

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAXIMO BATE (ALIAS BORJA, ALIAS PATSO), DEFENDANT AND
APPELLANT.***G.R. No. L-1547. January 28, 1949*

Ponente: MONTEMAYOR, J.

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The appellant Maximo Bate alias Borja alias Patso was charged with treason before the People's Court, on nine counts. In the course of the trial, the Special Prosecutor informed the court that he was dropping counts 3, 6, and 8 of the amended information. After trial, the People's Court (Fifth Division) found the defendant guilty of counts 1, 2, 4, 5, 7, and 9, stating that it entertained no doubt as to the guilt of the accused; that the overt acts alleged in the information on said counts had been fully substantiated by the witnesses for the prosecution, and that there was nothing in the record to show why their testimonies should not be given full credit. He was sentenced to suffer life imprisonment with all the accessories of the law and to pay a fine of P10,000, plus costs. He is appealing from that decision.

At the beginning of the trial the appellant admitted in open court that he was and had always been a Filipino citizen. For the sake of clearness we shall take up the different counts and the facts alleged under them in chronological order.

Under count 7, it has been duly proven that on October 8, 1943, while the deceased Bernardo Laborete and his companions, many of whom were guerrillas were in or around the store of Maxima de Java at Tisa Market, Cebu City, a truckload of undercover men, among them the appellant Maximo Bate, then armed, and some Japanese soldiers arrived. She companions of Laborete ran away, but he, because of his sore foot could not escape. The Japanese soldiers and their companions started shooting and hit Laborete on the shoulder, as a result of which, he fell down. Later on, one of the raiders finding him on the ground wounded, shot him in the head, killing him. The identity of the person who wounded Laborete on the shoulder and the one who later shot him in the head has not been established. But it is a fact that after the shooting, and while the Japanese soldiers were investigating, the appellant posted himself on the road as a guard on the look-out for snipers.

Under count 1, it has been proven that on October 13, 1943, while Alfonso de la Cerna, Ariston Sevilla, and Genaro Tabares were in a store in Punta Princesa Market in Cebu City, a patrol composed of Japanese soldiers and armed Filipino undercover men, among whom was the appellant, raided said store and the three men were apprehended, accused, and maltreated on the spot and were later tied up and taken to the Headquarters of the Japanese Military Police in the Normal School where they received further punishment. They were kept in said building as prisoners up to October 27, 1943 when they were transferred to Guindolman, Bohol where they were made to work, and were not released until three months after. In that raid at the store at Punta Princesa Market, the appellant played an important role by pointing his rifle at Tabares and telling his fellow raiders to take the three men (meaning Tabares and his companions) to the Japanese Military Police Headquarters.

Under count 9, the evidence shows that on December 3, 1944, the appellant Maximo Bate, Pablo Labra, Francisco Concepcion and two Japanese soldiers raided the house of Clemente Chica and questioned him on his alleged guerrilla activities. Concepcion had previously informed the Japanese that Chica had received a letter from the guerrillas in the mountains. At first, Chica denied any connection with said guerrillas but appellant and his companions advised and pressed him to admit said connection. Chica was taken to the Japanese Military Police Headquarters at the Normal School Building where he apparently made some admissions, including his possession of a revolver, because the following day he was taken back to his house by the Japanese who recovered his revolver from a coffin where he had kept it.

Under count 2, it was equally proven that on January 5, at dawn, a group of Filipino spies including the appellant and some Japanese soldiers raided the house of the Singson family in Pardo, Cebu City. Besides the members of the family who were the two sisters Felipa Singson and Susana Singson and their brother Hospicio Singson, there were many Filipino evacuees in the house. Three of these were immediately apprehended and tied up and when one, tamed Ben Abellaneda of the raiding group pointed to Hospicio Singson, the appellant immediately tied him too and began to maltreat him by choking and punching him. After some investigation, the three evacuees were released but Hospicio was taken to the Military Police Headquarters and was never seen nor heard of afterwards.

Under count 4, the evidence reveals that on January 13, 1945, while Francisca Bacalla and Pascuala Bacalla were riding in a horse-drawn vehicle on Tres de Abril Street, Cebu City, the appellant who was then armed and who was accompanied by several undercover men arrested Francisca Bacalla and took her to Sgt. Yoshida, chief of the Japanese Military Police, where she was investigated and maltreated. She was suspended in the air, stripped of all her clothes, while she was being investigated and questioned, specially by the appellant. During said investigation she evidently made some admissions about the connections of certain people in Cebu with the guerrillas, as may be gathered from the facts in count 5.

