

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JESUS CAMPOS, DEFENDANT AND APPELLANT.

G.R. No. L-2331. May 13, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Jesus Campos is charged with treason in an amended information filed with the Fifth Division of the People's Court in Cebu City. (case No. 925). After trial, the Court found him guilty of the crime, as charged in the second, fifth, seventh, eleventh and twentieth counts of the amended information, and sentenced him to suffer the penalty of reclusion perpetua, the accessories of the law, and to pay a fine of P10,000 and costs. He has appealed.

Count No. 2

At about 10:00 o'clock in the morning of 7 May 1942, the appellant, armed with a revolver, came to the house of Kong Nico in barrio Tubod, Sibonga, Cebu, accompanied by Margarito Campos and one Dodong, and demanded from Kong Nico the surrender of his revolver. Kong Nico refused. The appellant said that he was ordered by the Japanese military authorities to confiscate firearms and showed him a mimeographed copy of the proclamation of the Japanese Imperial Army (Exhibit A) urging holders of firearms to surrender them, and that if Kong Nico refused to surrender his revolver to him, he would take him to the Japanese garrison at Carcar or a patrol of Japanese soldiers would come to molest him. Fearing that the appellant would carry out his threat, Kong Nico surrendered to him his pearl-handled .32 caliber revolver, the license to possess it and nine bullets.

Kong Nico himself and Casiano Cabrera, who was in the house of Kong Nico when the appellant and Margarito Campos arrived, testified in Court to prove the charge in this count.

Count No. 5

At about 6:00 o'clock in the morning of 28 April 1943, the appellant, armed with a .45 caliber pistol and accompanied by six armed Japanese soldiers arrested Anatolio Lucero at his house in Sibonga, Cebu, allegedly for being an American citizen, a soldier of the USAFFE and a member of the guerrilla movement, and brought him to the corner of Zamora and Rizal streets where the rest of the Japanese contingent was waiting for him. There, the appellant, by means of signs, asked rope from the Japanese soldiers, tied his hands on his back, 'kicked him and dealt him blows over the body, on the abdomen and on the left and right ribs. Then the appellant ordered him to walk to the town plaza, where he turned him over to the Japanese. Anatolio Lucero was brought to Cebu City on board a motorboat where upon arrival he was taken to Tinaan, Naga, Cebu, and then to the kempeitai headquarters in Cebu. Later on, he was brought to Guindulman, Bohol, where he was forced to work in the Nippon Mining Company run and managed by the Japanese where manganese was extracted. On 1 December 1943 he was taken back to Cebu City and on 2 December he was released from custody. On 3 December he returned to his house.

Anatolio Lucero himself, Ramona de Lucero and Daniel Campos testified in Court to established the charge in this count.

Count No. 7

At about 9:00 o'clock in the evening of 20 November 1943, while coming down from the house of Melecio Avila on Sikatuna street, Cebu City, the appellant, armed with a revolver, and accompanied by Sgt. Yoshida of the kempeitai, two Japanese noncommissioned officers and one named Adlawan, all riding in a car, accosted Jose del Villar, a city operative with the rank of lieutenant in the Allied Intelligence Bureau, and his wife Nieves Ibanez del Villar, ordered them to ride in the car and proceeded to their house. Upon reaching their house, the appellant and his companions, accompanied by Mrs. del Villar, went up the house, leaving del Villar in the car under guard, and ransacked the house. After finding nothing incriminating, they took Jose del Villar to the headquarters of the kempeitai at the Cebu Normal School building, where the appellant, pointing an accusing finger at his face, with the aid of Adlawan and Sgt. Yoshida, investigated him on the guerrilla activities of Captain Guillermo Monfort, G-2 of the USAFFE, Allied Intelligence and Propaganda, AIB. The appellant advised Jose del Villar to reveal his co-guerrilla members, for it would be "tough" for him if he should refuse to do so. As he denied knowledge of the guerrilla activities of Captain Monfort, he was incarcerated at the Kempeitai headquarters. There he saw Captain Monfort inside cell No. 3. He was confined at the kempeitai headquarters in the Cebu Normal School building for 61 days, and on 21 January 1944 he was brought to Manila and confined in Fort Santiago and later on in Bilibid Prison, together with Captain Monfort, Atty. Efrain Pelaez and one Lt. Dionisio Sivial. After four months and eight days he and his companions were tried, convicted and sentenced for espionage and treason against Japan by a court martial convened at Fort McKinley. He was liberated on 5 February 1945.

