

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. PABLO LABRA, DEFENDANT AND APPELLANT

G.R. No. L-886. August 10, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

The information filed against appellant accused him of treason on seven counts. At the trial, the prosecution offered evidence to prove only three counts, Nos. 1, 3, and , 7, which are reproduced as follows:

"1. That during the Japanese occupation, in the City of Cebu, Philippines, and within the jurisdiction of this Court, the accused herein, with intent to adhere and give aid and comfort to the enemy above mentioned, did then and there wilfully, illegally, feloniously and treasonably accept the position of, and act as an undercover agent and/or spy for the Japanese Military Police, otherwise known as Kempei Tai, and as such, did accompany Japanese patrols on expeditions in various places in the Province of Cebu and in the Province of Leyte to combat and/or arrest guerrillas and other persons engaged in the resistance movement against the enemy and did assist members of the Japanese Imperial Forces in torturing, maltreating and executing persons charged and/or suspected of being guerrillas and/or engaged in the resistance movement against the enemy;

"3. That on or about the 28th day of July 1944, in the City of Cebu, Philippines, and within the jurisdiction of this Court, the accused herein, with other Filipino undercover agents, with intent to give aid and comfort to the enemy aforementioned, did then and there wilfully, illegally, feloniously and treasonably arrest a certain Tomas Abella for being a guerrilla, bringing him thereafter to an uninhabited place and once there, with treachery, evident premeditation and abuse of superior strength, the accused herein, acting and conniving with other undercover agents of the Japanese, did wilfully, illegally and feloniously attack and inhumanly kill the said Tomas Abella;

"7. That on or about October 1, 1944, in the City of Cebu, Philippines, and within the jurisdiction of this Court, the accused herein, together with other agents of the Kempei Tai, with intent to give aid and comfort to the enemy above mentioned, did then and there wilfully, illegally and feloniously arrest a certain Nicolas Tudit for being a guerrilla suspect, the members of whose family having been suspected of helping the guerrillas, delivering thereafter the said Nicolas Tudit to the Japanese Kempei Tai who, after having tortured and maltreated him, executed with a bayonet the said Nicolas Tudit."

The lower court found appellant guilty of treason and of the murder of Tomas Abella, and sentenced him to the maximum penalty provided by article 114 of the Revised Penal Code.

Upon learning that a counsel de oficio was appointed by this Court to represent him on appeal, appellant addressed on June 6, 1947, a letter to said counsel, excerpts of which are reproduced in the latter's brief:

"On April 26, 1946, in the morning at about 8:00 a.m. I was brought to court. Upon our arrival in the courtroom, I was told by the Clerk of Court to stand and read to me the information against me. There are seven specifications in my charge and this is the first time I came to know of it. After the Clerk had finished reading the information the prosecutor requested the Honorable Court to proceed with the trial of my case at

once. . Attorney Lumontad, the attorney de officio appointed by the Honorable Court to handle my defense requested the Honorable Court for postponement as he has to study the information, first inspite of the vehement persistence by my attorney de officio for postponement for the hearing of my case, the court have not granted his request.

"After the Honorable Court adjourned its session during that morning the hunter's of the people's court got mad at me and instigated the crowd to mob me for not pleading guilty to the charges filed against me, the indifference of the Honorable Judges of the people's court, coupled with the instigation of the hunters of the aforementioned court, the crowd mobbed me and as a result of this I suffered serious physical injuries from the mobs, in spite of the injuries, the M.P.C. that was escorting me didn't even take the pain of obtaining for me some medicine to be applied to the wounds inflicted upon me by the mobs much less of bringing me to a doctor for medical treatment.

"On May 2, 1946, although I'm still physically weak in view of the injuries I had from the mob, this Honorable Judges forced me to appear at the trial, what fear and pain I have to endure during this day inside the court room, only our good Lord knows, in view of the emotional tension, anxieties coupled with the injuries I still have on that occasion, when we arrived at the compound during "that noon, I fainted and had a strong fever. It was only then that the Honorable Judges have consented to the pleading of my counsel de officio to postpone the trial or hearing of my case.

