

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOROTEO ABATAYO, DEFENDANT AND APPELLANT.

G.R. No. L-2315. December 29, 1950

Ponente: JUGO, J.

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JUGO, J.:

Doroteo Abatayo was accused before the People's Court, Manila, of the crime of treason. The information contained five counts, the first four of which were abandoned by the prosecution, and the trial proceeded only with regard to the fifth.

The general allegations which precede the counts, and the fifth count, read as follows:

"That on or about and during the period comprised between December 8, 1941 and September 2, 1945, both dates inclusive, more specifically on or about the dates and in the different places hereinafter mentioned and within the jurisdiction of this Court, the above-named accused, Doroteo Abatayo, not being a foreigner but a citizen of the Philippines, owing allegiance to the United States of America and the Commonwealth of the Philippines, in violation of his allegiance and fidelity aforesaid, did, then and there, wilfully, unlawfully, feloniously and treasonably adhere to the enemy, to wit, the Imperial Japanese Government and her armed forces, with which the United States of America and the Commonwealth of the Philippines were then at war, intentionally giving said enemy aid and comfort in the following manner, to wit:

* * * * *

"5. That on or about December 6, 1944, in the municipality of Minglanilla, province of Cebu, Philippines, and within the jurisdiction of this court, the accused, Doroteo Abatayo, in furtherance of his adherence to the enemy, the Empire of Japan and her armed forces, with treasonable intent to give aid and comfort, as he did give aid and comfort to said enemy, in company and jointly with other members of the Japanese sponsored constabulary and Japanese soldiers, did, then and there, wilfully, unlawfully, feloniously and treasonably go out on patrol for the purpose of apprehending, arresting and capturing prospective guerrillas, as a result of which, Pedro and Jose Abellanosa were arrested as guerrilla suspects and one 'John Doe' was killed.

During the trial, after the prosecution had rested, counsel for the defendant moved that the case be dismissed for lack of evidence. After a prolonged oral argument between counsel and the fiscal, the court denied the motion. Upon said denial, counsel for the defendant stated in open court that the defense waived the right to present evidence. The court convicted the defendant and sentenced him to suffer fifteen (15) years of *reclusión temporal*, with the accessory penalties of the law, to pay a fine of P5,000 and the costs. The defendant appealed. The appellant refused to state at the trial that he is a Filipino citizen; but this was proved by his statements. Exhs. A and B.

Marcelino Veloso, information clerk of the provincial jail of Cebu, was present when the defendant put his thumbmark and his signature on Exhibit A and his signature on Exh. B. This evidence was not rebutted by the defense.

At about midnight of December 6, 1944, a group of more than two hundred Japanese soldiers, armed with rifles with fixed bayonets, accompanied by armed Filipinos' in Japanese uniform, among whom was the appellant, repaired to the house of Jose and Pedro Abellanosa in barrio Tubod, Minglanilla, Cebu, in pursuance of their campaign to suppress the resistance movement. The appellant was armed with a rifle and was wearing a Japanese military uniform and cap. He was known as a Japanese undercover man. One of the group knocked at the door which was closed and demanded admittance. Upon the opening of the door, ten Japanese soldiers and eight Filipinos, one of whom was the appellant, entered. They searched the house and examined the personal properties of the inmates. A Japanese soldier slapped Teotima Abellanosa, mother of Pedro and Jose, on both cheeks and hit her on the head. Jose and Pedro were not in the house. Said Japanese called the full name of Doroteo Abatayo and ordered him to tie the hands of Teotima and Santos Rodriguez, her husband, at their backs. Teotima and Santos were then taken downstairs and there they were grilled and intimidated. A Japanese soldier pressed the barrel of his pistol on the abdomen of Santos, while the appellant pointed his rifle at Teotima saying he would kill her if she refused to reveal the whereabouts of her sons, who were guerrilla men under Major Ibañez. Notwithstanding the maltreatment and threats by the Japanese and the appellant, neither Teotima nor Santos nor Gloria, daughter of Teotima, revealed the whereabouts of Pedro and Jose. However, the soldiers, together with the appellant, were able to extract from a neighbor named Julian, who was outside the house, information as to the place where Pedro and Jose were. The soldiers then arrested the two guerrilla men and tied their hands at their backs. The soldiers, together with the appellant, returned to the house of the Abellanosa family with their captives Pedro and Jose. Pedro whispered to his mother, "We will leave it to God." Jose said: "Mother, you may just consider that we will be gone forever." Teotima and Santos were untied, but Pedro and Jose were taken away by the patrol.

On the afternoon of the next day, Teotima and Gloria saw for the last time Pedro and Jose, who were tied and led by the armed forces, including the appellant, along the road to Minglanilla. On this occasion the appellant was armed with a revolver instead of a rifle. Pedro and Jose have never been seen again by the other members of their family, who received the news that they had been killed.

The above facts were proven by the testimony of Teotima Abellanosa and Gloria Abellanosa.

The appellant contends that his Filipino citizenship has not been established. This contention is untenable, for he thumbmarked and signed the statement Exhibit A regarding his Philippine citizenship, and he signed Exhibit B in which the same fact appears, in the presence of the information clerk of the provincial jail, Marcelino Veloso. It is true that the signature of the appellant appearing in Exhibit B is not the same as that in Exhibit A, but he may have changed his signature. If he really did not thumbmark Exhibit A, it would have been very easy for him to prove it by making another thumbmark in court, which might have been compared by experts with that appearing in Exhibit A. Thumbmarks never lie. The appellant did not present any evidence.

The defense argues that Teotima and Gloria could not have recognized the defendant, as he was among numerous Filipinos wearing Japanese uniforms at midnight. This contention is not well founded. The lamps were lighted in the house upon the order of a Japanese soldier. As the appellant tied Teotima and Santos, they could have easily distinguished him from the other Filipinos.

The appellant was called by a Japanese, using appellant's full name, when the former ordered him to tie Teotima and Santos. This circumstance contributed to fix the attention of the witnesses on the defendant.

After Pedro and Jose had been captured, the appellant was one of the group of soldiers who returned to the house of the Abellanosa family and there was seen again by the witnesses'. On the following day, when the appellant and other soldiers led Pedro and Jose along the road to Minglanilla, he was seen for the third time by Teotima and Gloria, who closely examined his face and physical features.

It should be borne in mind that a person will easily remember another who maltreats him because he turns his attention to the offender consciously or unconsciously.

In view of the circumstances above set forth there could have been no mistake as to the identity of the appellant.

The defendant maintains that his acts did not constitute treason for he simply accompanied a Japanese patrol without guiding it. This is not supported by the facts of record. The appellant tied the spouses Santos and Teotima and threatened them with death should they refuse to reveal the whereabouts of Pedro and Jose and investigated the other inmates of the house. He helped the Japanese patrol in the search for guerrilla men, for the purpose of having them liquidated. Pedro and Jose were never seen again after their capture.

The appellant further argues that Pedro and Jose could not have been guerrilla men, because they were members of the constabulary rendering service to the Japanese. Apparently they were so at the beginning, but they were even then in connivance with the guerrilla forces, which they afterward joined. For that reason they were hunted, caught, and liquidated by the Japanese.

It results from the above facts that the appellant is guilty of treason under the provisions of article 114 of the Revised Penal Code.

In view of the foregoing, the judgment appealed from is affirmed, with costs against the appellant. So ordered.

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

MORAN, C.J. :

Mr. Justice Paras and Mr. Justice Feria voted for affirmance.

Judgment affirmed.

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