

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FILEMON ESCLETO, DEFENDANT AND APPELLANT.

G.R. No. L-1006. June 28, 1949

Ponente: TUASON, J.

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TUASON, J.:

The appellant, Filemon Escleto, was charged in the former People's Court with treason on three counts, namely:

"1. That during the period of Japanese military occupation of the Philippines, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably collaborate, associate and fraternize with the said Imperial Japanese Forces, going out with them in patrols in search of guerrillas and guerrilla hideouts, and of persons aiding or in sympathy with the resistance movement in the Philippines; bearing arms against the American and guerrilla forces in the furtherance of the war efforts of the Imperial Japanese Forces against the United States and the Commonwealth of the Philippines, and mounting guard and performing guard duty for the Imperial Japanese Forces in their garrison in the municipality of Lopez, Province of Tayabas, Philippines.

"2. That during the period of Japanese military occupation of the Philippines, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably accompany, join, and go out on patrols with Japanese soldiers in and around the municipality of Lopez, Province of Tayabas, in search of guerrillas and guerrilla hideouts, and of persons aiding or in sympathy with the resistance movement in the Philippines.

"3. That on or about the 18th day of March, 1944, in the municipality of Lopez, Province of Tayabas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Filemon Escleto, with intent to give aid or comfort to the Imperial Japanese Forces in the Philippines, then enemies of the United States and of the Commonwealth of the Philippines, did wilfully, unlawfully, feloniously and treasonably arrest and/or cause to be arrested one Antonio Conducto as a guerrilla and did turn him over and deliver to the Japanese military authorities in their garrison, since which time, that is, since the said 18th day of March, 1944, nothing has been heard from the said Antonio Conducto and is considered by his family to have been killed by the Japanese military authorities."

The court found "no concrete evidence as to defendant's membership in the U.N. or Makapili organization nor on what the patrols he accompanied actually did once they were out of town", and so was "constrained to rule that the evidence of the prosecution fails to establish, in connection with counts 1 and 2, any true overt act of treason." We may add that no two witnesses evidenced in any specific acts of the defendant. The People's Court believed, however, "that the same evidence is sufficient to prove beyond question defendant's adherence to the enemy."

As to the 3rd count, the opinion of the People's Court was that it had been fully substantiated.

The record shows that on or about March 11, 1944, Japanese patrol composed of seventeen men and one officer was ambushed and totally liquidated by guerrillas in barrio Bibito, Lopez, province of Tayabas, now Quezon. As a result, some of the inhabitants of Bibito and neighboring barrios, numbering several hundred, were arrested and others were ordered to report at the poblacion. Among the latter were Antonio Conducto, a guerrilla and former USAFFE, Conducto's wife, parents and other relatives.

Sinforosa Mortero, 40 years old, testified that on March 18, 1944, at about 5 o'clock in the afternoon, in obedience to the Japanese order, she and the rest of her family went to the town from barrio Danlagan. Still in Danlagan, in front of Filemon Escleto's house, Escleto told them to stop and took down their names. With her were her daughter-in-law, Patricia Araya, her son Antonio Conducto, and three grandchildren. After writing their names, Escleto conducted them to the PC garrison in the poblacion where they were questioned by someone whose name she did not know. This man asked her if she heard gunshots and she said yes but did not know where it was. The next day they were allowed to go along with many others, but Antonio Conducto was not released. Since then she had not seen her son. On cross-examination she said that when Escleto took down their names Antonio Conducto asked the accused if anything would happen to him and his family, and Escleto answered, "Nothing will happen to you because I am going to accompany you in going to town."

Patricia Araya declared that before reaching the town, Filemon Escleto stopped her, her mother-in-law, her husband, her three children, her brother-in-law and the latter's wife and took down their names; that after taking down their names Escleto and a Philippine Constabulary soldier took them to the PC garrison; that her husband asked Escleto what would happen to him and his family, and Escleto said "nothing" and assured Conducto that he and his family would soon be allowed to go home; that Escleto presented them to a PC and she heard him tell the latter, "This is Antonio Conducto who has firearm;" that afterward they were sent upstairs and she did not know what happened to her husband.

