

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELIGIO TORRES, DEFENDANT AND APPELLANT.

G.R. No. L-2064. May 12, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellant Eligio Torres was found by the trial court guilty of the crime of treason and was sentenced to suffer the penalty of death, to pay a fine of P20,000, to indemnify in the sum of P1,000 the heirs of each of the deceased Castro de la Vega, Ponciano de la Chica, Mariano Alfonso and Domingo Jimenez, to indemnify Florencio Sebastian and Jose Lim in the amounts of P3,020 and P5,700, respectively, and to pay the costs.

On appeal, counsel de oficio alleges that the People's Court erred in giving greater weight and credit to the evidence of the prosecution than that of the defense in finding that it was appellant and not a Japanese, Hashimoto, who killed Castro de la Vega; in not finding that it was Japanese Nonaca who tortured and maltreated Liberate Cabaya Cruz; in not finding that Eligio Torres was only used as a porter of the Japanese under duress, while prisoner of the Japanese soldiers; in not finding that it was the Japanese soldiers who tortured and maltreated and assaulted Florencio Sebastian; in finding that it was Torres who confiscated and misappropriated the goods of Florencio Sebastian and Jose Lim. Appellant admitted in open court that he is a Filipino citizen.

The witnesses for the prosecution testified in substance as follows:

Rosalina de la Chica, 33, widow, testified that at about two o'clock in the afternoon of January 23, 1945, she and her husband, Castro de la Vega, went to the house of Cresencio Timpangco where they found Mariano Alfonso and Ponciano de la Chica. At about four or five o'clock that afternoon, appellant, Francisco de los Santos and many Japanese arrived and immediately went up the house. The Japanese searched the house. Appellant said that all those living in the house should be killed because they were aiding the bandits in the hills, referring to all the members of the family of Cabaya Cruz. Those in the house were Cresencio Timpangco, Mariano de la Chica, Mariano Alfonso, Ponciano de la Chica, Castro de la Vega and the witness. Eligio tied them, separating the men from the women, and investigated them. He beat with a stick Domingo Jimenez and his wife, Liberata Cabaya Cruz (1-7). When fireshots were heard, Liberata Cabaya Cruz, Margarita de la Chica, Josefa Savillano and the witness ran away (11). They waited the whole night in the bushes. At about six o'clock the next morning, the witness saw appellant take Castro de la Vega to the river to drown him. Castro de la Vega shouted asking for pity in vain (13). Between one or two o'clock in the afternoon, those tied were brought to Pasonangca. As Castro de la Vega could not walk any more, appellant cut his right foot and then his neck, using a sword he asked from the Japanese (14). Mariano Alfonso was able to escape that very night. Castro de la Vega had guerrilla friends and used to offer them water to drink (16).

Isidro Francisco, 32, married, farmer and resident of Tumaga, Zamboanga City, testified that in January, 1945, he was in the kitchen of the Japanese headquarters in Prisa Mayor, Zamboanga City, assigned there to chop vegetables, as a prisoner. On January 25, 1945, at about five o'clock in the afternoon, he saw Domingo Jimenez

pass by with hands tied at the back, in the company of Japanese soldiers, going towards the edge of the river at about 20 meters from the kitchen (34-40). When the Japanese and appellant came back, Domingo Jimenez and the other prisoners were no longer with them (41).

Cristobal Fernandez, 29, married, farmer and resident of Prisa Mayor, Zamboanga City, testified that in the afternoon of January 24, 1945, he was in the kitchen of the Japanese garrison as a prisoner, he saw three prisoners tied to a coconut tree (47). One of them he knew as Domingo Jimenez. The three prisoners were left tied the whole night. At about five o'clock in the afternoon of January 25, 1945, the three prisoners with about 12 Japanese soldiers and two Filipinos, including appellant, passed by the kitchen (48). The prisoners were taken to a distance of about 20 brazas. He did not see the three prisoners returning to the garrison (50). The Japanese and the accused passed by again when they returned, but the three prisoners were already missing (51).

