

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ARSENIA NUÑEZ, DEFENDANT AND APPELLANT.

G.R. No. L-2321. January 31, 1950

Ponente: TORRES, J.

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TORRES, J.:

This is an appeal by Arsenia Nuñez from a judgment of the People's Court which convicted her of the crime of treason on an Information consisting of one count, and after proper trial sentenced her to suffer the penalty of reclusion perpetua with the accessory penalties of the law, to pay a fine of P10,000 and the costs.

In the brief filed in her behalf by counsel de oficio it is contended that the alleged overt acts alleged in the information and which were made the basis of her conviction were not clearly proven to establish the guilt of the accused beyond reasonable doubt} that the guilt of appellant was predicated merely on circumstantial evidence and that the prosecution failed to prove the traitorous intent of the accused in accordance with the requirement of the treason law.

The charge brought against Arsenia Nuñez before the People's Court appears in the following:

"That during the period comprised between December 8, 1941, and March 1945, more specifically on or about the dates hereinbelow mentioned, and in different places in the Philippines hereinafter designated, within the jurisdiction of this Honorable Court, the said accused, not being a foreigner but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, in violation of the said oath of allegiance, did then and there wilfully, unlawfully, feloniously and treasonably adhere to the enemy, the Empire of Japan and the Imperial Japanese Forces in the Philippines, against which the United States and the Philippines were then at war, by extending, facilitating and giving assistance, aid and comfort to the above-mentioned enemy, in the following manner and form to wit:

"The herein accused, with intent to give aid and comfort to the enemy, on or about July 23 1944, wilfully, unlawfully and treasonably acted as the finger-woman when the barrio of Tapia, General Trias, Cavite, Philippines, within the jurisdiction of this Honorable Court, was 'zonified' by the Japanese, pointing out to the Japanese several men whom she accused as guerrillas, among whom were Carlos Guarin, Cayetano itsistores, Dionisio Carandang, Carlos de los Reyes, Bionisio Asistores and Severino Portugues, who were then and there loaded in a truck and taken away by the Japanese and were never heard of since that time; on the same occasion the herein accused wilfully and treasonably pointed to the Japanese soldiers several women whom she accused as wives of or connected with guerrillas, among whom were Balbina Rosa whom she pointed out as the wife of a guerrilla and as a result of which the said Balbina P.osa was imprisoned by the Japanese for two months and seven days.

"Contrary to law."

It appears from the evidence that Arsenia Nuñez, according to her owl admission, a native-born citizen of the Philippines, was a resident of barrio Pasong Kawayan, municipality of General Trias, province of Cavite, where she lived with her family up to the month of July, 1944. She was married to Albino Torres, but her husband

having abandoned her, she moved to the City of Cavite where, in consonance with her loose morals, particularly during the Japanese occupation, she became the mistress of Hagno Garcia, a Japanese mestizo and a notorious spy in the service of the Japanese Kempei-tai in Cavite.

No less than four witnesses took the stand before the People's Court to substantiate the allegations made in the above-quoted charge. They are Teodora Guarin, Marcelina Reyes, Perpetua Cadava, and Florencia Luneta.

Teodora Guarin, a sexagenarian and a merchant of Pasong Kawayan, General Trias, Cavite, stated that one afternoon in the month of July, 1944, Arsenia Nuñez, in company with a man named Garcia and four truckloads of Japanese soldiers arrived in Pasong Kawayan for the zoning of the barrio. The Japanese soldiers rounded up the inhabitants, including women and children, and herded them into a pre-designated place; they also rounded up Ceferino Portuguese, son of the witness, and Carlos Guarin. During the process of zoning, the appellant pointed out those two persons to her Japanese companions by telling them that they are bad men and guerrillas. Immediately thereafter, the Japanese soldiers tied the hands of Portuguese and Guarin and loaded them on a truck, and the two prisoners, with other persons from the same barrio, were taken away by the Japanese and "brought to the City of Cavite. Teodora Guarin said that after that she never saw her son Ceferino again. She also testified that Garcia, known as "the fat man," was accompanying the appellant and the Japanese soldiers in the zoning of that place and was a notorious Japanese spy in Cavite. Appellant was living in Cavite with Garcia as his mistress, and, during the zoning of the barrio of Pasong Kawayan, she saw the appellant wearing a Japanese cap and clothing similar to that worn by Japanese soldiers.

