

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JUAN LANASANAS, DEFENDANT AND APPELLANT.

G.R. No. L-1622. December 02, 1948

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court (Second Division), finding the appellant guilty of treason and sentencing him to *relusion perpetua*, and its accessory penalties and to pay a fine of ten thousand pesos, plus the costs. Appellant's conviction was based only on counts V and VI of the information. The first charged the appellant with having enlisted, joined and served in the organization commonly known as Makapili. The second accused the appellant of having led and accompanied a patrol of Japanese soldiers and Makapilis to a raid in Barrio Parian, Municipality of Calamba, Province of Lasuna, resulting in the arrest of all the male inhabitants of the barrio and their confinement in the Japanese garrison in Calamba for three days and two nights without food, in retaliation for the killing of one of appellant's companions.

We will concede, following appellant's argument, that count V was not established in accordance with the two-witness rule, since only one witness (Marcial Flores) was specific in testifying that he knew the appellant to be a Makapili because he used to persuade people, in meetings held by him with others in different barrios, to join the Makapili organization. This is, however, sufficient to prove appellant's adherence to the enemy, considering the purposes for which the organization was created, namely, "to accomplish the fulfillment of the obligations assumed by the Philippines in the Pact of Alliance with the Empire of Japan"; "to shed blood and sacrifice the lives of our people in order to eradicate Anglo-Saxon influence in East Asia"; "to collaborate unreservedly and unstintedly with the Imperial Japanese Army and Navy in the Philippines", and "to fight the common enemies." (People vs. Adriano, G. R. No. L-477, June 30, 1947.)[1]

The appellant, with such proof of adherence, has to be found guilty of treason under count VI, because at least two witnesses (Marcial Flores and Tereso Villar) had testified that the appellant played an active role in bringing about the mass arrest and confinement of the people of Barrio Parian, a punitive measure that took place in December, 1944, in reprisal for the killing of a Makapili. The fact that said witnesses were not uniform on the points whether or not there were Japanese soldiers in the raiding party, or whether or not the persons arrested and confined include not only the males but some women and confined included not only the males but some women and children, is not sufficient to entirely discredit their testimony, as the deficiency refers merely to minor details. Neither may the negative testimony of Elpidio Elasigue, an alleged victim of the raid, to the effect that he did not see the appellant among the raiders prevail over the positive testimony of Marcial Flores and Tereso Villar who, moreover, were not shown to have had any improper motive in testifying against the appellant. For obvious reasons, also, appellant's mere denials and the exculpatory testimony of his wife deserve little or no weight. At any rate, the latter has even strengthened the theory of the prosecution as to appellant's Makapili membership, when she admitted that the appellant was Sakdal before the war.

Counsel for the appellant contends that, assuming the truth of count VI, no treason was committed because the

raid against the people of barrio Parian was motivated by the slaying of a Makapili, and not by a desire to betray one's country. The contention, however, ignores the fact that the appellant had shown his adherence to the enemy by his Makapili membership and that, by retaliating for the violent death of fellow member, he had defended the Makapili organization and had thereby committed a positive act in the furtherance of its aims and purposes.

Lack of instruction or education cannot be considered a mitigating circumstance in favor of the appellant, because love of country should be a natural feeling of every citizen, however unlettered or cultured he may be.

The appealed judgment is therefore affirmed, with cost against the appellant. So ordered.

Moran, C.J., Ozaeta, Feria, Pablo, Bengzon, Briones, Tuason and Montemayor, JJ., concur.

DISSENTING

PERFECTO, J.,

- Juanito Abesamis, 22, married, policeman, Calamba. In September, 1944, he saw the accused in barrio Parian looking for his brothers-in-law, Tereso Villar and Rufino de Chaves. (2). The accused was accompanied by Japanese. He does not remember how the accused was dressed. He does not know defendant's duty or occupation. (3). He came to know that the accused was lodging for Tereso Villar and Rufino de Chaves because he saw him in the company of both. The accused was armed with a revolver. (4). The witness heard about an organization known as Makapili with headquarters at Calamba, but he does not know for certain who the members were. The Filipino who entered the house of Tereso Villar and Rufino de Chaves did not wear any distinctive insignia, band or identifying sign that they belong to the party composed of the Japanese. (5).

- Marcial Flores, 27, married, policeman, Calamba. On December 28, 1944 "our barrio (Parian) was zoned. They gathered all the men in our barrio and afterwards we were all taken to the town and imprisoned in the school building." The witness was not arrested because "I jumped out of our window and hid in the banana plants." He saw the accused with some policemen. There was no Japanese, (11). They were armed with guns. "My brother-in-law (Antonio Gomez) was ordered by these persons (indicating the accused) tied up." "But when they were already about to go to town, he was released." He saw Antonio Gomez taken away. (12). There were many persons apprehended because in a previous day the dead body of a Makapili was found in the barrio. The accused has connection with the Makapili organization "because they often held meetings in the barrio and trying to recruit people." (13). "He often saw him (the accused) in company with the Japanese whenever they held searching parties in adjoining barrios." Antonio Gomez was released after two days. (14).

