

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RIZAL MAGBANUA, DEFENDANT-APPELLANT.*G.R. No. L-2058. July 31, 1952*

Ponente: PARAS, C.J.

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The defendant Rizal Magbanua was charged with treason under a 5-count information. The prosecution presented no evidence on the second and fourth counts, and after trial the People's Court found the defendant guilty under the first and fifth counts and sentenced him to 15 years, reclusion temporal, with legal accessories, and to pay a fine of P2,000.00, plus the costs. Upon appeal by the defendant, the case was elevated to the Court of Appeals which, however, certified the same to this Court on the ground that, in the opinion of the Court of Appeals, the penalty that should be imposed upon the defendant is reclusion perpetua, there being no modifying circumstance.

The appealed judgment is correct. Appellant admitted in open court his Filipino citizenship. The evidence satisfactorily shows that the appellant, during the Japanese occupation of the Philippines, joined the Kono Butai, a semi-Japanese police organization established for the purpose of checking the activities of guerrillas in the province of Uegros Occidental. That the appellant acted as a spy and member of the Kono Butai is established by several witnesses if or the prosecution, appellant's activities consisting mainly in searching for and causing the arrest of guerrillas either by the Japanese or by other spies of the latter. Appellant was always seen armed with a revolver, a hand grenade, and sometimes a sword or hunting knife. He, moreover, was able to obtain from Inocenta Tupedoy the sum of P7,000.00, in Japanese war notes, and a blanket, upon the representation f that he would secure the release of Inocenta's nephew, Alberto Luzurriaga who was arrested and imprisoned by the Japanese. The foregoing facts related to count No. 1 and are sufficient for appellant's conviction; and we are disregarding count No. 5, under which the appellant was charged with the arrest of Tomas Diaz, Demetrio de la Pana and Serena Debala, merchants who gave food to the guerrillas in the mountains, on the ground that the appellant has not been identified as having personally effected said arrest.

Appellant's connection with the Kono Butai is not denied by him, and the pretense is merely made that he joined said organization under duress. We cannot believe this contention, since his activities as a member of said organization did not prevent him from going around, and he could have easily fled from the control of the Japanese at any time if he in fact wanted to do so. His guilty connection is, on the other hand, confirmed by the fact that the appellant retreated with the Japanese to Mount Concepcion, a fact testified to by two Japanese mestizas who also joined the retreating Japanese army.

Appellant's claim for the benefit of the Amnesty Proclamation No. 51 is untenable, since he acted as a spy or informer with activities that led to the arrest of guerillas and guerilla suspects. Neither is there merit in appellant's contention that the People's Court Act is unconstitutional. (People vs. Carlos, 44 O. G. 4281.)

In our opinion, however, the penalty imposed by the trial court is appropriate, there being no showing that the appellant committed any atrocity against any of those arrested by the Japanese or other Filipino spies. (People vs.

Caña, L-1678, Nov. 10, 1950; People vs. Morales, L-4533, May 28, 1952.)

Wherefore, the appealed judgment is affirmed, and it is so ordered with costs against the appellant.

Pablo, Bengzon, Padilla, Tuason, Montemayor, and Labrador, JJ., concur.

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