

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FEDERICO CORTES, ALIAS PEDRING CORTES, DEFENDANT AND APPELLANT.

G.R. No. L-14712. April 29, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Cebu, Hon. Ramon O. Nolasco, presiding, finding accused-appellant Federico Cortes guilty of treason and sentencing him to suffer the penalty of fifteen years of reclusión temporal, with the accessory penalties prescribed by law, and to pay a fine of P2,000, with costs. The case was first appealed to the Court of Appeals, but the latter forwarded it to this court on the ground that the crime proved is punishable by life imprisonment. The trial court found him guilty on count Nos. 1 and 7 of the information, which counts are as follows:

"That during the period from June 1942 to the landing of the American Liberation Forces in Cebu, for the purpose of giving and with intent to give aid and/or comfort to the enemy, the above-named accused, FEDERICO CORTES alias PEDRING CORTES, did then and there wilfully, unlawfully and feloniously act and serve as member of the puppet Cebu Police Force and later on of the Bureau of 'Constabulary of the puppet Republic of the Philippines with the rank of corporal and at the same time as agent and informer of the Japanese Military Police (Kempei Tai) in the City of Cebu, and as such, made reports to the Japanese Kempei Tai as to the movements and activities of guerillas and prominent persons in the Province of Cebu and participated in the apprehension and arrest of guerrillas." (Count No. 1)

"That sometime in 1942, for the purpose of giving and with intent to give aid and/or comfort to the enemy, the above-named accused, FEDERICO CORTES alias PEDRING CORTES, did then and there wilfully, unlawfully and feloniously arrest and apprehend Fernando Macasero on the charge of having contraband goods in his possession, and did turn him over to Sgt. Mori of the Japanese Military Police (Kempei Tai); that said Fernando Macasero was sent to Manila by the Japanese where he was court-martialed and sentenced to serve an imprisonment for one year." (Count No. 7)

The evidence submitted by the prosecution to prove count No. 7 consists of the testimonies of witnesses Fernando Macasero, his wife Teodora Alisna, and Cornelio Barcelo. Macasero testified that in the morning of August 28, 1942, appellant Federico Cortes went to his house at Carcar, Cebu, and asked him to change a P20 Cebu emergency money with bills of small denominations and, if possible, with some treasury notes. Macasero granted this request and gave Cortes, in exchange, ten P1 emergency notes and two P5 Philippine treasury notes. On the following Sunday Cortes again came to his house, driving a car, accompanied by a Japanese interpreter and two Japanese officials. The car driven by Cortes was followed by a truck loaded with Japanese soldiers. Upon arrival, the soldiers immediately surrounded a house near that of Macasero. Cortes told his companions that that was not the house of Macasero, then pointed to Macasero's own house. So the Japanese officials, the interpreter and Cortes went up the house and got all the money that Macasero kept in a drawer, amounting to around P6,000. It was Cortes, who pointed to the drawer where the money was being kept.

After that Cortes tied the hands of Macasero together, after which all of them went down. Macasero was ordered to board the truck, which he did. From there he was brought to the school building. Once there he was accused of exchanging money with the guerrillas hiding in the mountains. The Japanese soldiers and Cortes beat him with a wooden stick, as a result of which he sustained a wound on the right side of the head. After the investigation and beating he was brought to Cebu City and after a month and seven days there he was brought to Manila and confined in Muntinglupa prison, and was not released until April 29, 1943 on the occasion of a holiday in honor of the Japanese emperor.

His wife Teodora Alisna declared that on August 28, 1942. Cortes went to their house to have a P20 bill changed to small denominations, and that they accommodated him; that at that time they had P6,000 in their drawer; that the following day appellant Cortes came with Japanese soldiers, went up their house and investigated her husband, imputing or charging him with having obtained the money amounting to P6,000 from the guerrillas; that after the investigation, Cortes tied his hands, and then he was brought down, and asked to board a truck, and later brought to the schoolbuilding; that she did not actually see what happened to her husband in the school although she heard groans coming from inside the building; that, thereafter, he was brought to Cebu City and was not released until after April 29, 1943.

Cornelio Barcelo corroborated the statements of Macasero and his wife, as to the coming of the Japanese soldiers to Macasero's house. He declared that it was his house that was first surrounded by the Japanese soldiers, but that Cortes informed them that that was not the house of Fernando Macasero; that upon being told where the house of Macasero was, the soldiers went to surround it. He did not see what happened inside the house of Macasero, but after a while he saw the soldiers and Macasero and his wife come down, and then the two were asked to board the truck with Japanese soldiers, while the accused Cortes and the Japanese officials rode in the car. He further declared that he saw the hands of Macasero being tied together by Cortes himself; that he followed the truck and the car to the place where Macasero was brought, which was only about half a kilometer away; that there he saw Fernando Macasero being beaten by Cortes with a wooden stick; that the place where the beating took place was in the schoolbuilding of Carcar, Cebu province.