Josefa Savillano, 56, widow, and resident of Zamboanga City, testified that in the afternoon of January 23, 1945, appellant went to her house accompanied by Japanese and Francisco de los Santos (58). Eligio asked her where the bandits were and she answered that she did not know. Liberata Cabaya Cruz was beaten. The witness was investigated in the house of Cresencio Timpangco (59). In the Timpangco house she saw Cresencio Timpangco, Margarita de la Chica, Ponciano de la Chica, Rosalina de la Chica, Mariano Alfonso and Domingo Jimenez (61). Appellant and the Japanese separated the men from the women and were investigated. Domingo Jimenez was asked where the bandits were and he answered that he did not know anything about them. Jimenez was beaten first by Santos and afterwards by appellant. The women were tied (62). Among those who investigated and beat them were appellant and Francisco de los Santos, using a piece of cord or rope made of leather (63). Appellant investigated also Liberata Cabaya Cruz asking her where was his son, the bandit. She answered that she had no son that was a bandit. Appellant beat her and when she was stooping kicked her (64). At about 7 or 8 o'clock at night, an explosion was heard and the Japanese became nervous and scattered. Witness, Margarita and Rosalina de la Chica escaped. The men were not able to escape. The next morning the witness saw appellant stepping on the body of Castro de la Vega, who was praying that the torture be stopped as it was painful (65). At about three or four o'clock in the afternoon, while witness was returning to her house, she saw a Japanese delivering to appellant a long bolo, a sort of a sword, with which appellant hit Castro de la Vega's foot and when Castro fell down, Torres cut his neck (67). Those who were taken prisoners by the Japanese were Domingo Jimenez, Cresencio Timpangco and Ponciano de la Chica. Mariano Alfonso was able to escape (68). The prisoners did not return any more (69-71).

Liberata Cabaya Cruz, 46, widow, housekeeper and resident of Campana, Zamboanga City, testified that the Japanese, accompanied by appellant and Francisco de los Santos, went to her house in the afternoon of January 13, 1945 (85). They arrested her and her husband and were taken to the house of Cresencio Timpangco. Her husband was asked by appellant where his bandit son was. When her husband denied having a bandit son, appellant and Francisco de los Santos began beating him (86). Appellant and Francisco de los Santos, after beating her husband, tied him, with his hands at his back (87). The witness was beaten by Francisco de los Santos (88). Appellant kicked her. At about seven o'clock, an explosion was heard and at that moment the women, Josefa Savillano, Rosalina de la Chica and the witness were able to escape (89). The witness never saw again Domingo Jimenez (90).

Florencio Sebastian, 48, married, merchant and resident of Tetuan, Zamboanga City, testified that on March 2, 1945, appellant, Francisco de los Santos, another Filipino and 10 Japanese went to his house at Bactus, where he was living with the members of his family (98). Appellant and Francisco de los Santos ordered the witness to cook food for them (99). After all had eaten, Francisco de los Santos asked the whereabouts of Jose Fernandez who, he alleged had a son who was a bandit. The witness said that he did not know (100); then the witness was

tied by Francisco de los Santos and took him to the next house of one Felipe. Santos ordered the witness to lie down, face up, and covered his face with a handkerchief, over which he poured water mixed with oil into his mouth (101). Appellant lighted a cigarette with which he burned several parts of the witness body (103). Because the witness could not stand any more the torture, he said that he knew that Jose Fernandez was staying in Lumiyac. Pe los Santos asked the witness for his money; the witness said that he did not have money, and Santos continued pouring water mixed with oil into his mouth, attempting to drown him (104). The witness finally said that he had one trunk kept in the house of Juaning Sebastian (105) and from the trunk appellant and companion had taken one twenty-peso bill, real money, and about one thousand pesos of white money, meaning the money issued by the Japanese. Cloths worth P1,000 were also taken from the trunk (106). The Japanese took no part in the torture of the witness (107). The witness was then brought to the house of Jose Lim (108). Nine trunks were taken down from the house by appellant and Francisco de los Santos (110).

