

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ISMAEL AQUIVIDO, DEFENDANT AND APPELLANT.

*G.R. No. L-1789. July 29, 1949*

Ponente: REYES, J.

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### REYES, J.:

The defendant Ismael Aquivido, a Filipino citizen, is accused of treason on three counts. Briefly, he is charged with having, in the month of February, 1945, adhered and given aid and comfort to the enemy by joining the Makapili organization in the City of San Pablo, Laguna, and cooperating with the Japanese Army in the apprehension of guerrilla suspects, commandeering of vehicles and supplies, burning of houses, and fleeing to the mountains and fighting the American and guerrilla forces, and, in particular, in the rounding up, on February 24, 1945, of over six hundred civilians in the said city and the identification and segregation out of that group of a number of guerrilla suspects, who were on that same day massacred by the Japanese soldiers.

There is no proof that defendant has taken part in the commandeering of vehicles and supplies and in the burning of properties or that he fled and fought with the Japanese forces.

But there is proof that before the war defendant was a Sakdal and that during the Japanese occupation he confiscated the gun of one Jose Lanuza. There is also proof of the existence of a Makapili branch in the city of San Pablo and, although it does not appear how defendant got into that organization, two witnesses testified that they knew him to be a Makapili. Moreover, he was garbed like the other Makapilis and bore a firearm. He was also seen at the Makapili headquarters consorting with members of that organization. Once he was seen with some companions in a calesa, escorting two bound men to headquarters.

The evidence further shows that, in the morning of February 24, 1945, the male residents of San Pablo City between the ages of 15 and 50 were made to assemble in the church on the pretext that laborers would be recruited. Once they were inside the edifice, the doors were closed and it was then announced that only some would be selected. To that end they were made to march out through the door of the adjoining seminary before a line of Japanese soldiers and armed Makapilis. As they marched out, Agripino Calavia, a Makapili chief, picked out the wanted men by patting them on the back and those thus identified, or at least about seventy of them, were taken over by the Japanese soldiers and later massacred.

These facts were established by the testimony of several of those who were assembled in the church on that occasion and two of those who were led to the place of massacre and bayoneted but managed to survive by playing dead.

These same witnesses testified that on that occasion, as they marched out through the door of the seminary, they saw defendant standing beside or near Agripino Calavia, the man who was identifying the guerrilla suspects to be turned over to the Japanese soldiers. Defendant, like the other Makapilis, then had a firearm and wore khaki shirt, "maong" pants, leggings, and a Japanese cap with visor.

Defendant did neither testify nor present proof in his favor.

On the above evidence, a division of the People's Court found him guilty of treason and sentenced him to reclusion perpetua, with the accessory penalties prescribed by law, and to pay a fine of P10,000, and the costs. From this sentence, defendant has appealed, alleging that—

"The First Division of the People's Court erred in finding the appellant guilty of treason notwithstanding that no one of the witnesses testified to the overt acts alleged in the information, and presuming, contrary to the two-witness rule, that the appellant affiliated with the organization known as Makapili."

Not all of the counts in the information were proved, it is true. But we gather from the decision appealed from that the People's Court found it as a fact that defendant had identified himself with the Makapili organization and had his part in the segregation of guerrilla suspects from the large crowd that had gathered in the church on the day of the massacre. There is ample proof to support this finding.

The existence of a Makapili organization in the city of San Pablo with headquarters in the seminary is a fact sufficiently established by the evidence and, besides, this Court has already held that the existence and aims of the Makapili organization are matters of public notoriety that come within judicial notice. Thus, in the case of *People vs. Alitagtag*, 45 Off. Gaz., 715, this Court said:

"Judicial notice may be taken of the existence and purposes of the Makapili organization as matters of public notoriety and interest and as part of contemporary history. The courts knew as historical facts that the Makapili association was organized under the sponsorship, direction and supervision of the Japanese Army; that its aims were as stated in the preamble and purposes of its by-laws, Exhibit A-1; that it was a body of men recruited and armed chiefly for the purpose of warfare and placed itself at the disposal of the enemy; that it received military training and instruction from Japanese military personnel and was equipped by the invaders for combat; that Filipinos joined that association and rendered service in furtherance of the above objectives, fighting side by side with the Japanese, commandeering supplies for the latter, and in many instances excelling their overlords in the commission of atrocities against their own countrymen in a campaign to suppress what they and the Japanese regarded as subversive acts."

There is no proof of appellant's formal induction into the Makapili organization. But, as already stated, two witnesses testified that they knew him to be a Makapili. Moreover, membership in that organization "need not be established by direct testimony" but "may be inferred from the surrounding circumstances." (*People vs. Alitagtag*, supra.) In the present case appellant's identification with the Makapilis may be inferred from a combination of circumstances which eloquently point to that fact. He was a Sakdal before the war. Early during the occupation he helped carry out the enemy's policy of disarming the civilians by confiscating the revolver of one Jose Lanuza. He was seen in a calesa conducting two bound men to the Makapili headquarters. He bore firearm at a time when that privilege was denied to those who were not working for the Japanese. He was with the other Makapilis in church on February 24, 1945, standing beside or near their local chief, Calavia, while the latter was identifying those suspected of guerilla activities, who were later massacred by the Japanese. He was then garbed like a Makapili.

There is no proof that he has taken part in rounding up the male residents of the City of San Pablo and concentrating them in church. He was not the one who identified the guerrilla suspects and he had no direct part in their execution. But despite the conflict of testimony on the kind of firearm he bore on that occasion, the evidence is quite clear that he was there with the other Makapilis and was armed like them. Indeed, he was, according to the witnesses, on the line of Makapilis posted at or near the door of the seminary through which those concentrated in the church were made to file out while the chief Makapili picked out those suspected of guerilla activities. The obvious inference from this fact is that he was there to help keep order or prevent those thus picked out from escaping or putting up resistance. He was thus identified with the task which the Makapili organization was then

performing, which was that of apprehending guerrilla suspects and turning them over to the Japanese. It would be idle to suggest that he just happened to be in that place by accident or as a mere spectator. He made no claim that he was merely an innocent by-stander, for he did not testify at all.

Our conclusion, therefore, is that appellant has been proved to be a Makapili and to have had a part in the carrying out of one of the main purposes of the Makapili organization when on February 24, 1945, he joined the Makapili escort at the door of the seminary for the obvious purpose of giving armed support to the identification and apprehension of guerrilla suspects. This shows that he has adhered to the enemy and given the latter aid and comfort. He is therefore guilty of treason.

There being no reason to disturb the sentence appealed from, the same is affirmed, with costs against the appellant.

Moran, C.J., Ozaeta, Paras, Feria, Perfecto, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

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