Jose del Villar himself and his wife Nieves Ibañez del Villar testified to substantiate the charge in this count.

Count No. 11

At about 2:00 o'clock in the morning of 1 July 1944, a band of four Japanese soldiers and three Filipino undercover men swooped upon a group of Filipino evacuees in a swampy place at sitio Camorosan, barrio Bonbon, Clarin, Bohol, and rounded up the family of Leonilo Mercado, mayor of Sibonga, Cebu tied his hands on his back, and those of his son Jesus and of Urbano Lapis, Apong Salolan, one Pedro and Jovito Soria, the last a member of the guerrilla movement. Asked if he had any firearm or if he knew of any who had, and if he knew the whereabouts of Governor Abellana of Cebu, Representative Pedro Lopez of Cebu and other guerrilla officers, Leonilo Mercado answered in the negative. At daybreak of the same day, Maria Paz Mercado and Jesus Mercado, children of Leonilo, recognized the appellant, who carried a .45 caliber revolver, Margarito Campos, Alfonso Almendras, Ato Adlawan, Antonio Racasa and others, who were also armed, as the Filipino undercovermen who accompanied a group of Japanese soldiers that swooped upon them early in the morning of that day. They released the inmates of the house of Leonilo Mercado but took along with them the latter and Jovito Soria, and proceeded to barrio Bonbon. There Maria Paz Mercado and Jesus Mercado saw their father, hands tied on his back, and guarded by the appellant. The band moved to Inabanga, Bohol, and brought the two captives to the headquarters of the kempeitai. Of the two, only Jovito Soria returned after his release from confinement. Jesus Mercado saw the bones of his late father.

The arrest of Leonilo Mercado by a band of Japanese soldiers and Filipino undercovermen, in which the appellant took a direct and active part, was witnessed by Maria Paz Mercado, Jesus Mercado and Jovito Soria; that of Jovito Soria was witnessed by Maria Paz Mercado and Jesus Mercado; and that of Jesus Mercado, Urbano Lapis, Apong Salolan and one Pedro, who were later on released, was witnessed by Maria Paz Mercado and Jesus Mercado, all of whom testified in court to prove the charge in this count.

Count No. 20

On 11 July 1944 the members of the Bolo Battalion of Inabanga, among whom were Ignacio Opileña, Vitaliano Vitor and Eugenio Orteza were rounded up and detained by the Japanese military authorities in the municipal building for investigation concerning firearms possessed by them and the activities of the guerrillas and their whereabouts. Three days later, or on 14 July 1944, they; were marched to the school building and there grouped into three. Ignacio Opileña, Vitaliano Vitor and Eugenio Orteza were assigned to the group under the charge of the appellant. As Eugenio Orteza revealed to the appellant that he had a firearm at home, the latter allowed him to leave the school premises accompanied by three of his men to get it. He returned under guard together with Januario Aparri whom the guards apprehended. Upon seeing them the appellant demanded from Orteza the surrender of his firearm and in compliance he produced a toy gun, which act angered the appellant. He pushed him to the floor and when he fell down the appellant trampled upon his prostrate body. The appellant took a piece of wood and beat him with it. At about 10:00 o'clock in the evening, the appellant brought Orteza and Aparri to the home economics building. Januario Aparri was the only one who returned.

The act of the appellant in torturing and maltreating Eugenio Orteza, a member of the Bolo Battalion, was witnessed by Ignacio Opileña, Vitaliano Vitor and Januario Aparri, all of whom testified in court to established the charge in this count.

