

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ANTONIO RACAZA, DEFENDANT AND APPELLANT.

G.R. No. L-365. January 21, 1949

Ponente: TUASON, J.

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TUASON, J.:

Antonio Racaza was charged with treason on 14 counts and tried in the City of Cebu before the First Division of the People's Court. The information is as follows:

"That during the period comprised between January, 1944 and February, 1945, more specifically on or about the dates and periods hereinbelow mentioned, in the municipalities hereinafter stated all within the Provinces of Cebu and Bohol, Philippines, within the jurisdiction of this Court, said accused not being a foreigner but a Filipino citizen owing allegiance to the United States of America and the Commonwealth of the Philippines, in violation of said duty of allegiance did, then and there wilfully, unlawfully, feloniously and treasonably adhere to the Empire of Japan with which the United States and the Philippines were then at war, giving said enemy the Empire of Japan and the Imperial Japanese forces in the Philippines, aid and/or comfort in the following manner, to wit:

'1. That on or about May 8, 1944, in the City of Cebu, Philippines, for the purpose of giving and with the intent to give aid and comfort to the enemy said accused did, then and there wilfully, unlawfully, feloniously and treasonably acting as a Japanese spy lead, guide and accompany a patrol composed of Japanese soldiers and Filipino under covers, which apprehended Custodio Abella; that the aforementioned accused did question Abella as to the hiding place of Captain Ibañez, G-2 of the guerrilla forces; that during the investigation, the herein accused hit Custodio Abella several times with a revolver and did threaten to kill him if he did not give the desired information; and while Abella's hands were tied behind his back, the herein accused did knock him down and choke him, while another companion did jump up and down several times on Abella's stomach; that said Antonio Abella was finally taken and detained at the Japanese Kempei Tai Headquarters for fifteen days;

'2. That sometime during the month of August, 1944 in the Municipality of Mandawe, Province of Cebu, the accused herein acting as a Japanese spy and undercover with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol composed of two Japanese soldiers and 12 Filipino undercovers which apprehended one Florencio Perez as a guerrilla suspect; that the aforesaid accused and his companions did demand that Perez turnover his pistol to the accused and upon denying of having any pistol, said accused and his companions did hang him with a rope and while he was thus suspended in mid-air, the herein accused and his companions hit Florencio Perez on the head and in other parts of the body with the butts of the revolvers and with their fists; that the accused then took Florencio Perez outside the house and threatened to shoot him on the back of his head unless he told them where his pistol was;

'3. That on or about December 2, 1944, in the Municipality of Mandawe, Province of Cebu, the aforesaid accused acting as a Japanese spy for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany three Japanese to the house of Pablo Seno; that upon arrival at the said house, the herein accused and his companions

did apprehend Pablo Seno and his daughter Anunsacion Seno for alleged guerrilla activities and connections and did ransack and take away many objects therein; that said Pablo Seno and Anunsacion Seno after having been tied and tortured by the accused and his companions were imprisoned at the Japanese Kempei Tai Headquarters, and since then nothing more was heard of them nor are their whereabouts known;

'4. That on or about December 2, 1944 in the Municipality of Mandawe, Province of Cebu, for the purpose of giving and with the intent to give aid and comfort to the enemy, the aforesaid accused acting as a Japanese spy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol of Japanese soldiers and Filipino undercovers to the house of one Rufino Seno for being a guerrilla suspect; that said Rufino Seno was tied, beaten and tortured and brought to and detained at the Japanese Kempei Tai Headquarters at Cebu City and since then nothing more was heard of him nor are his whereabouts known;

'5. That on or about the first day of July, 1944, in the municipality of Clarin, Province of Bohol, Philippines, said accused, acting as a Japanese spy and with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol composed of Japanese soldiers and Filipino undercovers for the enemy which apprehended Leonilo Mercado and Jovito C. Soria for alleged guerrilla activities; that Leonilo Mercado was brought to the municipal jail of Clarin, and detained up to July 12, 1944 when his wife visited him; and since then Leonilo Mercado was not seen again nor heard from, nor are his whereabouts known;

