

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FAUSTO TABORADA, DEFENDANT-APPELLANT.

G. R. No. L-4230. May 31, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Fifth Division of the People's Court, Cebu City, finding Fausto Taborada guilty of treason on four counts of the information, namely, Counts Nos. 2, 3, 4, and 5, and sentencing him to fifteen (15) years of reclusion temporal, with the accessories of the law, and to pay a fine of P2,000.

Count No. 2

The evidence submitted by the prosecution to sustain Count No. 2 consists of the testimonies of Francisco Lopez and Francisca Navaja, to wit: On August 24, 1944, defendant-appellant Taborada called at the Taiwan Shiko So on Martires Street, Cebu City, where Francisco Lopez was employed as a toolkeeper. Appellant informed Lopez that the latter was wanted in his (appellant's) office at the Kempei Tai on charges that he was connected with the guerrillas. Lopez was an operative under the guerrilla organization. Lopez was made to ride in a rig and brought to the Kempei Tai. Once there his hands were tied at the back and he was suspended in mid-air, and while in that position two undercover by the name of Cocon and Duaso questioned him, charging him with possessing papers under guerrilla lieutenant Navarro. While he was thus being questioned, appellant had a branch of an acacia, 3 feet long and 3 inches in diameter, with which he beat Lopez. Lopez fell unconscious, and when he regained consciousness, he was again beaten and kicked on the sides. Lopez was, however, released after four days, but for a period of two weeks he was not able to go to work because of the injuries that he had received while in the Kempei Tai and at the hands of appellant and his companions. Appellant, as well as his companions, was armed with a pistol when he arrested Lopez.

Count No. 3

Two witnesses were introduced by the prosecution to support Count No. 3 of the information, namely, Timoteo Cabras and Marcela Cabras. The substance of their testimony is as follows: On January 27, 1944, defendant-appellant Fausto Taborada, in company with two undercover by the name of Labra and Cocon and many Japanese soldiers, went to the house of Timoteo Cabras in Cebu City looking for the latter's daughter Fortunata Cabras. Fortunata Cabras was a nurse, and at that time was in the mountains with the guerrillas. Timoteo Cabras was asked why he permitted his daughter to join the guerrillas and was accused of hiding the guerrillas. Thereupon, he was tied and he and his wife and two children were taken to the office of the Kempei Tai. The following day Timoteo Cabras was taken to the mountains to carry rice for the Japanese soldiers. There he was employed as a cook. However, he was released after two weeks. His daughter by the name of Marcela Cabras was released after two days. At the time of the arrest of Cabras, Taborada was armed with a pistol.

Count No. 4

Count No. 4 of the information is supported by the testimonies of witnesses Teofista Nacorda, Juana Jomaoan, and Trinidad Alesna. According to them, on November 2, 1944, Teofista Nacorda sent her son Domingo to a neighbor. They were then living in Labangon, Cebu City. Appellant Taborada and other Filipino undercover agents met Domingo on his way and asked him if he was a guerrilla. Jomaoan interceded for Domingo, saying that the latter was not a guerrilla, but to no avail. Domingo denied that he was a guerrilla, but nevertheless they tied his hands at the back and took him to Mambaling, followed by his mother. From there Domingo was brought back to Labangon, and here he was asked to point out the soldiers in the vicinity who were guerrillas. Domingo could not point any one, so he was sent back to prison. His mother was, however, released. The reason why Domingo was taken was because he was suspected to be a guerrilla. The companions of the appellant at that time were Japanese undercover agents by the name of Diplong and Tony, and all of them carried homemade revolvers.

Count No. 5

Count No. 5 was proved by the testimonies of Teofista Sacristan, Tereso Sanchez, and Antonio de la Cerna. They declared that on July 29, 1944, appellant went to the house of Braulio Padilla, husband of Teofista Sacristan, and ordered Braulio, as well as all the males of the neighborhood, to proceed to the chapel of Mambaling, Cebu City. Padilla did as ordered. He returned in the afternoon of that same day at about 4:00 o'clock, with his hands tied at the back and accompanied by three undercover agents, one of whom was appellant Taborada, and the others Campos and Racasa. Taborada was at that time armed with a pistol. Taborada and his companions came that afternoon with Padilla looking for arms but could find none. Padilla was then brought back to prison, and on July 30th he was brought to Mount Toong together with some 22 Filipinos, all prisoners, one of whom was witness Tereso Sanchez. The undercover agents who accompanied them to the mountains were appellant Taborada, Racasa, Bautista, and others. There were also many Japanese Kempei Tai soldiers. The reason why people were arrested and brought to the Mambaling chapel on July 29th was because a handgrenade had been thrown by guerrillas at a train, and a truck loaded with Japanese navy men was also ambushed. Padilla was charged by Racasa as being a guerrilla.