Testifying in his own defense, the appellant claimed that he confiscated the firearm of Kong Nico by order of Lts. Maulit and ftapus for the use of the guerrillas; that he was arrested and tried by the Japanese military authorities for concealing firearms and ammunition, for being anti-Japanese and for telling the people to accept debarred emergency notes of the Commonwealth Government, and confined in the Snead Dormitory, later on in Fort Santiago, in the old Bilibid Prisons in Manila and in Muntinglupa; that sometime in February 1943 he was taken back to Manila and brought to Cebu where he was detained at the kempeitai headquarters, investigated and maltreated; that he did not serve the Japanese military authorities but that they brought him to places to bring and carry their cargoes and effects; that sometime in November 1943 he was again arrested by the Japanese when they learned that his brother Filomeno was a liason officer of the guerrillas; that every time he went out with the Japanese, a member of his family was taken as hostage to discourage him from escaping; that it is not true that he arrested Anatolio Lucero and turned him over to the Japanese, the truth being that he voluntarily surrendered to them and that he struck him for not heeding the warning he gave through his wife to go into hiding as the Japanese were after him; that he did not arrest Jose del Villar, Leonilo Mercado and Eugenio Orteza, much less beat and maltreat them. To corroborate the appellant's defense Lucio Amigable testified that he (Lucio) sought the aid of the appellant in behalf of his son Jovenal Amigable, who was a USAFFE soldier, in order that he might not be arrested by the Japanese; and that the appellant advised him to tell his son not to go into hiding and promised him that "he would take care of that." Jovenal Amigable testified that he met the appellant during the Japanese occupation but that he did not molest him. Roque Senarillos testified that notwithstanding the fact that he was wanted by the appellant, he or his family was never bothered by him. Meliton Amarillo testified that he and the appellant were together in the kempeitai headquarters at the normal school building and in Guindulman in the custody of the Japanese in 1944 Soledad Campos de Garcia, sister of the appellant, testified that her brother was a prisoner of the Japanese.

The appellant's testimony alone cannot overcome the clear and positive testimony of the witnesses[1] for the prosecution who testified in court to establish the appellant's guilt on the five counts. Nothing has been presented, not even a statement made, impeaching their testimony as proceeding from an unfairly and unduly biased source, or as one given perjurally. The testimony of Lucio Amigable that the appellant advised him to tell his son Jovenal, a USAFFE soldier, not to go into hiding, and that he promised to protect Jovenal, far from bolstering up his defense, indicates that the appellant enjoyed the confidence of the Japanese military authorities whom he would influence. The testimony of the rest of his witnesses is of no value to the appellant's defense.

While this case was pending appeal in this Court, the appellant filed a motion for new trial and a supplement thereto on the following grounds:

- that the transcript of stenographic notes now in the office of the Clerk of this Honorable Court is incomplete and the pages thereof are not consecutively numbered.
- that a number of credible witnesses, whom the appellant could not contact during the trial on account of the fact that he was then a detention prisoner and who could not dare volunteer to testify for the accused in view of the popular prejudice at the time against those charged with collaboration, have come forward and offered to testify on those counts under which the accused was convicted.

In support of the first ground, the appellant alleges that the testimony of prosecution witnesses Policronio (Policarpio) Mendoza, who testified that the appellant had nothing to do with the arrest of Anatolio Lucero; and Roque Senarillos, then chief of police of Sibonga, Cebu, who testified on the activities of the appellant, are missing; that part of the direct examination and all of the cross-examination of the appellant, the offer and admission of Exhibits 1, 2 and 3 for the defense, and the submission of the case for decision are likewise missing; and "that the pages in the transcript of stenographic notes are not numbered consecutively so that it would be impossible to make page references thereto." A new trial to hear the testimony or parts of the testimony of the witnesses referred to would not change the judgment of conviction. Moreover, it is not true that the transcript of the testimony of Policronio (Policarpio) Mendoza and that of Roque Senarillos, the chief of police of Sibonga, Cebu, are missing, because the former may be found in Volume IV, pp. 37-42, session of 19 June 1947 and the latter may also be found in Volume VI, pp. 40-41, session of 14 July 1947. Contrary to the appellant's claim there is nothing in the testimony of Policronio (Policarpio) Mendoza that would support the appellant's pretense that Policronio (Policarpio) Mendoza testified that the appellant had nothing to do with the arrest of Anatolio Lucero. The testimony of Mendoza corroborates the evidence for the prosecution that on 26 April 1943 he saw the appellant in the house of Mrs. Lucero. Also, contrary to appellant's claim, Roque Senarillos did not testify on the appellant's activities but on his recapture about the middle of August 1946. The trial court said that Policronio (Policarpio) Mendoza "did not testify on any point of importance." Much less would the absence of the part of the stenographic notes concerning the offer and admission of Exhibits 1, 2 and 3 and the submission of the case for decision, prejudice the appellant's defense. The fact that the transcript of stenographic notes are not numbered consecutively cannot impair the substantial rights of the appellant and his claim that it would be impossible to make page references thereto is belied in the very brief filed by his counsel who made reference to the transcript of stenographic notes.

