

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FAUSTINO FLORES, DEFENDANT AND APPELLANT.

G.R. No. L-1731. January 31, 1950

Ponente: REYES, J.

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REYES, J.:

These three cases were among the thirty that were heard by the People's Court in a mass trial held in Pasig, Rizal, by agreement: of the parties.

The defendants were charged with treason, the first two (Faustino Flores and Leon Gutierrez) on two counts, and the last one (Felipe Reyes) on five counts. Common to the three defendants was the charge contained in count No. 2, relating to defendants' alleged participation in the "zoning" of the barrio of Tipas, Taguig, Rizal, on December 1, 1944, and it is on this count alone that defendants were found guilty and sentenced to a prison term and fine. Of the other counts, including the charge that they had joined the Makapili organization, defendants were acquitted for lack of proof. The present appeal is, therefore, confined to the second count, which charges each of the appellant as follows:

"That on or about December 1, 1944, in the different barrios of the Municipality of Taguig, Province of Rizal, Philippines, the herein accused, acting as informer or agent of the Imperial Japanese Forces in the Philippines, for the purpose of giving and with the intent to give aid and/or comfort to the enemy, with the aid of a group of armed men and Japanese soldiers who afforded him (them) impunity and taking advantage of the darkness of the night, did wilfully, feloniously and treasonably guide and accompany a group of armed men and Japanese soldiers in the "zonification" of the different barrios in search of guerrilla suspects; that, on this occasion, the herein accused, assisted by armed men and Japanese soldiers with the intention of spreading terror around the place and in search of guerrilla suspects, established a perimeter of restricted freedom and mass confinement, arrest, investigation, maltreatment and torture, known in common parlance as "zona", during which the accused and his companions arrested about two hundred sixty seven (267) male residents, suspected of being guerrillas, and herded them together in a place which was afterwards surrounded by armed men and Japanese soldiers, and, having thus confined the two hundred sixty seven (267) guerrilla suspects and illegally and arbitrarily having deprived them of their freedom, carried out the purpose and plans of the enemy; that, on the same occasion, the accused together with armed men and Japanese soldiers made a house-to-house search in the said barrios and took and turned over to the enemy, for their benefit and for the benefit of the Japanese soldiers for whom they were working and without the consent of the owners thereof, money, jewelry, palay, corn, canned goods, hogs and chickens, and, subsequently, the accused and his companions loaded in Japanese trucks and took to Pasig, Rizal, the two hundred sixty seven (267) guerrilla suspects, all of whom have not returned since then."

Anent the above charge, the People's Court found that early in the morning of December 1, 1944, a mixed force of Japanese soldiers and Filipinos, the latter armed with rifles and revolvers and each wearing a white band across his chest, rounded up the male residents of the different sitios of the barrio of Tipas, herded them together at the town plaza and then made them pass single file in front of a house located at one corner of the plaza. At the

window of this house were several hooded persons known in those days as "magic eyes," who, as the men passed before them, indicated by a nod the ones suspected of being guerrillas. These were then led to the Aglipayan church where they were subjected to tortures to make them admit their guerrilla affiliation and squeal on the other guerrilla suspects. Some of them were even hanged from trees and the rafters of nearby houses. At about 5:00 o'clock in the afternoon of that day, the suspects were loaded in trucks and taken to Fort Santiago in Manila, many of them never to return.

The above facts are established by more than the required number of witnesses and are not disputed. The only question of fact presented in the appeal is the participation of the appellants in the "zoning" above described.

As regards the participation of appellant Faustino Flores (G. R. No. L-1731), two witnesses (Antonia Rodriguez and Felisa Rodriguez) testified that said appellant was one of the armed Makapilis they saw in the "zoning" of barrio Tipas. But their testimony does not disclose that they were referring to the same act, place or moment of time, so that it cannot be said that one corroborated the other. Antonia declared that appellant was one of those who went up her house, while Felisa, on her part, stated that she approached appellant on the day of the "zoning" to plead for one Gonzalo Ma-palid. But neither statement was corroborated. The result is that there are no two witnesses to the same overt act.

As to the participation of Leon Gutierrez (G. R. No. L-1676) the witness Julita Gregorio testified that she saw the said appellant between 6 and 7 o'clock in the morning of December 1, 1944, arresting and driving the male residents towards Tipas and that he was among those who went to her store that morning and took her husband along. No one, however, corroborated this testimony. Another witness, Leonila Mañosca, testified to having seen appellant and his companions at about 8 o'clock that morning bearing arms and wearing white bands and in the act of searching the houses. But again the testimony finds no corroboration. Various other witnesses, who also claimed to have seen appellant that day, failed to disclose that they were testifying to the same overt act.

The same defect is to be noted in the testimony of the witnesses against the appellant Felipe Reyes (G. R. No. L-1624). Maria Umali Ramos testified that this appellant was one of those who took her husband from their house. But no one corroborated her on this point. Neither is there corroboration for the testimony of Margarita Bunyi to the effect that she saw appellant at 11 o'clock in the morning of December 1, 1944, at the store of one Teria. The third witness, Rafael Sanga, merely gave the information that he saw appellant bearing arms on the day of the zoning, but his testimony corroborates neither that of Maria Umali Ramos nor that of Margarita Bunyi.

In view of the foregoing, we find merit in the contention of counsel for appellants that their conviction was a violation of the two-witness rule. The Solicitor General contends, in effect, that the zoning of Tipas the whole day of December 1, 1944, constitutes but one treasonous act and since at least two witnesses saw each of the appellants on that occasion, the legal requirement as to the concurrence of two witnesses on the same overt act has been satisfied. To this we can not agree. The rule is that "every act, movement, deed and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." (Cramer vs. U. S. 65 8. C, 918), and in accord with that rule, we have ourselves held that "the two-witness rule must be adhered to as to each and every one of all the external manifestations of the overt act in issue." (People vs. Abad, 44 Off. Gaz. 4901.)[1] We have also adopted the rule that "each of the two 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." (People vs. Adriano, 44 Off. Gaz. 4300.)[1]

The rule as thus formulated may be severely restrictive. But as an eminent author on evidence aptly 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."

In view of the foregoing, the judgment of conviction in each of these three cases is revoked and the appellants

acquitted, with costs de oficio.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.
Feria, J., no part.

[1] 78 Phil., 766.

[1] 78 Phil., 561.

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