

**THE REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEANDRO GONZALES, DEFENDANT AND APPELLENT.***G.R. No. L-710. March 05, 1948*

Ponente: PARAS, J.

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The defendant-appellant was accused of treason in the People's Court on seven counts. The appealed judgment — which found the appellant guilty and sentenced him to *reclusión perpetua*, with corresponding accessory penalties, and to pay a fine of ten thousand pesos and the costs, — contains specific pronouncements expressly overruling counts 1, 2, 4, 5, and 7. As to the third count, the People's Court merely held that; "The accused, on the night of December 31, 1944, participated in a raid on barrio Curiba, Lipa, Batangas, made by a patrol of Japanese soldiers and other Filipino followers and on that occasion apprehended fifteen persons and brought them to the barrio of Mataas-na-kahoy of the same municipality. However, while those persons who were apprehended were presumably killed because they have not reappeared up to the present time, there is no evidence to show that the accused took part in their execution. The witnesses on this count were Fidel Hernandez, Remigia Lorzano and Marcelo Peña." with reference to the sixth count, the appealed judgment contains the following conclusions: "The accused on February 27, 1945, participated in the burning of the houses in barrio Cumba, Lipa, Batangas, which was perpetrated by a patrol of Japanese soldiers and their Filipino followers, because they suspected the people residing therein to be guerrillas. The witnesses who substantiated this count were Fidel Hernandez who testified that he saw the accused burn his house and the house belonging to Crisanto Mendoza, Julian Sara and Enrique Sara; Remigia Lorzano who testified that she saw the accused set fire to her house and the houses of her brother-in-law and two consins; and Marcelo Peña who testified that he saw the accused apply a torch to his house and the houses of Asuncion Hernandez, Benito Hernandez, Sofia Katigbak and Melquiades Careng. While it is true that no two witnesses saw the accused burn the same house but instead saw him burn separate group of houses the overt act of treason in this case is the burning of the houses as a whole in the barrio of Cumba, The act was a single, continuous, composite act made of several circumstances and passing through several stages. In such a case it is not necessary that there be two witnesses to each circumstance in each stage; it is sufficient that the witnesses were able to testify to the act as a whole."

Counsel for the appellant has limited the scope of his brief to the task of demonstrating that the People's court erred in sustaining count 6, thereby assuming that all the other counts upon which the appellant was indicted, did not form part of the basis of appellant's conviction under the appealed judgment. The brief for the Government, however, undertakes to show not only that the error attributed to the People's Court does not exist, but that the appellant was not entirely acquitted of count 3 which charges the following treasonable acts: "(a) Appellant's participation in the raid in barrio Cumba by a patrol composed of Japanese soldiers and the Makapilis. (b) His participation in the arrest and apprehension of 15 persons in connection with said raid. (c) The execution of 15 of the persons arrested." In other words, it is contended for the Government that "the fact that the trial court absolved the defendant of the last charge, that is, his participation in the execution of most of the persons arrested does not necessarily mean that he is cleared of all the charges in said count. It simply means that instead of finding him

guilty of the complex crime of treason with murder, he was convicted merely of treason."

It is our opinion that the appellant cannot, on the merits, be convicted of treason as defined and penalized in Article 114 of the Revised Penal Code, even if the overt acts charged in the sixth count are admitted as having been proved in the manner stated in the appealed Judgment, for lack of compliance with the two-witness principle. Indeed, the brief for the appellee points out that "It is true, as the trial court said, that no two witnesses saw the accused turn the same house. Fidel Hernandez testified that at about 10 o'clock a. m. of February 27, 1945, he saw the accused and companion, with rags and gasoline, burn his (Fidel Hernandez') house, and that of Crisanto Mendoza, Julian Sara and Enrique Sara (pp. 19-20, t. s. n.). Remigia Lorzano stated that at about 6:30 a. m. of the same day she saw the accused igniting a piece of rag and setting her house, as well as the houses of his brother-in-law and her two cousins, on fire (p. 96, t. s. n.). The last witness Marcelo Peña testified that at about 9 o'clock a.m. he saw the accused and companion pour gasoline on the houses of Asuncion Hernandez, Benito Hernandez, Sofia Katigbak and Melquiades Garin and burn said houses afterwards (pp. 125-128, t. s. n.)." In *People vs. Adriano*, L—477, decided on June 30, 1947, we already have had occasion to explain, in quite emphatic terms, the meaning of the two-witness requirement. There we said:

"It is necessary to produce two direct witnesses to the whole overt act. It may be possible to piece bits together of the same overt act, if so, each bit must have the support of two oaths."

