

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA RUFINO LUPERA, ACUSADO Y APELANTE.

G.R. No. L-1489. March 17, 1949

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BRIONES, M.:

Tratase de la apelacion interpuesta por el acusado, Rufino Lupera, contra la sentencia unanime del que fue Tribunal del Pueblo en que, por el delito de traicion, se le condena a sufrir la pena de reclusion perpetua y a pagar una multa de P5,000, mas las costas del juicio. La querella contenia siete cargos, pero la prosecucion articulo pruebas sobre los cargos 4, 5, 6 & 7 solamente, de ellos se le halla y declaro al acusado culpable.

Despues de revisar las pruebas llemos llegado a la conclusion de que los mencionados cargos han quedado satisfactoriamente probados, fuera de toda duda razonable, conforme lo pronuncia la sentencia cuidadosamente redactada por el Juez Asociado Hon. Pompeyo Diaz, con la concurrencia de sus asociados lions. Leopoldo Rovira y Angel S. Gamboa.

La parte pertinentes de la sentencia, a la cual damos nuestro asentimiento, es como sigue:

"The evidence for the prosecution, consisting of the testimonies of witnesses who had known the accused since their childhood, and who hailed from, and resided in the same barrio or town as the accused, shows: That during the Japanese occupation, the herein accused, Rufino Lupera, alias "Pinong Pilay", was always seen armed and in the company of Japanese soldiers; that during the fateful hours between 4:00 and 6:00 in the early morning of December 27, 1944, the accused, who was then armed, accompanied by Japanese soldiers and Filipinos, all likewise armed, actively led the said group and participated in the arrest and apprehension of Eligio Salvador, Cirilo Lopena, Filemeno Landrito and many others; that the said accused pointed out Cirilo Lopena to his Japanese companions as a guerrilla and that he even aided the Japanese in tying up Cirilo Lopena and Eligio Salvador at the time of their arrest; that the said accused actively participated in the investigation of Cirilo Lopena and Eligio Salvador for their guerrilla activities while these two were confined in the Japanese garrison at the Sukat Barrio School at Sukat, Muntinlupa, Rizal; that in the arrest of the above-named persons, it was the accused who called them by their names on arriving at their respective homes and it was he who went up their houses first, followed immediately by his Japanese and Filipino companions; and that these people, arrested by the accused were never seen or heard of again from the time of their arrest, except Eligio Salvador and Cirilo Lopena whose remains were found buried in a shallow pit at the back of the school yard at Sukat, Muntinlupa, Rizal on December 27, 1944. The evidence also shows that on January 28, 1945, at around 11:00 p.m., said accused, armed, led a group of Japanese soldiers and Filipinos, all likewise armed, in the arrest of Juan Beltran, who was never seen alive again after his arrest.

"These overt acts imputed to the accused, and described in counts 4, 5, 6 and 7 of the amended information were testified to by at least two witnesses for each and every overt act charged.

"On the other hand, the evidence for the defense consisted of a general denial by the accused of the evidence adduced by the prosecution at the trial, and a plea of innocence predicated on two grounds, namely, the physical infirmity of the accused and the defense of alibi. The accused claimed and showed that his left leg is lame, that he can bend his right arm to the extent of only 25 degrees and he can raise his left arm only up to the

level of his neck. To bolster the defense of alibi, the defense introduced two witnesses, Laureana Cabuan and Serapia Batac. The former testified that when she evacuated to Sukat, Muntinlupa on November, 1944 from Manila, she asked the accused, on the next day of her arrival, to go to the city to live in and occupy the house she vacated at Pennsylvania street in Manila, and forthwith, the accused transferred to Manila and lived alone in the said house. Serapia Batac on the other hand testified that the accused was at her house in Paco on December 24 and 25, 1944, to do some tailoring work. How this witness ever happened to meet the accused and to invite him to her house to saw, and how did she ever discover that the accused was a tailor without having had the benefit of a previous acquaintance with him, the evidence does not disclose.