Marcelina Reyes, a resident of barrio Tapia, General Trias, Cavite, testified that she knew the appellant since her childhood. In July, 1944, Arsenia Nunez, was in company with Japanese soldiers when they conducted a zona in her barrio and arrested Perpetua Cadava, Ceferino Portuguese, Carlos de los Reyes, Dionisio Colanteng and a man who answered to the name of Tano. The witness was also arrested by the Japanese pursuant to the indication of appellant who informed them that her husband, Alonso Saliba, was a guerrilla. Marcelina was therefore loaded on a truck together with Ceferino Portuguese and a few others, and brought to the Military Police garrison in Cavite City, where she was investigated regarding the guerrilla activities of her husband. While she was detained in Cavite for two months and seven days, she saw the appellant sitting on a chair and holding office at the Kempei-tai headquarters in Cavite. Appellant was married to a guerrilla by the name of Albino Torres and the accused joined the Japanese to compel the surrender of her husband. "When the prisoners were brought to the City of Cavite, appellant was on the front seat of the vehicle, next to the chauffeur, and on that occasion she was wearing a Japanese uniform. Marcelina further stated that Carlos de los Reyes, one of those arrested and taken to the City of Cavite from the place of the zona, has never returned nor seen after his arrest; likewise, her brother Carlos de los Reyes and many others who were arrested have never returned to their respective homes.

The third witness Perpetua Cadava declared that she was acquainted with the appellant since her childhood. She narrated practically all the facts testified by the two previous witnesses and added that when she was arrested together with Marcelina Reyes, Ceferino Portuguese and others, her hands were tied and she was loaded on a truck together with those persons already mentioned. They were taken to the Kempei-tai garrison in the City of Cavite and investigated regarding her guerrilla connections. During her questioning in the Kempei-tai garrison, appellant was pacing up and down the floor of the premises and once approached her sayings "Is it true that your house is being used as headquarters of Magirog and is it also that your husband is a guerrilla?" after which, she was slapped on the face by appellant. Perpetua corroborated the other two witnesses when she stated that appellant was dressed in Japanese uniform, was wearing sun glasses, and frequently pointed out several persons to the Japanese and those pointed out by her were immediately tied by the hands and loaded on trucks by the Japanese. This witness was kept in the Kempei-tai garrison for one month and one day.

The fourth, witness is Florencia Luneta, a merchant in the town of Tanza, Cavite. According to her, in 1944, she lived -with the appellant and some guerrillas in the same house in the barrio of Tapia, General Trias. In July, 1944, the appellant suddenly left the house and lived with some Japanese in the City of Cavite. One afternoon, appellant came to the barrio of Tapia with Japanese soldiers travelling in four trucks and in order to conduct a zona in that place. The appellant pointed out the witness to the Japanese as the laundry woman of Magno Mairoguin, a guerrilla leader in Cavite; she also pointed, out to the Japanese Marcelina Reyes, Perpetua Cadava and Balbina Posas. In fact, these women were wives of guerrillas and upon being pointed out by appellant their hands were tied and they were loaded by the Japanese on trucks and brought to the Kempei-tai headquarters in the City of Cavite. Florencia was investigated regarding her connections with guerrilla leader Magno Mairoguin. and during her questioning she was confronted by her accuser, the appellant herein. She told the appellant, "Woman you might be mistaken; I am not a laundry woman of the guerrillas." She was detained in the Japanese garrison for one month and a half. During her confinement therein she saw appellant frequently in the Japanese headquarters. She saw appellant wearing a cap and a suit similar to that worn "by the Japanese soldiers and when going out on an expedition with the Japanese, she usually sat near the chauffeur.

In the light of the above-stated facts, it is undeniable that this appellant has been acting as the "finger woman" of the Japanese when the latter zoned the inhabitants in the barrios of Tapia and Pasong Kawayan, municipality of General Trias, Cavite. All the witnesses for the prosecution have attested that she was always in the company of Japanese soldiers, and that appellant was wearing sun glasses, a Japanese cap and uniform, and that she was the one who pointed her accusing finger at the persons already mentioned above who were immediately put under arrest by the Japanese members of the Kempei-tai and transferred to their headquarters, investigated and tortured.

It is distinctly shown that in taking part in the zoning activities of the Japanese, appellant was responsible for the arrest of several persons such as Ceferino Portuguese, Carlos Guarin, Carlos de los Reyes and others, with the added circumstance that the three named persons have never been seen alive again, and although it is not the purpose of the prosecution to make her directly and personally responsible for the disappearance, and perhaps the killing by the Japanese, of Ceferino Portuguese, Carlos Guarin and Carlos de los Reyes, yet the conclusion is inevitable that, by pointing them out to her Japanese masters, she had greatly cooperated in their arrest, detention, disappearance, and perhaps death, by the positive act of accusing them and pointing them out to the Japanese kempei.

