

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DANIEL ALARCON, DEFENDANT AND APPELLANT.

G.R. No. L-407. July 28, 1947

Ponente: FERIA, J.

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FERIA, J.:

This is an appeal by appellant Daniel Alarcon from the judgment of the third division of the People's Court, that convicted the appellant of the crime of treason and sentenced him to reclusion perpetua, with the accessory penalties of the law, and to pay a fine of P10,000 and the costs.

After a careful consideration of the facts and the law of the case, we are of the opinion and hold that the trial court did not err in finding the appellant guilty of the crime charged and in sentencing him to suffer the penalty imposed in its judgment.

As to the first count, the finding of the lower court that during the month of December, 1944, the defendant joined the military organization called Makapili, which had its headquarters in Cabanatuan, Nueva Ecija; received an army rifle from the enemy; stood guard every morning at said headquarters; underwent military training under a Filipino and a Japanese instructors; and accompanied patrols of Japanese and Makapili soldiers in search of guerrillas, is supported by two witnesses, Pedro B. Tolentino (pages 2, 3, 4, 5, 9, and 10, t. s. n.) and Sotero Domingo (pages 16, 17, 18, 22, 23, 29 and 37, t. s. n.). The appellant upon being asked "what he had to say to the charge of the government's witnesses that he was a member of the so-called Makapili, instead of denying it, he merely said 'I have nothing to say about that'" (p. 11, t. s. n.).

With respect to the third count, the testimony of two witnesses Lorenzo Sampang (80-83, t. s. n.) and Felizardo Sampang (95 to 98, t. s. n.) support the conclusion of the trial court to the effect that, on January 11, 1945, a group of Japanese and Makapili soldiers arrested Lorenzo Sampang, his two sons Benedicto and Felizardo, and his son-in-law Manuel Villar, and took all of them to the Makapili headquarter in Cabanatuan; that the persons arrested met the accused with other Makapilis at said headquarter, and were submitted by the latter to a rigid examination about their connection with the guerrillas; that, as Manuel Villar refused to answer questions propounded to him by the appellant, the latter took him to a room, and so maltreated and tortured him that when Villar came out of the room, his face was bloody, his arms swollen, and he could hardly walk; and that they were released on January 13, except Villar whose whereabouts until the date of the trial was unknown.

And the finding of the trial court, in connection with the fourth count, that the accused in the month of December, 1944, retreated with the Japanese forces towards Bongabon, Nueva Ecija, before the arrival of the American forces in Cabanatuan, is also supported by the testimony of two witnesses, Pedro B. Tolentino (p. 12), and Sotero Domingo (pp. 18 and 19, t. s. n.). But the conclusion of fact of the trial court that the appellant with some other Makapilis and Japanese soldiers went to the market place of Cabanatuan, and there commandeered vehicles, foodstuffs, and animals for the Japanese, can not be taken into consideration, because it was not alleged in the information, and only one witness testified to the said fact. Sotero Domingo (p. 18, t. s. n.). And the other

conclusion of the lower court that while the appellant was coming down from the mountain, he was apprehended by the witness Simeon Sami, is supported only by the latter's testimony (pp. 117, 118, t. s. n.).

The trial court did not err in not giving any weight to the testimony of the witnesses for the defendant, Leoncio Ramos, Juan Esteban, and Bernardo Hilario, because their testimonies consist in merely denying to have seen the acts attributed to the appellant by the witnesses for the prosecution, and at dates different from those referred to by the latter (pp. 130, 133, and 138, t. s. n.).

Attorney for appellant contends that the testimonies of the witnesses Pedro Tolentino and Sotero Domingo are incredible, because they say that the appellant was the only one recognized and pointed out by them among those who had been drilling in front of the Kempei's and Makapili's headquarters, and who retreated with the Japanese forces to Bongabon before the arrival of the American forces. There is nothing incredible in that said witnesses were unable to tell who were the other persons, and recognized only the appellant among them, because the appellant was formerly a friend of Domingo (p. 22, t. s. n.) and a leader in the neighborhood association under the control and supervision of Pedro Tolentino (p. 13, t. s. n.).

The so-called discrepancies and contradictions of the witnesses for the prosecution pointed out by the attorney for the appellant, are not real contradictions and discrepancies, and therefore they can not affect in any way their credibility.

