

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MIGUEL M. MORENO (ALIAS CAPTAIN MORENO), DEFENDANT AND APPELLANT.

G.R. No. L-1441. April 07, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

At the outbreak of the war in 1941 appellant was serving sentence in the San Ramon Penal Farm where he was assigned as assistant chief of the machinery and engineering division. He says that he was also designated by USAFFE Major Pitcher to take charge of the observation squadron of the Penal Colony, and, as such observer, he was ordered, together with the superintendent of the institution, Severo Yap, to burn the wharf in Recodo, get some machinery and truck nearby and bring them to San Ramon. At the time there was a jail break and so he, together with some guards, was ordered to apprehend the escapees. According to him, he was later on pardoned by President Quezon, and the order of pardon was received by the superintendent, of the colony, a copy of which was handed to him in the early part of 1942.

After the Japanese had landed in Zamboanga, defendant was made a commander of the "Kaigun Juitai", a military organization attached to the Japanese naval police of Zamboanga. As such he was authorized to possess a .45 caliber revolver, a Japanese saber, and a "caborata" and to wear a uniform of blue denim shirt and pants and an olive green cap with an anchor at the front. He allowed his beard to grow down to his chest.

Accompanied by his daughter Olimpia, Ramon B. Alvarez went in the afternoon of November 16, 1943, for a friendly visit to Otto Galle, a German-born naturalized Filipino citizen and owner of a one thousand hectare coconut plantation known as Patalon. Ramon was met by Heddy, Galle's daughter and wife of Dr. Eduardo del Rosario. She told him that if he had not come, she would have called for him. She brought him to an adjoining building which housed the canteen where Dr. Del Rosario's house was also located. Del Rosario handed a note conceived as follows: "I would like you to come here at Cadalogan at 6 a.m., sharp for a conference. In coming to that place just come alone. (Sgd.) Berenguer, 1st Lt. Infant."

Because the letter was delivered by one Ernesto, a nephew of appellant's wife, Mrs. Del Rosario had misgivings about the authenticity of the letter. Alvarez suspected it to be fake and as a trick of appellant to meet Del Rosario, because he knew that Lieutenant Berenguer was then in Dipolog and could not be in Cadalogan, within the jurisdiction of Zamboanga. Besides, Berenguer was only a second infantry lieutenant.

The fact that the owner of the Patalon plantation used to give the guerrillas a monthly contribution of P150, some medicine, coffee and other foodstuffs and the fact that some members of the resistance movement used to visit Galle's house strengthened the worries and fears of Alvarez and the Del Rosario spouses. Alvarez advised that the note must not be answered and that a sailboat be prepared in order to leave the place when necessary. Otto Galle requested Alvarez to pass the night in Patalon. Although he himself entertained fears that he might be implicated if found in the Galle residence, Alvarez consented to remain in the place for the night with his daughter.

After supper and when Alvarez had already retired to the room assigned to him, a voice from the yard outside was heard calling for Dr. Del Rosario. The latter went to a window and asked who was calling, and the answer was: "The one who arrived," which was understood by the inmates of the house to be that the one who answered was or pretended to be a guerrilla.

Those in the house assembled in the sala. Heddy, del Rosario came telling that: "it is exactly 10:05." After a conference, Del Rosario took his wrist watch and handed it to Alvarez telling him; "give it to them." Alvarez was about to follow the suggestion but in the middle of the stairs he became afraid and told Galle that he could not comply as it was dangerous for him to do so. Galle took the wrist watch and went downstairs with a light in his right hand, but returned because he was ordered by the men outside to put out the light. When he went down again he was followed by Alvarez. There he met the appellant.

Appellant Moreno asked Alvarez for Del Rosario and ordered Galle to go with him outside. Galle refused and so Moreno struck him. Then Galle said: "You can do anything you want." Whereupon, shots were heard and Galle fell down.

Heddy del Rosario sounded the alarm, but Moreno shouted: "Stop that sounding and put out the light." When the light was about to be put out, another shot was fired which entered the room where Olimpia Alvarez was, and so Alvarez ran and jumped to the other side of the barbed wire fence, then went down to a brook and hid in a bamboo grove.

The next morning, at about 6 o'clock, Moreno came again with his men and started firing many shots at the house. Sometime later, Alvarez was able to count more than two hundred empty shells in the yard. During the firing that morning Alvarez and his daughter were able to escape by the back yard to about two hundred meters away where they took a vinta and went to Talisayan. Alvarez saw Galle's house burning.

Within the house ten persons were killed, Otto Galle, his wife Ines, Eduardo del Rosario, Heddy del Rosario, Nene del Rosario, Fred del Rosario, two maids Alejandra and Gregoria, Cristino Geronimo and Andres Fabian. According to Elena Casongcay, a maid who was able to, witness the proceeding from a hidden place near the fence, after the assailants had looted the house of its many personal belongings, Moreno ordered his men to burn it. Blas Francisco, a worker in the service of Galle and who had survived from that holocaust, substantially corroborated both Alvarez and Elena Casongcay.

