

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINGO CAPACETE, DEFENDANT AND APPELLANT.

G.R. No. L-943. November 22, 1947

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of the People's Court sentencing Domingo Capacete to reclusion perpetua and to pay P10,000 fine and costs for treason.

The information contains four counts, to wit:

I

"That in or about the month of December, 1944, in the municipality of San Pedro, Province of Laguna, the accused for the purpose of giving and with intent to give aid and comfort to the enemy, did then and there enlist, join and serve the "MAKABAYAN KATIPUNAN NG MGA PILIPINO" (MAKAPILI), an organization of military character, founded and organized for the purpose of giving material support and physical or moral assistance and aid to the Empire of Japan and the Imperial Japanese Forces in the Philippines; and as such member thereof, the accused, did, moreover, fight side by side with the enemy, participate in the procurement and confiscation of foodstuffs and other provisions for the same, and finally join and flee with the latter in his retreat to the mountains of Luzon.

II

"That on or about December 4, 1944, the accused, acting as informer or agent of the Imperial Japanese Forces, for the purpose of giving and with intent to give aid and comfort to the enemy, led and assisted an armed patrol of Japanese soldiers and municipal policemen, all being members of the Makapili organization, in a raid to the barrio of San Antonio, municipality of San Pedro, Province of Laguna, and then and there caused and participated in the arrest and apprehension of one Feliciano Casacup, suspected of being a guerrilla, whom the accused thereafter delivered and turned over to the enemy to the latter's garrison in the barrio of San Vicente in the same municipality, where the said suspect was subjected to maltreatment and torture, and escaped eventual death only by escaping from his executioners at the very time they were digging the grave to bury him and three other victims.

III

"That on or about December 9, 1944, in the barrio of Santo Niño, municipality of San Pedro, Province of Laguna, the accused, acting as informer or agent of the Imperial Japanese Forces, accompanied by several members of the police force who afforded him impunity, caused and participated in the arrest and apprehension of Jacinto Polintan, whom the said accused later delivered and turned over to the Japanese soldiers in the barrio of San Vicente in the same municipality, where the said victim was killed after undergoing brutal maltreatment and torture.

IV

"That on or about December 9, 1944, in the barrio of San Antonio, municipality of San Pedro, Province of Laguna, the accused, acting as informer or agent of the Imperial Japanese Forces, accompanied several municipal policemen, all members of the Makapili organization, whose presence and assistance afforded him impunity, caused and participated in the arrest of Ignacio Gilbuena and thereafter delivered the said victim to the enemy, who failed to execute the same because of his being able to escape from them on the way to the place designated for execution."

The trial court found the defendant guilty of all the charges. In our opinion the prosecution has not made out a case on the first count. There is no proof, except sweeping assertions of witnesses, that the defendant was a makapili. The evidence utterly fails to prove that he was appointed or inducted into the makapili organization. Nor is there any indication that he "comported himself according to the expected pattern of behaviour" of makapilis. He was never seen wearing insignia or uniform, only one witness said he had seen him carry a rifle, and none saw him mount guard or perform any duty usual in members of a military or semi-military outfit. There is not even sufficient showing that a makapili branch was constituted in San Pedro Tunasan or that there was an organized Filipino armed force there or a barrack or quarter for any military contingent distinct from that of the Japanese military garrison. One witness said the makapili came into being in 1941. The men whom the prosecution witnesses pointed out as makapilis were a handful of former sakdalistas or ganaps who openly collaborated with the Japanese. The appellation of makapili, it seems, was given these people only because they had been ganaps and sakdalistas and had transferred their allegiance to the newcomers. For instance, Feliciano Casacup, when asked what was the meaning of makapili, said he did not know. Asked again, "When you said that the accused was a Makapili, what do you mean?" he answered, "I mean that they were the ones that ordered the killing of people." Later he declared, "They said that the Ganaps and Makapilis mean the same thing." He emphasized that this was precisely what he understood.