"Ten days after that was on May 13, 1946, I was summoned again before the Honorable Court, although I was still weak from my ailment after the prosecution had finished presenting their witnesses, I was asking for postponement in order for me to prepare my defense witnesses. This request had been denied me again by the Honorable Court. In presenting my defense witnesses this Honorable Court didn't accept or either grant to have my other six witnesses to testify in my behalf. Out of the eight witnesses I have, only two have been allowed by the court to testify, the six others were not allowed to testify. Of this six witnesses three are civilians, others guerrilla officials.

"Inspite of the curtailment of the rights and privileges a defendant is supposed to have before the court, what lust me the most is the denials or refusal of the court to have my other defense witnesses to appear in my behalf. It is evidently clear then, my attorney that the Honorable Court has and is fully determined to have my fate zealed. If this is what the law says and what is the interpretation of justice towards us, poor and humble people, gladly and willing I'll suffer everything, I won't ask for many for then indirectly or directly you might think that I am really guilty of this offense allegedly imputed to have been committed by myself. My conscience is clear and if real justice will be denied my poor humble self, I am certain and fully convinced that a real justice will be given me by our Lord who sees and knows everything.

"Very respectfully,

(Sgd.) "PABLO M. LABRA"

The case was called in the lower court on April 26, 1946, at 8:30 for arraignment of the accused and trial. Because attorney de officio Emilio Lumontad was then busy attending another trial in the Court of First Instance of Cebu, the session at the People's Court was suspended. At 9:15 a.m., upon Lumontad's arrival, the session was resumed. The information was read to the accused. The accused pleaded not guilty on each of the seven counts. From the transcript we quote:

"Judge Borromeo: Are you ready?

"Major Gorospe: The prosecution is ready, your Honor.

"Mr. Lumontad: The defense is not yet ready, because only I knew this morning that I am appointed attorney de officio. Tomorrow, yes.

"Judge Borromeo: Where are your witnesses, Major? * * *. Do you admit or ratify the admission of your attorney, that you are a Filipino citizen, during, before and after the war?

"The accused: I do.

"Mr. Lumontad: I insist for the postponement of the trial until tomorrow, because the other sala is waiting for me, I don't know why Judge Martinez insisted to finish that case there in his sala.

"Judge Borromeo: All right, take the oath of the witnesses for the prosecution." (2-3).

The oath of the witnesses was taken and immediately one of them was called and started to testify. The transcript does not show any express action on counsel de oficio's reiterated motion for postponement of hearing. The testimonies of the witnesses for the prosecution are as follows:

1. Policarpo Labiste, 37, married, rig driver, resident of Guadalupe, Cebu City, testified that during the Japanese occupation appellant was "an undercover agent." He used to patrol outside the city and apprehend guerrilleros and guerrilla suspects. (3). On August 17, 1944, Antonio and Irineo Gabucan and Julian and Sergio Bacalan "were apprehended and were brought near to our house. They were tied up." They were investigated regarding firearms by Pablo Labra and his undercover companions. On said date, "I have just awakened up when I went down I was apprehended and tied. I don't know what was the reason." Sergio Bacalan was killed by a companion of Labra. (3-4). "They brought Sergio Bacalan near the creek and then I heard the shot." He was shot by a companion of Labra whom "I don't know." The witness came to know that Sergio Bacalan was dead "because the Japanese told us that Sergio was dead. I was one of those persons maltreated. (6). First they tied my hands behind my back, then we were beaten with a big stick and galvanized iron pipe. I had many contusions. Two in my left arm and in my back." During the maltreatment the accused "was just present" and said to the maltreated persons: "You better satisfy your soul now because you will be killed." All happened "in the yard of my house, in Guadalupe." At that time Pablo Labra was armed. (7). He had many companions. There were two Japanese. During the maltreatment inflicted to Antonio Gabucan, Irineo Gabucan, Sergio Bacalan and Julian Bacalan, the accused was just present, looking. The maltreatment was inflicted by the undercovers. It was nighttime, four o'clock in the morning; quite dark. (8). Sergio Bacalan was killed but the witness does not know who killed him. (9). The witness had not seen the execution of Sergio Bacalan. He just heard the shot. (10). Between the place of the execution and the place of the witness, at about 150 meters' distance, there were trees intercepting the view. The group who arrested the witness and Sergio Bacalan was headed by a Japanese. (11). It was a Japanese kempei with the name of Muri. The accused was an undercover because he used to come to town and to carry a revolver. At that time anybody carrying a revolver was an undercover. (12). The accused was a kempei "because he went to our place and searched our house and told us to surrender our firearms." (13).