Under count 5, the following day or rather on January 13, 1945, at two o'clock in the morning the appellant accompanied by Francisca Bacalla, some Japanese soldiers and Filipino undercover men raided the house of Rosario Bacani and Anita Bacani in Bulacao, Cebu. Rosario and Anita who were suspected as guerrilla operatives and which they really were, were questioned and maltreated in an effort to make them admit their guerrilla connections. They were suspended in the air with their hands tied behind their backs. In the course of the investigation, the appellant suggested to Sgt. Yoshida who was then with the raiding party that they pour gasoline in the house and set it on fire, but his suggestion was not followed. That same morning the two sisters Rosario and Anita and their brother, all tied and secured with tie same rope were taken to the house of Dr. Colegado, then being used as a Japanese garrison where they were confined and kept prisoners, Rosario for 20 days, Anita for 14 days and their brother for 4 days.

In his defense, the appellant claims that he joined the guerrilla movement in September, 1942 but the following year he was arrested and imprisoned by the Japanese for his guerrilla connections and between September, 1943 and February, 1944, while under Japanese custody, he was assigned to work in the kitchen of the Japanese Military Police and in September, 1944 he escaped and went to Leyte. In September, 1944 he was again captured and charged with killing one, Francisco Catil; that from November, 1944 up to the arrival of the American forces he was assigned to work in the house of Sgt. Yoshida of the Japanese Military Police as a trusted prisoner. He further stated that he had no connection with nor was he present in the several raids attributed to him under the several counts already mentioned, except in the raid made at Punta Princesa Market on October 13, 1943 under count 1, where he says that he was taken there by the Japanese only to identify the killer of one Amang Dempsey. However, in connection with this claim of appellant and as was well observed by the Solicitor General, if the purpose of the raid was to find out who killed Amang Dempsey, then the Japanese in that raiding party should

have questioned the three men they had apprehended, namely: De la Cerna, Sevilla and Tabares about the death of Dempsey as well as of his killer, but no such questions were asked and the raiding party merely questioned these men as to their guerrilla connections and activities.

To corroborate the appellant in his claim that he was not present in the raid in the store of Maxima de Java under count 7, he presented. Arcadio Mondejar who told the court that he was one of the men in the truck which arrived in front of De Java's store, but that it was not a raiding party but only a shipment of rice of the NARIC; that the appellant was not present at the time; that what really happened was that Bernardo Laborete who was then armed with a revolver, tried to hold up the truck and that the Constabulary soldiers who were in the truck as guards shot him.

Even with this attempted corroboration we are not inclined to accept this theory of the appellant. In the first place, the witness Arcadio Mondejar was, like the appellant, a treason indictree and confined in the same jail with him. And besides being good friends, they evidently realized that they were in the same predicament and decided to help each other out. If the truck really contained only rice for distribution, there was no reason why it should be held up by Laborete especially, if as claimed by Mondejar, there were several armed Constabulary soldiers guarding it. It is more reasonable to believe the prosecution that it was really a raiding party composed of Japanese soldiers and Filipino spies, one of them being the appellant, which succeeded in dispersing the guerrillas found in and around the store and killing one of them.

In connection with all these counts found proven against the appellant by the People's Court, it may be remembered that during the period covered by these counts the appellant was always seen armed and in the company of Filipino undercover men who allied themselves with their superiors—the Japanese soldiers and Military Police. The appellant was seen always accompanying and aiding these raiding parties and took quite an important part in them, questioning the people found during the raids, apprehending them, tying, them up, even threatening and torturing them in an effort to obtain the information desired. Furthermore, there is no reason known why the witness for the prosecution should falsely accuse the appellant of these grave charges.

All the charges under the five counts 1, 2, 5, 7, and 9 have been established by the testimonies of at least two witnesses. As regards count 4, as pointed out by the Solicitor General, only one witness Felisa Taboado testified as to Francisca Bacalla's arrest by the appellant and only one witness, Conrado Bao, the cook of Sgt. Yoshida testified about her investigation at Yoshida's house by the defendant; but although not sufficient to prove the overt acts of which he is accused, nevertheless, the evidence may be considered as proof of his adherence to the enemy.

In conclusion, we find that the guilt of the appellant has been established beyond reasonable doubt and finding the decision appealed from in accordance with law and supported by evidence, the same is hereby affirmed, with costs against the appellant.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, and Tuason, JJ., concur.

CONCURRING AND DISSENTING

PERFECTO, J.:

We concur in the decision affirming the judgment of the People's Court. The evidence on record has proved beyond all reasonable doubt overt acts of treason committed by appellant.

We cannot agree, however, with the pronouncement as regards count 4 of the information upon which only one witness, Felisa Taboado, testified as to Francisca Bacalla's arrest, and only one witness, Conrado Bao, testified as

to Bacalla's investigation by appellant at Yoshida's house, wherein it is said that the uncorroborated testimony of each of said witnesses can be considered as proof of the defendant's adherence to the enemy. We are of opinion that to prove any element of the crime of treason that constitutes an overt act or upon which the same is based, it is indispensable that the two-witness rule be strictly adhered to. Article 114 of the Revised Penal Code does not distinguish, for purposes of the two-witness rule, between overt acts of aid and comfort and overt acts of adherence.

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