

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELEN DEL ROSARIO, DEFENDANT-APPELLANT.*G.R. No. L-2229. April 19, 1950*

Ponente: OZAETA, J.

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Eleno del Rosario was accused of treason before the People's Court on 39 counts. In substance the charges against him were: that in 1944 he enlisted in and became an active member of the Ganap, an organization of subversive character, which upon the entrance of the Japanese invading forces in the Philippines communed with them and joined in their efforts to exterminate all loyal resistance movement against the imperial Japanese forces in the Philippines by cooperating with them, acting as agent and informer for them, aiding and assisting them in the identification of persons suspected by the enemy as being guerrillas, and actually taking part in the raids which they conducted towards the suppression of the guerrilla activities; that on various dates between March 6, 1944, and February, 1945, the said accused took part with Makapilis and members of the Japanese military police in raiding various houses in the municipalities of Pasig, Marikina, Taguig and Antipolo, Rizal, and in arresting various persons suspected of being guerrillas, who were later tortured and most of whom were killed by the Japanese; and that he also took part in the "zonification" of the barrios of Tipaz, Taguig, and Calurapang, Marikina, Rizal, on December 1 and December 26, 1944, respectively, during which persons suspected of being guerrillas were screened and arrested and later tortured and killed by the Japanese.

After a group trial with 29 other treason indictees, most of whom were Makapilis who were charged with the same overt acts of treason as the herein accused—which joint trial was held by agreement between the prosecution and the defense to avoid the necessity of calling the same witnesses several times—the herein accused was found guilty on 11 counts and sentenced to 20 years of reclusion temporal, and to pay a fine of P7,000, with the accessories of the law. One half of the period of preventive imprisonment was credited to him. From that sentence he has appealed.

It is not disputed that at least two witnesses testified to each of the following overt acts imputed to the appellant and of which he was found guilty by the People's Court:

- (1) On July 9, 1944, at about two o'clock in the morning, the appellant took part in the arrest of Teofilo Torres in his house in the barrio of Maybunga, Pasig, Rizal. Torres was tied and taken to the garrison of the military police in Pasig, and since then he was never seen again by his relatives.
- (2) On November 16, 1944, between 9:00 and 10:00 a.m., the appellant with various individuals raided the house of Alberto Sampedro in the barrio of SantoIlan, Pasig, Rizal, and arrested him, and since then he was never seen again,
- (3) At about 7:00 a.m. on November 21, 1944, the appellant with various other accused, all armed with rifles, arrested Miguel Castillo in his house in the barrio of Ugong, Pasig, Rizal, and since then Miguel Castillo was never seen again.

(4) In the morning of November 24, 1944, the appellant with about 20 Makapilis arrested Salvador Sampedro, Daniel Santos and Cirilo Jose in the barrio of Ugong, Pasig, Rizal. They were tied and taken to Ft. Santiago and were never seen again.

(5) At dawn on December 1, 1944, the barrio of Tipaz, municipality of Taguig, Rizal, was "zonified" by Japanese soldiers and Filipinos, all armed with rifles and pistols, who surrounded the barrio to prevent the escape of the male population. The men were herded together on the plaza of the barrio in front of the Aglipayan church, where one known as "magic eye" indicated those suspected of being guerrillas, who were then and there arrested, and taken to the garrison of the military police. The herein appellant was one of those who took part in the "zonification".

(6) Between 8:00 and 9:00 o'clock in the evening of December 13, 1944, the appellant and other accused arrested Perpetuo Cruz in his house in the barrio of Rosario, Pasig, Rizal. Since then Perpetuo Cruz was never seen again.

(7) On the morning of December 26, 1944, Makapilis armed with rifles and revolvers raided the barrio of Calumpang, Marikina, Rizal, rounded up the male inhabitants of said, barrio and made them line up in front of the school building. Among the raiders was the appellant Eleno del Rosario. After lining them up Agaton Martin alias Borong-Borong called out names from a list while the appellant Eleno del Rosario picked the persons thus called from the line. Nine persons were called from the line and the rest were released. These nine men were severely maltreated and then taken to the Japanese garrison. Only two of them ever returned.

(8) In the morning of February 2, 1945, Makapilis headed by the appellant arrested Pablo Sierra in the barrio of Bulao, Antipolo, Rizal, and since then the latter was never seen again by his relatives.

(9) In the early part of February, 1945, more than 20 Makapilis, among whom was the appellant, arrested Sebastian Raymundo in the barrio of Bulao, Antipolo, Rizal, and took him to their garrison in Rosario. Subsequently they brought him back to Bulao and ordered him to show the hideouts of the guerrillas and upon his refusal to do so he was kicked, boxed and tortured. Lastly, Cirilo Tuason beat him on the head with a piece of wood and he fell unconscious. Four days later he died.

The appellant presented no defense other than a mere denial of having participated in the different overt acts of treason testified to by the witnesses for the prosecution. He tried to explain his inability to produce witnesses in his behalf by saying that he was unable to do so because he was and had been confined in Muntinglupa. Appellant could surmise no reason why the witnesses for the prosecution should have testified falsely against him.

Appellant's counsel contends in this instance that appellant acted under compulsion from the Japanese soldiers when he participated in the "zoning" of the barrios of Tipaz and Calumpang. This contention, however, is not supported by any proof in the record. Appellant himself made no such claim when he testified in his own behalf.

Counsel further contends that, even granting that appellant was a Makapili, that fact would not constitute treason. Such contention has been decided adversely to the defense in the case of *People vs. Alitagtag*, G.R. No. L-924, wherein it was held that mere membership in the Makapili, an organization for aiding the Japanese war effort, constituted treason.

Finding no justification to reverse or modify the sentence appealed from, we hereby affirm the same, with costs.

Moran, C.J., Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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