2. Julian Bacalan, 28, single, farmer, resident of Guadalupe, testified that Sergio Bacalan was killed by Pablo Labra on August 17, 1944. "I was present when they took Sergio Bacalan and they passed in my front, when they took my brother." Pablo Labra and Raymundo arrested his brother. A few minutes after Sergio Bacalan was taken away from the witness' group, "we heard a shot, and one of the Japanese asked the group, which of us will be the next." The question was made in the house of Policarpo Labiste. (14). Pablo and Raymundo Labra were armed. The following morning the witness recognized the body of Sergio Bacalan. "He was shot on the head." Policarpo Labiste was present "when they shot my brother." Antonio and Irineo Gabucan were present when Sergio was maltreated. (15). The accused charged the arrested persons as guerrillas and asked them where Major Villamor was, and accused them of hiding Major Villamor and his men. Pablo Labra "tied my hands behind my back and kicked me and he pushed me and he asked to surrender my arms, and because I could not say anything about that, he slapped my face with his revolver." Pablo Labra maltreated Antonio Gabucan. "He whipped me with a stick and boxed me." Irineo Gabucan was beaten with a piece of iron bar. (16). The witness was maltreated by Pablo

Labra but he does not know whether Pablo Labra maltreated Antonio Bacalan and Irineo Gabucan. "They took them to the dark place." Labiste "was taken to the back of the house and was hung and beaten" by the undercovers. The accused walked and kicked everyone. He seemed very proud. He walked back and forth. (17). Among the arrested persons were Mariano Taguno, Tomas Fernandez and Santos Taguno. "Pablo Labra and Raymundo Labra were the only undercovers I know because they were my cousins." The witness does not know if they killed his brother. (18). The witness heard the shot 100 meters away. It was very dark. The witness believes that Raymundo Labra and Pablo Labra were the ones who killed Sergio Bacalan, but the witness did not actually see the killing. Pablo and Raymundo Labra were the leaders of the undercovers. (19). Pablo Labra was in Japanese uniform. He was dressed in maong. (22).

3. Irineo Gabucan, 57, married, farmer, resident of Guadalupe, testified that Pablo Labra was a spy "because he used to apprehend people." He caused to be apprehended "myself, my son, Carpo, Julian Bacalan, Isaac Labiste, Tomas Caballos. We were apprehended on the 17th day of August, 1944." Pablo Labra and a companion arrested the witness. (24). "We were investigated. They told us to reveal where was our revolver." The witness was maltreated by Pablo Labra, by hitting him with a stick and iron bar. Sergio Bacalan was killed by Pablo Labra and companion. (25). After the arrested persons were maltreated, Pablo Labra made a speech telling that they better satisfy their soul, because if they will not die from the maltreatment, they will be told to jump to the bridge near the capitol. (26). Pablo Labra was looking for guerrillas and killed them and the witness knows it through "the brothers who told me they are our neighbors," but the witness was not present when the persons were arrested. (29). Sergio was killed by "Pablo Labra, Raymundo Labra, and companion," but the witness was not present when the killing took place "because we were told to line up and the killing took place on the creek." The creek was about 50 brazas from the place where the witness was tied. "It was dark and showering a little. (30). I don't know who shot Sergio." He saw the accused taking the victim, Sergio Bacalan, to the creek and they took the dress before they shot." (31). The witness was hit with an iron bar at the back. The accused was the one who hit him. (32-33).