'6. That on or about August 19, 1944, in the city of Cebu, Philippines, the herein accused who was a Japanese spy, with the purpose of giving and with the Intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and guide a patrol of Japanese soldiers and Filipino undercovers to the house of Silvina Cabellon; that upon arrival at said house, the herein accused and his companions did ask Silvina about the whereabouts of her brother who was a guerrilla and to surrender the latter's revolver; that upon receiving an unsatisfactory reply, said accused did forcibly undress her, choke and beat her; that the aforesaid accused then took her to another house where through force, violence and intimidation he attempted to have sexual intercourse with her, but which criminal purpose the accused did not realize on account of reasons independent of his own will;

'7. On or about the 24th day of August, 1944 in the Municipality of Mandawe, Province of Cebu, Philippines, said accused acting as Japanese spy, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol of 15 Filipino pro-Japanese undereovers and two Japanese soldiers in search of guerrillas, guerrilla suspects and their supporters, and did apprehend Patricio Suico, Leonardo Ouano and Eduardo Ouano from their homes and did bring them to the Japanese Navy Kempei Tai Headquarters in Cebu City where they were questioned on the whereabouts of Sulpieio Ouano, brother of Leonardo Ouano and a guerrilla suspect, and Patricio Suico was questioned and blgmed for not taking proper steps against the guerrillas as barrio lieutenant; that the accused herein and his companions did bring the aforesaid three persons back to Leonardo's house at Banilad where they were again tied, hung and tortured on account of which Patricio became unconscious; that while said Patricio Suico was thus unconscious, the accused and his companions did build a fire under the sled where Patricio Suico was, on account of which said Patricio was burned and died; that while being detained in Cebu City, Leonardo and Eduardo Ouano managed to escape and fled to the mountains;

'8. Sometime during the month of December, 1944 in the municipality of Lahug, Province of Cebu, Philippines, the accused herein acting as Japanese spy with h other Filipino undereovers for the Japanese Army, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably capture Pedro Lavares and Luis Hallares and did detain, tie and torture them at the Kempei Tai Headquarters for alleged guerrilla activities; that said accused and his aforesaid companions did detain likewise in said Kempei Tai Headquarters Bonifacio Suico and Aniceto Taranza and did toture them by giving them fist blows, tying them with ropes, hitting them with bamboo poles and wooden pestles to force them to tell the real connections of Mayor Alejandro Fortuna with the guerrillas;

that due to said punishment and torture, Bonifacio Suico died; that after torturing Aniceto Taranza, said accused and his companions did bring him to the river bank near by and did kill him with a saber;

'9. On or about July 28, 1944 in the Mabaling, City of Cebu, Philippines, said accused acting as Japanese spy with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol of Japanese soldiers and Filipino undercovers for the Japanese Army and did capture Vicente Abadiano, Nazario Abadiano, Tereso Sanchez, Fidencio Delgado and some twenty other Filipinos whose names cannot now be stated all suspected of being guerrillas and of having allegedly taken part in the ambush of Japanese soldiers on board a truck while passing at the boundary of Mambaling on July 25, 1944; that all the persons above-named and 20 others referred to were brought to the Lensa mountains near Ponta Princesa and after having been questioned and tortured, twelve of them including Nazario Abadiano and Tereso Sanchez were shot by the herein accused and his companions, all of whom died except Tereso Sanchez who is now an invalid due to wounds he received;

'10. On or about July 21, 1944, in the City of Cebu, Province of Cebu, Philippines, said accused acting as Japanese spy with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably in company with three Filipino undercovers like the accused and two Japanese soldiers, capture Jose Roda for being the brother of Apolonio Roda alleged G-2 operative for the guerrilla who could not be found, Claros Numeran for being related with Santiago Numeran a guerrilla suspect whom accused and his companions were looking for, and Marciano Alejandrino a guerrilla suspect, and did maltreat and torture said Jose Roda, Claros Numeran and Marciano Alejandrino and later did bring them to a secluded spot at Mambaling and shoot them to death; that due to the fact that the wounds of Jose Roda were not serious, he survived;

'11. On or about November 17, 1944, in the Municipality of Mandawe, province of Cebu, Philippines, said accused acting as Japanese spy, for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably guide, lead and accompany a patrol composed of ten Filipino undercovers for the Japanese Army and two Japanese soldiers for the purpose of apprehending guerrillas, guerrilla suspects and their relatives and the herein accused and his companions did catch Hipolita Cabahug, Dionisio del Castillo, Victorino del Castillo and Demetrio Congson and did whip and torture the last 3 persons for being allegedly messengers for the guerrillas; that said accused and his companions finally did kill Dionisio del Castillo and Victorino del Castillo by inflicting fatal wounds on their necks with swords;