Maria de Guzman, 48, married and resident of Tetuan, Zamboanga City, testified that in the afternoon of March 2, 1945, appellant and Santos, with some Japanese, went to her house in Bactus and ordered them to prepare supper (119). After supper, Torres and Santos called her husband and she heard them asking her husband where Jose Fernandez is. Later they tied him, with his hands at his back. Her husband was Florencio Sebastian; he was brought to some place (121). Her husband was taken out about nine o'clock and was able to return at about one o'clock past midnight. His clothes were wet, his hands showed signs of having been tied, his face was swollen and his ear and legs were burned (122).

Quasi Lim, 49, married and resident of Zamboanga City, testified that Jose Lim is her husband. On March 2, 1945, they were living in Bactus. That night Santos with some Japanese entered their home. She saw that there was with them a man with his hands tied at the back and it was Florencio Sebastian (125-126). Santos asked for a Parker fountain pen. Jose Lim said that he had none and that they could open his trunk and find out if he had one (127). Santos went up and searched the contents of the trunk. Santos noticed a wallet hanging on the wall and took it and found jewelry inside. He took the jewelry and found among them a ring which he placed on his finger (128). There were nine trunks in the house and they carried them (129). The trunks contained many articles, the combined value of which was about P5,000. The trunks were taken by Santos and appellant (130). The jewelry inside the wallet was worth P700 (131). The witness was not able to recover the jewelry (132).

Isaias Lacasti Santos, 32, married, blacksmith and resident of Tugbugan, Zamboanga City, testified that on March 2, 1945, he was in his evacuation place in Bactus where he saw Florencio Sebastian with his hands tied at the back escorted by appellant and Santos (141). He was taken to the house of his neighbor, Felipe Sinelega (142). He heard someone asking for the whereabouts of Jose Fernandez (143).

The witnesses for the defense testified in substance as follows:

Elena Ortega, 28, single, housekeeper and resident of Zamboanga City, testified that appellant arrived with the Japanese at Campana and apprehended persons of the group of Timpangco, aside from Rosalina de la Chica, Castro, the husband of Rosalina, the mother of Eosalina and her sister Margarita. Ponciano de la Chica, Mariano Alfonso and others including Liberata Cabaya Cruz were also arrested (150-151). The witness was also apprehended. The accused did not apprehend anyone (152) Nonaca, a Japanese, made the investigation. There were persons maltreated, among them, Domingo Jimenez and Liberata Cabaya Cruz. Nonaca was the one who maltreated them. The witness did not see the accused maltreat any person. Appellant and Santos were rendering service in cooking, fetching water and doing servants' work (153). Eligio Torres was ordered by the Japanese to wash dishes (157). The Japanese were the ones who were maltreating people, but not the accused (158).

Guillermo Piedad, 21, single, student and resident of Zamboanga City, testified that on January 23, 1945, he saw

appellant and Francisco de los Santos at Campana with Japanese companions. They proceeded to the house of Timpangco where they investigated, among others, the witness about carbines and tommyguns. The one who investigated was Nonaca, a Japanese (176). Nonaca tortured them also (177). The families of the detained persons were bringing chickens and appellant and Francisco de los Santos were the ones cooking for the Japanese to eat (178).

Jovita Torres Encarnado, 33, married and resident of Tomas Claudio Extension, Zamboanga City admitted as her signature Exhibit A, and she testified that she bought the two earrings from a Moro (184). She volunteered to return the earrings to Lim because she wanted to avoid appearing in Court. She gave the article mentioned in Exhibit A to Jose Lim because he said that they belong to him (185). The articles were given to her by a Japanese soldier Moto San who was a friend of hers (186). The appellant Eligio Torres is her brother. He did not give her any article (187).

