

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. HILARION JARDINICO, DEFENDANT AND APPELLANT.

G.R. No. L-2065. January 31, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Hilarion Jardinico is appealing from a decision of the People's Court finding him guilty of treason with homicide and sentencing him to death, to pay a fine of P20,000, to indemnify the heirs of the deceased Porfirio de la Peña in the sum of P7,000 and to pay the costs.

Under an amended information, the accused was charged with treason under five counts. At the trial the prosecution abandoned counts 4 and 5 and presented evidence only on the first three counts. The lower court found the appellant guilty only under counts 1 and 2. In this appeal we are, therefore, concerned only with said first two counts. We are reproducing the amended information with the first two counts.

"That during the years 1942-1944, more specifically on or about the dates hereinbelow mentioned, in the different places hereinafter stated, and within the jurisdiction of this Honorable Court, the above-named accused, Hilarion Jardinico, not being a foreigner, but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, did then and there wilfully, unlawfully, 'feloniously and treasonably adhere to the Empire of Japan, enemy both of the United States of America and the Commonwealth of the Philippines, giving said aid and comfort, to wit:

"1. That on or about November 26, 1942, in the sitio of Viernesan, municipality of Sagay, province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, with intent to give aid and comfort to the enemy; wilfully, unlawfully, feloniously and treasonably acted as a driver and guide to Japanese soldiers, and in the said capacity, accompanied the said Japanese soldiers in their raid in the house of Porfirio de la Peña, who was arrested and taken to the Japanese quarters in Central Leonor, Escalante, Negros Occidental, Philippines, where the said Porfirio de la Peña was killed by the said Japanese aided by the herein accused; on the same occasion, the herein accused, aided by his Japanese companions, looted the house of the said Porfirio de la Peña stealing therefrom about P1,000.00 in cash, jewelry, etc. and after looting it the herein accused personally set fire to the said house, as a consequence of which the said house was burned, as also the house of Alejandro Mondido in the same municipality of Sagay, Negros Occidental, Philippines.

"2. That the herein accused, with intent to aid the enemy, acting also as guide and driver to the Japanese, participated in the arrest and killing of 26 other persons, names unknown, in the Central Leonor, municipality of Escalante, Negros Occidental, Philippines, sometime in the month of November, 1942, on charges of being guerrillas or aiding them, which persons, after having been killed, were left to rot and be eaten by the animals in and around the vicinity of the said Central Leonor."

After a careful review of the records of this case, we find the following facts to be duly established. Appellant Hilarion Jardinico is a Filipino citizen by his own admission. After the arrival of the Japanese forces in the province of Occidental Negros, the appellant was employed by them as a driver of one of their trucks. Thereafter,

he always wore a Japanese uniform and carried a rifle. He served the Japanese until the American forces of liberation landed in Negros Occidental.

For convenience we are merging or considering counts 1 and 2 jointly for the reason that the facts or events under count 2 are a continuation of those under count 1. Early in the morning of November 26, 1942, a patrol or raiding party composed of Japanese soldiers and some Filipino adherents, all riding in five trucks one of which was driven by Jardinico, went to the sitio of Biernesan, Sagay, Negros Occidental. Alighting from his truck and leading some Japanese soldiers, the appellant went up the house of the couple Porfirio de la Peña and Josef a de la Peña. Once inside, he grabbed Josefa by the arm and inquired about the whereabouts of the USAFFE soldiers, whom he claimed to have seen jumping out of the window. When the couple denied any knowledge of the USAFFE soldiers, the appellant took them downstairs before a Japanese captain for investigation. When questioned by the said captain and by the appellant about USAFFE soldiers, and upon disclaiming any knowledge of them, Porfirio and Josefa were punched, slapped and kicked by the Captain and by Jardinico. To further intimidate Porfirio the Japanese captain ordered him to open his mouth and the appellant inserted the bayonet of his gun into it. In spite of this, Porfirio refused or failed to give any information about USAFFE soldiers, and because of this, his hands were tied behind his back by the Japanese soldiers and by the appellant.. The same thing was done to Josefa. Thereafter, the appellant and some Japanese soldiers went up the house of Porfirio and ransacked it, and took and appropriated to themselves clothing and jewelry valued at P1,800, including P1,000 in genuine Philippine money and P200 in emergency notes. Then the appellant and his companions set fire to the house, including three bodegas containing corn, rice and palay which had a total value of P2,000. They also set fire to the neighboring houses belonging to the tenants of Porfirio and Josefa. Thereafter, the patrol went toward Central Leonor, Escalante, Negros Occidental, taking Porfirio de la Peña in one of the trucks.