'12. Sometime in January, 1945, in Inawayan, Pardo, Cebu Province, said accused who was a Japanese spy, with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol composed of Japanese soldiers and Filipino undercovers for the Japanese to Inawayan, Pardo, Cebu for the purpose of apprehending guerrillas; that the herein accused and his companions did catch one Hospicio Singson from his house, tie him with a rope, hang and torture him urging him to tell about reports and papers from the mountains (guerrilla reports) and questioning him about alleged money contributions to guerrillas; that thereafter said Hospicio Singson was carried by accused and his companions to the local Japanese garrison and since then he was not seen again nor heard from, nor are his whereabouts known;

'13. On or about the 5th day of January, 1945, in the Minglanilla of Cebu, Province of Cebu, with the purpose of giving and with the intent to give aid and comfort to the enemy the aforesaid accused acting as Japanese spy did, then and there wilfully, unlawfully, feloniously and treasonably lead a group of Filipinos who were enemy undercovers to the house of Susana Singson; that upon arrival at the said house, said accused and his companions did catch Hospicio Singson, brother of Susano Singson and who was a guerrilla suspect; that the herein accused and his companions tied and tortured Hospicio Singson and brought him to the Japanese Kempei Tai Headquarters in the City of Cebu and that from that date Hospicio Singson was not seen again nor heard from, nor are his whereabouts known;

'14. That on or about January 25, 1945, in Minglanilla, Province of Cebu, Philippines, said accused who was a Japanese spy, for the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead and accompany five other Filipino undercover and did arrest Anacleto Eben, that the herein accused and his companions did take Anacleto to the Japanese Kempei Tai Headquarters where she was questioned on the whereabouts and activities of her daughter who was a member of the Women's Auxiliary Service (Guerrilla); that during the questioning Anacleto Eben was tied, hung, boxed, beaten and tortured, and while said accused was questioning her, he did choke and threaten to kill her with a gun.

The trial court found the defendant guilty of all the counts and sentenced him to death and to pay a fine P20,000 and costs. It said that "the prosecution instantiated the overt acts specified in counts Nos. 2, 3, 4, 6, 7, 9, 11, 12 and 13 by two competent witnesses, and the rest of the fourteen, and all of them are likewise proven through the confession of the defendant in open Court."

The trial was not conducted in strict accordance with law and the rules of practice and procedure, giving rise to confusions, misunderstanding, and non-presentation of evidence on some charges. The court below itself was led into serious errors.

After several witnesses for the prosecution had given testimony, defendant's counsel informed the court that his client, upon the latter's insistence, was willing "to enter a plea of guilty and ask whatever consideration or mercy the court will give him." Upon being asked whether or not he ratified the statement of his counsel, the defendant answered yes. He also answered yes to the question whether he was aware of the consequences of a plea of guilty (t.s.n., pp. 50-51). However, when the information was read over again, the accused said that he admitted some of the charges but not all (t. s. n., pp. 51-52). Specifically, he said he pleaded guilty to counts 2, 3, 4, 7, 12, 13 and 14 and not guilty to counts 1, 5, 6, 8, 9, 10 and 11 (t. s. n. pp. 54-55).

The prosecution then resumed the presentation of evidence and called witnesses to substantiate the charges to which a plea of not guilty was entered. But after three new witnesses had taken the stand, and while the third of them was testifying, counsel for the accused reiterated "his petition at the instance of the accused himself", that the latter be allowed to change his plea of not guilty to that of guilty to all the 14 counts. Informed of his attorney's statement, the defendant said "I am pleading guilty. I accept my guilt." (t. s. n., pp. 71-73).

As counsel insisted on putting his client on the stand the prosecution went ahead with its witnesses who testified on counts 6, 9, 12 and 13. Then it rested and the accused testified on his own behalf.

According to defense counsel the purpose of the defendant's testimony was not to deny his guilt for the crime of treason; it was, he added, to "clarify certain points which he (accused) denied when he was informed again of the contents of the information filed against him."