Appellant admitted that she pointed out to the Japanese and caused the arrest of Ceferino Portuguese and three other persons; she also admitted that she had been living in the house of Magno Garcia, a notorious Japanese spy in the City of Cavite from July, 1944 up to the date of liberation thereof. She alleged, however, that a group of armed bandits locally known as "Texas" kidnaped her from the home of her parents in Pasong Kawayan, General Trias, that Ceferino Portuguese, a rejected suitor, was a member of that band; that her kidnapers brought her to a place called Santol where she was outraged; that after abusing her, her kidnapers brought her to the house of Perpetua Cadava where she was made to stay overnight guarded by Portuguese and three others. The day following the zoning referred to by the witnesses for the prosecution, the house of Perpetua Cadava was raided by the Japanese soldiers and they found her there in the premises with Ceferino Portuguese and the latter's companions. Then she was investigated by the Japanese, she reported to them what happened to her, and that she was kidnaped by the "Texas" band; but the Japanese did not believe her story and instead brought her to the City of Cavite and placed her under the custody of Magno Garcia. Upon the arrival of the American troops she escaped from the house of Garcia and proceeded to Batangas, Batangas, and stayed in the house of a friend. Then an American member of the CIC (Counter Intelligence Corps) arrested her on the charge of being a Japanese spy.

The above denials and assertions made by the defendant fail to counteract the evidence presented by the

prosecution. For instance, one Felix Cubal who claims to be a next-door neighbor of the Nuñez family, testified that one day previous to the zoning of Pasong Kawayan, the appellant was kidnaped by the "Texas" band, but the appellant's father, Placido Nuñez, put on the witness stand by the defense, declared that he had no close neighbors, that his house was isolated and very far away from others, that he was working on his land when this happened and learned about it when he returned home. Alleging that he was afraid of the Japanese, he said, however, that he did not notify the local authorities about it nor take any steps to ascertain the whereabouts of his daughter, and that it was only on the following year, when the American forces were already occupying the province of Cavite, that the witness learned that his daughter, the appellant, was in the City of Cavite. The attitude of utter indifference shown by Nuñez in connection with the matter of the alleged kidnapping of his daughter is so unnatural, so contrary to the well-known strength and closeness of the family ties of the Filipinos, that We hardly believe the accuracy of this story of the kidnapping, and that appellant voluntarily left her home for the City of Cavite to join the Japanese.

This shows that the evidence of appellant is based on a shaky foundation. In fact, even assuming that her contention that she was criminally assaulted and kidnaped by the "Texas" bandits is true, yet, We fail to understand how such acts could justify her treasonable acts and adherence to the enemies of her country and fellow citizens. We find that the testimonies of the four women who were put on the stand by the prosecution ring true, and it is unbelievable that they would have concocted such, accusations against this appellant, one of their own sex, if the facts related by them on the witness stand were mere fabrications.

The Solicitor General, agreeing to the plea of counsel for defendant, invites our attention to the attendance of the privileged mitigating circumstance of minority of this offender when she committed those treasonable acts. (Rev. Penal Code, Art. 13, par. 2.) The transcript of her testimony shows that this appellant, answering to questions of her counsel, said that, according to her mother, she was born on the 17th of August, but she did "not know what year." Her mother just told her that she "was 18 years old." However, when on January 5, 1948 she was put on the stand, after being sworn as a witness, she said that she was 21 years of age. Considering that the evidence shows that her treasonable acts were committed after her alleged kidnapping and raping by the "Texas" bandits in July, 1944, We may safely conclude that, she was over 15 and under 18 years of age when she violated the treason law, and in the absence of evidence to the contrary (judgment of the Supreme Court of Spain of June 9, 1890, Viada, Vol. 2, page 14, cuestion 2; U.S. vs. A.gadas, et al., 36 Phil. 246) when the culprit is over 15 and under 18 years of age, "the penalty next lower than that prescribed by law shall be imposed, but always in the pi-oper period," upon this culprit (Art. 68. par. 2, Rev. Penal Code).

Treason is punished by reclusion temporal to death and a fine not to exceed P20,000. According to the rules for graduating penalties provided in Article 61 of the Revised Penal Code, "when the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale." In this instance, the penalty next lower in degree is prision mayor, to be imposed in its medium period, on account of the absence of modifying circumstances.

Pursuant to Section 2 of the Indeterminate Sentence Law, as amended, this appellant, herein convicted of treason, is, however, not entitled to the benefits of saia law.

In view of all the foregoing, Arsenia Nuñez is, therefore, sentenced to ten years of prision mayor. Thus modified, the judgment appealed from is otherwise affirmed, with costs.

Moran, C. J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Feria, J., no part.

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