

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. GUADALUPE ZAPATA AND DALMACIO BONDOC, DEFENDANTS AND APPELLEES.

G. R. No. L-2236. May 16, 1951

Ponente: JUGO, J.

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JUGO, J.:

Bias Cruz was accused of treason before the People's Court on six counts. Counts 3 and 6 were abandoned by the prosecution. Count 2 was dismissed as only one witness identified the defendant. Count 5 was also dismissed because only one witness testified as to the participation of the defendant in the acts complained of. He was found guilty on Counts 1 and 4, with the mitigating circumstance of lack of education, and sentenced to suffer fourteen (14) years, eight (8) months, and one (1) day of reclusion temporal, to pay a fine of P7,000, with the accessory penalties of the law, and to pay the costs, with credit of one-half of the preventive imprisonment served by him. He appealed.

Bias Cruz is a Filipino citizen. He joined the Makapili organization, the purpose of which was to help the Japanese in their campaign against the Fil-American forces and guerrillas. As such member he helped the Japanese in the so-called zonification of the people in the barrio of Tipaz, Municipality of Taguig, Province of Rizal, on December 1, 1944. He took part in the arrest of Sebastian Raymundo in Maybunga, Municipality of Pasig, Province of Rizal, in 1945. These facts show his adherence to the enemy.

Count No. 1.—In the afternoon of November 29, 1944, the defendant with many other individuals, among them Cirilo Tuazon, Aurelio Santiago, Faustino Santos, Rufo Mejia, Benito Tuazon, Juan Alejandro, Daniel Alejandro, and Alfredo Espiritu, all armed with rifles and pistols, arrested the guerrilla Jose Cruz in the barrio of Ugong, Municipality of Pasig, Rizal. The appellant, with the help of his companions, tied the hands of Jose Cruz and took him to a banca. From that time nothing has been heard about Jose Cruz.

These facts were proved by the testimony of Marcela Raymundo and Justa Santos, whose motives in testifying have not been assailed by the defense. The defendant presented no evidence in his favor. Although he took the witness stand, he confined his testimony to Count No. 4.

The appellant urges that he failed to present his evidence because he understood that the trial was held with regard to the other defendants. This contention requires explanation. There were many defendants accused of similar acts in different informations. Inasmuch as some of the acts were common to each of several groups, to save time, by agreement of counsel and approval of the court, a joint trial was held with respect to the common allegations relative to each group, without prejudice to holding a separate trial as to allegations concerning each individual in particular. The group to which the defendant pertained was called Group Z. When the common trial with reference to Group Z began on March 3, 1947, the appellant alleges that the court did not announce that the trial was with respect to said group, and that is the reason why he did not present his evidence. This contention is groundless. The trial on March 3 was only a continuation of the trial concerning Group Z that was adjourned on

February 28, at which time the court announced that the trial in regard to said group would be continued at the next session. It was not necessary for the court to reannounce on March 3 that the trial was a continuation of that started on February 28 with regard to Group Z. Counsel could have inquired from the court or could have asked for an opportunity to present his evidence later, for a reopening of the trial or a new trial, if he really had a valid defense. This was not done. This point cannot be raised for the first time in the appellate court, and even at this stage of the proceedings, the defendant has not presented to the court the substance of what the defense witnesses would have testified if they had been presented. The circumstances of the case undoubtedly show that he had no valid defense.

The appellant claims that there is no evidence to the effect that he arrested Jose Cruz because the latter was a guerrilla suspect. The defendant was rounding up guerrilla suspects for he was a member of the Makapili organization, which was helping the Japanese Army during the occupation. The appellant has not shown that he arrested Jose Cruz because of a common crime.

Count No. 4.—On December 10, 1944, Bias Cruz with other companions, armed with rifles, went to the house of the spouses Pedro Natividad and Ceferina Raymundo in barrio Ugong, Pasig, Rizal. There they maltreated Pedro Natividad whom they suspected of being a guerrilla, and took him to the house of a person named Legaspi, which was occupied by the Makapilis. Later on the group returned to the house and searched it for firearms. Not finding any, they took some jewels of Ceferina and led her to their headquarters. There Ceferina saw her husband being maltreated by the Makapilis. Up to the trial, nothing has been heard about Pedro Natividad.

These overt acts were proved by the testimony of Ceferina Raymundo, wife of Pedro Natividad, and the latter's son, Deogracias. Although these witnesses are part of the family of Pedro Natividad, yet there is no reason to assume that they testified falsely against the defendant.

The appellant points out certain contradictions between Ceferina and Deogracias, such as that one of them testified that the arrest took place in the dining room, and the other, in the living room; and that the jewels were found, according to Deogracias, after his mother had been taken away from the house, while the mother testified that she was still there when the jewels were seized. These minor contradictions do not detract from the essential testimony of both witnesses, taking into consideration that they testified in 1947 as to events which had occurred in 1944, and that when they happened said witnesses must have been excited due to imminent danger of death. These minor discrepancies would rather show the sincerity of the witnesses and the absence of connivance between them to make their testimony tally in every respect.

Regarding the credibility of the witnesses, the trial judge makes the following remark:

"En cambio, el Juzgado ha visto que los testigos del declararon con sinceridad y convicción, sin abultar los hechos ni exagerar las circunstancias, concretándose solamente a decir la verdad en todas sus manifestaciones."

The lower court applied the minimum degree of the penalty prescribed by law, considering the lack of education as a mitigating circumstance. This court has held in recent cases that lack of education should not be considered as a mitigating circumstance in treason cases. However, in the present case, inasmuch as the appellant does not appear to have taken part in the killing of the victims, we are not inclined to increase the penalty imposed by the trial judge, who saw, heard, and sized-up the defendant and gauged his perversity.

In view of the foregoing, the judgment appealed from is affirmed, with costs against the appellant. It is so ordered. Paras, C. J., Pablo, Bengzon, Tuason and Montemayor, JJ., concur.

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