Once in the mountains Padilla was beaten very badly. He was made to lie down, and in this position the undercover agents jumped on his breast. Afterwards the Filipino prisoners were fired at and shot at the back by the undercover agents and by the Japanese. Of the 22 persons, 17 were killed, one of them being Padilla. The evidence, however, does not show that appellant herein was the one responsible for the killing of Padilla, or of any one of the prisoners.

The appellant admitted that he is a Filipino citizen. He submitted, in defense, the testimonies of Pedro Villareal, Roberto Bautista, and his own. According to them, Villareal was a first lieutenant of the commando troops of the guerrillas since May, 1943, and that in January, 1944, defendant-appellant Taborada joined Villareal's unit, staying with it up to September, 1944.

As to Count No. 2, appellant admits that he arrested Francisco Lopez, but he claims that he did so under orders of Lieutenant Pedro Villareal; that he brought him to the mountains and punished him there, and that Lopez was imprisoned for some time.

In connection with the incident of the arrest of Timoteo Cabras (Count No. 3), Villareal testified that he ordered defendant-appellant to arrest Cabras because he was collaborating with the Japanese, and that Taborada reported to him that he had warned Cabras not to help the enemy. Appellant admitted that he was the one who tied the hands of Cabras during the investigation, but that his purpose in doing so was to compel Cabras to discontinue working with the Japanese.

In connection with Count No. 4, appellant flatly denies the claim of the witnesses for the prosecution that he

participated in the arrest of Nacorda, alleging that the same is not true, because on the date of the alleged arrest on November 4, 1944, he was under detention by the Japanese, having been arrested on September 28, 1944. He, however, admits knowing Racasa and Duaso, who were supposed to have taken part in the arrest of Domingo Nacorda.

In connection with Count No. 5, appellant makes the claim that he really did investigate Padilla, Sanchez, and De la Cerna in June, 1944, but that he did so to find out if they were really Huks, and as he found them to be Huks, he punished them by boxing them. In July, 1944, however, he was already arrested by the Japanese. Villareal also testified that he had ordered Padilla to be shot on sight because he used to guide the Japanese in the capture of guerrillas. He further denied being a spy for the Japanese.

The People's Court, Fifth Division, found that the charges contained in Counts Nos. 2, 3, 4, and 5 were proved beyond reasonable doubt with the two-witness rule, and sentenced the appellant as above indicated. On this appeal appellant's counsel makes no specific assignments of error. In connection with Count No. 2, it is argued that the arrest of Francisco Lopez was not proved by two witnesses for the reason that Lopez's arrest was not made in the presence of witness Francisca Navaja. The contention is unfounded. While Francisca Navaja did not expressly state that Francisco Lopez was arrested, she declared that Taborada appeared looking for Lopez, and that she heard Taborada telling Lopez that he was wanted in his office, which was the Kempei Tai. She further declared that "after two days confinement" Lopez did not return. This is sufficient corroboration. However, appellant himself admitted having caused the arrest of Lopez (t.s.n., p. 90), although he claims that he made the arrest in his capacity as a guerrilla, not as a Japanese undercover. This defense of his, however, is belied by the testimonies of Francisco Lopez and Francisca Navaja, both of whom testified that Taborada wanted Lopez to go to his office at the Kempei Tai because Lopez was suspected to be connected with the guerrilla. Furthermore, if Taborada was acting as a guerrilla in the arrest of Lopez, why is it that Lopez was brought to the Kempei Tai and not to the mountains? Again, arrests were made by guerrillas not in broad daylight. If Taborada made the arrest, therefore, it must have been because he was acting as a Japanese agent.

