

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JESUS CALVENTO, DEFENDANT AND APPELLANT.

G.R. No. L-4571. January 30, 1952

Ponente: TUASON, J.

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TUASON, J.:

Jesus Calvento was prosecuted for treason on nine counts. The Information was filed with the People's Court but the case was transferred to the Court of First Instance of Zamboanga, where it was tried, upon the abolition of the former court.

Of the nine counts, the prosecution introduced evidence only on counts 3 and 9, its witnesses on the other counts, it was said, being unavailable.

Count 3 alleges that on October 6, 1944 the accused acting as a guide of and in company with six Japanese soldiers apprehended one Teodomiro Bucoy on suspicion that he was a guerrilla, and in company with one Bruno Hiyasaki, another spy named Moreno and some Japanese soldiers conducted said Teodomiro Bucoy and two other Filipinos to a coconut grove where they were executed for guerrilla activities.

Count 9 alleges that on the same date, the accused, acting as enemy agent, spy and informer, and in company with a Patrol unit of Japanese soldiers, apprehended Joaquin Pioquinto and Santiago Alivio on suspicion that these were guerrillas, after which the said Pioquinto and Alivio were executed by the Japanese.

It will be seen that Counts 3 and 9 concern arrests made on the same date and in the same municipality. Moreover the defendant put up the same defense and, like the evidence for the prosecution, his on both counts is intermingled. For these reasons the two counts may well be considered together.

It is admitted that Teodomiro Bucoy, Joaquin Pioquinto and Santiago Alivio were apprehended in the suburbs of Zamboanga City on the date above mentioned as guerrilla suspects. It is also a fact that the accused was at least with Japanese troops when those arrests were made. And there is no denying that the three victims were summarily executed although it does not appear that the defendant took part or was present in the execution. The defense is that the defendant was himself a prisoner suspected of being a guerrilla and that the evidence to the effect that he was a spy for the Japanese and aided them in the apprehension of the victims, was perjured.

Substantially the defendant testified that on the afternoon of October 2, 1944, he was arrested by one Moreno and a Japanese named Bruno, and taken to the Kempetai headquarters where he was bound and tortured for having allegedly sold dried fish to guerrillas; that he was shackled to a chair until the afternoon of October 6, when he was untied and forced by Bruno to "reveal the location of the house of Teodomiro Bucoy," who, Bruno said, was wanted by the Japanese commander to act as cockfight referee.

Of the evidence for the prosecution the court below said that it is unassailable. It observed that the government witnesses bore no grudges against the accused aside from those generated by his actions in this case. We find nothing of significance in the record which would warrant reversal or modification of the court's conclusions on

this feature of the case. What is more, our independent and considered opinion from a perusal of the testimony is that the prosecution witnesses told the truth.

With the question of credibility out of the way, let us now see if the defendant was, as he said, a prisoner and acted under compulsion, for this purpose there is no need of going beyond the details of the testimony which have bearing on the defendant's intention or lack of wilful intention.

To start with, most of the above witnesses swore that the accused wore an arm band with Japanese characters.

Francisca Bucoy, Teodomiro Bucoy's sister, and her son Jose B. Garcia declared that as they were returning home from their *caiñgin* in Tulungatung, a motor car pulled over in front of their house, six Japanese soldiers and the accused jumped out of the vehicle, surrounded them, and asked where Teodomiro Bucoy was; that, informed that Bucoy was in his *caiñgin*, Calvento commanded Francisca to fetch her brother, with the threat that if she did not do so, she and her children would be taken, so Francisca did as she was told; that when Teodomiro appeared with Francisca one hour later, he asked the accused what he was wanted for and Calvento replied that somebody in Kawit was waiting for him. Then Bucoy was whisked away.

Maria Vda. de Bucoy, Teodomiro's widow, testified that the next day she looked for the defendant to know the whereabouts of her husband, and Calvento told her that there was a report that her husband was a guerrilla and had been supporting the underground organization.

Constancia Vda. de Alivio testified that on the afternoon of October 6, Calvento with a squad of Japanese soldiers came to her house or store looking for her husband; that when her husband came out of the room, the accused told him, "You are under arrest that immediately thereafter the accused posted a Japanese companion to guard Alivio and went off in the car in the direction of Tulungatung, coming back later with Joaquin Pioquinto; that after depositing Pioquinto in Alivio's store, the accused went out again and one hour or so later returned with Teodomiro Bucoy in the car; that this time Calvento ordered Pioquinto and Alivio to get into the automobile and drove off with the three prisoners; that when several days afterward, the accused passed by the witness house or store he told Mrs. Alivio, in answer to her query, that her husband was in Cabatañgan making airraid shelters.

Mrs. Virginia Pioquinto, Joaquin's mother, stated that on October 6, she, her son and one Vicente Miranda were together at the market place when Calvento called out: "Hoy, Joaquin, male camo ta ayuda camo con el guerrilla;" that thence the accused carried Pioquinto to Santiago Alivio's store and left him there; that in company with the Japanese driver alone Calvento rode on to Tulungatung and came back with Teodomiro Bucoy; that now the accused alighted from the car, went inside the store, told Alivio and Pioquinto to get into the car and drove off to town. Vicente Miranda gave testimony of the same tenor.

Concepcion Climaco de Pioquinto testified that on the afternoon of October 6, after she had learned from her mother-in-law that her husband had been picked up by the accused, she went to the house of one Banga in front of which she saw Calvento doing guard duty; that she asked Calvento the reason for her husband's arrest and the accused answered that Pioquinto was helping the guerrillas and had already been turned over to Bruno. She further testified that the next morning she brought eggs and chickens for Jesus Calvento at Mrs. Conti's house where she found him and three Japanese eating their breakfast, and that on that occasion the accused showed Mrs. Calvento the list of wanted persons informing her that there was no hope for those whose names he checked in her presence but that those, including Pioquinto, whose names were in red circles still might be saved. She also declared that frequently thereafter she appealed to the accused for her husband's safety until she gave birth to a child on November 6.

The defendant's actions which the foregoing testimony discloses completely belie his assertion that he was a

passive, helpless onlooker to the arrests in question. He not only took part in those arrests but appeared to be the leading actor. In the whole proceeding with the Japanese playing supporting roles.

Specifically, and to mention only some of his performance, he sported a Japanese symbol of authority and did all the talking to and rounding up of the wanted men; he had the list of wanted persons and knew who were doomed for liquidation. He was seen at least once on assignment as a sentry at a Japanese detachment headquarters.

The fact that the victims' wives sought the accused for information about their husbands and for help is clear proof that he had played an outstanding part in those men's capture and wielded influence with the Japanese.

Macario Asuncion, one of the witnesses for the defense, himself contradicted the defendant's testimony that Calvento was a prisoner. Asuncion said that he was arrested on October 16, 1944, and that "Jesus Calvento no era soldado y vi que estaba alli partiendo lefia y haciendo la cocina y era el unico que atendia la comida de los Japanesees."

There being no error in the findings of the trial court, and the penalty imposed, which is reclusion perpetua and a fine of P10,000, being in accordance with law, the appealed decision is affirmed with costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

Feria, J., took no part.

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