

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DIONISIO AGONCILLO, DEFENDANT AND APPELLANT

G.R. No. L-985. January 23, 1948

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court finding the appellant, Dionisio Agoncillo, guilty of treason and sentencing him to suffer fifteen years of *reclusión temporal* and to pay a fine of two thousand pesos and the costs.

According to the information, from February, 1944, to March, 1945, in Cebu City and its environs, the appellant (1) "did consistently and continuously traffic in war materials and sold them to the enemy," and (2) "did join and serve the enemy as informer, agent, and spy." The People's Court held that the second count was not proven, and the appealed judgment of conviction is predicated solely on the first count.

Under the theory of the prosecution, appellant's adherence to the enemy is inferable from the following alleged facts; (a) In the afternoon of September 20, 1944, while the appellant was taking a bath in the house of his neighbor Rufina Cepeda, the latter's cousin (Olimpio Do), who knew how to read Chinese, examined appellant's clothes and found therein appellant's identification card written in Japanese and Chinese characters tending to show that the appellant was a Japanese undercover, (b) In January, 1945, after a trip to Bohol, Rufina Cepeda told the appellant that there were guerrillas in Bohol and that Japanese notes were no longer accepted in said place. In the evening of the next day, Rufina Cepeda was arrested by the Japanese and their undercovers and asked about things she saw in Bohol. Rufina was detained for three days. After her release, the appellant came to her house and got some chickens for the consumption of the Japanese who arrested her. A Japanese also used to sleep once in a while in appellant's house.

Upon the other hand, appellant's alleged overt acts of giving aid and comfort to the enemy are summarized in the brief for the Government as follows: In the middle of April, 1944, the appellant sold about 300 kilos of alum crystals at three pesos a kilo, to the Keribo, a construction company operated by the Japanese Army. Two or three weeks thereafter, he sold to the same entity some 100 pieces of water pipes, the price of which was not known. About the third week of December, 1944 the appellant was seen on Jones Avenue helping push a handcart full of truck and auto tires, batteries and spare parts into the intermediate on high school premises then used by the Japanese Army as a motor pool.

Regardless of the writer's view on suspension of political laws and change of sovereignty as heretofore expressed, the Court is of the opinion that the overt acts imputed to the appellant have not been duly proven. With respect to the sale of 300 kilos of alum crystals, the testimony of the prosecution witness Lorenzo Barria to the effect that the price was P3 a kilo, is not corroborated by any other witness. With respect to the alleged sale of 100 pieces of water pipes, counsel for the appellee admits that the price thereof was not known. In essential part of the overt act charged in the information was therefore lacking. No pretense was made that the appellant donated the articles in

question. The alleged delivery of truck and auto tires, batteries and spare parts can be disregarded. The only detail that may at most be considered established by the prosecution refers to the fact that the appellant helped in pushing a handcart loaded with such articles, and the evidence is even uncertain in one respect, namely, that the cart was brought either to the intermediate school premises or to the high school building. Indeed, It Is acknowledged by the lower court that the witnesses for the Government did not know how the appellant disposed of the articles loaded in the cart.

Even supposing, however, that the appellant had really sold for a definite price alum crystals and water pipes, the same did not per se constitute treason. As said articles or materials were not exclusively for war purposes, their sale did not necessarily carry an intention on the part of the vendor to adhere to the enemy. The theory of the prosecution is that the sale was treasonable in view of the other proven acts showing appellant's adherence to the enemy. It appears, however, that the alleged acts of adherence performed by the appellant took place after the overt act in question. It is not unlikely that at the time the appellant made the sale, his motive was purely personal gain, uninfluenced by any benefit inuring to the enemy. Where two probabilities arise from the evidence, the one compatible with the presumption of innocence will be adopted. (People vs. Agpangan, G. R. No. L-778, October 10, 1947.)

Wherefore, the appealed judgment is reversed and the appellant acquitted with costs de oficio. So Ordered.

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

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