

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. TEODORO CANTOS (ALIAS TEODORO TATISHI), DEFENDANT AND APPELLANT.

G.R. No. L-1661. April 28, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellant Teodoro Cantos, alias Teodoro Tatishi, is accused of the complex crime of treason with quadruple murder and robbery under the information which reads as follows:

"That during the Japanese Military occupation of the Philippines, especially on or about the dates herein below mentioned, in the different places hereinafter stated and within the jurisdiction of this Honorable Court, the above-named accused, Teodoro Cantos, alias Teodoro Tatishi, not being a foreigner but a citizen of the Philippines, owing allegiance to the United States and the Commonwealth of the Philippines, in violation of said allegiance, did then and there wilfully, unlawfully, feloniously and treasonable adhere to their enemy, the Empire of Japan, with which the United States and the Commonwealth of the Philippines (are at war, gave) aid and/or comfort in the following manner, to wit:

"1. That on or about December 28, 1941, at or near Davao City, Mindanao, Philippines, for the purpose of giving and with intent to give aid and/or comfort to the enemy, the above-named accused, Teodoro Cantos, alias Teodoro Tatishi, who was a member of the Japanese Civilian Army, conspiring and confabulating with other Japanese and helping each other, did then and there wilfully, unlawfully and feloniously tie the hands of Sixto Babao, Dalmacio Babao, Francisco Cabling and Martin Marquez, and did with treachery kill all of them.

"2. That on or about January 7, 1942, at or near Ilang, Davao City, Mindanao, Philippines, for the purpose of giving and with intent to give aid and/or comfort to the enemy, the above-named accused, Teodoro Cantos, alias Teodoro Tatishi, who was a member of the Japanese Civilian Army, conspiring and confabulating with other Japanese and helping each other, did then and there wilfully, unlawfully and feloniously, with violence against or intimidation of persons and with intent to gain, loot, take and carry away personal properties belonging to Justina Larracochea Babao, consisting of food, canned goods, soap, shoes, eyeglasses, etc."

After trial the lower court found him guilty of the crime alleged in the information and sentenced him to death, to pay a fine of P15,000, to pay an indemnity of P2,000 and of P500 to the heirs of Sixto Babao, the latter amount as payment for the articles robbed and not recovered; to pay an indemnity of P2,000 to the heirs of Dalmacio Babao; to pay an indemnity of P2,000 to the heirs of Francisco Cabling; to pay an indemnity of P2,000 to the heirs of Martin Marquez, and to pay the costs.

The trial court ordered the case remanded to the Supreme Court in view of the death penalty imposed to the accused.

Appellant's attorney de officio contends in his brief that the trial court erred in finding appellant guilty of the complex crime of treason with multiple murder and robbery and in sentencing him to death. At the trial six

witnesses testified in direct evidence for the prosecution: Justina Larracoechea Babao, Andrea B. Cabling, Antonio Rasay, Igleceria Bacalso, Napoleon Zapanta, Zoilo de las Verlas, and as a rebuttal witness, Vicente Hizon Panlilio. For the defense testified the accused himself and his wife, Lucila, Adrales.

The prosecution tried to prove by its witnesses that on December 24, 1941, four days after the Japanese had captured the City of Davao, Vicente Tatishi appeared in the house of Segundo Basalo in Ilang, where the spouses Sixto Babao and Justina Larracoechea were living. Not finding Basalo, Vicente left word that Sixto Babao should surrender his firearms to the Japanese army, and Francisco Cabling, Dalmacio Babao, Martin Marquez, then living with Sixto, should get their passes. On December 27 Vicente called again at the same house and told Justina Larracoechea that if her husband failed to present his firearms to the Japanese, soldiers would be sent to kill them all. In the morning of December 28, 1941, Sixto Babao bringing with him his shotgun and revolver and displaying a white flag and Dalmacio Babao, Francisco Cabling and Martin Marquez went to the Japanese garrison in the premises of the Tibungco Lumber Company in Ilang. The Japanese herded them in the office of the company, tied their hands at the back and at about 4 o'clock in the afternoon brought them to the pier of the Tibungco Lumber Co. where, with their faces covered, they were made to stand facing the water, with their backs towards the firing squad composed of Fuji, a Japanese, Masahiro Tatishi and his children Vicente and Teodoro Tatishi. Ichida Matsuda, another Japanese, ordered the firing. Three shots were fired, killing Dalmacio Babao, Martin Marquez and Francisco Cabling. As Sixto Babao continued still standing, three other shots were fired by Teodoro, Vicente and Masahiro Tatishi, felling him down. Okabe, another Japanese, chopped off Sixto's head and, thereafter, the corpses of the four victims were thrown into the sea. The news of the killing itself were confirmed by appellant on January 7, 1942, when he personally told about it to the widow of Sixto, adding that the reason for Sixto's killing was because he was a parachooter of the volunteer guards, while the three others were shot so they could not reveal the death of Sixto.

The prosecution also offered evidence to show that at about 10 o'clock in the morning of January 7, 1942, appellant and his father Masahiro and brothers Juan and Vicente, all armed with shotguns and accompanied by other persons similarly armed, appeared in the house of Justina Larracoechea and asked for foodstuffs. As Justina refused to accede to the demand, Teodoro searched the house stating that he was a volunteer in the Japanese army and as such he had the right to confiscate properties of Filipinos or kill them. The group appropriated canned goods, toilet articles, shoes, eyeglasses and two police dogs, and left with a loot valued at P500.

The evidence presented by the prosecution appears to be convincing and the mere denials of the appellant and his weak defense of alibi, supported only by the corroboration of his wife, is not enough to shake the credibility of the prosecution witnesses, it appearing, as admitted by appellant himself, they had absolutely no reason for testifying falsely against him. We are of opinion that the facts had happened as narrated by the witnesses for the prosecution, the substance of whose testimonies is above-stated.

The trial court erred, however, in finding appellant guilty of the crime of treason because, as pointed in the prosecution's brief itself, the evidence failed to satisfy the two-witness rule provided by article 114 of the Revised Penal Code. Napoleon Zapanta is the only witness who testified as to appellant's actual participation in the killing of Sixto Babao, Dalmacio Babao, Francisco Cabling and Martin Marquez and no one of the other witnesses for the prosecution had seen the actual killing.

We are satisfied, however, that the evidence offers enough ground to find appellant guilty of murder for his participation in the killing of the four victims. The appellant appears to be guilty of four distinct murders qualified by treachery with the aggravating circumstance of having been committed in band, offset by the mitigating circumstance of lack of instruction, for which reason there is no basis to impose upon appellant four sentences of death, one for each murder, as recommended by the prosecution

Upon the evidence, appellant appears also to be guilty of robbery with intimidation committed in the house of Justina Larracoechea on January 7, 1942, with the aggravating circumstance of in band.

The lower court's judgment is modified and appellant is sentenced to reclusion perpetua for each of the four murders of Sixto Babao, Dalmacio Babao, Francisco Cabling and Martin Marquez, and to indemnify the heirs of each one of the four victims in the sum of P6,000 in accordance with the decision in *People vs. Amansec*[1] (L-927, 45 Off. Gaz. [Supp. to No. 9], 51), and for the crime of robbery he is sentenced to an indeterminate penalty of not less than one month and one day of arresto mayor and not more than six (6) years, ten (10) months and one day of prision mayor, and to indemnify the heirs of Sixto Babao in the sum of P500, with costs.

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

[1] 80 Phil., 424, 435.

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