actg., C.J., concurs in the result.*

*Paras, Actg., C.J.,* I hereby certify that Mr, Chief Justice Moran voted for the affirmance of the decision appealed from.

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<sup>[1]</sup> 78 Phil., 561.

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