At one time Central Leonor was occupied by the Japanese forces, but subsequently they left it and the USAFFE forces took over and presumably had control over it but maintained no guard or detachment there. They allowed Filipinos to go inside the bodega of the Central and get all the sugar they needed. That morning of November 26, 1942, when the Japanese patrol arrived or approached the Central, there were about 100 people in or near the bodega in the act of getting sugar. The patrol immediately opened fire on them and killed about 25 Filipinos. Among the people in or near the bodega at the time were the prosecution witnesses—Dominador Gempasala and Francisco Gicano. Apprised of the approach of the Japanese patrol and scared by the first volley they scampered for safety, hiding outside the bodega but near enough to see what happened in that place. They saw appellant Jardinico and a Japanese soldier take down Porfirio de la Peña from the truck. Jardinico led him to a spot on the railroad track of the Central and securely tied him to a post and then at a signal from a Japanese soldier, Jardinico began bayoneting De la Peña until he was dead and his body hung limply from the post. Then Jardinico and the Japanese soldier unfastened his body from the post and dumped it on the square fronting the bodega. After three hours the patrol departed and Gempasala and Gicano ventured out from their hiding place and approached the dead body of De la Peña which they found to bear wounds on both cheeks, on the chest, at the base of the neck and in the abdomen. Both ears were clipped off. Scattered on the same square or plaza were the dead bodies of between 20 to 25 other Filipinos, presumably victims of the gunfire of the Japanese patrol.

In the meantime, Josef a de la Peña had been engaged in a frantic search for his husband. She went to Fabrica where a Japanese detachment was stationed and there found the appellant who informed her that her husband had been left in the garage of Central Leonor, and later a Japanese captain who arrived at the place told her that her husband was able to escape to the mountains. Both informations were, of course, untrue, and were presumably intended to deceive her. During all this time, Josefa was kept in jail by the Japanese for being suspected as a spy of the Filipino resistance forces. After three days she was released and she returned home but on the way she was informed that the dead body of her husband was on the plaza of Central Leonor. Accompanied by her tenant

Espiridion Maglimutan and Fortunato de los Reyes, she went to that place, saw the body of her husband already in a state of decomposition together with the corpses of several other men. She also noted the same wounds in the body of her husband already, described. She had her husband's body taken home and buried in a plot behind her house.

The acts of maltreatment performed by the accused at or near the house of De la Peña in Biernesan, Sagay, including the looting of the house and its subsequent destruction by fire, all performed by the accused and his Japanese companions were witnessed and testified to by Josefa and her tenant Espiridion Maglimutan who, on the approach of the raiding party ran and hid behind some banana trees. The bayonetting of De la Peña at Central Leonor was witnessed and testified to by Gempasala and Gicano. The two witness rule provided by law has therefore been complied with.

The appellant's defense rests on his claim that although he was employed by the Japanese as a driver, his service was involuntary-, that on the morning of November 26, 1942, he had no participation whatsoever in the alleged maltreatment of the De la Peña couple or in the looting and burning of their house but that on the contrary when he found De la Peña behind his truck, being maltreated by the Japanese and some Filipinos, he tried to intervene because De la Peña was his former teacher but the Japanese disregarded his intervention and even suspected him of being a pro-gerrilla; that although he drove to Central Leonor on said morning with the Japanese soldiers, upon arrival there he no longer saw De la Peña. The accused introduced several witnesses in support of his defense. Naturally, the question of credibility of witnesses enters. We prefer to leave the decision on this point to the People's Court which had the opportunity of observing their demeanor while on the witness stand and gauging their credibility. We quota with appr oval the decision of the trial court on this point:

"Hemos considerado detenidamente las pruebas obrantes en autos y hemos llegado a la conclusion de que las aportadas por la prosecucion son merecedoras de credito. Sobre lo que ocurrio en Biernesan, tenemos los testimonios de la viuda del occiso Porfirio de la Peña y del testigo Espiridion Manglimutan. Estos aseveraron categoricamente de que el acusado, armado de un rifle, fue el que guio a los japoneses a la casa de los esposos Porfirio de la Peña, fue el que llevo a este y su esposa ante el capitan japonés, participo en la investigacion de dichos esposos asi como en la tortura de los mismos y aconpaño a la patrulla cuando la misma se dirigió a la Central Leonor llevando al referido occiso Porfirio de la Peña. Dichos testigos tambien declararon que el acusado tomo participacion directa tanto en el saqueo de la casa de Porfirio de la Peña asi como en la quema de dicha casa, de las tres bodegas y de las otras vecinas. Los testimonios de ambos testigos son claros y convincentes y no encontramos ningun motivo para dudar de su veracidad. Bajo tales circunstancias, nosotros creemos que los testimonios de dichos testigos no pueden echarse abajo por los testimonios negativos del acusado y de su cuñado Raymundo Abellana, Si fuese cierto, como contiene el acusado, de que el inclusive trato de defender al malogrado Porfirio de la Peña y que de este hecho se entero su esposa Josefa, no concebimos como esta habia declarado contra el si los hechos que habia testificado no fuesen ciertos.

"Con respecto de lo que habia ocurrido en la Central Leonor, tambien sostenemos que las pruebas negativas de la defensa no pueden prevalecer a las declaraciones claras y categoricas de los testigos del gobierno Dominador Gempasala y Francisco Gicano. Estos afirmaron que cuando la patrulla llego a dicha central los soldados japoneses bajaron de sus trucks, se esparcieron y empezaron a disparar a los que entonces se habian reunido en la central para recoger azucar. Tambien declararon de que el acusado fue el que ejecuto directamente al occiso Porfirio de la Peña, cuya ejecucion se llevo a cabo en la forma y manera como se ha relatado arriba. El acusado dijo que sus relaciones con los testigos de cargo Dominador Gempasala y Francisco Gicano no eran muy cordiales puesto que antes del suceso de autos estos dos ultimos trabajaban en el 'Boiling Department' de la central mientras que el trabajaba en el 'Milling Department' de la misma central, y que hubo disgustos entre los obreros que trabajaban en ambos departamentos. Entendemos, sin embargo, que dichos disgustos, aunque fuesen ciertos, no fueron suficiente motivos para que los referidos testigos declaren falsamente contra el acusado en un asunto sumasente grave, como es el caso presente. Nos parece muy dificil,

si no imposible, que los referido testigos hayan podido inventar los diferentes hechos que habian declarado si los mismos fuesen falsos y que ellos no los hayan visto, como asi pretende la defensa. Conste, que el acusado fue un tiempo aparcerero de la testigo Petra Barrameda y fue conipañero de trabajo del testigo Servillano Abecendario, cuyas circunstancias afectan naturalmente a la credibilidad de dichos testigos."

In conclusion, we find the guilt of the appellant established beyond reasonable doubt. We agree, however, with his counsel and the Solicitor General that the trial court erred in convicting the accused of treason with homicide. In the first place, the information charges only the crime of treason. In the second place, altho there was at least one killing, namely, that of Porfirio de la Peña for which the accused may clearly be held responsible, the crime of homicide or murder is and must be regarded as included in that of treason. This point has already been decided by this Court in several cases among them those of *People vs. Eduardo Prieto alias Eddie Valencia*, (L-399, 45 Off. Gaz., 3329),^[1] and *People vs. Pablo Labra* (L-886, 46 Off. Gaz [Supp. No. 1), 159.^[2]

As to the killing of the people at Central Leonor, numbering from 20 to 25 men, when the Japanese soldiers opened fire, we are not prepared to say that the defendant could be held responsible for the said killing. Of course, he formed part of the patrol as a driver. There is no showing however that he knew that the Japanese soldiers were going on a shooting spree at Central Leonor. Neither is it known that he took a direct part in it or that he fired a single shot. Anyway, whether or not we hold him responsible for the said killing, will not affect the result and the decision in this case.

Although the appellant may well be sentenced to death because the treason committed was aggravated by killing, nevertheless, because of lack of sufficient votes to impose this extreme penalty, the sentence of death is hereby commuted to life imprisonment. In all other respects the decision appealed from is hereby affirmed with costs against the appellant.

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

[1] 80 Phil., 138. [2] 81 Phil., 377.

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