After having been sworn the defendant again said that some of the charges filed against him were not true; that in some of those cases there were other persons responsible for the commission of the crime, as in the Basac massacre (count 9). Referring to this count 9, he said that it was Captain Suriyama who ordered that those people who were tortured because of their refusal to give information, be taken to Imomaki, Isisaka and Muraki, after which they were marched off to Lensa by Japanese soldiers. There were about 20 prisoners, he said. Upon arriving at Lensa they were shot by Muraki and Isisaka in the presence of Captain Suriyama. He admitted having gone with these people and seen Isisaka and Muraka shoot the prisoners with luggers. He said about 700 civilians were herded on that particular date and that it was among these 700 that 20 were executed.

In answer to a question of Judge Saguin if he wanted to make any statement regarding counts 3 and 4, to which he had pleaded guilty, the defendant answered in the affirmative. He said that when they apprehended Pablo Seno

and Anunciacion Seno, he and Pedro Labares stood guard under the house while the Japanese went up. When the Japanese came down they brought the Senos. From there they returned to the Normal School where the prisoners were confined. That was, he said, all he could say.

As to Del Castillo (count 11), he said he was not the one who killed him but two Japanese by the names of Isituca and Pujisaki; that it was Pedro Labares and not he who reported Del Castillo to the Japanese; that he accompanied Labares because the Japanese ordered him to do so. He said that his sole connection with the Japanese was as a driver of Watanabi. He said that after he was captured as a guerrilla he was told that he should drive their car or else he would be killed (t. s. n., pp. 98-102).

Regarding count 2, he said it was Japanese accompanied by some Filipinos, one of whom was Antonio Tancingco, who arrested Florencio Perez. Reminded that he had pleaded guilty to this count, the accused stated that he was groggy because right in the court room, after the session, he had been struck in the head and that when he came back to court he was still confused. Nevertheless, he said, having accepted his guilt he wanted to abide by his plea fully realizing its consequences, now that his mind was already clear. (t. s. n., pp. 102-104).

In answer to a direct question of Judge Borromeo, the accused answered in the affirmative the question whether he admitted the facts and pleaded guilty to counts 2, 3, 4, 7, 12, 13 and 14 (t. s. n., p. 104). But when these last counts were read over again and he was told to plea after each count was read, he pleaded guilty to counts 2 and 3, and not guilty to counts 4, 7, 12, 13 and 14 (t. s. n., p. 105).

With specific reference to count 7, he said: "When we apprehended Suico and Ouano, they were brought to the pier before Yusidati, a sergeant of the Japanese Military Police here. At night time, Ouano, his nephew and Patricio were taken by four Japanese by the names of Muraki, Isisaka, Pujisaki and Koydi and other members of the Japanese Military Police, We started from the pier about 9:00 o'clock of that evening and they took a truck and proceeded to Mandawe. Upon reaching Mandawe, right in the house of Leonardo Ouano, there they were investigated by Muraki. In the affidavit, it says that Patricio Suico was burned and that is not true. The truth is that, during that night, those three were brought back here to the pier, and from that time on Ouano and Suico were never heard by me any more." He admitted that he took part in the apprehension of these persons but said that he was ordered to do so by Watanabi (t. s. n., pp. 106-107).

With respect to count No. 12, he said that those who took part in the apprehension of Hospicio Singson was Maximo Bati alias Pacho (t. s. n., p. 108).

With regard to count 13, he said he had nothing to say and renewed his plea of guilty to this charge (t. s. n., pp. 108-109).

As to those counts which the defendant denied or qualified, his plea does not possess the requirement of a plea and should have been rejected and the parties directed to introduce their evidence. A plea of guilty must be unconditional save to explain mitigating circumstances. The defendant's responsibility on these counts therefore have to be gauged by the prosecution's evidence and defendant's admissions.

From the defendant's changing attitude, changing pleas and statements, only counts 2, 3 and 13 survive the test of having been confessed in open court. The prosecution's evidence and defendant's testimony substantiate counts 4, 6, 9 and 11. On count 7, only one witness testified; on the rest none whatever.

Count 4. Maximina Basubas, 46 years old, testified that on December 2, 1944, the accused apprehended her son Rufino Seno for being a guerrilla; that Rufino Seno was tied, beaten, tortured, and taken to and detained at the Japanese Kempei Tai headquarters in Cebu City; that since then he heard nothing more of him; that with the accused were other Filipinos and Japanese.