In effect, attorney for defendant says that Domingo asserted that when he saw, "the group of Filipino and Japanese with the accused going toward Bongabon, they carried carts, foodstuff, animals together with their relatives;" while "Tolentino testified they only carried rifles when he saw them going to Bongabon on the same occasion." In the first place, Domingo did not say that the accused and Makapili soldiers were carrying those things while going to Bongabon; what he testified is that when the Americans were approaching, the Makapilis went to the market and carried them away. And in the second place, Tolenthio did not testify that the accused and the Makapilis did not take with them carts, foodstuffs, and animals in going toward Bongabon (p. 12), because he was not asked about it; what was asked of him was "When the Americans were approaching Cabancalan, do you know what the accused did?", and he answered: "Yes, sir, I saw him together with the Makapilis and the Japanese going toward Bongabon, they had rifles with them" (p. 12, t. s. n.).

It is true that Domingo assured that in the vicinity of Sangitan there was only one headquarter (referring to Makapili headquarter) where the appellant and his companions used to drill (p. 25, t. s. n.), but said testimony is not in contradiction, as contended by attorney for the appellant, with that of Tolentino to the effect that there were two headquarters in Sangitan: one where the Makapilis were drilling, and the other is the headquarter of the Philippine Constabulary (p. 11, t. s. n.). And the testimony of Lorenzo Sampang that he woke up his sons and son-in-law when he heard the Japanese and Makapili soldiers shout "this is the house, this is the house, open the door" (p. 78, t. s. n.), is not necessarily contradictory to that of his son Tolentino Sampang who said lie woke up because of Japanese soldier gave him a kick (p. 99, t. s. n.), for the words or act of his father might not have been sufficient to wake him up.

The first question of law to be determined in this appeal refers to the admissibility of Exhibit A for the prosecution as corroborative evidence of the overt act alleged in count No. 4. Said exhibit is a confession or rather an admission in writing signed by appellant that "he went with the Japanese when they retreated from Cabanatuan, Nueva Ecija as a soldier of the Japanese Army." The lower court admitted it as a corroborative evidence of the testimonies of Domingo and Tolentino which established the overt act charged in the fourth count, and we agree with the defense that the trial court erred in this regard. An extrajudicial confession or admission made by a defendant of having committed an overt act charged is a proof of the said act or fact, and as such it

must be proved by two witnesses to be admissible as evidence by way of corroboration only. Although proved by two witnesses is not sufficient to support a conviction, because according to law a confession in order to sustain a conviction must be a judicial confession or made in open court. As there was only one witness, Simeon Samin, who testified to the making of the admission, it is not admissible even as a corroborative evidence of an overt act, but it may be admitted to corroborate the proof of appellant's adherence to the enemy, implied in the overt acts committed by him, and we consider it as such. (*Respublica vs. Roberts*, 1 [U. S.], Law. ed., 39; 3 Wharton Criminal Evidence, 2d ed., section 1396.) The testimonies of Domingo and Tolentino are sufficient to prove the overt act of having the appellant joined the Makapili organization charged in the first and fourth counts, and therefore the error of the lower court is not a reversible one.

There is no doubt that, under the law, the overt acts alleged in the second count and borne out by the testimony of two witnesses, constitute adherence to the enemies giving them aid and comfort. Because the appellant in furtherance of the hostile design of our enemies aided them to look for and liquidate the guerrillas, to the extent of torturing and detaining civilians, among them one Manuel Villar, who never returned to his home and whose whereabouts until the date of the trial, was still unknown. Of course this overt act is independent from that charged in counts one and four, for it could have been committed without committing the latter.

The facts alleged in the fourth count and established by the evidence or testimony of two witnesses, constitute only a part of the act charged in the first count against the appellant, of having joined and acted as a member of the military organization called Makapili, since the appellant, as one of the members of said organization, had to retreat with the Japanese soldiers and other Makapilis to the mountains. Said organization was created, according to Exhibit D, to "accomplish the fulfillment of the obligation 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 establish unreservedly and uninterestedly with the Imperial Japanese Army and Navy in the Philippines, and to fight the common enemies;" and therefore, unless the appellant was forced to join or joined the Makapili organization against his will, of which there is no evidence in the record, by joining and acting as a member thereof he adhered to and gave the enemy aid and comfort, regardless of whether the motive prompting him to do so was merely sympathy or pecuniary gain. As rightly stated by Lord Reading in the *Casement* trial "an act which strengthens or tends to strengthen the enemies of the King in the conduct-of war against the King, that is, in law giving of aid and comfort," and "an act which weakens or tends to weaken the power of the King and the country to resist or to attack * * * is * * * giving aid and comfort." It is not essential that the effort to aid be successful, provided overt acts are done which if successful would advance the interest of the enemy. (See *Cramer vs. United States*, 65 Sup. Ct., 918.)

In view of all the foregoing the judgment appealed is affirmed with costs against the appellant. So ordered.

Moran, C.J., Pablo, Perfecto, Hilado, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I reserve my vote. The decision in the Laurel case is not as yet final.

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