

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SEVERO BASCON (ALIAS KID MORO), DEFENDANT AND APPELLANT.

G.R. No. L-1548. March 29, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Severo Bascon alias "Kid Moro" is appealing from a decision of the People's Court finding him guilty of treason and sentencing him to life imprisonment, to pay a fine of P1,000, and to pay the costs.

Out of the three counts included in the information, evidence was submitted to support only one, namely, Count No. 1 which we reproduce below for purposes of reference:

"1. That during the Japanese occupation, in the City of Cebu, Cebu, Philippines, and within the jurisdiction of this Court, the accused herein with intent to give aid and comfort to the enemy above-mentioned, did then and there willfully, illegally, feloniously and treasonably act as a spy and/or undercover agent for the Japanese Military Police known as Kempei Tai and as such, did arrest, apprehend and identify guerrillas and other persons, engaged in the resistance movement for the Kempei Tai, torturing and maltreating persons thus arrested by him and did furnish valuable military information regarding guerrillas and the USAFFE to the Japanese Imperial Forces;"

By his own admission the appellant Severo Bascon alias "Kid Moro" is a Filipino citizen.

From a careful study of the evidence on record we find the following facts to have been duly established:

On May 3, 1943, while Inocencia Mabini and Cristobal Cortes, a cousin of her father, were walking along T. Padilla Street, Cebu City, they met a party of two Japanese soldiers and three Filipinos, among the latter being the appellant who was at that time armed with a revolver and one named Turang who forthwith pointed to Cristobal as a guerrilla soldier. As a matter of fact, at the time, Cristobal was a sergeant in the guerrilla forces in the province of Cebu, and he had gone to the city upon instructions of his superior officers to procure foodstuffs. Bascon immediately arrested Cristobal and he and Inocencia were taken to Tisa, in Mabolo where they were questioned and searched. The party or group of which the appellant was a member wanted information about the guerrilla activities and also wanted to get a revolver which they were informed was kept by Cristobal. The two Japanese and the three Filipinos then took Inocencia and Cristobal to Inocencia's house in General Loriga Street, Cebu City, where in order to obtain the information needed Cristobal was severely maltreated by the group including Bascon. Cristobal was punched, beaten and strangled until he finally revealed that he had given his revolver to Inocencia to hide for him. In ransacking the house, Bascon found the revolver in the kitchen under the stove where Inocencia had hidden it. These facts were testified to by Inocencia and were corroborated by her younger sister Cristina Mabini who was in the house when her sister and Cristobal arrived accompanied by the group. Cristina further told the court that during the torture of Cristobal the appellant was laughing, and at one time it was he who inserted bullets between the fingers of Cristobal,—a form of torture of common knowledge, sometimes resorted to, by inserting bullets between the fingers and later squeezing the hand to cause intense pain.

Afterwards, Inocencia and Cristobal were taken to the Military Police headquarters in the City where they were kept for forty-seven days. The evidence further show that after tills release, Cristobal wast later killed by the Japanese in Binalid, and so was unable to testify during the trial.

The evidence further discloses that about August 4, 1944, a group of five Japanese and six Filipinos among the latter being the appellant Bascon and one Pat. Romales went to the house of Gerardo Ouano located near the seashore in barrio Opao, Mandaue, Cebu. At the time Bascon was armed with a revolver. The group was looking for firearms and guerrilla soldiers. The whole house was ransacked by Pat. Romales and "Kid Moro" and even a locked cabinet was opened and searched after the key to it had been taken from Jovita Ouano, Gerardo's daughter. The men of the household specially Gerardo and his servant Gonzalo Dacuya were maltreated by beating them with the butt of a, revolver, and as to Dacuya the group even inserted the barrel of the revolver in his mouth apparently, in an endeavor to frighten him. As a result of the search, only a toy gun was found. The group arrived at the house about 10 o'clock in the morning and left only about 2 o'clock in the afternoon. When they left they took with them Gerardo, his son Alfredo Ouano and Gonzalo Dacuya. To these facts Gonzalo Dacuya, a servant and Lazaro Jerosa, a laborer of Gerardo employed by him in his salt beds, testified. Dacuya further told the court that he and his master Gerardo and Alfredo were taken to the San Carlos Building, City of Cebu and there kept for two and a half days. During said period Gerardo and Alfredo remained tied while he (Dacuya) was suspended in mid air and otherwise tortured so much that after his release he was unable to devote himself to work for a period of four (4) months and that even on the day of the tidal which took place more, than two (2) years after his torture, he still felt pains in his back. Dacuya also told the court that Gerardo was already dead and so was unable to testify during the trial.

