

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AURELIO SANTIAGO, DEFENDANT AND APPELLANT.***G.R. No. L-2239. March 30, 1950*

Ponente: TUASON, J.

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Aurelio Santiago was prosecuted in the People's Court for treason on six counts. The case was tried along with 29 others each of which was against a single defendant. The information made charges of arrests and atrocities to most of which the present appellant was not a party. The result of this "mass trial" was that proofs applicable to individual defendants and not common to all were intermingled in the voluminous records, giving rise to the necessity of poring over the great mass of testimony given by numerous witnesses to pick out the evidence bearing on each particular accused. The other result was that many specifications were not dwelt upon thoroughly or not at all.

The trial court found the herein appellant guilty on three of the six counts laid against him, there being no evidence touching on the other three) as far as the appellant is concerned. The counts on which the appellant was convicted are the first, the second and the fifth.

The testimony which the trial court believed supported count No. 1 was that of Maria Estanislao, Eduvijis Samson, Pablo Rojas and Aquilino Guevara.

Maria Estanislao, 33 years old, testified substantially as follows: The Makapilis came to her parent's home on December 26, 1944, looking for her father. Borong-Borong and Eleno del Rosario were the only Makapilis she knew very well. The Makapilis wanted her father because he was a supply officer furnishing vegetables and rice to the guerrillas. Her father was on his way to the field when Borong-Borong called him back. The Makapilis were armed, Eleno and Borong-Borong with a revolver and a hand grenade each. Her father was given a water cure and taken away, but she did not see what was done to the other prisoners. Later her father was brought back to their house and the house was searched for weapons. Her father was tied and had scratches on the face when he returned accompanied by Borong-Borong and others. She did not see her father alive again after that date.

Pablo Rojas, 31 years old, testified that on December 26, 1944, he was apprehended in Marikina; it was about 6:30 a.m. and he had just gotten up from bed. He was taken to barrio Calumpang and was made to fall in line with about 300 other men. Only one Makapili took him from his house but there were many others on the road. After the prisoners were lined up, including himself, eight of them were segregated from the rest and manhandled. He did not witness the maltreatment because Japanese soldiers, one of whom was one Kubata, came and allowed him to go to the municipal building because he was on guard on that day, being a policeman. Those who lined up the prisoners were the fat man (pointing to Agaton Martin), Eleno del Rosario, Domingo Ramirez and Aurelio Santiago. He could not remember the rest any more.

Aquilino Guevara testified that on the 26th of December, 1944, he was living in Calumpang, Marikina. His son, Bienvenido, was taken by "those people" (pointing to all the accused) during the "zonification" in Calumpang.

They were made to line up and then, while a man read a list, another, an old man, pulled out of the line those whose names were called. Told to point out among the accused the persons who were present at the "zonification", the witness indicated several defendants one of whom was Aurelio Santiago. His (witness') son Bienvenido was one of the "zonified" persons whose names were in the list, and Bienvenido was conducted to a place near a house. He could not tell what was done to Bienvenido nor did he see his son again. Eleno del Rosario said that Bienvenido was a guerrilla.

Following are extracts from Eduvijis Samson's testimony: In December, 1944, she lived in Calumpang, Marikina. On the 26th of that month, she saw something extra-ordinary: male residents of Calumpang were ordered to stand in line; then they were made to sit down, and, as names were being called from a list, those who were in the roll stood up, were segregated, bound and maltreated. This happened in front of her house. Those who ordered the people to line up were Makapilis. The only ones she knew among them were Gavino, Borong-Borong and Eleno. She knew some of the Makapilis by sight and pointed to Gavino Basilio, Agaton Martin, Eleno del Rosario, Felipe Reyes, Faustino Santos, Cirilo Tuason, Amado Menor and Guillermo Figueroa. Nine men were taken out of the line. On cross-examination, when defense counsel requested the witness to point out again, the Makapilis whom she recognized, she indicated Aurelio Santiago, among others.

Count No. 2. Marcela Raymundo testified that Jose Cruz was her husband. She saw him when he was brought to their home under arrest with his hands tied. The reason for the arrest was that he was a guerrilla. She knew some of the men who arrested her husband, and they were Cirilo Tuason, Bias Cruz, Aurelio Santiago, Faustino Santos, Rufo Mejia, Benito Tuason, Juan Alejandro, Daniel Alejandro and Alfredo Espiritu. She did not know the rest but there were many. She did not see her husband again after he was loaded on a banca, and she did not know where he was taken. Some of the persons who arrested her husband carried rifles and others pistols. They were all Filipinos attired in blue denim. All of this occurred on November 29, 1944, in the afternoon, in Ugong, Pasig, Rizal. It was still light.