The evidence on the alleged intervention of the accused in the confiscation of foodstuffs and firearms suffers from the same defects as the evidence on his alleged affiliation with the makapili association. The evidence is vague and general. At least it does not pass the test of the two-witness rule in that no two eye-witnesses testified to any specific part or bit or date of the alleged overt act of seizing arms and supplies for the Japanese.

But the evidence is definitely positive and convincing that the accused was a Japanese informer and agent. Together with other former ganaps and sakdalistas in San Pedro Tunasan he, from the advent of Japanese occupation, consorted with the invaders stationed in that municipality. On at least three occasions he accompanied them in their night raids on Filipino homes to apprehend guerrilla suspects. Victims of these raids were Feliciano Casacup, Jacinto Polintan and Ignacio Gilbuena. The arrests of these men and execution of one of them are averred in the information and narrated in the decision under review.

Following is a resume of the circumstances relative to those arrests and appellant's part therein. It should be made clear that if in the summation of the findings we mention the arrests of one Benjamin Manas and one Felino Cruz, who were seized by the Japanese also upon the indication or with the aid of the appellant, it is only because they are inseparably linked with the arrests of Casacup, Gilbuena and Polintan and the eventual disappearance of the last.

On December 9, 1944, about midnight, a squad of Japanese soldiers accompanied by armed Filipinos, one of whom was the appellant, came to the house of Ignacio Gilbuena and roused him from sleep. Gilbuena's hands were afterward bound, and with him in tow, the Japanese and their Filipino companions proceeded to the house of Polintan who lived in another barrio of the same town. From his house Polintan was also taken with his hands tied. The Japanese and their Filipino followers next transferred to the house of Felino Cruz whom they likewise seized and whose hands they bound in spite of his protestations of innocence. From Felino's house the Japanese

moved to the house of Policarpo Manas whom they wanted to arrest, and when they did not find Policarpo Manas they got his son Benjamin instead. Benjamin's hands were likewise tied and he was herded with Gilbuena, Polintan and Cruz. Then the four prisoners were marched off to the barrio of San Vicente of the same town where the Japanese garrison was located, reaching that place at four o'clock in the morning. Soon after, Feliciano Casacup, who on December 4, had been arrested by Japanese troops accompanied by the same group of Filipinos, was brought out of the barracks and joined to the other four suspected guerrillas. Once the five men were assembled, the Filipino members of the group, including the accused, withdrew, and the Japanese alone carried the prisoners to a rice-field for execution. On the way, Benjamin Manas and Feliciano Casacup were able to escape and Ignacio Gilbuena managed to run away, defying a volley of fire, while the Japanese were digging a grave. Jacinto Polintan and Felino Cruz were not so fortunate and have never been heard from ever since.

The arrests of Gilbuena, Polintan and Casacup have each been established by the testimony of two or more witnesses, testimony which, in this respect, leaves no room for doubt. We are satisfied that with these arrests Domingo Capacete was connected in the manner stated by the said witnesses—that he was with the Japanese captors when the arrests were made and carried a pistol. We think it far-fetched to suppose that the defendant happened to be in the places above mentioned as a mere spectator or by accident. Openly carrying a firearm while going with Japanese soldiers can only be reconciled with the idea that the man was in league with and had the confidence of the enemy. There is not the slightest pretense that the accused was in any way connected with underground movements or that he feigned cooperation in order the better to carry out a patriotic objective. The defendant's collaboration appeared to be wholehearted, absolute and undisguised, neither justified nor mitigated by any ulterior lofty motive.

The acts thus proven constitute both adherence to the enemy and overt acts of treason.

The defense of alibi cannot be taken seriously. Assuming that the defendant had business in Manila which he came daily to attend, this fact did not deprive him of time and opportunity to commit the deeds charged in the second, third and fourth counts.

The judgment of the lower court will be affirmed with costs. It is so ordered.

Moran, C.J., Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, and Padilla, JJ., concur.

PARAS, J.:

I concur in the result. The appellant is guilty of murder.

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