Appellant's conviction can neither be predicated on the third count, not only because the corresponding pronouncements of the People's Court (hereinabove quoted) do not specifically intimate that the acts charged in said count and proven at the trial constitute treason — a failure or silence amounting to acquittal, — but because, even supposing said acts to be treasonable, we are inclined to discard the testimony of the witnesses Remigia Lorzano and Marcelo Peña who had made the glaring contradiction to the effect that while the first testified that Hilario Peña was at the house alleged in count 3 to have been raided, Marcelo Peña stated that his father (Hilario Peña) was not in said house. Upon the other hand, there can be no doubt that the People's Court obviously based the judgment of conviction on the acts charged in the sixth count, for it made the express assertion that "the overt act of treason in this case is the burning of one houses as a whole in the barrio of Cumba."

The appealed judgment will therefore be, as the same is hereby, reversed and the defendant-appellant acquitted, with costs de oficio. So ordered.

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

DISIDENTE

PABLO, M.:

No estoy conforme con la absolución del acusado. Hay no solamente dos, sino tres, que testificaron que el acusado quemó la mitad del barrio de Cumba, Lipa, Batangas. El cargo No. 6 es del tenor siguiente:

"6. That on or about the 27th day of February, 1945, in the municipality of Lipa, province of Batangas, and within the jurisdiction of this Court, the said accused Leandro Gonzales, with intent to give aid and comfort to the enemy, did join, participate and take part in a raid on the barrio of Cumba of said municipality made by a patrol composed of Japanese soldiers and Makapilis, and on the occasion thereof the said patrol did burn and set fire to approximately one-half (½) of the houses in said barrio for alleged guerrilla activities."

Los autos demuestran que Fidel Hernández declaró que en 27 de Febrero de 1945, a eso de las 10:00 de la mañana, el acusado y sus compañeros, japoneses y espías filipinos, provistos de trapos y gasolina, quemaron su

casa (de Fidel Hernandez), la de Crisanto Mendoza, de Julian Sara y de Enrique Sara. Remigia Lorzano declaró que a eso de las 6:30 a. m. del mismo día el acusado encendió un pedazo de trapo con el cual quemó su casa (de Remigia Lorzano) como también la casa de su cuñado y de sus dos primos. Marcelo Peña declaró que a eso de las 9:00 a. m. del mismo día el acusado con compañeros vertieron gasolina en las casas de él (de Marcelo Peña), de Asunción Hernandez, Benito Hernandez, Sofía Katigbak y Melquiades Gareng prendiendo fuego después. Todas las trece casas se redujeron a cenizas. Fidel Hernández presencié la quema de su casa y la de tres personas; Remigia Lorzano vió al acusado quemar su casa de ella y la de su cuñado y dos primos, y Marcelo Peña presencié el acto del acusado con sus compañeros al quemar las casas de él, de Asunción Hernandez, Benito Hernandez, Sofia Katigbak y Melquiades Gareng: total, trece casas.

Si la acusación consistiese solamente en la quema de una casa, como la de Fidel Hernández, por ejemplo, no se le puede condenar al acusado porque no hay más que un solo testigo y es el cuñado de Fidel Hernandez; pero se le acusó de haber quemado con sus compañeros japoneses y Makapilis aproximadamente la mitad de las casas del barrio para inutilizar a sus habitantes que son guerrillas para sembrar el terror en todas partes y subyugar a todos por medio de la destrucción. Hay pues, tres testigos que declararon que trece casas — parte de la mitad de las casas del barrio de Cumba, del municipio de Lipa, de la provincia de Batangas — han sido quemadas por el acusado y sus compañeros. Una casa es solamente una parte de la mitad del barrio; no es necesario que haya dos testigos para probar la quema de una casa: lo que se necesita es el testimonio de dos testigos, por los menos, de la quema de la mitad de las casas del barrio, que es el objeto de la acusación. No debemos olvidar que se le acusó de haber quemado la mitad de las casas del barrio y no de haber quemado las casas solamente. Opino que debe confirmarse la sentencia condenatoria.

DISSENTING

HILADO, J.:

In my opinion, there is sufficient evidence, satisfying the two-witness rule, to find appellant guilty under count 3, referring to the raid made by the Japanese accompanied by him and other Filipino followers on December 31, 1944, New Year's Eve, in barrio Cumba, Lipa, Batangas, in which raid fifteen persons were apprehended and brought to the barrio of Mataas-na-Kahoy of the same municipality. It would be closing our eyes to the reality of things if we were not to understand that those fifteen persons were apprehended and dealt with in the manner stated, by the Japanese, either because they were guerrillas or guerrilla suspects, or other kind of underground movement members, or suspects of being such.

Under count 6, although the two-witness rule may not have been satisfied, I am of opinion that conviction for arson as a common crime is in order.

Judgment reversed;Defendant acquitted.

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