There is no doubt in the mind of the Court as to the guilt of the appellant of foe crime of treason. By his acts and conduct duly proven during the trial, he, a Filipino owing allegiance to the United States and to the Government of the Philippine Islands adhered to and aided the Government of Japan represented by its invading and occupation forces in the Province of Cebu, by accompanying and helping them in confiscating firearms and obtaining information about the whereabouts, strength, and activities of the guerrilla forces by freely using force, intimidation and torture.

The appellant was a boxer and before the war, had fought in the ring under the name "Kid Moro". So, he was well-known in the City of Cebu. He was married to a Japanese woman who according to the evidence and by the very admission of the appellant, was employed by the Japanese as an interpreter. This fact, of course, does not and cannot affect the innocence or guilt of Bascon. Neither does it influence this Court in passing upon the merits of the appeal, although, it may perhaps serve as an indication or reason why the appellant had such sympathy for the Japanese to the extent of going against his own people.

The appellant claims that after liberation he was investigated by the C.I.C. (Counter Intelligence Corps of the United States liberation forces) and was cleared by it and given clearance papers. However, he was unable to produce such alleged clearance papers in support of his claim, saying that he had lost them. He further told the court that notwithstanding the clearance given him by the CIC, the guerrillas of Cebu were after him, so much so that for his own safety he preferred to stay and in fact, stayed in prison and under custody. If this is true, it is indicative of the hostile feeling in the community against the appellant for being an all-out pro Japanese, arming himself with a revolver and accompanying and helping the Japanese soldiers in their frequent raids and searches, torturing Filipinos suspected of concealing firearms or possessing information about the guerrillas or actually being connected with them.

In conclusion, we find that the guilt of the appellant has been established beyond reasonable doubt. The decision being in accordance with law and supported by evidence, the same is hereby affirmed with costs against the

appellant. So ordered.

Moran, C.J., Paras, Feria, Pablo, Bengzon, and Tuazon, JJ., concur.

DISSENTING

PERFECTO, J.:

Appellant is entitled to acquittal upon two grounds, namely:

- Because not a single overt act has been proved under the two-witness rule of article 114 of the Revised Penal Code.
- Because not one of the two overt acts attempted to be proved by the prosecution is alleged in the information.

I

The first overt act sought to be proved by the prosecution is the appellant's alleged participation in the arrest of Cristobal Cortes and Inocencia Mabini at about 3 o'clock in the afternoon of May 3, 1943.

The sisters Inocencia Mabini and Cristina Mabini are the only witnesses called to testify on the arrest.

Inocencia testified that the arrest took place at P. Padilla St., Cebu City. (2, 3 and 8).

"Question: Now who were present during that arrests? Were there any person present during that arrest?"

"Answer: There were plenty of people because it was in P. Padilla, but I did not know them." (7).

Cristina agreed that the apprehension took place at P. Padilla St. (2 and 5) adding that it took place at about 3 o'clock in the afternoon of May 3, 1943. (7). But at the time she was, in her own words, "in my house, at Gen. Loriga St." (5, 6). But during the whole day and night she remained in her house at said street.

"Question: On May 3, 1943, where were you?"

"Answer: In my house.

"Question: What do you mean? Do you mean to say that you stayed in your house from morning until night, you did not go somewhere?"

"Answer: Yes sir." (6)

It is evident, therefore, that as to the arrest at P. Padilla St., there is on record only the testimony of Inocencia Mabini.

Moreover, according to Inocencia, the one who was arrested with her, was Cortes, but according to Cristina the one arrested was Ortiz. (3).

II

The second overt act attributed to the accused is his alleged participation in the arrest at 2 o'clock in the afternoon of Gerardo Ouano, Alfredo Ouano and Gonzalo Dacuya.

Two witnesses were called to testify on the alleged arrest: Gonzalo Dacuya and Lazaro Jerosa. Putting aside the discrepancies between the two witnesses, we will deal only with the important detail as to the date of the arrest.