4. Timoteo Cabras, 51, married, teacher, resident of Cebu, testified that he has known Pablo Labra since 1925. During the Japanese regime the witness was in the mountain. (34). Pablo Labra was in the City of Cebu. The accused used to go with the kempei and tried to catch people related to the guerrillas. The accused was roaming around with Japanese kempei. On one occasion the accused, accompanied by a Japanese soldier left downstairs "came down to my house and captured me and tied me, and he said 'Where is your daughter?' " When the witness told the accused that his daughter was taken by the guerrillas to the mountain, the house was ransacked. (35). The accused was accompanied by Francisco Taborada and Samuel Cocon. He asked the witness why he let his daughter go to the mountain. The witness was taken in a car to the kempei-tai, and the next morning he was made to carry a sack of rice to the mountain by the Japanese. (36). The accused was armed with a pistol. Although the witness was hiding in the mountains, in November, 1943, he came out to attend the wedding of the younger sister of his wife. Since then the witness sometimes went back to his evacuation place. He was arrested by the accused on January 26, 1944. (37-38).

5. Basilio Taboada, 33, married, farmer, resident of Labangon, Cebu, testified that he has known Pablo Labra since he was a small kid. During the Japanese occupation, the accused was a spy. He was attached to the Japanese imperial forces and he used to be the guide in apprehending guerrilla's. (40). The accused was armed with a pistol. On July 28, 1944, the witness was in his farm field. He saw Tomas Abella in the company of Pablo Labra and two persons. "They were walking together when I was plowing my land, and I saw them going one by one forming a line and when they passed by me at a distance of 20 meters I stopped, because I was afraid they will apprehend me. Since Tomas Abella was in the rear I saw that he was followed by the accused, and I saw with my two eyes that when he was in that position, the herein accused cut his neck, of tomas="" abella."="" the="" accused=""

used="" a="" sanggot="" (a="" scythe).="" neck="" was="" not="" fully="" cut.="" witness="" saw="" it="" "becausehjjie="" next="" day="" we="" buried="" body.="" incident="" happened-in="" labangon="" between="" bridges="" 3="" de="" atari!="" and="" that="" of="" railroad.="" place="" isolated. of Thomas Abella." The accused used a sanggot (a scythe). The neck was not fully cut. The witness saw it "because the next day we buried the body." The incident happened in Libangon between the bridges 3 de Abril and that of the railroad. The place was isolated, There was no house. Tomas Abella had his hands tied behind the back. He died immediately. (41-42). He was buried in San Nicolas, Cebu. The incident happened at 4 o'clock in the afternoon. (43). The witness does not exactly know the number of the Filipinos in the group. The accused was dressed in maong, the same as the Japanese. (45). The witness saw the accused apprehending persons in Guadalupe, but he cannot name any one of the arrested persons. (46).

Abella was killed "in the border of my land I was plowing." It was not "under the coconut grove. There was no coconut there, there was some bamboo grove." But he was not killed under the bamboo grove. (46). "He was killed in the place where I was plowing." (47).