Eligio Torres, 27, testified that on January 23, 1945, he went to Campana, Zamboanga City with the Japanese (188) Francisco de los Santos was with them. Appellant was arrested by the Japanese in his house and they made him a prisoner about the middle of November, 1944. He was suspected as a member of the guerrilla, because they found out that his brother and the husband of his sister were in the hills with the guerrillas. The Japanese made him stay in the reservation of the Japanese headquarters. They made him work grinding coconut and making oil (189). He went to Campana forced by the Japanese. He was carrying food for the Japanese (190). The Japanese arrested people. Appellant was assigned in the kitchen and was cooking food for the Japanese (191). The investigation was made by Nonaca, a Japanese (192). Appellant did not investigate or torture anyone on that occasion (193). It is not true that he cut the foot and then the neck of Castro de la Vega (193). He knows only that the Japanese arrested and took care of Castro de la Vega (194).

After a careful consideration of the evidence on record, we are fully satisfied that appellant, a Filipino citizen., took active part, with Francisco de los Santos and several Japanese soldiers, in the apprehension, investigation and torture of several persons in Campana, Zamboanga City, on January 23, 1945, in an effort to check the guerrilla movement which appellant described as composed of bandits. Among those who were arrested and tortured were Castro de la Vega, Domingo Jimenez, Liberata Cabaya Cruz, Cresencio Timpangco, and it has been conclusively proved that it was appellant who killed Castro de la Vega by cutting his neck. Appellant tried to deny his participation in said arrest, investigation, torture and killing, alleging that his presence in the place at the time was due to the fact that he was a prisoner of the Japanese and was brought there to cook food for the Japanese. Such allegation is unconvincing when confronted with the witnesses for the prosecution pointing appellant as having actively participated in the arrest, investigation and torture of several persons and in the killing of Castro de la Vega, it appearing that there is absolutely no reason why the witnesses for the prosecution should have testified falsely against appellant. Appellant's allegation that it was Nonaca, a Japanese, who investigated and tortured the persons who were arrested, cannot be accepted, as the witnesses for the prosecution among them, persons who have been victims of the arrests and tortures, could not have mistaken appellant for Nonaca.

It has also been conclusively proved that on March 2, 1945 appellant Eligio Torres took active part in the arrest and torture of Florencio Sebastian in Bactus, Zamboanga, at first for the purpose of inquiring from him the whereabouts of Jose Fernandez, and then to rob said Sebastian of about P20 in genuine money and P1,000 in Japanese notes, aside from cloths and clothing material with a prewar value of P1,000, and to rob Jose Lim of jewelry valued at P700 and goods contained in nine trunks valued at about P5,000.

We find appellant guilty of the crime of treason punished under article 114 of the Revised Penal Code, but we do not believe that he deserves the penalty of death imposed upon him by the lower court. The part of the appealed judgment regarding indemnities should be modified.

Appellant is sentenced to reclusion perpetua, to indemnify the heirs of each of the deceased Castro de la Vega, Ponciano de la Chica, Mariano Alfonso and Domingo Jimenez in the sum of P6,000, following: the decision in the case of People vs. Amansec (80 Phil., 424), and the indemnity to Florencio Sebastian should be reduced to P1,020. Thus modified, the appealed judgment is affirmed.

Paras, Bengzon, Montemayor, and Reyes, JJ., concur.

Moran, C. J., concurs in the result, there being no sufficient votes for the imposition of death penalty.

TUASON, J.:

I am of the opinion that the judgment of the lower court should be affirmed.

DISIDENTE

PABLO, M.:

Disiento. No estoy conforme con la reduccion de la pena.

Para ayudar a los soldados japoneses en la supresion de la guerrilla, no tenfa necesidad el acusado de torturar a las personas arrestadas con crueldad, ni tenia necesidad de pegar y maltratar a pobres mujeres, ni tenia necesidad de cortar el pie derecho de Castro de la Vega antes de decapitarle. Robar P20 en dinero filipino, mil pesos en papel moneda japonesa y telas por valor de P1,000 de la propiedad de Florencio Sebastian, y robar alhajas valuadas en P700 y otros efectos avalorados en P5,000 de la propiedad de Jose Lim, no eran necesarios si su intencion fue solamente querer saber el paradero de Jose Fernandez en el desempeño de su papel de espia.

Porque concurre circunstancia agravante, voto por que se connrme la sentencia impuesta por el juzgado inferior.

FERIA, J.:

I concur in this dissenting opinion.

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