Dacuya said that the arrest took place in his house in Mandawe "in August, 1944." (1). He did not mention the date of the arrest.

Jerosa testified that the arrest took place in the "first week of August, 1944, (11) on August 4, 1944." (12).

From the foregoing, it appears that only a witness testified as to the arrest on August 4, 1944. No other witness testified as to the arrest on said date. The testimony of Dacuya that the arrest took place in August, 1944, does not satisfy the two-witness rule.

When Dacuya mentioned August, he, in fact, mentioned thirty-one days, the number of days of said month. The possibility that he could refer to August 4 is against thirty other possibilities, from August 1 to 31. This conflict of possibilities, in view of the legal presumption of innocence, has to be resolved in favor of appellant who, in addition, is overwhelmingly favored by a ratio of 30 to 1.

III

The fact that not one of said overt acts has been proved under the two-witness rule can be emphasized by the circumstance that not one of the above two overt acts has been and is alleged in the information.

This omission in the information shows that at the time the same was filed, the prosecution did not have the least idea of the two arrests. Otherwise, it would have not failed to mention them specifically, as it did in count 2 of the information, where it is stated that appellant apprehended and shot to death a guerrilla soldier named Pedro Maglasan.

However, not a single bit of evidence has been presented or offered to prove the alleged arrest and killing of Pedro Maglasan. No explanation has been given why no such evidence has been presented. No explanation has been given why, in a move of surprise, the prosecution instead offered evidence of the two arrests above discussed.

Appellant cannot be convicted legally of said two arrests, upon which he has not been duly informed by proper allegations in the information. Appellant was entitled, as a matter of constitutional right (Art. III, secs. 1-17 of the Constitution), to be informed of the nature of the specific crime imputed to him. This constitutional right has been denied to him.

A trial is not a game of chance. It is not a bout of fencing where opponents are entitled to all ruses, deceptions and surprises. It is not a heartless war in which belligerents may resort to treachery, like the treacherous Pearl Harbor attack. Because the purpose of a court trial is to administer justice, it has to be fair, and it has not to be decided on the cunning of litigants and lawyers who thrust their foils against unguarded opponents, but on the merits of a controversy in which all the cards have to be laid on the table honestly and even in a true Christian spirit.

CONCLUSION

All the foregoing show that the only alternative for this Court in this case is to reverse the appealed.

DISIDENTE

BRIONES, M.:

Creo que el apelante debe ser absuelto por no haber probado la acusación contra él fuera de toda duda razonable.

Se formularon los cargos contra el acusado en una época en que los prejuicios sobre la colaboración con los japoneses eran muy pronunciados y los guerrilleros, unos genuinos y otros falsos, veían un trasfondo en cada vecino de conducta. Algún tanto sospechosa durante la ocupación. En el caso particular del acusado y apelante estos prejuicios se habrán acentuado por estar el mismo casado con una mujer nacida en Hawaii de padres japoneses, si bien ciudadana americana, según alegación no impugnada. En algunas ocasiones esta mujer fue utilizada por los militares japoneses como interprete, en ausencia del que regularmente desempeñaba este oficio.

Es harto significativo el hecho de que habiéndose formulado en la querrela tres cargos contra el acusado, éstos se sobreseyeron por no haberse presentado sobre los mismos ninguna prueba. Without any evidence on record to prove the charges under counts Nos. 2 and 3. dice el Tribunal del Pueblo en su sentencia. No prueba esto, por lo tanto, la Tigreza con que se redactó y presentó, querrela.

Otra circunstancia que milita en favor del acusado y le hace acreedor a los beneficios de una duda razonable es el haber sido investigado inmediatamente después de la liberación por agentes de la O10, entre ellos un teniente americano. Llamado Greenwall, saliendo exonerado de dicha Investigación. Sin embargo, por consejo del mismo Greenwall el acusado se refirió continuamente detenido para su propia seguridad personal, pues los guerrilleros le miraban mal y temía que le hiciesen daño. Entre la imparcialidad de los agentes de la CIC y el apaslamiento de los guerrilleros, optó por lo primero.

Es verdad que el acusado no pudo presentar en la vista los papeles que acreditaban su exoneración, pero explica esta omisión diciendo que los había perdido en uno de sus traslados. De todas maneras no hay en autos ninguna prueba tendiente a refutar el hecho de la referida exoneración.

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