

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. APOLINAR ADRIANO, DEFENDANT AND APPELLANT.

G.R. No. L-477. June 30, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of conviction for treason by the People's Court sentencing the accused to life imprisonment, P10,000 fine, and the costs.

The information charged:

"That between January and April, 1945 or thereabout, during the occupation of the Philippines by the Japanese Imperial Forces, in the Province of Nueva Ecija and in the mountains in the Island of Luzon, Philippines, and within the jurisdiction of this Court, the above-named accused, Apolinar Adriano, who is not a foreigner, but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, in violation of said allegiance, did then and there willfully, unlawfully, criminally and treasonably adhere to the Military Forces of Japan in the Philippines, against which the Philippines and the United States were then at war, giving the said enemy aid and comfort in the manner as follows:

"That as a member of the Makapili, a military organization established and designed to assist and aid militarily the Japanese Imperial Forces in the Philippines in the said enemy's war efforts and operations against the United States and the Philippines, the herein accused bore arm and joined and assisted the Japanese Military Forces and the Makapili Army in armed conflicts and engagements against the United States armed forces and the Guerrillas of the Philippine Commonwealth in the Municipalities of San Leonardo and Gapan, Province of Nueva Ecija, and in the mountains of Luzon, Philippines, sometime between January and April, 1945. Contrary to Law."

The prosecution did not introduce any evidence to substantiate any of the facts alleged except that of defendant's having joined the Makapili organization. What the People's Court found is that the accused participated with Japanese soldiers in certain raids and in confiscation of personal property. The court below, however, said these acts had not been established by the testimony of two witnesses, and so regarded them merely as evidence of adherence to the enemy. But the court did find established under the two-witness rule, so we infer, "that the accused and other Makapilis had their headquarters in the enemy garrison at Gapan, Nueva Ecija; that the accused was in Makapili military uniform; that he was armed with rifle; and that he drilled with other Makapilis under a Japanese instructor; * * * that during the same period, the accused in Makapili military uniform and with a rifle, performed duties as sentry at the Japanese garrison and Makapili headquarters in Gapan, Nueva Ecija;" "that upon the liberation of Gapan, Nueva Ecija, by the American forces, the accused and other Makapilis retreated to the mountains with the enemy;" and that "the accused, rifle in hand, later surrendered to the Americans."

Even the findings of the court recited above in quotations are not borne out by the proof of two witnesses. No two of the prosecution witnesses testified to a single one of the various acts of treason imputed by them to the appellant. Those who gave evidence that the accused took part in raids and seizure of personal property, and

performed sentry duties and military drills, referred to acts allegedly committed on different dates without any two witnesses coinciding in any one specific deed. There is only one item on which the witnesses agree: it is that the defendant was a Makapili and was seen by them in Makapili uniform carrying arms. Yet, again, on this point it cannot be said that one witness is corroborated by another if corroboration means that two witnesses have seen the accused doing at least one particular thing, be it a routine military chore, or just walking or eating.

We take it that the mere fact of having joined a Makapili organization is evidence of both adherence to the enemy and giving him aid and comfort. Unless forced upon one against his will, membership in the Makapili organization imports treasonable intent, considering the purposes for which the organization was created, which, according to the evidence, were "to accomplish the fulfillment of the obligations assumed by the Philippines, in the Pact of Alliance with the Empire of Japan;" "to shed blood and sacrifice the lives of our people in order to eradicate Anglo-Saxon influence in East Asia;" "to collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines;" and "to fight the common enemies." Adherence, unlike overt acts, need not be proved by the oaths of two witnesses. Criminal intent and knowledge may be gathered from the testimony of one witness, or from the nature of the act itself, or from the circumstances surrounding the act. (Cramer vs. U. S., 65 Sup. Ct., 918.)

At the same time, being a Makapili is in itself constitutive of an overt act. It is not necessary, except for the purpose of increasing the punishment, that the defendant actually went to battle or committed nefarious acts against his country or countrymen. The crime of treason was committed if he placed himself at the enemy's call to fight side by side with him when the opportune time came even though an opportunity never presented itself. Such membership by its very nature gave the enemy aid and comfort. The enemy derived psychological comfort in the knowledge that he had on his side nationals of the country with which his was at war. It furnished the enemy aid in that his cause was advanced, his forces augmented, and his courage was enhanced by the knowledge that he could count on men such as the accused and his kind who were ready to strike at their own people. The practical effect of it was no different from that of enlisting in the invader's army.

But membership as a Makapili, as an overt act, must be established by the deposition of two witnesses. Does the evidence in the present case meet this statutory test? Is the two-witness requirement fulfilled by the testimony of one witness who saw the appellant in Makapili uniform bearing a gun one day, another witness another day, and so forth?

The Philippine law on treason is of Anglo-American origin and so we have to look for guidance from American sources on its meaning and scope. Judicial interpretation has been placed on the two-witness principle by American courts, and authoritative text writers have commented on it. We cull from American materials the following excerpts which appear to carry the stamp of authority.

Wharton's Criminal Evidence, Vol. 3, section 1396, p. 2282, says:

"In England the original Statute of Edward, although requiring both witnesses to be to the same overt act, was held to mean that there might be one witness to an overt act and another witness to another overt act of the same species of treason; and, in one case it has been intimated that the same construction might apply in this country. But, as Mr. Wigmore so succinctly observes: 'The opportunity of detecting the falsity of the testimony, by sequestering the two witnesses and exposing their variance in details, is wholly destroyed by permitting them to speak to different acts.' The rule as adopted in this country by all the constitutional provisions, both state and Federal, properly requires that two witnesses shall testify to the same overt act. This also is now the rule in England."

