

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TROADIO BUTAWAN, DEFENDANT AND APPELLANT.

G.R. No. L-855. April 28, 1949

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court convicting the appellant Troadio Butawan of the crime of treason with murder and illegal detention, and sentencing him to death by electrocution, to pay a fine of P2,000, plus the costs.

The information charged eight counts, but the prosecution was able to present evidence in support of only counts 1, 5 and 6. The People's Court found the appellant guilty of these three counts.

Under count 1, the appellant is charged with having adhered to the enemy and given her aid and comfort by serving as a detachment commander of the Bureau of Constabulary under the Japanese Military Forces. Under count No. 5, the appellant is charged with having shot and killed at about 7 o'clock in the morning of January 18, 1944, Zoilo Calimutan, a member of the guerrilla organization known as the "Bolo Battalion," while the latter was distilling tuba near his house in Rosario, Cortes, Bohol, with his back towards the appellant. Under count No. 6, the appellant is accused of having apprehended, maltreated and tortured, on February 22, 1944, Gabriel Lumba, Maximo Buyo and Apolinario Igpit, also members of the "Bolo Battalion."

There is no dispute that the appellant served as a detachment commander of the Bureau of Constabulary during the Japanese occupation, and that his duty was to protect the lives and properties of, and pacify, the civilians. Even so, mere membership in said Bureau of Constabulary, without more, did not constitute treason, for as held in *People vs. Albano*, (82 Phil., 767), "possibly, under certain circumstances, members of the police force during the occupation who merely urged guerrillas to keep the peace and to stop their activities did not commit treason; but when it is shown by positive evidence that said officers were not content to render lip service to the enemy in making pleas for public order, but went further and tortured their countrymen who were guerrillas or guerrilla sympathizers, a verdict of guilt must inevitably be returned."

The appellant, however, did not merely perform pacification work, but, as charged in count No. 5, he shot and killed his countryman Zoilo Calimutan, a guerrilla member; and, as charged in count No. 6, he apprehended and maltreated Gabriel Lumba, Maximo Buyo and Apolinario Igpit, likewise members of the guerrilla organization known as the "Bolo Battalion." These overt acts were proved by the testimony of two or more witnesses who have not been demonstrated to have had any motive for incriminating the appellant. Adherence to the enemy is to be inferred from the fact that when said overt acts were committed, he was in company of Japanese soldiers and constabulary patrols, and from the fact that the victims were guerrillas. That Zoilo Calimutan was shot is even admitted by the appellant who, however, alleges that he was shot by a Japanese. His testimony is not worthy of credence. It is noteworthy that the appellant admits that, when the mother of Zoilo Calimutan was begging for medicine from the appellant with which to cure her wounded son, the appellant answered that he would give her

bullets.

The appellant does not deny that he was with a combined Japanese and Constabulary patrol on February 22, 1944, when several people, among whom were Gabriel Lumba, Maximo Buyo and Apolinario Igpit, were apprehended and maltreated, although the appellant claims that it was the Japanese who were responsible therefor. Appellant's pretense cannot negative the effect of the testimony of the witnesses for the prosecution.

Counsel for the appellant has stressed the fact that the Filipino citizenship of the appellant was irregularly proven, in that the prosecution rested its case without establishing said citizenship, although the prosecutor thereafter successfully maneuvered to extract from appellant's lawyer an admission of appellant's Filipino citizenship, which admission was confirmed in open court by the appellant. As the appellant and his attorney virtually stipulated as to the question of citizenship, they cannot now be permitted to withdraw therefrom. In view of said stipulation, it became unnecessary for the prosecution to submit proof on the point.

Upon the whole, we conclude that the appellant is guilty of treason, not complexed by murder and illegal detention, since these offenses are elements and the very overt acts of treason. There being no aggravating or mitigating circumstances, the penalty provided by article 114 of the Revised Penal Code should be imposed in the medium degree.

It being understood, therefore, that the appellant is sentenced to reclusion perpetua, the appealed judgment, as thus modified, is hereby affirmed, with costs. So ordered.

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

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