

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMEO GERMINIANO, DEFENDANT-APPELLANT.

G.R. No. L-4449. May 26, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Charged with treason on three counts in the Court of First Instance of Pangasinan, Romeo Germiniano was found guilty under count 3, and was acquitted with regard to the other two counts. He was sentenced to suffer reclusion perpetua, with the accessory penalties of the law, to pay a fine of P5,000.00, and the costs. From this judgment he appealed.

The evidence shows that on December 16, 1944, Romeo Germiniano, accompanied by about fifty Japanese soldiers, went to barrio Umanday, Bugallon, Pangasinan, for the purpose of looking for some guerrillas. Upon their arrival, they immediately conducted an investigation to find out the whereabouts of guerrillas and to this effect they questioned Feliciano Dumlao, Telesforo Cuison and Domingo Basi. As these persons could not give the information desired, the investigators subjected them to torture such as singeing the face with a lighted cigarette, hitting them with a bayonet or piece of wood, strangulating them and inflicting upon them various bodily injuries. These facts are borne out by the testimony of the aforesaid three persons who had been subjected to torture.

The defense of the accused is alibi. He claims that on December 16, 1944, he was in the municipal building of Aguilar, in conference with Mayor Raymundo Pantaleon, to whom he reiterated his desire to resign as member of the police force of said municipality, but that he turned down the resignation. In this respect, he was corroborated by Servillano Monje and Bartolome Reyes. The first testified that he knows the accused well but that he was not with the Japanese soldiers when they raided Casili and Lacip on December 16, 1944. The second said that he was with the group of Japanese soldiers who raided in said places but that the accused was not with them, and that the one who accompanied the Japanese on that occasion was a constabulary soldier by the name of Quitlong who is at present detained in the provincial jail on serious charges of treason.

The defense of alibi cannot be sustained, as it has not been established by clear and convincing evidence. From the testimony of the accused it does not appear at what particular time he was in the municipal building of Aguilar to confer with Mayor Pantaleon regarding his resignation as member of the police force, and as between the municipality of Aguilar and the municipality of Bugallon there are only eight kilometers distance, it does not appear impossible for him to have the conference and at the same time be with the raiding party of the Japanese to help in the search and detection of guerrillas. Moreover, it is a well known rule that alibi is of no avail if the presence of the accused has been positively established and in this case the three witnesses who testified against him, and who had been subjected to torture positively identified him as the one who accompanied the Japanese during the raid.

The claim that the guilt of the accused has not been established by the two-witness rule is not also well taken.

While Feliciano Dumlao stated that he did not recognize the person who actually maltreated him, he was nevertheless positive that the accused was present when the Japanese raided Bugallon. Telesforo Cuison also stated that it was the accused who questioned him regarding the whereabouts of the guerrillas and when he denied knowledge of their presence, he hit him on the head with a bayonet and singed his face with a lighted cigarette. To the same effect is the testimony of Domingo Basi.

The claim of the accused that he could not have acted a spy of the Japanese because he was a guerrilla himself is belied by the conduct he has observed during the period covered by the charge. Thus, it appears that he has always been with the Japanese soldiers, that he was armed with a revolver and bayonet and wore a Japanese badge and uniform. This attitude is inconsistent with his claim that he was a guerrilla. And even granting that he was one, that circumstance would not justify nor exempt him from liability for the treasonous acts he has committed of which we find convincing proof. From the evidence we are persuaded that he is guilty of the acts charged.

The lower court imposed upon the accused the penalty of reclusion perpetua. Considering, however, that the nature of the acts committed is not serious because it does not involve any killing or death, we believe that a penalty of reclusion temporal would be sufficient.

With the modification that the accused be sentenced to suffer 14 years, 8 months, and one day of reclusion temporal the judgment appealed from is affirmed in all other respects, with costs.

Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, and Labrador, JJ., concur.

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