- Miguel Alvarez, 60, married, merchant, Calamba.—At midnight of November 28, 1944, two Japanese, Juan Bautista, and the accused went to his house and took his son Marcial Alvarez. The witness did not notice whether they were armed. (21). His son was taken away. He heard them saying that they will get another person from the shore named Almario Abasan. They took him on that same night and his nephew Bernardo Ustaris,

suspected of being a guerrilla. He did not see any precautionary measure taken to prevent the escape of his son. (22). His son was taken to the store owned by Takasita, then to the municipal building and then to San Pablo. His son was released on December 22. (23).

- David Carreon, 47, married, assistant provincial fiscal, Laguna.—His house was just in front of the house of Takasita, a Japanese civilian "and I used to see the accused go to that place. There were times when he was armed and there were times when he was not." His arm was a revolver. In November, 1944, a man detained at the house of Takasita managed to escape and the accused pursued him. but fortunately he was not able to catch him. He supposed that the man was a guerrilla. (29), He saw one night a person being tortured by a member of the MP and the accused was present. He did not notice that the accused had done anything there.

- Remedios Jabacon, 31, married, housewife, Calamba.—On November 23, 1944, we were awakened by the call of someone at our house who ordered my brother Llarío Jabacon and Bernardo Ustaris to dress up." Those who awakened her were Juan Bautista and Clemente Tenido. She saw the accused. (35). Mario Jabacon and Bernardo Ustaris were taken by them to a place the witness does not know. They were being suspected as guerrillas. Mario Jabacon was taken by the Japanese and is dead. Bernardo Ustaris is in Okinawa. (36). Mario Jabacon was able to come back. (37).

- Elpidio Retusto, 46, married, foreman, Bureau of Public Works, Calamba.—During the Japanese occupation he saw the accused sometimes with a Japanese and sometimes with Filipino Makapilis. He believes him to be a Makapili. On July 4, 1943, at four o'clock in the morning, Francisco Tiamson, Buenaventura Tiarason, Felipe Hernandez, Jose Canicosa and Mrs. de Jesus were taken to the garrison. The witness saw the accused in the garrison, but he was not armed. (42). He did not see who arrested those persons but he heard that Juan Lansanas was one of those who arrested them. He did not know who brought them to the garrison. The day of the arrest, the accused was not in the room, but in another place also within the garrison. (43). "Mrs. de Jesus and her group were taken to a place about 80 meters from the garrison and I have not seen them returned."

- Marcial Alvarez, 22, single, employee, 110 Plaza Goiti, Manila.—He joined the Fil-American Guerrilla in 1943. (II-I). At around 12 o'clock at night of November 28, 1944, he was awakened by certain Makapilis and Japanese Kempeis among whom was the accused. They were dressed in khaki. He did not notice if they were armed. (3). The Japanese Kempei was holding a list "and he read my name there and told me to dress up." He saw the accused "when we went down to the road. The accused was one of those who tied my hands. We were taken to the municipal jail at Calamba." Also caught that night were Ernesto Elepano, Mario Jabacon, Eusebio Alviar and Bernardo Ustaris. (4). "They did not molest us while we were in jail." The next morning "we were taken to the garrison in San Pablo. We stayed there until December 22, 1944. We were treated there very badly and cruelly. The Japanese Kempei beat me with a big piece of lumber. (5). "I think that when we were taken to the municipal jail he (the accused) was one of those who held my hands. They left us there" in the jail. n1. When I was taken

from my house my hands were tied already. When we arrived at the municipal jail in Calamba my hands were untied." But from Calamba to San Pablo his hands were tied by the Japanese kempei.(6). He was arrested because he was a guerrilla suspect. He was a sergeant of the Fil-American Intelligence. (7).

- Tereso Villar, 36, married, rig driver, Parian, Calamba.—During the Japanese occupation he used to see the accused in company with Japanese. (16). In the group Japanese soldiers predominated. The accused was armed with a revolver. In September, 1944, the accused went to barrio Parian. "They were looking for my brothers-in-law as they were suspected of being guerrillas. (17). He talked with the accused and requested him not to have his brothers-in-law arrested and the accused "told me that it would not do because they were guerrillas." They searched our house looking for arms. Then they went away. He saw the accused in December, 1944, when we were zonified. (18). Parian was zonified because a Makapili was killed, and no one could point who killed him. We were locked up and we were forced to tell who killed the dead Makapili. We were about 120 with some women and children." The accused was in the company of some Japanese and Filipinos. They were armed. (19). The accused carried a revolver. "We were taken to the garrison." There they remained two nights and three days. And they were not fed anything. Two persons pointed Rufino de Chaves as the person responsible for the killing. De Chaves was not arrested. The witness does not know if anything happened to Rufino de Chaves until he was released. (20). The witness heard from people that the Uakapllis were the persons who were always in company of the Japanese pointing out guerrillas. One of them was Juan Lansanas. (21).