"Obviously, the question resolves itself into one of credibility. All the witnesses for the prosecution know the accused very well and almost all of them have known the accused since their childhood, and like the accused, have resided in the same barrio or town during the Japanese occupation. Some of the witnesses were themselves arrested by the accused and his companions but were fortunate enough to be spared the tragic fate that "befell Girilo Lopena," Eligio Salvador, Pilomeno Landrito, Juan Beltran and the others who have not come back. There was absolutely no motive on the part of these witnesses to perjure against the life and liberty of the accused. Indeed, the accused himself, could not think of any, much as he wanted to.

"The old age and physical infirmities of the accused, while they might have ordinarily limited his sphere of action, certainly did not immobilize him and did not prevent him from going wherever he pleased, and if we are to believe his claim, he was even able to come and live alone in Manila, frequenting divers parts of the city in the pursuit of his tailoring work. This only shows that his physical infirmities did not restrict his freedom or movement. But was the accused really in Manila, and not in Sukat, Muntinlupa, Rizal, in the closing months of 1944 and the first months of the year 1945?

"We find it strange and beyond comprehension that the accused, an old man well advanced in years, infirm of limbs and body, a native of and residing at barrio Sukat, Muntinlupa, Rizal, should transfer his residence to Manila and live here alone without any companion in the house and a total stranger in the place, at the simple request of a woman, a Manila resident who had evacuated to Sukat, Muntinlupa, who knew him slightly, let alone the conditions of the times. He sees here, therefore, an old and infirm man at the sunset of his life, leaving his place of birth and his familiar haunts and companions, relatives and friends, to transfer to a place unknown and strange to him, and to live there alone, with life and livelihood uncertain because of the conditions of the times (November, 1944), and all these to accommodate a woman from whom he owed no special favors and with whom he was not bound by any impelling bonds of relationship. The logic of the situation here and its probability are indeed strained.

"These pretensions of the accused can not prevail over the direct and positive testimony of witnesses who actually saw, recognized and identified the accused in the commission of the overt acts imputed to him and proven during the trial, witnesses whose sincerity and truthfulness, the Court has no reason to doubt.

"The adherence of the accused to the enemy is more than amply proven by the very nature of the overt acts themselves. Seen always armed and always in the company of Japanese soldiers, displaying unusual vigor in leading the arrest and the tying of the people arrested, and zeal in the investigation of those arrested for their guerrilla activities, all these show not only mere adherence but the complete and full transformation of the accused into a loyal and active disciple of Nippon, especially if we take into consideration his waning years and the great physical handicaps and infirmities of his deformed and wasted limbs. Indeed, he had gone a long way in ingratiating himself with the cruel enemy, and his path had been strewn with the anguish and suffering of those whom he had chosen to betray.

"The leniency which the law at times feels towards offenders who are physically defective, who are infirm of body and wasted of limbs, can find no application in this present case where the herein accused has shown such fire of purpose, and zeal and vigor in the execution of his treasonous activities are not unaware of the mitigating circumstance of age the accused being over 70 years old, and considering it with reluctance, in the

accused's favor, we do not impose upon him the supreme penalty."

Se dice con razon en la sentencia, que toda la cuestion en esta causa se reduce a la credibilidad de los testigos. No hemos hallado nada a dudos que justifiabile el que no demos plena validez a las apreciaciones de hecho establecidas por el Tribunal del Pueblo al declarar culpable al acusado con relacion a los cargos de que se ha hecho merito.

Se hace hincapie en que el acusado, por su edad algun tanto avanzada y por cierto defecto fisico, mal podia dedicarse a las actividades de traicion de que se le acusa. Sin embargo, se declara en la sentencia apelada—y estimamos que atinadamente—que ni Una ni otra cosa tuvieron el efecto de inmovilizar al acusado para dejar su provincia y venir a vivir en Manila, y ya en esta ciudad ir de un sitio a otro prosiguiendo su oficio de sastre.

En meritos de lo expuesto, y estando ajustada a derecho la sentencia, la misma se con firma, con las costas a cargo del apelante. Asi se ordena.

Moran, Pres., Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, y Montemayor, MM., estan conformes.

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