More to the point is this statement from VII Wigmore on Evidence, 3d ed., section 2038, p. 271:

"Each of the witnesses must testify to the whole of the overt act; or, if it is separable, there must be two witnesses to each part of the overt act."

Learned Hand, J., in *United States vs. Robinson* (D. C. S. D., N. Y., 259 Fed., 685), expressed the same idea: "It is necessary to produce two direct witnesses to the whole overt act. It may be possible to piece bits together of the overt act; but, if so, each bit must have the support of two oaths; * * *." (Copied as footnote in *Wigmore on Evidence*, ante.) And in the recent case of *Cramer vs. United States* (65 Sup. Ct., 918), decided during the recent World War, the Federal Supreme Court lays down this doctrine: "The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every act, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses."

In the light of these decisions and opinions we have to set aside the judgment of the trial court. To the possible objection that the reasoning by which we have reached this conclusion savors of sophism, we have only to say that the authors of the constitutional provision of which our treason law is a copy purposely made conviction for treason difficult, the rule "severely restrictive." This provision is so exacting and so uncompromising in regard to the amount of evidence that where two or more witnesses give oaths to an overt act and only one of them is believed by the court or jury, the defendant, it has been said and held, is entitled to discharge, regardless of any moral conviction of the culprit's guilt as gauged and tested by the ordinary and natural methods, with which we are familiar, of finding the truth. Natural inferences, however strong or conclusive, flowing from the testimony of a most trustworthy witness or from other sources are unavailing as a substitute for the needed corroboration in the form of direct testimony of another eye-witness to the same overt act.

The United States Supreme Court saw the obstacles placed in the path of the prosecution by a literal interpretation of the rule of two witnesses but said that the founders of the American government fully realized the difficulties and went ahead not merely in spite but because of the objections. (*Cramer vs. United States*, ante.) More, the rule, it is said, attracted the members of the Constitutional Convention "as one of the few doctrines of Evidence entitled to be guaranteed against legislative change." (*Wigmore on Evidence*, ante, section 2039, p. 272, citing Madison's *Journal of the Federal Convention*, Scott's ed., II, 564, 566.) Mr. Justice Jackson, who delivered the majority opinion in the celebrated *Cramer* case, said: "It is not difficult to find grounds upon which to quarrel with this Constitutional provision. Perhaps the framers placed rather more reliance on direct testimony than modern researchers in psychology warrant. Or it may be considered that such a quantitative measure of proof, such a mechanical calibration of evidence is a crude device at best or that its protection of innocence is too fortuitous to warrant so unselective an obstacle to conviction. Certainly the treason rule, whether wisely or not, is severely restrictive." It must be remembered, however, that the Constitutional Convention was warned by James Wilson that " 'Treason may sometimes be practiced in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an enemy.' The provision was adopted not merely in spite of the difficulties it put in the way of prosecution but because of them. And it was not by whim or by accident, but because one of the most venerated of that venerated group considered that 'prosecutions for treason were generally virulent.' "

Such is the clear meaning of the two-witness provision of the American Constitution. By extension, the law-makers who introduced that provision into the Philippine statute books must be understood to have intended that the law should operate with the same inflexibility and rigidity as the American forefathers meant.

The judgment is reversed and the appellant acquitted with costs charged de officio.

Moran, C.J., Feria, Pablo, Perfecto, Bengzon, Briones, Hontiveros, and Padilla, JJ., concur.

Paras, J., concurs in the result.

DISSENTING

HILADO, J.:

Being unable to bring myself to agree with the majority upon the application of the two-witness rule herein, I am constrained to dissent.

As I see it, being a member of the Makapili during the Japanese occupation of those areas of the Philippines referred to in the information, was one single, continuous, and indivisible overt act of the present accused whereby he gave aid and comfort to the Japanese invaders. That membership was one and the same from the moment he entered the organization till he was captured. The fact that he was seen on a certain day by one of the state witnesses being a member of the Makapili, and was seen by another state witness but on a different day being a member of the same organization, does not mean that his membership on the first day was different or independent from his membership on the other day—it was the selfsame membership all the way through. A contrary construction would entail the consequence that the instant defendant, if we are to believe the allegations and proofs of the prosecution, became or was a member of the Makapili as many times as there were days from the first to the last.

T. E. Holland defined "acts" in jurisprudence as follows:

"Jurisprudence is concerned only with outward acts. An 'act' may therefore be defined * * * as 'a determination of will, producing an effect in the sensible world'. The effect may be negative, in which case the act is properly described as a 'forbearance'. The essential elements of such an act are three, viz., an exercise of the will, an accompanying state of consciousness, a manifestation of the will". (Webster's New International Dictionary, 2d ed., unabridged, p. 25.)

There can, therefore, be no question that being a member of the Makapili was an overt act of the accused. And the fact that no two witnesses saw him being such a member on any single day or on the self-same occasion does not, in my humble opinion, work against the singleness of the act, nor does the fact that no two witnesses have testified to that same overt act being done on the same day or occasion argue against holding the two-witness rule having been complied with.

My view is that, the act being single, continuous and indivisible, at least two witnesses have testified thereto notwithstanding the fact that one saw it on one day and the other on another day.

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