6. Lorenzo Tabasa, 21, single, student, residing in Labangon, Cebu, testified that during the Japanese occupation Pablo Labra was collaborating with the Japanese army. He saw him many times in the company of Japanese patrols. He was armed, sometimes he was in maong and sometimes in civilian clothes. "Last July 28, 1944, I and Tomas Abella were caught. We were taken from the premises. Before reaching the Japanese garrison, Tomas Abella was released but I reached there. Later on, about 2 o'clock, Pablo Labra and the Japanese went back and took us to the coconut grove. We were tortured and we saw Tomas Abella tortured and he no longer can live." Labra used firewood to torture Abella. (50-51). Pablo Labra with some of his friends, who were undercovers, tortured the witness. The place was under the coconut trees, and it was full of civilian evacuees. The undercovers were armed with bolos, sickles, rifles and other arms. Tomas Abella is dead in the cemetery. "He was brought to our home already dead. The burial was the following day." The witness was not present at the burial because he hid himself. (52). Abella was maltreated by Labra and his companions. The witness was able to escape, and when he left the place Abella was still being maltreated. "They suspected Tomas Abella as a guerrilla. The Japanese were present at the maltreatment. (53). The Japanese took no part in the maltreatment. They were just sitting on the bench. (54). When they have finished torturing me severely Tomas Abella was right there and he can no longer live and the undercovers left me alone."

"Judge Saguin: Tell the truth to the court. You escaped from the undercovers who caught you or you were released ?

"A. No, they released me."<of tomas="" abella.="" the="" accused="" used="" a="" sanggot="" (a="" scythe).="" neck="" was="" not="" fully="" cut.="" witness="" saw="" it="" "becausehjjie="" next="" day="" we="" buried="" body.="" incident="" happened-in="" labangon="" between="" bridges="" 3="" de="" atari!="" and="" that="" of="" railroad.="" place="" isolated.

The witness was investigated for half an hour. (55). The witness does not know when Abella died. "That day when they released me we heard the rumor already that they found the dead body lying there. Our neighbors saw the dead body of Tomas Abella." Abella received severe blows with firewood. His head was struck, and blood flowed from his ears, nose and mouth. (56). The witness did not see the cadaver of Tomas Abella. (57).

7. Catalina Abella, 32, single, merchant, residing in Labangon, testified that Tomas Abella is her younger brother. He is dead, killed by Pablo Labra and his companions. "He was killed or executed near our house." He was buried on July 28, 1944, in San Nicolas. He was arrested by Pablo Labra on July 28. The apprehension was made by Pablo Labra and company. (58). "In the morning he (Tomas Abella) was apprehended and brought to the Japanese garrison, and in the Japanese garrison he was released because the Japanese believed then he had no fault at all,

but in the afternoon they came back and took him away. They brought him there under the coconut grove very near the creek where they executed him. The next time we saw him he was dead." The witness saw the dead body that same afternoon. The witness does not know who killed him. "I have not seen personally but there were witnesses who had seen the execution." (59). The arrest was effected by many persons. The witness only knows Pablo Labra among them. (60). Tomas was beheaded. The front of his neck was cut and the head was attached to the trunk on the back. (61).

8. Juan Daclan, 53, farmer, residing in Labangon, Cebu, testified that he was kindling fire near the house of Tomas Abella when the latter was apprehended on July 28, 1944, by Pablo Labra. "He was released, then I saw him in the afternoon with the accused and Cocon and some other undercovers." (62). Abella was maltreated by them near the creek. The witness was about 80 meters from him. "They tried to cut his neck off with a scythe. I could not distinguish it very well because I was about 80 meters from them." Pablo Labra did the beheading. At that time, "I was taking care of a carabao." When the actual beheading took place, "I hid behind the corn plantation." (63). Abella is dead. "They put the body near the bank of the creek, then they left him there." (64). Tomas Abella was "my cousin." (67). Abella was released at noon, and at that time he was not accompanied by the undercovers. (68). The accused went to the house of Tomas Abella at 4 o'clock in the afternoon. The accused was accompanied by Japanese, about four or five. There were more undercovers, more than ten. (69).

