

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GAVINO BASILIO, DEFENDANT-APPELLANT.

G.R. No. L-2238. May 11, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

Gavino Basilio, charged before the People's Court with the crime of treason on eleven (11) counts, was found guilty on two counts, with the mitigating circumstance of lack of instruction and with no aggravating circumstance, and was sentenced to suffer 14 years, 8 months and 1 day of reclusion temporal, being credited however with one-half of his preventive imprisonment; to pay a fine of 17,000 with the accessories of the law; and to pay the costs.

On December 1, 1944, the barrio of Tipas, Taguig, Rizal Province, was raided by a group of Makapilis, one of them being appellant Basilio, and Japanese soldiers in several armored tanks. All the males of the barrio were gathered and herded into the 'patio' (yard) of the Catholic church. They were made to file out singly and pass before a certain house where several hooded persons pointed out the 'guerrillas' to the Japanese. The ones thus singled out were brought to the Aglipayan church and were maltreated, while the rest were returned to the Catholic church and later released. After the segregation of suspects, these were loaded in trucks guarded by Japanese soldiers and were carried away to Fort Santiago in Manila, according to Rosa Salazar, one of those arrested.

This entire episode was shown by the testimonies of: Conrado Bonifacio and Anselmo Eustaquio, who were in the 'zona' (concentration) but among those brought to the Catholic church and later released; Rafael Senga, who was singled out by the hooded persons but was able to escape being loaded into a truck by mixing with the crowd; and Rosa Salazar, who was also singled out and brought to Fort Santiago. Witnesses Eustaquio and Senga pointed out appellant during the trial as one of those who participated in the aforementioned raid.

In the morning of December 26, 1944, a group of Makapilis, one of them being appellant Basilio, swooped down upon the barrio of Calumpang, Mariquina, province of Rizal, gathered all the men of the locality and lined them up near the schoolhouse. The raiding party also went to the house of Eligio Estanislao, and upon being told that he was out, they went to the fields where they found him, arrested him and charged him with being a supply officer of the 'guerrillas'. He was boxed by appellant Basilio and was later given the 'water cure' by the others, and then brought over to where the rest were lined up. One of the raiders, Agaton Martin (Borong-Borong), read out names from a list. Those called, about nine of them including Eligio Estanislao, were then taken to the Japanese garrison. Estanislao was never seen again until his body was exhumed in 1946 near the bank of a river.

These facts were established by the following witnesses: Maria Estanislao, daughter of the victim Eligio; Eduviges Samson, owner of a store in front of which the men were lined up; Aquilino Guevara, one of those lined up but whose name was not on the list; Luis Senga, brother of one of the victims who has not been seen since he was taken to the garrison. Appellant's participation in this raid, particularly his maltreatment of Eligio Estanislao,

was recounted by two eyewitnesses, namely, Maria Estanislao and Eduvigis Samson who was peeping from the window of his store.

Appellant's defense consists in the sweeping denial of his having participated in both raids and in the alibi that during the raid on barrio Tipas on December 1, 1944, he was at his house in Palatiao, Pasig, Rizal Province, cooking food for peddling. In support of his defense, appellant presented two witnesses, Cirilo Tuason and Mariano Mariano, who are both serving sentence in the Insular Penitentiary. The People's Court saw it fit to disbelieve appellant and his unreliable witnesses, and this Court agrees with such a view.

In both raids narrated above, as proven by the testimonies of various witnesses, at least two witnesses testified to appellant Basilio's direct participation in each of the raids. Appellant's Filipino citizenship has been adequately established by Exhibit No. B-626 as identified by Mariano Tan, Chief of the Identification Office of the Bureau of Prisons, during the trial. All the elements of treason have been fully proven and this Court affirms the finding of guilt made by the People's Court.

FOR ALL THE FOREGOING, this Court finds appellant Gavino Basilio guilty of the crime of treason on two counts, with the mitigating circumstance of lack of instruction in his favor. However, this is offset by the aggravating circumstance pointed out by the Solicitor-General that the wrong done in the commission of the crime was deliberately augmented by causing other wrong not necessary for its commission as evidenced by the maltreatment to which some of the victims were subjected by appellant Basilio and his companions. The penalty, therefore, provided by Article 114 of the Revised Penal Code should be imposed in its median period, namely, *reclusion perpetua*. With this modification, the judgment of the People's Court is hereby affirmed, with costs.

IT IS SO ORDERED.

Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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