- Victoria Aguilar, 57, married, housewife, Calamba.—On November 28, 1944, around two o'clock in the morning, her son Teodoro Jabacon told her mother "he told me to open the door and when I peeped out I saw that he has two companions." (25). He told her that Mario Jabacon and Bernardo Ustaris "were being invited by the Japanese." Clemente Teiido and Juan Bautista were the only ones accompanying Teodoro Jabacon. There were also the De la Cruz brothers and Juan Lansanas. taken were (27). Those who were brought to the municipal building of Calamba. They were not tied. The next morning she returned to bring breakfast. They rode in a truck and they were tied. MI do not know where they were taken." They came back perhaps 24 days after. (28). The accused was always in company with the Japanese kempeis during the enemy occupation. He was always armed. (29).

- Apolonio Genoveso, 33, married, policeman, Parian, Calamba.—During the Japanese occupation, every time he saw the accused the latter was always in company with the Japanese. He saw him when they searched the house of the Chavez brothers. He had many Japanese companions who were armed with fixed bayonets. The accused was shouting at the foot of the stairways asking "where are the Chavez brothers? the nuns, why don't you produce them?" He was looking towards the balcony of the house of Tereso Villar. (35). It happened in September, 1944. The accused was married with a .45-caliber revolver. (36). Tereso Villar and the De Chavez brothers were guerrillas.(37).

A careful consideration of the testimonies of the ten witnesses for the prosecution will show that not a single overt

act of aiding and giving comfort to the enemy has been proved by the testimonies of two witnesses.

Juanito Abesamis said that he concluded that the accused was looking for Tereso Villar and Rufino de Chavez in September, 1944 because he saw them in their houses. No other witness corroborated him. On the contrary, Tereso Villar contradicted him in a way, because Tereso said that when he saw the accused in September, 1944, he saw him looking for his brothers-in-law and that he requested him not to arrest them.

Marcial Flores testified about the alleged zoning in Parian on December 23, 1944, in which Antonio Gomez, his brother-in-law, was tied on orders of the accused, but then released. No other witness testified as to the alleged arrest of Antonio Gomez. Although Tereso Villar testified that Parian was zonified, he did not state its date. He mentioned only that it took place in December, 1944. This is not enough to conclude that two witnesses testified about the Parian zoning on December 28, 1944.

Miguel Alvarez testified that the accused, accompanied by two Japanese and Juan Bautista, went to his house at midnight on November 28, 1944, and took his son Marcial Alvarez. His son was taken to the store of Takasita, then to the municipal building of Calamba and then to San Pablo. No precautionary measure was taken to avoid the escape of his son. Marcial Alvarez in turn testified that he saw the accused only when he went down to the road and that the accused tied his hands and that he was thereafter taken to the municipal jail in Calamba. He does not say that he was ever brought to the house of Takasita. The testimonies of the two witnesses do not tally on any single detail regarding any specific act attributed to the accused. The two testimonies are contradictory. While the first says that the accused went to his house, Marcial says that he saw the accused only on the road, and, while the first says that no precautionary measure was taken to avoid the escape of Marcial, the latter says that he was tied. The evidence does not satisfy the two-witness rule.

David Carreon testified that the accused used to go to the house of Takasita, a Japanese civilian. He gave no testimony damaging to the accused.

Remedios Jabacon says that on November 23, 1944, she was awakened by Juan Bautista and Clemente Teñodo, who took her brother Mario Jabacon and Bernardo Ustaris to a place she does not know. She saw the accused at the time. But Victoria Aguilar testified that her son Ilario Jabacon and Bernardo Ustaris were taken at two o'clock in the morning of November 23, 1944, by Juan Bautista and Clemente Teñodo, who were accompanying her son Teodoro Jabacon, and the accused was not with them. So the testimony of Remedios Jabacon about the participation of the accused in the arrest of Ilario Jabacon and Bernardo Ustaris was not corroborated by her mother or by any other witnesses for the prosecution.

Elpidio Rejusto has not given any damaging testimony against the accused whom he simply believes is a Makapili.

The last witness Apolonio Genoveso testified about seeing the accused searching the house of the De Chavez brothers and looking towards the balcony of the house of Tereso Villar, but no one corroborated him.

For all the foregoing, because Article 114 of the Revised Penal Code requires that all overt acts of treason should be proved by the testimony of at least two witnesses, we are of opinion that appellant is entitled to be acquitted and we therefore vote for the reversal of the appealed decision.

Judgment affirmed.

[1] 78 Phil., 561.

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