In connection with Count No. 3, counsel for the appellant points to certain supposed discrepancies in the testimonies of the witnesses for the prosecution. Supposing that there are certain discrepancies, it is a fact admitted by the appellant himself that Timoteo Cabras was arrested. The excuse that the arrest was done by the appellant in his capacity as guerrilla operative is not believable, because Timoteo Cabras declared that he was brought to the Japanese Kempei Tai, and this fact is corroborated by the testimony of his daughter. Guerrillas bring their enemies not to the Japanese prisons but to the mountains. It is, therefore, conclusively shown that appellant arrested Timoteo Cabras in his capacity as a Japanese undercover.

In connection with Count No. 4, it is claimed that the two-witness rule as to the arrest of Domingo Nacorda was not satisfied for the reason that there are differences between the testimony of Teofista Nacorda and Juana Jomaoan, as well as Trinidad Alesna, all three of whom testified to sustain the said count. The first supposed contradiction lies in the fact that whereas Teofista Nacorda testified that she followed her son Domingo when the latter was taken away, already arrested, to Mambaling, both Juana Jomaoan and Trinidad Alesna declared that both son and mother were arrested. Both Jomaoan and Alesna must have considered Teofista Nacorda as having been arrested when she went along with her son to Mambaling. Besides, Teofista expressly declared that once in Mambaling she and her son were imprisoned. She was, therefore, also placed under arrest, and there is no contradiction between her testimony and those of Jomaoan and Alesna. Capital is also made of the fact that whereas in one part of her testimony Teofista Nacorda stated that her son was tied at the Lahug Redemptorist church, in another part of her testimony she said that nothing was done to him at that place. We find no contradiction in both statements. According to Teofista, Domingo was tied from the start. What she wanted to say,

when she declared that there was nothing done to him, is that he was not kicked or punished. It is also contended that there are discrepancies between the number of Japanese undercovers that were supposed to have been present at the time of the arrest. This is easily explained by the fact that whereas one witness may have seen or known only a few, others may have known or seen more. The differences are indicative of the witnesses truthfulness, not their unreliability.

In respect Count No. 5, it is argued that as to the arrest and torture and execution of Braulio Padilla, the two-witness rule was not fully satisfied for the reason that whereas one witness testified to one thing, the other witness testified to another. As to the arrest, Teofista Sacristan testified that undercovers Taborada, Campos, and Racasa took her husband away and brought him to the chapel of Mambaling, while Tereso Sanchez testified that he saw Padilla at the chapel of Mambaling already arrested, with Taborada as one of the undercovers then in attendance. Antonio de la Cerna also testified that he was arrested and brought to Mambaling, and there he saw that one of the persons detained was Braulio Padilla, and that the undercovers present were Taborada, Labra, and another. The actual arrest of Padilla may have been seen by Sacristan alone, but Padilla was seen already arrested in the Mambaling chapel by three witnesses, Sacristan, Sanchez, and De la Cerna. The arrest and detention of Padilla are, therefore, sufficiently attested by three witnesses.

As to the torture to which he was subjected, Tereso Sanchez testified that he was brought with Padilla to the mountain, and while there Padilla, who was tied, was smashed in the breast, the undercovers, Taborada included, taking turns in jumping on Padilla's body as he lay on the ground. Antonio de la Cerna also testified that he was present when Padilla was being maltreated by Taborada at Mambaling chapel. Sacristan testified that when he was brought home in the afternoon of his arrest, already tied, he had already contusions in his body. The testimonies are not to the same act of torture, and do not satisfy the two-witness rule.

We are satisfied, in conclusion, that appellant's guilt in connection with the arrest and torture of guerrillas has been proved beyond reasonable doubt and by the two-witness rule. However, we find no evidence to show that Padilla, one of his victims, died of torture, or that he participated in his killing, or in that of other guerrilla prisoners who were shot on that occasion. In fact, the testimony of De la Cerna is to the effect that it was the Japanese who shot Padilla. Appellant may not, therefore, be found guilty of killing a guerrilla, or of inflicting torture on his victim resulting in the latter's death. For this reason the penalty of reclusion temporal imposed by the People's Court should not be disturbed. (People vs. Caña, G. R. No. L-1678, November 10, 1950; People vs. Morales, G. R. No. L-4533, May 28, 1952.)

The judgment appealed from is hereby affirmed, with costs.

Paras, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

Mr. Justice Jugo, J., took no part.

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