

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANUEL MAGPANTAY, DEFENDANT-APPELLANT.

G.R. No. L-2585. February 22, 1950

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a decision of the Court of First Instance of Batangas, convicting appellant of treason on two counts and sentencing him to life imprisonment and to pay a fine of P10,000.00 and the costs.

The first count reads as follows:

"That in or about January 1942, and at divers other dates subsequent thereto during the period of Japanese military occupation, the herein accused, for the purpose of giving and with intent to give aid and comfort to the enemy did wilfully, feloniously and treasonably become, serve and act as informer of the Imperial Japanese Forces and as such did report guerrillas, accompany Japanese soldiers in arresting guerrillas and perform other acts incumbent upon him by reason of said position in aid of the enemy."

Testifying on this count, Estanislawa Coloma declared that between 3:00 and 4:00 o'clock in the morning of March 9, 1945, while she and her husband Simplicio Virtusio, a guerrilla attached to the unit commanded by Col. Pedro Pasia, were lying down side by side in the convent of Cuenca, Batangas, where about 200 people, including themselves, had taken refuge after their houses had been burned by the Japanese, the latter came with lighted candles and accompanied by appellant, who, posting himself beside the window, began pointing out those who should be arrested as guerrillas, and, as a result, the Japanese seized and hogtied six men (among them her husband and her brother-in-law, Manuel Cuevas), who had since then not been heard from.

Corroborating the above testimony, Teresa Sahagun, a cousin of the defendant, declared that early in the morning of March 9, 1945, while she was in the convent of Cuenca together with the other people who had taken refuge there, the defendant came with Japanese soldiers and indicated to the latter several persons (among them her husband (Braulio Mercado), Simplicio Virtusio, Jose Sevilla, Santos Laqui, Manuel Cuevas, and Agapito Viray), who were thereupon arrested and hogtied by the Japanese and were never thereafter seen or heard from again; and that the Japanese were then carrying lighted candles.

Count No. 2 reads:

"That on or about March 5, 1945, in company with Bernardo Magpantay, and Japanese soldiers, the herein accused with intent to give aid and comfort to said enemy did wilfully, feloniously and treasonably arrest Sinfroso Jusay and Honesto Jusay who since then were never seen alive nor heard from."

In support of this count the prosecution presented the testimony of Filotea Laredo and her mother-in-law Elena Chavez to the effect that early in the morning during the first week of inarch, 1945, Japanese soldiers came to their house accompanied by the appellant, who was then carrying a rope and a lighted candle; that appellant pointed to the Japanese Filotea's husband (Honesto Jusay, a guerrilla) and her father-in-law (Sinforoso Jusay, a

guerrilla supporter), who were then and there arrested and hogtied; and that these were never heard from again. While these two witnesses did not specifically mention March 5 as the date of the arrest, their testimony leaves no room for doubt that they were referring to the arrest alleged in the information.

As a background for the treasonous acts imputed to appellant, another witness, Maximo Laqui, testified that he had known appellant from childhood as he was a son of his compadre; that during the Japanese occupation, specially in 1944, he often saw appellant accompanying and helping the Japanese; that appellant then had a pistol; that he was once invited by appellant to join him in serving the Japanese; and that appellant told him that Braulio Mercado, Jose Sevilla, Manuel Cuevas, Honesto Jusay, and other guerrillas had already been arrested and liquidated. This witness also gave the information that appellant was arrested by the C.I.C. on March 25, 1945. Though given by only one witness, this testimony may be considered as proof of adherence to the enemy and to rebut appellant's alibi without violating the two-witness rule.

Testifying in his own defense, appellant declared that he could not have participated in the arrest of guerrillas on March 5 and 9, 1945, because, having been arrested by them on the 4th of that month, he was then already in their custody as a prisoner. This testimony was corroborated by that of four convicts, who had been his cellmates in Bilibid.

Our examination of the evidence convinces us that appellant's guilt has been proved beyond a reasonable doubt, each of the two counts in the information being clearly established by the testimony of two eye-witnesses to the same overt act. There can be no doubt as to the identification of the appellant by the witnesses for the prosecution, for they were able to observe him at close quarters, and one of them was his own cousin while another had known him for about twenty-five years. As against the insinuation that it was dark when the raid for the arrest of guerrillas in the convent and in the house of the Jusays took place, the evidence shows that the raiders carried lighted candles.

On the other hand, the defense of alibi set up by appellant is supported by nothing more reliable than his own testimony and that of four convicts under sentence for capital offense. They had all been appellant's cellmates in Bilibid, and their testimony that appellant was arrested by the guerrillas on or before March 4, 1945, i.e., before the commission of the criminal acts imputed to him, was contradicted by that of Maximo Laqui, who declared that appellant's arrest took place on March 25, 1945.

There is no merit in the contention that the lower court erred in considering the participation of the accused in the arrest of Manuel Cuevas, Braulio Mercado, Jose Sevilla, Santos Laqui, Agapito Viray, and Simplicio Virtusio on March 4, 1945, since the arrest of those persons is not mentioned in count No. 2. This count charges appellant with having acted as informer of the Japanese army and with having, in that capacity, reported the guerrillas and accompanied the Japanese soldiers in arresting them. Under that general charge, proof of specific arrests made with appellant's participation was admissible (*People vs. Bagalawis*, G.R. No. L-262, 44 O.G. 2655), and, even if it were not, objection thereto could not be made for the first time on appeal.

In view of the foregoing, we find appellant guilty beyond a reasonable doubt of the crime of treason, and as the sentence appealed from is in accordance with law, the same is hereby affirmed with costs against the appellant.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Torres, JJ., concur.
Feria, J., did not take part.

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