On April 22, 1944, appellant also took active part in the arrest in Labuan of Eulogio and Dionisio Biel and of Enrique Fargas, made by a group of Japanese and Filipino soldiers. The two Biels were arrested because of the help they were giving to the guerrillas. The three arrested persons were at about 4 o'clock in the afternoon taken in a truck to San Ramon Penal Colony and on April 28 they were seen by Filoteo being escorted by Japanese soldiers on a truck bound for the City Hall Building of Zamboanga. None of them were ever heard of or seen alive since then. These facts are proven by the testimonies of Patrocinio Vda. de Biel, Agueda Vda. de Biel, Romula Biel, Fermin Filoteo and Mamerto de Leon.

In the morning of February 11, 1944, another patrol of armed Japanese and "Kaigun Juitai" Filipino soldiers, led by appellant as one of the leaders, arrived at the house of Venancio Ventura in Boongan, Isabela de Basilan, Zamboanga. Several persons in the house were called by the members of the patrol for investigation. After Eduardo Ventura, one of the members of the patrol, had started to make investigation about the guerrillas and their activities in the place, shots were fired from a nearby hill directed towards the patrol, the members of which laid flat on the ground and returned the shots. The firing lasted almost half an hour. While the firing was going on, Prudencio and Raymundo Nonial ran away to a nearby bush and were able to escape. After the shooting had ceased, Moreno and his companions continued investigating Agustin and Claro Nonial regarding the whereabouts

of Ramon and Miguel Nonial, lieutenant and surgeon respectively of the guerrillas at Bangue. Because of their denials, they were slapped and struck with fist blows. Agustin Ventura, Venancio Ventura, Claro Nonial, Agustin Nonial, Agustin Laracochea and Victor Garcia were ordered to march in single file. After they had walked for about thirty meters, Eduardo Ventura ordered them to turn to the left and on appellants order, he machine-gunned them all, Agustin and Claro Nonial were instantly killed, while the four others were wounded. The left arm of Laracochea was later amputated.

The above facts were testified to by Agustin Laracochea, Prudencio Nonial, Venancio Ventura and Victor Garcia.

During the first week of August, 1944, Toribio Timonel, Candido Cabrera and Daniel del Rio, all imprisoned guerrillas, were investigated by appellant, who took part in the maltreatment of the first two. Ramon Camagay and Hermenegildo A. Santos testified to these facts. Since then these three guerrillas were never seen nor heard of anymore.

The trial court found the appellant guilty of treason, complexed with multiple murder of fifteen persons, and sentenced him to suffer the penalty of death in the manner prescribed by law and to pay a fine of P10,000, to pay indemnity of P2,000 to each of the heirs of Otto Galle, Ines Galle, Eduardo del Rosario, Heddy del Rosario, Nene del Rosario, Fred del Rosario, maid Alejandra, maid Gregoria, Cristino Geronimo, Andres Fabian, Eulogio Biel, Dionisio Biel, Enrique Fargas, Agustin Nonial and Claro Nonial, and to pay the costs.

Counsel for the appellant assign in their brief eight alleged errors of the trial court. We shall now consider them.

I

"The trial court erred in denying the petition of appellant for the postponement of the hearing to enable his counsel to prepare his defense properly, a right which is granted him by our fundamental laws."

At the start of the trial, appellant's counsel moved for the postponement of the hearing in order to prepare properly for the defense, stating:

"Your honor, please.—My services was just hired by the family of the accused, so we ask for the postponement of the trial of the case in order to prepare properly our defense." (1).

The petition was not granted. The accused was arraigned and the trial proceeded.

Appellant now invokes the provision of Section 7 of Rule 114, Rules of Court, which reads, as follows:

"SEC. 7. Time to prepare for trial.—After a plea of not guilty, except when the case is on appeal from the justice of the peace, the defendant is entitled to at least two days to prepare for trial unless the court for good cause shown shall allow further time."

The prosecution contends that appellant cannot invoke the above provision, because the petition was made before the arraignment, and the proper time for filing the petition is after arraignment and a plea of not guilty, and not before. The prosecution contends further that, from what appears in the transcript, counsel has waived the right for postponement because, when asked whether he had any objection to the prosecution introducing its evidence, he answered: "Yes, Your Honor without prejudice to reserve our right to ask for the postponement for the presentation of the evidence for the defense." (2).

There cannot be any question that a petition or a motion for postponement of hearing can be filed before or after arraignment. The proper time for filing said petition or motion is not provided for in Section 7 of Rule 114, which is only intended to guaranty that "after a plea of not guilty, * * * the defendant is entitled to at least two days to prepare for trial."

There is conflict of opinion as to whether defendants counsel made express waiver of his petition for postponement.

