

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCELO ARAMBULO, DEFENDANT-APPELLANT.

G.R. No. L-2053. April 29, 1950

Ponente: BENGZON, J.

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BENGZON, J.:

Charged with treason described in three counts, the appellant Marcelo Arambulo was found guilty of the third by the People's Court, that, considering his minority as mitigation, sentenced him to twelve years and one day of reclusion temporal with the accessories, and to pay a fine of five thousand pesos, plus the costs. He appealed to the Court of Appeals.

The First Division of that appellate tribunal certified the case to us in a resolution in which, stating the facts found, it expressed the belief that appellant should be given life imprisonment at least. We have revised the whole record.

In support of the first two counts, there was evidence to show that during the Japanese occupation in September, 1944, this defendant, being a constabulary soldier stationed in Bautista and Alcala, Pangasinan, contacted the guerrillas operating in the nearby towns of Bayambang and Urbiztondo, and feigning sympathy with their cause, agreed to take part in a raid against the constabulary barracks at Bautista only to ascertain the details of the plan and to denounce, as he did denounce, it to his superiors in the constabulary. The result was a complete frustration of the attempt, and the arrest, maltreatment and incarceration of several guerrilla operatives, among them Fidencio de Vera, Justo Resultan and Francisco Bato.

However, inasmuch as the two-witness rule to the same overt act had not been strictly complied with, the People's Court absolved this appellant of the said two counts. Nevertheless, it stated, correctly we should say, that the evidence introduced could be considered as exhibiting adherence to the cause of the Japanese invader, by the defendant who is unquestionably a Filipino citizen, born of Filipino parents in Urbiztondo, Pangasinan, in December, 1925.

On the third count, the following facts were competently proven:

In the morning of September 7, 1944, this accused, together with two other soldiers named Evangelista and Miguel Arañada went to the house of Leonardo Dumlao, in Alcala, to bring him and his son Leonides, about 17 years of age, to the constabulary barracks located in the Home Economics Building. Arambulo said that his superior officer Lt. Romero wanted to see them. Once in the building, this soldier quizzed Leonardo about his connections with or knowledge of guerrilla activities. Leonardo said he was not a guerrilla and did not know anything about the matter, and was, after some grilling reluctantly released. As he was passing out of the gate, he saw Leonides being investigated and maltreated by the aforesaid soldiers in the balcony of the building. When Leonides was later taken to a room the poor father could hear the cries of his son under physical torture. It must have been with a heavy heart that he proceeded home to report to his wife Hipolita Neri. But his cup was not yet filled.

At about noon the same soldiers brought the youth to his house, with marks of maltreatment showing all over: He was in a weak condition, his hands were tied behind his back, his shirt was torn and smeared with blood and his forehead was swollen. The soldiers were after his gun which they ordered him to produce using the butts of their rifles as forceful means of persuasion. The young man pointed to a pipe about one foot long. This accused picked it up and cudgeling Leonides' head with it, angrily exclaimed: "Fool, is this the revolver you are talking about?" Leonides fell on the floor unconscious. When he came to, Evangelista and Miguel Aranada helped him to stand up, only to be again questioned about the revolver. He stoutly denied having one; so Evangelista said, "Well, if there is none we better go". Arambulo then pulled Leonides from the sala to the stairs, whereat he pushed Leonides, causing the latter to roll down, because he was helpless, as his hands were tied. Evangelista again assisted Leonides to stand up.

The above is the account of Leonardo Dumlao and his wife, who were helpless spectators of the whole affair.

The captive was presently returned to the constabulary barracks; but at four o'clock that afternoon he was brought by the three soldiers to the Municipal Hall, his head covered with a raincoat.

Luciano Pabunan, policeman then on guard, saw Leonides and, describing his appearance, swore that "there were bruises in his face and blood was coming out, there were swollen parts on his head". This same policeman declared that that night he slept near the jail and at midnight he was awakened by the three constabulary men who had entered the jail to fetch Leonides, saying they needed him to apprehend his other guerrilla companions; that they took Leonides to the north, towards the river; that after a short while he heard two shots; that several minutes later Arambulo and his two co-conspirators returned to the jail shouting: "guards help us because Leonides was able to escape".

Leonides was never seen again. At that time it was not unusual for constabulary soldiers to take out prisoners from the jail under one pretext or another, then shoot them and allege that the prisoners had run away.

"The defense" says Judge Bautista for the People's Court, "has not introduced any evidence, whether oral or documentary, except the testimony of the accused that merely consisted in a simple denial. He denied any knowledge of the event in question, although he admitted that on the date of Leonides' arrest he already knew the Dumlao couple. No mention is made of even the smallest circumstance to make us suspect that the Dumlaos and the policeman Pabunan had testified under the impulse of any resentment against the accused, other than the grief and hate" (in the Dumlaos) "naturally produced by the criminal act. Under such circumstance it would be most unjust to let the defendant's negative testimony prevail over the positive and unanimous affirmations of the witnesses for the prosecution". This estimate of the situation deserves our endorsement.

The defense counsel argues here, however, that the People's witnesses merit no credence, because they were "like actors and actresses who have been trained and properly coached" their "answers tallying on all points, even as to the exact time, place and manner of torturing the victim, etc.". This, of course, is a serious charge. But after scrutinizing the stenographic notes, we are persuaded that there was no such coaching. The assertions of Leonardo Dumlao were not all exactly like those of his wife Hipolita Neri. For instances: (a) He could not remember the date: She said it was September 7, 1944. (b) She averred she was ordered to open a trunk "to find out the gun of my son": Leonardo failed to mention that incident, (c) The husband said Leonides was wearing a short white pant: The wife declared, "if I am not mistaken he was wearing 'maong' (blue denim pants)". And so on.

Another point which is the subject of appellant's third assignment of error relates to the circumstance that this third count was added in the amended information submitted (August, 1947) more than one year after the original information (March, 1946).

Enough to point out that the amendment was made before the arraignment and at that stage it is allowed by the Rules of Court. Furthermore, no objection on that ground was ever made in the trial court.

Wherefore, finding no error in the appealed decision, we affirm the verdict of guilt. But, as the Court of Appeals has suggested, it was error to give this accused the benefit of the mitigating circumstance of minority. On September 7, 1944, he was more than eighteen years old. Consequently life imprisonment and fine is the penalty under Article 114 and other articles of the Revised Penal Code.

The appealed judgment is modified, and appellant is hereby sentenced to life imprisonment and to pay a fine of P5,000.00, plus costs.

So ordered.

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

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