Appellant Cortes does not deny that he was with the Japanese soldiers when they took Macasero down from his house and brought him to the Carcar schoolbuilding. He said that he went to investigate Macasero in the latter part of June, in his house in Carcar, which was near the Japanese garrison; that he told Macasero that he had been reported, as the head of a band of robbers and looters, which accusation Macasero denied; that after this he went down and proceeded to Cebu City; that he did not go up the house as charged but only stayed in the truck and waited until Macasero was brought down the house by the Japanese. It is to be noted that Cortes has not offered any witness to corroborate his denial, nor did he deny that it was he who had indicated the house of Macasero to the Japanese soldiers. His admission that he investigated Macasero and that Macasero was taken by the Japanese indicates that he must have been the one who had denounced Macasero to the Japanese. As he admits that he was entrusted with investigating Macasero, he must have used the Japanese technique of investigation, that is, by beating the one being investigated. We find that the testimony of Macasero that he was beaten by Cortes, as corroborated by the testimony of Barcelo who saw the actual beating, is true. We, therefore, find that count No. 7 of the information has been proved beyond reasonable doubt by two competent witnesses to the same overt act.

As to the first count, two witnesses also testified, namely, Diego Cañiza and Marcelino Veloso. Cañiza testified that he was chief of the secret service of the City of Cebu during the Japanese occupation from June 9, 1942; that Cortes worked with him for four months until October 4, 1942, when Cañiza resigned as chief of the secret service division; that during the four months that Cañiza was chief of the secret service, Cortes was detailed to the Japanese military police, working directly under one Captain Mori; that he used to see Cortes going with the

Japanese military patrol; that in the beginning he did not know what the work of Cortes with the Japanese military police, known as the Kempei Tai, was, but later on, when the Kempei Tai began arresting suspected guerrillas, he came to know that Cortes acted as spy or undercover agent.

Marcelino Veloso testified that he was a clerk in the provincial jail and that he knew the accused. Cortes admitted to him that he was a Filipino citizen when accused signed the document Exhibit "A". This witness, however, did not testify to any overt act of treason committed by appellant.

Another witness identified two documents, Exhibits "B" and "C", apparently signed by the appellant, which are reports on the movements of certain persons under suspicion and surveillance. The accused denied the authenticity of his signature to these documents. We are of the belief that his signatures thereon are authentic, because they are similar to the authentic signature appearing in Exhibit "A". These documents are indicative of the activities of appellant Cortes, as spy and undercover of the Japanese Kempei Tai.

Another witness presented to prove the first count is Lini Beng Liong, who declared that in the month of September or October, 1944, while he was walking along Jungera street, he met Federico Cortes who asked him to sign a piece of paper and, at the same time, ordered him to go to the Philippine Constabulary headquarters that afternoon; that upon reporting to said headquarters as he was told to do, he was asked to work the following morning at Yate airfield; that he asked to be excused, but his request was denied; that he and certain companions of his were* brought in a truck to Yate airfield and there required to make excavations for the Japanese; that these excavations were found by him later to have been used by the Japanese for hiding military supplies, ammunitions and properties.

The evidence submitted to prove the first count, is to the effect that Cortes was a member of the Japanese Kempei Tai, engaged in spying on suspected persons, and in helping secure labor for Japanese defense works. Membership in the Kempei Tai was proved by the testimony of Cafriza. The act of spying is also proved by the reports signed by Cortes, Exhibits "B" and "C"; that of securing labor to help in the building of Japanese defenses was proved by Lim Beng Liong. But while each of the above acts of helping the enemy is competent by itself, the three are riot sufficient to satisfy the requirement that the evidence or testimonies of at least two witnesses must be to the same overt act. (People vs. Adriano, 78 Phil., 561; 44 Off. Gaz., No. 11, p. 4300, People vs. Abad, 78 Phil., 766; 44 Off. Gaz., No. 12, p. 4901; People vs. Tan Mateo, 80 Phil., 211; 45 Off. Gaz., No. 8, p. 3323). We are, therefore, constrained to hold that the evidence submitted to prove count No. 1 is not sufficient to satisfy the two-witness rule on treason.

For the foregoing considerations, we find that the accused-appellant Federico Cortes is guilty of treason on count No. 7 alone. However, we find that the penalty imposed by the trial court is commensurate with the nature of the act of treason committed. Hence, the decision appealed from is hereby affirmed.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, and Dizon, JJ., concur.

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