9. Milagros C. Magalang, 40, married, business woman, resident of Cebu, testified that in October, 1944, on her way to Dr. Valencia, she was stopped by three men, Labra, Dictong, and Laya. (72). They arrested the cochero, alleging that he was a guerrillero. The cochero was Nicolas Tudit. "They brought him under a house where they tied his hands and beat him with a piece of wood." The maltreatment was inflicted by Laya, Dictong, and Labra. The witness saw it with her own eyes. (73). The witness pleaded to Dictong and Laya in behalf of the cohero. They told her "you better ask Labra, he can arrange it, he is good with the Kempei-tai. If Labra can set him free, they can let him go." The witness approached Labra who told her "don't talk to me now because the Japanese are looking at us." The next morning the witness went to see Labra who told her "you better stop asking for Tudit because it is of no use. We had to kill him, he is a guerrillero. I am sure he is a guerrillero because I am sending men to follow him to see whether he is a guerrillero; because of that he must be killed." A few days after, the witness learned that the dead body of Nicolas Tudit was found in San Nicolas near the seashore. "I did not see who killed him." (74). When the arrest took place, there were many Japanese in the company of Labra. (76). During the arrest, "I had my maid with me." (77).

10. Aurea Pilar, 40, widow, housemaid, residing in Cebu City, testified that she came to know Pablo Labra "when they apprehended us in Sanciango Street on the first of October" of 1944. (78). Nicolas Tudit was arrested. The rig was stopped by Pablo Labra and Dictong. "I do not know where they brought him. We were told to alight from the rig. And they ordered us to take another rig. (79). We were brought to the house of the doctor in Mabolo." They brought him (Tudit) under a house. Immediately they clubbed Nicolas Tudit with the butt of a rifle. She saw Japanese but she did not count them. Mrs. Magalang pleaded that Nicolas be released, but she was told not to intervene for "they might be included yet if they insist." It was Labra who told her so. (80). Tudit was maltreated by Pablo Labra and Dictong. His arrest was effected at 2 o'clock in the afternoon. After alighting from the rig driven by Nicolas Tudit Mrs. Magalang and the witness took immediately another rig and went to Mabolo to see the doctor. (81). After alighting from the rig, "Mrs. Magalang and myself went to Pablo Labra and pleaded for the release of Nicolas." (82). The appeal was made "the next day." Mrs. Magalang pleaded for Tudit many times. The witness was living together in the same house with Mrs. Magalang. (83). She is the servant of Mrs. Magalang. (84).

11. Fortunato Tudit, 47, married, rig driver, residing in Labangon, Cebu City, testified that Nicolas Tudit is his

son. He is dead. He saw his dead body in the place called Lodo. He was buried at San Nicolas cemetery. He had some wounds in the breast. (84). "A candle vendor notified me that the body was found." The hair of his son was burned. (85). The head was about to be separated from the body and there was indication that the deceased was shot through his medulla oblongata. Mrs. Magalang notified the witness that his son was apprehended by Pablo Labra, Dictong and Tinong Laya at about 6.30 in the afternoon. (86). Nicolas was 19 years old, single. When the witness went to see him the next day, October 2, Pablo Labra told him that his son. had connections with the guerrillas. (87). "He told me my son will be killed. He asked me for some chickens, fruits and some other things. I even brought plenty of eggs. Just imagine, I have been bringing eggs there until the 10th day of October. It was the wife who used to receive the things I used to carry." The accused made him understand that "he will help me." (88).

13. Anita Bacani, 23, single, employee, residing in Cebu City, testified that she has known the accused "from the time my father was arrested in Guadalupe, October 2, 1943, around seven o'clock in the morning. (89). There were Japanese soldiers with Pablo Labra." There were lots of civilians and other people from Guadalupe who were arrested. Her father was brought to the Snead Dormitory, then to the Normal School which was the Kempei Tai. Her brother was arrested. He was maltreated. At last he spat blood. That was the cause of his death. The accused was an undercover working under the Japanese military police. "During the arrest of my father I saw him guide the Japanese, capturing lots of civilians in Guadalupe together with my brother and father." (90). Her father, who was in perfect health when he was arrested was sick, spat blood and his legs were swollen when he was released four months and six days after. About her brother, Jose Bacani "I am certain he has been killed because until now he has not come home." (91).