In support of the second ground, the appellant attached to his motion for new trial the affidavits of Filomeno G. Kintanar, Salvador G. Varga, Nestor A. Muñoz, Woodrow Kintanar, Celestino B. Diosmano, Leonardo Cabantan, and Lorenzo de los Reyes; and to his supplementary motion for new trial the affidavits of Jose del Villar, Pantaleon P. Ciano, Pablo R. Paglinawan, Roberto Bautista, Margarito Campos and Alfonso Alcomendras Torres. The sworn statements attached to the motion for new trial merely recite the fact that the appellant aided the cause of the guerrilla movement and that he was incarcerated by the Japanese. The sworn statements of Pantaleon P. Ciano and Pablo R. Paglinawan attached to the supplementary motion for new trial are to the same effect. Help extended to the guerrilla movement, incarceration by the Japanese on suspicion of being a member of the guerrilla, even if one is actually a member thereof, are not valid defenses to his treasonous acts. The sworn statements of Margarito Campos, who has been convicted of and sentenced for treason,¹ and Alfonso Alcomendras Torres tend to exculpate the appellant from guilt. Their testimony proposed to be introduced at the new trial sought by the appellant would not be sufficient to overcome the finding of guilt beyond reasonable doubt made by the trial court. Furthermore, there is no showing that the appellant or his counsel had exerted reasonable diligence to discover and produced at the trial all the evidence sought to be introduced at the new trial. In his

sworn statement Jose del Villar recants his previous testimony in court. Recantation of a previous testimony is not a ground for new trial.

The appellant, who was at birth, and still is, a Filipino citizen, then owing allegiance to the Government of the United States of America and the Philippines, and still is owing allegiance to the latter, adhered to their enemy, giving him aid and comfort, by confiscating the pearl-handled .32 caliber revolver of Kong Nico whom he threatened to arrest and turn over to the Japanese military authorities if he refused to surrender it; by arresting and maltreating Anatolio Lucero, an American citizen, a soldier of the USAFFE and a member of the guerrilla organization, and turning him over to the Japanese military authorities at the kempeitai headquarters; .by arresting Jose del Villar, a guerrilla officer, and turning him over to the kempetai headquarters; by joining the band of Japanese soldiers and Filipino undercovermen that swooped upon the evacuation place of Leonilo Mercado, Mayor of Sibonga, Cebu, arresting him and Jovito Soria and bringing them to the Japanese garrison, arresting Jesus Mercado, Urbano Lapis, Apong Salolan and one Pedro who were subsequently released, and investigating all of them to obtain information as to the whereabouts of Governor Hilarion Abellana of Cebu, Representative Pedro Lopez also, of Cebu and other guerrilla officers; and by torturing Eugenio Orteza, a member of the Bolo Battalion for failure to surrender his firearm. He is, therefore, guilty of treason—a verdict supported by evidence sworn or testified to by at least two witnesses on the same overt acts.

The appellant's motion for new trial and supplementary motion for new trial are denied and the judgment appealed from being in accordance with law is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

[1] *People vs. Margarito Campos*, 83 Phil., 47; 46 Off. Gaz., 922.

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