Justa Santos, 58 years of age, swore that she saw Jose Cruz for the last time on November 29, 1944, in barrio Ugong, Pasig. He was under arrest and passed in front of her house guarded by his captors, who were Cirilo Tuason, Rufo Mejia, Bias Cruz and Aurelio Santiago. She could not tell if these were armed, and she did not know where Jose Cruz was taken. She knew Jose Cruz was under arrest because his hands were tied. Her house in Ugong, Pasig, was on the same road or street where the Cruz's was situated with nine other houses between them.

Count No. 5. Ceferina Raymundo, 32 years, resident of Ugong, Pasig, testified that Pedro Natividad was her husband. On the 10th of December, 1944, Pedro Natividad was arrested at her house by the Makapilis. She did not know the cause of the arrest and did not see him any more after he was hauled away. She inquired of the Makapilis about her husband's whereabouts but all of them told her it was useless to look for him because he was a guerrilla. Of those who arrested Pedro Natividad, she knew Agaton Martin, Faustino Santos, Bias Cruz, Aurelio Santiago, Alfredo Espiritu and Benito Tuason. She did not know the names of the others but she could point them out. Some of them were armed with rifles.

Deogracias Natividad, 13 years old, testified that Pedro Natividad was his father and Ceferina Raymundo, his mother. On December 10, 1944, at about 8 o'clock p.m., his father was apprehended by the Makapilis. He was at home with his parents. He knew the names of some of the Makapilis who arrested his father. There were about fifteen of them. Those whom he knew were Aurelio, whose surname he did not know, and also Bias, Benito and Tibo. They were all armed with rifles and there were no Japanese with them. After his father was taken away, the Makapilis came back and searched their house for firearms. When they did not find any weapons, they picked up and carried away jewelry and money. Since December 13, when his father was arrested, he had not seen him.

Aurelio Santiago took the witness stand on his behalf. He gave his age as 37 years. When his attention was called to the testimony of Deogracias Natividad, he replied, "I can not tell anything about that." He said he was a farmer and used to go to the farm early in the morning to take care of his carabao, and that there were nights in December when he did not come home. He denied having possessed a firearm. Referring to the testimony of Marcela Raymundo, to the effect that he and others arrested Jose Cruz, the appellant again said, "I do not know anything about that." He gave the same answer with regard to the testimony of Justa Santos and to the question about his alleged part in the "zonification" of the inhabitants of barrio Calumpang. He stated in this connection that on November 26, 1944, he was tending his carabao which, he said, he had to do on weekdays and Sundays, He added he never went to Calumpang during the Japanese occupation.

The evidence does not sustain the first count. Disregarding the two-witness requirement, we find the testimony offered in support of this count at variance with the charge. For once, the heart of count No. 1 is that the accused was a Ganap, an agent and informer for the Japanese. There is not sufficient evidence on this score. The reference to the appellant as a Makapili is laconic, and the basis of that reference is unexplained. The burden of the evidence on count No. 1 is that Aurelio Santiago helped round up citizens for screening guerrillas or guerrilla suspects who were later executed, matters which are not alleged in the count under consideration.

Conviction in prosecution for treason must be founded on direct and positive evidence, not on Inferences from generalities that are susceptible of various meanings.

However, the first count is for the most part a mere variant statement of counts 2 and 5. Each of these two counts has been fully established by the oaths of two witnesses. We find nothing in the record which would justify us in disturbing the findings of the trial court on said counts. The witnesses knew the accused intimately since, according to the defendant's testimony, he lived in barrio Ugong where Jose Cruz and Pedro Natividad were apprehended.

True, it is to be noted, in relation to count No. 2, that Justa Santos and Ceferina Raymundo saw Jose Cruz in the hands of the accused and some of his codefendants at different places and consequently at different moments. But considering the short distance between the two places, the fact that Jose Cruz was arrested only once, at least on December 10, 1944, and the fact that the accused and his companions were, when they were seen by Justa Santos, leading the prisoner in the direction of the house where his wife saw him and from which he was whisked away on a banca, there can be no question that both witnesses referred to the same act averred in count No. 2.

As to count No. 5, both Marcela Raymundo and her son saw the defendant at the same time and at the same place pick up Pedro Natividad. We have no reason to doubt their veracity.

The arrests of Jose Cruz and Pedro Natividad by the accused and others were undeniably accomplished with treasonable intent, and there is no gainsaying that their performance materially aided the Japanese and gave them comfort. The proofs on counts 2 and 5 constitute both adherence to the enemy and overt acts irrespective of whether the appellant was a Ganap, Makapili or plain civilian.

The appellant has been sentenced to 14 years, 8 months and 1 day of reclusion temporal and to pay a fine of P7,000.00 and the costs, the court having appreciated in his favor the lack of education. This sentence is in accordance with law and the evidence, and the same is affirmed with costs of this appeal.

Moran, C. J., Ozaeta, Pablo, Bengzon, Padilla, and Reyes, JJ., concur.

MORAN, C. J.:

Mr. Justice Montemayor and Mr. Justice Torres voted for affirmance.

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