

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. RUFINO SURALTA, DEFENDANT AND APPELLANT.

G.R. No. L-1546. March 06, 1950

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court finding the appellant guilty of the complex crime of treason with murder, and sentencing him to suffer the penalty of death, to pay a fine of P10,000, and to indemnify the heirs of Simon Domayre in the sum of P2,000 and the heirs of Felix Tamayo in the sum of P2,000, plus the costs. The information contained 11 counts, but the People's Court based the judgment of conviction only on counts 3, 4, 9, and 10.

The appellant is a Filipino citizen and was a USAFFE soldier at the outbreak of the last war. he surrendered to the Japanese forces and later joined the occupation Japanese constabulary. As sergeant in said organization, he was in command of the detachment in Palompon, Leyte.

Under count No. 3, the prosecution alleges that some time in May, 1944, three Filipinos escaped from forced labor in a landing field in Opon, Cebu, and disembarked in Palompon, Leyte. Appellant arrested the three in the market of Palompon and brought them to the Social Center building, from which they were taken by appellant to the Palompon Elementary School then occupied by the Japanese. Said three men were blindfolded and thereafter bayoneted to death by the Japanese.

Under count No. 4, it is alleged that Simon Domayre, a guerrilla suspect, was arrested in Barrio San Pedro, Palompon, Leyte, some time in June, 1944, upon order of the appellant. Placido Pajaron, who made the arrest with another unidentified person, delivered Simon Domayre to the appellant in the Social Center building, where appellant boxed Simon and hit him with a baseball bat, made him drink as much water as he could, put him on the table, placed a board on his stomach, after which appellant and two Japanese soldiers stepped on the board causing the water to ooze from Simon's mouth and nose. Subsequently, the appellant brought Simon to the municipal jail. At about eight or nine o'clock in the evening, two men maltreated Simon upon order of the appellant, after which appellant slapped and kicked the two men upon seeing that they were half-hearted in their task. The appellant then ordered Carlos Guzman, a policeman, to kill Simon and, upon Guzman's refusal to do so, he was boxed by the appellant who afterwards hit Simon in the forehead with a bottle causing his death.

Under count No. 9, the evidence for the Government shown that in July, 1944, the appellant arrested and boxed Nicanor Sy on suspicion that he was aiding the guerrillas. The appellant brought Nicanor to the Social Center building of Palompon, Leyte, where lie was investigated and maltreated by the appellant.

The evidence for the prosecution as to count No. 10 is to the effect that in the later part of June, 1944, the appellant arrested in Palompon, Leyte, Felix Tamayo and brought him to the constabulary headquarters where he was maltreated by the appellant. The latter brought Felix to the Social Center building where he tied him to the bars of a window and investigated him about his guerrilla connections. Upon his refusal to admit that he was a

soldier, the appellant gave Felix fist blows and later hit him with an iron bar. When Felix still denied, the appellant thrust the iron bar into his mouth until Felix was forced to admit that lie was a soldier. The appellant later brought Felix to the seashore and bayoneted him to death.

Count No. 3 is supported by the testimony of Cipriano Payos and Deogracias Astorga, two school teachers of Palompon, Leyte. The contention of attorney for appellant is that the two-witness rule has not been satisfied because Astorga learned of appellant's reason for arresting the three men who escaped from Japanese forced labor only from the boatmen who brought them to Palompon. This contention is not tenable because, according to the record, Astorga came to know the motive for said arrest also from the conversation between the appellant and his three victims when the latter were arrested.

Count No. 4 is established by the testimony of Cipriano Payos and Carlos Guzman. The criticism of attorney for appellant on this point is that only Payos testified to the maltreatment of Simon Donayre in the Social Center building. However, we find that the two prosecution witnesses testified that they saw the torture and killing of Simon in the municipal building, and this is a sufficient overt act. The alleged inconsistency between Guzman and Payos as to who struck the fatal blow on Simon may be explained by the fact that the two witnesses were not in the same positions when they witnessed the incident.

Count No. 9 is proved by the testimony of Nestorio Omega and Nicanor Sy, the latter being the very person arrested by the appellant. It is contended by appellant that Omega did not actually see the arrest but only saw Nicanor in the municipal jail. We believe, however, that the charge of having arrested Nicanor includes the act of confinement, and when witness Omega testified that he saw Nicanor in the municipal jail, he was in fact testifying on the arrest charge.

Count No. 10 is born out by the testimony of Deogracias Astorga, Nestorio Omega and Nicanor Sy. It is claimed by attorney for appellant that it was only Astorga who saw the arrest of Felix Tamayo and his maltreatment in the constabulary headquarters. But we find that the three witnesses saw the maltreatment of Felix in the Social Center building of Palompon, Leyte, as well as the act of killing by the appellant of Felix on the beach.

The evidence does not reveal any indication that the witnesses for the prosecution had testified falsely against the appellant for any improper motive. Hence the appellant's guilt has been proved beyond reasonable doubt. But the People's Court erred in finding the appellant guilty of the complex crime of treason with murder, because murder was an ingredient of the crime of treason, as we have heretofore held in several cases. Under the circumstances of this case, and taking into account appellant's past services with the USAFFE and the fact that he was made a mere tool of the Japanese, we are not prepared to impose the penalty of death.

With the sole modification, therefore, that the appellant is hereby sentenced (for the crime of treason) to reclusion perpetua, the appealed judgment is in all other respects affirmed. So ordered, with costs against the appellant.

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

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