Jose Cui, 24 years old, testified that on December 2, 1944, Antonio Racaza "raided our place". Racaza was accompanied by other persons, Japanese and Filipinos; that he (witness) was arrested with four others, among them Apolonio Ceniza and Rufino Seno. They were taken to the U.P. building in the city of Cebu, near which he was punished personally by Antonio Racaza, hung by the hands tied at his back and whipped with a golf club (witness showed the scar). He said that he was accused of being a guerrilla; that Rufino Seno was brought with him and others in the afternoon of December 3 to the Kempei Tai; that a Japanese took Rufino Seno out and he had not seen Rufino since.

Count 6. Silvina Cabellon, 22 years old, single, testified that in August 1944, Antonio Racaza and others came to their house looking for somebody—her brother who was a soldier. Among the men who came she recognized only the accused. In her house the accused and others undressed her. She prayed to God and pleaded that she be not undressed. They succeeded in their purpose however and her naked body was exposed. They pushed her mother when the latter was not able to protect any arm. From that place they took her to Buakaw where they went up a house apparently in search of something. When they did not find anything they moved to another house. In the latter house they caught a man, took him behind a tree and there killed him. Then a soldier, Teofilo Navarro, who had killed that person, approached her and said, "Well, how do you like to come along with me behind the cassava trees?" She refused and then they proceeded to the provincial road with her; she was crying. At Basac, near a big house owned by Filemon Rago, Antonio Racaza told her, "Come along with me." Once in that place he hugged her and kissed her and told her to take off her panties. Then she said her devotion to the Virgin Mary praying that she might be delivered from her aggressors. Luckily, the accused did not succeed. Afterward one companion of the accused Jose Abascas, slammed her against a coconut tree and embraced her. Later, a truck passed by and she was told to get on. Then Racaza approached the Japanese and later she was released.

Raymunda Sabillano, 42 years old, testified that on August 19, 1944 Antonio Racaza came to her house at night (it was Saturday) looking for her son who was a guerrilla soldier. He had many companions among whom were two Japanese. They were armed but Racaza was not. As she was not able to produce any rifle when requested to do so, they undressed her daughter, Silvina Cabellon, and Antonio Racaza told witness to step out. When she heard her daughter cry out she tried to get inside but they blocked her way. Afterward they let her daughter dress up again and took her way. About 3 o'clock in the morning the girl returned, Her house is in Pardo, Cebu City.

Count 9. Hilaria Cabañezas, 56 years old, testified that on the 29th of July, 1944, her house was surrounded and she and the inhabitants of the house were apprehended and taken to a place near the Normal School in Basac. Those who arrested them were, among others, Antonio Racaza, Carding and Loloy. These three tied them and she pleaded for mercy. From her house she could see many people tortured in the Basac school building. There must have been around 1,000 people there.

Pastor Abadiano, 45 years old, testified that on the 29th of July, 1944, the accused and his several companions with Japanese came up to his house and maltreated him, trampling on his body. When he could not endure the punishment any longer they asked him where his nephew Inocencio was. Inocencio was a guerrilla soldier. Among those who were tortured and killed were Sario Abadiano, Tomas Bacalla, Quirico Abellanosa and Lope Bacon. The witness was allowed to go when they found the brother of Inocencio. Vicente Abadiano if as one of those who survived the torture.

Tereso Sanchez, 25 years old, testified that he knew Antonio Racaza. On July 29, 1944, he was arrested by Filipino spies. About 1,000 were apprehended and taken to the school building in Basac. They were taken there to be screened for guerrillas. Among those who tortured civilians was Antonio Racaza. He saw Racaza hang one of the persons arrested, that was Jose de la Cerna. Antonio Racaza was armed with a revolver. After he was tortured he was taken to the mountain of Lensa. With him were about 24; all of them were tied. When they arrived at the

mountain, the Japanese and their Filipino cohorts told them to sit down. The prisoners were taken by the Japanese to another place where they were shot. The witness was shot by Filemon Delgado and was hit in the neck, the bullet coming out of his left eye. He was left for dead and that was how he lived to tell the story. Before he was shot, Nazario Abadiano was shot by Antonio Racaza and killed immediately.

Vicente Abadiano, 19 years old, testified that he was apprehended on July 29 and brought to a place where his brother Nazario was killed. His brother was apprehended on July 29 and brought up where he was killed by Antonio Racaza. He actually saw Racaza shoot his brother; it was in Lensa, in the mountain. His brother had his back on Racaza when Racaza shot him in the buttock. He saw Tereso Sanchez as one of the victims in that massacre. He also witnessed the mass torture in the school building before the victims were marched up to the mountains.