14. Catalina M. Bacani, 46, widow, housewife, residing in Cebu City, testified that Jose Bacani is her son. (93). Pablo Bacani is her husband. He is dead. "He died because of the effect of the blows inflicted by Pablo Labra." He was arrested on October 2, 1942, by Pablo Labra together with the Japanese. Her husband was tied up and brought in a truck to the Kempei-tai. (94). The witness is sure that Jose Bacani is dead because he has not shown himself since October 2, 1942. Her husband stayed in jail for six months and six days. (95).

The substance of the testimonies of the witnesses for the defense is as follows:

1. Constancio Baruel, 23, single, detainee, testified that he boarded the tartanilla driven by Nicolas Tudit on October 1, 1944. His companions were two women. . (97). "Upon arriving at Sanciango Street, that Nicolas Tudit was arrested by the Japanese. After arresting him the Japanese ordered him to alight from the rig and he was immediately tied." There were about five Japanese. There were three Filipinos, Dictong, Hay and Cobarrubias. The witness does not remember having seen the accused stopping the rig. Tudit was tied and hit with the butt of the rifle. (98). The witness did not see Pablo Labra. (99) The witness is in jail. "I was caught stealing in Barili." He was convicted by courts of justice three times. (102).

2. Pablo Labra, 34, married, detainee, testified that he is not a member of the Japanese Kempei Tai nor a Japanese spy. "I was not able to work with the Japanese." (103). During the Japanese occupation, "Mr. Leyson had assigned me to take charge of his business of buying and selling of rattan, nipa sheets and bark used for the distilling of tuba. When the Japanese landed, the witness was in Guadalupe. Because the Cebu police force intended to arrest him, the witness went to see Governor Abellana, who telephoned Colonel Cruz. Governor Abellana "made me work in his office. After two weeks he told me to drive trucks to distribute foodstuffs concerning the neighborhood association." (105-106). It is not true that the witness arrested Tomas Abella on July 28, 1944, "because during that time I was sick; I was having asthma." It is not true that the witness arrested Nicolas Tudit. He just happened to stop in the place where the arrest took place. He came with his bicycle for an errand for Mr. Leyson. (106). Mrs. Magalang approached the witness to ask his help for the release of the driver. The accused

promised to talk to Dictong "who was a friend of mine whether he could help me, but I told her to see me the next day." After Tinong Ilaya told me not to intervene in the case because the Japanese would get mad, the accused told Mrs. Magalang "Well, we can't do anything about this because the Japanese are mad." The witness knows that the persons who arrested Tudtud were Tinong Ilaya, Cobarrubias and Dictong. Tinong approached me "because I was surrounded by people when that woman was pleading with me." (107). Tinong approached her and asked regarding the testimonies of Julian Bacalan, Policarpio Sebastian and Irineo Gabucan to the effect that they were arrested, including Sergio Bacalan, by the accused. The latter said that he was also arrested by Cocon, one PC and one Japanese, in his house, about 1 o'clock in the morning. The accused did not know the reason for his arrest. "They told me that Major Laput was calling for me." (108). Labiste and Gabucan were maltreated by the Japanese. (112). It is not true that the accused has maltreated Gabucan and Labiste, "because that night I was sick and I was just squatting down and the PC was guarding me in company with Raymundo Labra and Sergio Bacalan. They were continually beaten and punished because they were not telling the truth." (113). It is not true as testified by Rosario Bacani, that the accused caused the arrest of her father. (115).

3. Perfecto Ampoon, 36, married, driver-mechanic, testified that in the afternoon of July 28, 1944, he went to Malabangon to buy some rice cakes which he intended to sell in Guadalupe. He was called by some Filipinos who were his acquaintances. He was asked what he was bringing. He told them it was rice cakes, and they told him, "perhaps this is your aid which you intend to send to the mountains." Then they investigated him, and the "rice cakes were spilled." He was arrested. There were about 100 Japanese and four undercovers. There were fourteen civilians who were arrested. They were also slapped] (119). Twelve were released and two were brought by the Japanese. One was Tomas Abella. (120). The witness "does not know what happened to Tomas Abella." (121).