The majority had voted affirmatively. Although the majority vote appears to be supported by the wording of counsel's statement in the lower court, the writer's dissenting vote was cast on the ground that said statement should be interpreted jointly with the petition for postponement and the statements made by the court, the fiscal and the accused's counsel, made before and after the statements in question, and all said circumstances when considered make the waiver at least doubtful.

II

"The trial court erred in denying the petition of appellant for the voluntary inhibition of the trial judge who tried this case for the simple reason that they had already formed a biased opinion and therefore could not render an impartial judgment." (1).

Because of the fact that Judge Florentino Saguin one of the members of the trial court had sentenced appellant for murder based on the same facts as alleged in count number 4 of the information for treason, appellant's counsel moved for the voluntary inhibition of said judge to sit in this treason case, and now complains that his motion was denied.

The complaint is groundless. Counsel was not able to invoke any provision of law in support of his motion. As a matter of fact, there is none. The petition was addressed to the discretion of Judge Saguin, and Judge Saguin acted properly and wisely in sitting in this case.

It is not contended that Judge Saguin was disqualified under any specific provision of law. Consequently, it was his duty to take cognizance of a case. To take or not to take cognizance of a case, does not depend upon the discretion of a judge not legally disqualified to sit in a given case. It is his duty not to sit in its trial and decision if legally disqualified; but if the judge is not disqualified, it is a matter of official duty for him to proceed with the trial and decision of the case. He cannot shirk the responsibility without the risk of being called upon to account for his dereliction.

III

"The trial court erred in abusing too much his discretion and by assuming the role of the prosecution and converting our courts of justice into that of an inquisitorial tribunal." (1).

The reasons pointed out in appellants brief do not justify his complaint.

There is nothing on record to show that anyone of the judges of the trial court attempted to help the prosecution. The questions propounded by the judge, subject of appellant's complain, appeared to have been intended to elicit the truth from the witnesses. The inquisitiveness complained of by appellant's counsel did not have the purpose of unduly harming the substantial rights of the accused. It was only to be expected from judges who, with full consciousness of their responsibilities, could not easily be satisfied with incompleteness and obscurities in the testimonies.

With regards to the resolution sustaining an objection which does not appear in the transcript to have been made, the prosecution believes that the transcript need not contain a complete account of what actually transpired.

Accepting that the lower court erred in this respect, appellant has not shown that the error had adversely affected him in a substantial manner. In the absence of such a showing, further discussion on the question is unnecessary.

IV

"The trial court erred in admitting Exhibits A, B, and C." (1).

The admissibility of Exhibits A, B and C has been established by the testimony of Patrocinio Vda. de Biel, Mamerto de Leon and Ramon Camagay.

V

"The trial court erred in denying petition of appellant for an ocular inspection of the place of Otto Galle." (1).

There is not enough showing that the trial court erred in refusing defendant's request for an ocular inspection of the Galle plantation.

Whether such an ocular inspection should have been made or not, rested upon the discretion of the trial court. In the instant case there is no showing that the trial court committed a grave abuse of discretion.

VI

"The trial court erred in giving credit to the testimony of the witnesses for the prosecution and disregarded the testimony of the witnesses for the defense."

VII

"The trial court erred in finding appellant herein guilty of the crime charged."

VIII

"The trial court erred in holding appellant guilty and responsible for the crime of high treason complexed with multiple murders, and in not acquitting him." (1).

This court is fully satisfied that the findings of fact of the trial court are substantially supported by the evidence on record. This conclusion disposes of the appellant's contentions as to the last three alleged errors of the lower court. The appellant admitted that he is a Filipino citizen.

Upon the facts proved we find that appellant is guilty of the crime of treason as punished under Article 114 of the Revised Penal Code.

A majority voted for the affirmance of the appealed judgment, while there are minority members who voted that appellant be sentenced to reclusion perpetua. The writer, as a result of his position regarding the non-postponement of the trial in the lower court, voted to remand this case for a re-trial in the lower court. The final result is to modify the judgment.

Accordingly, appellant is sentenced to reclusion perpetua and to pay a fine of P10,000 and the costs. Under the ruling in *People vs. Amansec* (80 Phil., 424, 435) he is also ordered to pay an indemnity of P90,000 at the rate of P6,000 to the respective heirs of each one of the following fifteen persons: Otto Galle, Ines Galle, Eduardo del Rosario, Heddy del Rosario, Nene del Rosario, Fred del Rosario, maids Alejandra and Gregoria, Cristino Geronimo, Andres Fabian, Eulogio Biel, Dionisio Biel, Enrique Fargas, Agustin Nonial and Claro Nonial. With these modifications the appealed judgment is affirmed.

Moran, C.J., Paras, Bengzon, Briones, and Montemayor, JJ., concur.

Pablo, M., Voto por la confirmacion de la sentencia.

Tuason, J., I vote for affirmance.

CONCURRING**OZAETA, J.:**

This case was deliberated upon and voted on October 12, 1948; but as the decision will be promulgated during my absence, I desire to record now my vote for the affirmance of the death penalty imposed by the People's Court upon the appellant.

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