Jose de la Cerna, 34 years old, testified that on July 29, he was one of the people arrested in Basac and concentrated in the school building. Those who made the arrests were Japanese and Filipino undercover. Among these were Antonio Racaza, Antonio Tancinco, Roberto Bautista alias Eriberto Ocampo, Filemon Delgado, Margarito Campos and Jesus Campos. Antonio Racaza was one of those who beat him (witness) with an iron bar, kicked him, boxed him and inserted a galvanized iron tube into his throat through which sand was poured. He was choked and was unconscious for several minutes. When he came to, they questioned him as to the whereabouts of his brother who was with Governor Abellanosa. Then he was hung from two to five o'clock in the afternoon. The cause of the massacre and mass torture in Basac was that about three or four days before July 29, the guerrillas attacked a train loaded with naval officers on Mambaling bridge in Dulho, Cebu.

Count 11. Hipolita Cabahug, 18 years old, widow, testified that her husband was captured by Racaza and his companions on November 16, 1944, in the municipality of Mandawe, province of Cebu. On that date Antonio Racaza came up to her house leaving his companions below. He threatened the people in the house with his sword, told them not to move, and asked the witness whether her husband was a soldier. Because her answers were not satisfactory, he arrested her and her husband and took both of them to the Kempei Tai headquarters where Antonio Racaza hung her husband. While her husband was hanging in midair they beat him with a big bat. Then and they lowered her husband and Racaza hung her instead. While she was dangling in the air they stepped on her husband's prostrate body trying to force him to admit that he was a guerrilla. They put on his neck a piece of lumber and stepped on it while a man sat astride her husband's abdomen. Afterward they hung her husband again. After he was released this time he was taken across a creek; that was the last she saw of him. The cadaver was found by her father-in-law, Gregorio del Castillo. Her brother-in-law, Victorino del Castillo, was taken the next morning and brought to the same place. They also hung Victorino and beat him while hanging. He died before his body was brought down.

Gregorio del Castillo, 50 years old, testified that his sons are dead because they were arrested by Antonio Racaza in their place. It was November 16, at about 9 o'clock in the evening. Hipolita Cabahug is his daughter-in-law living with him. He was present when his sons were arrested. He himself was about to be arrested with his sons. Hipolita was told to come along. He found the next day the bodies of his sons in a creek. One of them was naked with several wounds and the neck was almost severed from the body. Rope was still tied around his hands.

To sum up, we find the defendant guilty of counts 2, 3 and 13 by the defendant's plea of guilty, and of counts 4, 6, 9 and 11 by the testimony of two or more eye-witnesses to the overt acts. These admitted and proven charges, in the opinion of the majority of the court, lead to the same result reached by the trial court.

The trial court found the aggravating circumstances of evident premeditation, superior strength, treachery and employment of means for adding ignominy to the natural effects of the crime.

The first three circumstances are, by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty. Adherence and the giving of aid and comfort to the enemy is, in many cases, as in this, a long, continued process requiring, for the successful consummation of the traitor's purpose, fixed, reflective and persistent determination and planning.

So are superior strength and treachery included in the crime of treason. Treachery is merged in superior strength; and to overcome the opposition and wipe out resistance movements, which was Racaza's purpose in collaborating with the enemy, the use of a large force and equipment was necessary. The enemy to whom the accused adhered was itself the personification of brute, superior force, and it was this superior force which enabled him to overrun the country and for a time subdue its inhabitants by his brutal rule. The law does not expect the enemy and its adherents to meet their foes only on even terms according to the romantic, traditions of chivalry.

But the law does abhor inhumanity and the abuse of strength to commit acts unnecessary to the commission of treason. There is no incompatibility between treason and decent, human treatment of prisoners. Rapes, wanton robbery for personal gain, and other forms of cruelties are condemned and their perpetration will be regarded as aggravating circumstances of ignominy and of deliberately augmenting unnecessary wrongs to the main criminal objective under paragraphs 17 and 21 of article 14 of the Revised Penal Code. The atrocities above mentioned, of which the appellant is beyond doubt guilty, fall within the terms of the above paragraphs.