Considered as a whole, the evidence has conclusively shown that appellant, being a Filipino citizen, in violation of his allegiance to the Commonwealth of the Philippines, adhered to the Empire of Japan during the enemy occupation of our country, and gave it aid and comfort by acting as an agent of the Kempei Tai, the Japanese Military Police, his main activity being that of arresting, investigating, and torturing guerrillas. It has been conclusively proved that he took part on July 28, 1944, in the arrest of Tomas Abella, a guerrilla suspect, who was later beheaded, and in the arrest on October 1, 1944, of Nicolas Tudtud, another guerrilla suspect, who days later was found dead in a seashore. There is no question that appellant is guilty of the crime of treason, as denned and punished by article 114 of the Revised Penal Code.

The lower court found appellant guilty not only of treason, but of murder, for the killing of Tomas Abella, and, following the provisions of article 48 of the Revised Penal Code sentenced him to death, the maximum penalty provided by article 114.

The lower court erred in finding appellant guilty of the murder of Tomas Abella. The arrest and killing of Tomas Abella for being a guerrilla, is alleged in count 3 of the information, as one of the elements of the crime of treason for which appellant is prosecuted. Such element constitutes a part of the legal basis upon which appellant stands convicted of the crime of treason. The killing of Tomas Abella cannot be considered as legal ground for convicting appellant of any crime other than treason. The essential elements of a given crime cannot be disintegrated in diffugient parts, each one to stand as a separate ground to convict the accused of a different crime or criminal offense. The elements constituting a given crime are integral and inseparable parts of a whole. In the contemplation of the law, they cannot be used for double or multiple purposes. They can only be used for the sole purpose of showing the commission of the crime of which they form part. The factual complexity of the crime of treason does not endow it with the functional ability of worm multiplication or amoeba reproduction. Otherwise, the accused will have to face as many prosecutions and convictions as there are elements in the crime of treason, in open violation of the constitutional prohibition against double jeopardy.

On the other side, the contradictions between the witnesses for the prosecution as to how and where Tomas Abella was beheaded are serious enough to cast a reasonable doubt as to their allegation that appellant himself undertook the beheading. One witness testified that the beheading took place in an open field, without any coconut grove, while another testified that the beheading took place in a coconut grove. One witness stated that the beheading took place suddenly, without any preliminaries, while the victim and the accused were walking behind other persons, while another declared that Abella was first subjected to a severe torture from which he would not come out alive. One witness testified that Abella was beheaded while walking, but another said that he was beheaded in a lying position.

In perusing the records of this case we noted that the attorney de oficio in the court below prayed and insisted for the postponement of the trial which was scheduled to take place on the very morning in which he was notified of his appointment. Without ruling on the petition for postponement, which was its duty to do, the lower court proceeded with the trial. Although appellant's counsel de oficio in this appeal does not make a specific assignment of error for the arbitrariness of the action of the lower court, he reproduced in his brief a letter of the appellant himself where the latter complains of the failure of the lower court to grant the postponement prayed by his lawyer, and of the mob attack which appellant suffered in the lower court, in the face of the indifference of the judges presiding it, and for which he sustained injuries.

Considering that the lower court's failure to grant the postponement of the trial was arbitrary and, as evidenced by appellant's letter, there are reasons to believe that the hearing and trial of this case took place under the influence of mob frenzy, and that appellant was not given ample opportunity to call and bring to court all his witnesses, the writer of this decision is of opinion that this case should be remanded to the lower court for a rehearing, but a majority is of contrary opinion and voted to affirm the penalty imposed by the lower court, which has to be modified in view of the writer's stand.

For all the foregoing, the appealed decision is modified, and appellant is sentenced to recluswn perpetua and to pay a fine of P20,000 and the costs.

So ordered.

Paras, Actg. C. J., Feria, Pablo, Bengzon, Briones, and Padilla, JJ., concur.

Tuason, J. - I vote for affirmance of decision.

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