The foregoing evidence fails to support the lower court's findings. It will readily be seen from a cursory examination thereof that the only point on which the two witnesses, Patricia Araya and Sinforosa Mortero, agree is that the accused took down the names of Conducto and of the witnesses, among others, and came along with them to the town. Granting the veracity of this statement, it does not warrant the inference that the defendant betrayed Conducto or had the intention of doing so. What he allegedly did was compatible with the hypothesis that, being lieutenant of his barrio, he thought it convenient as part of his duty to make a list of the people under his jurisdiction who heeded the Japanese order.

It was not necessary for the defendant to write Conducto's name in order to report on him. The two men appeared to be from the same barrio, Escleto knew Conducto intimately, and the latter was on his way to town to present himself. If the accused had a treasonable intent against Conducto, he could have furnished his name and identity to the enemy by word of mouth. This step would have the added advantage of concealing the defendant's traitorous action from his townmates and of not appraising Conducto of what was in store for him, knowledge of which might impel Conducto to escape.

That the list was not used for the purpose assumed by the prosecution is best demonstrated by the fact that it included, according to witnesses, Conducto's wife and parents and many others who were discharged the next day. The fact that, according to the evidence for the prosecution, spies wearing masks were utilized in the screening of guerrillas adds to the doubt that the defendant had a hand in Conducto's misfortune.

In short, Escleto's making note of persons who went to the poblacion as evidence of overt act is weak, vague and uncertain.

The only evidence against the appellant that might be considered direct and damaging is Patricia Araya's

testimony that Escleto told a Philippine Constabulary soldier, "This is Antonio Conducto who has firearm." But the prosecution did not elaborate on this testimony, nor was any other witness made to corroborate it although Patricia Araya was with her husband, parents and relatives who would have heard the statement if the defendant had uttered it.

Leaving aside the question of Patricia's veracity, the failure to corroborate her testimony just mentioned makes it ineffective and unavailing as proof of an overt act of treason. In a juridical sense, this testimony is inoperative as a corroboration of the defendant's taking down of the name of Conducto and others, or vice-versa. It has been seen that the testimony was not shown to have been made for a treasonable purpose nor did it necessarily have that implication. This process of evaluating evidence might sound like a play of words but, as we have said in *People vs. Adriano*, (44 Off. Gaz., 4300[1]) the authors of the two-witness provision in the American Constitution, from which the Philippine treason law was taken, purposely made it "severely restrictive" and conviction for treason difficult. In that case we adverted to the following authorities, among others:

"Each of the witnesses must testify to the whole overt act; or if it is separable, there must be two witnesses to each part of the overt act." (VII Wigmore on Evidence, 3rd ed., Sec. 2038, p. 271.)

"It is necessary to produce two direct witnesses to the whole, overt act. It may be possible to piece bits together of the same overt act; but, if so, each bit must have the support of two oaths; * * *." (Opinion of Judge Learned Hand quoted as footnote in Wigmore on Evidence, ante.)

"The very minimum function that an overt act must perform in a treason prosecution is that it show sufficient action by the accused, in its setting, to sustain a finding that the accused actually gave aid and comfort to the enemy. Every action, movement, deed, and word of the defendant charged to constitute treason must be supported by the testimony of two witnesses." (*Cramer vs. U. S. of A.*, 65 S. Ct. 918; 89 Law. ed., 1441.)

"It is not difficult to find grounds upon which to quarrel with this Constitutional provision. Perhaps the framers placed rather more reliance on direct testimony than:modern researches in psychology warrant. Or it may be, considered that such a quantitative measure of proof, such a mechanical calibration of evidence is a crude device at best that its protection of innocence is too fortuitous to warrant so unselective an obstacle to conviction. Certainly, the treason rule, whether wisely or not, is severely restrictive. It must be remembered, however, that the Constitutional Convention was warned by James Wilson that Treason may sometimes be practiced in such a manner, as to render proof extremely difficult—as in a traitorous correspondence with an Enemy. 'The provision was adopted not merely in spite of the difficulties it put in the way of prosecution but because of them. And it was not by whim or by accident, but because one of the most venerated of that venerated group considered that 'prosecutions for treason were generally virulent.' " (*Cramer vs. U. S. of A.*, supra.)

The decision of the People's Court will be and the same is reversed with costs de oficio.

Moran, C. J., Ozaeta, Paras, Feria, Bengzon, Montemayor, and Reyes, JJ., concur.

MORAN, C.J.:

Mr. Justice Pablo voted to reverse.

[1] 78 Phil., p. 561.

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