For the very reason that premeditation, treachery and use of superior strength are absorbed in treason characterized by killings, the killings themselves and other accompanying crimes should be taken into consideration for measuring the degree and gravity of criminal responsibility irrespective of the manner in which they were committed. Were not this the rule, treason, the highest crime known to law, would confer on its perpetrators advantages that are denied simple murderers. To avoid such incongruity and injustice, the penalty in treason will be adapted, within the range provided in the Revised Penal Code, to the danger and harm to which the culprit has exposed his country and his people and to the wrongs and injuries that resulted from his deeds. The letter and pervading spirit of the Revised Penal Code adjust penalties to the perversity of the mind that conceived and carried the crime into execution, Where the system of graduating penalties by the prescribed standards is inapplicable, as in the case of homicides connected with treason, the method of analogies to fit the punishment with the enormity of the offense may be summoned to the service of justice and consistency and in furtherance of the law's aims.

The judgment appealed from is correct in its result and the same should be affirmed with costs. However, as four justices dissent from the imposition of the death penalty, the appealed sentence is modified and reduced to reclusion perpetua and legal accessories, a fine of P20,000 and costs.

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

CONCURRING

PERFECTO, J.:

"A big crowd gathered at the plaza of the Cebu capitol during the three days of trial and right there the public showed visible indignation with an eager desire that the collaborators be dealt with by the court of justice without mercy."

The above quotation comes from the appealed decision, finding appellant guilty of the crime of treason and sentencing him to death and to pay a fine of P20,000 and the costs.

There is no question as to appellant's guilt. The evidence on record is conclusive, and defendant himself pleaded guilty to several of the counts of the information. We find that he committed the acts alleged in the information. The only question raised in this appeal refers to the penalty imposed by the People's Court.

Counsel de officio makes two assignments of error: First, that the lower court erred in not considering the plea of guilty entered by the defendant as a mitigating circumstance, and second, in considering evident premeditation, taking advantage of superior strength, treachery and employing means to add ignominy to the natural effects of his acts, as aggravating circumstances, and prays that the appealed judgment be modified to any degree within the limits of reclusion temporal and to a fine of P10,000.

The prosecution maintains that the plea of guilty cannot be considered as a mitigating circumstance in favor of appellant because it had been entered after seven witnesses for the prosecution had already testified. But counsel de officio points out that the plea should be considered as a mitigating circumstance, although entered after some witnesses for the prosecution had testified, because of the provisions of paragraph 10 of Article 13 of the Revised Penal Code, which provides that "any other circumstance of a similar nature and analogous to those above-mentioned," should be considered, referring to the specified mitigating circumstances. The similarity or analogy between a plea of guilty before any evidence of the prosecution is presented and a plea of guilty entered after some of the witnesses for the prosecution had testified cannot seriously be disputed. The circumstances in question should be taken into consideration in the judgment.

The appealed decision states that the aggravating circumstances in question concurred "in most of the overt acts committed by the defendant," but without specifying the specific acts constituting said circumstances. The prosecution's brief supplies the needed specifications.

The undressing of two women and attempted rape of one of them are pointed out as adding ignominy to the crime. According to the evidence, Silvina Cabellon was the only one undressed. The attempted rape on the person of Silvina Cabellon may be considered as ground for the prosecution of a different offense, but cannot be considered as aggravating treason, a crime political in nature. In the attempted rape there was nothing political and it had nothing to do with defendant's adherence and aid to the enemy.

Nighttime, superior strength, aid of armed forces, treachery, and evident premeditation should be considered as essential elements of the treason committed by appellant. We take judicial notice of the fact that said elements have always or almost always accompanied the procedures undertaken by the Japanese for the suppression of guerrillas. The accused, having adhered to the enemy and allowed himself to be a tool in his political objective of suppressing the underground movement, it was natural for him to follow the same tactics of his masters.

The medium penalty provided by Article 114 of the Revised Penal Code should be imposed upon appellant, as no aggravating nor mitigating circumstances can affect his legal responsibility. Although his plea of guilty should be considered in his favor, it should be considered only with regard to the counts to which he pleaded guilty, and there are other counts in the information to which he did not plead guilty and which are fully supported by the evidence on record.

A majority voted to affirm the appealed decision but in view of the contrary opinion of the writer, the principal penalty is modified to reclusion perpetua, and affirmed in all other respects.

We cannot vote for the affirmance of the appealed penalty, not only for the reasons as above stated, but for the further reason that it is not beyond the realm of probability that the trial court could not have been completely free from the psychological effect of the mob frenzy described in the a quo decision the pertinent paragraph of which is quoted at the beginning of this opinion.

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