

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CUCUFATE ADLAWAN, DEFENDANT AND APPELLANT.

G.R. No. L-456. March 29, 1949

Ponente: REYES, J.

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REYES, J.:

We are called upon in this case to review the sentence of death and a fine of P20,000 imposed by the People's Court upon the appellant, who was charged with treason but convicted of what the said court terms "complex crime of treason with murder, robbery, and rape."

The conviction is based on defendant's plea of guilty to a complaint which, as amended, contains the following counts:

"1. That on or about and during the period comprised between March, 1943 and May 3, 1945, in the city of Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan adhering to the enemy, the Empire of Japan, and its. Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, did, then and there, wilfully, unlawfully, feloniously and treasonably join and become a member of the so-called "Philippine Constabulary," an enemy-sponsored military organization, knowing fully well that the aims and purposes of said organization are, among others, to extend every aid and cooperation with said enemy in the prosecution of war efforts against the United States of America and the Commonwealth of the Philippines, and during the period aforesaid, as a member of said enemy-sponsored Philippine Constabulary, the said accused, further adhering to the enemy, with treasonable intent to give, as he did give aid and comfort to them did go out on numerous patrols in company with Japanese soldiers in search of guerrillas and other elements resisting said enemy in the Philippines.

"2. That on or about and during the period comprised between December 1, 1943 and May 3, 1945, in the City of Cebu, Philippines and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire, of Japan and the Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, in violation of his allegiance and fidelity to the United States of America and the Commonwealth of the Philippines, did, then and there, wilfully, unlawfully, feloniously and treasonably join the Japanese Military Police otherwise known as the Kempei-Tai under the command of a T. Yushida, performing the functions and duties of an informer, spy and chief undercover man of the Cebu district of said military police and did, during the period aforesaid, in various places in the Province of Cebu, Philippines and within the jurisdiction of this Court, in furtherance of his adherence to said enemy, with "treasonable intent to give, as he did give aid and comfort to them, did, in company with other members of the Japanese Military Police, go out on patrols to apprehend guerrillas as they did apprehend, capture and torture guerrillas, loot civilians and otherwise commit acts of atrocities in furtherance of the hostile designs of the enemy and to weaken the cause of the United States of America in the Philippines.

"3. That sometime in June, 1944, in various places in the province of Bohol, Philippines and within the jurisdiction of this Court, the accused Cucufate Adlawan, adhering to the enemy, the Empire of Japan and the Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, in his capacity as a member of the enemy-sponsored constabulary attached to the Japanese Military Police and a

guide of the Japanese Army, jointly and in cooperation with soldiers of the Japanese Imperial Army, did, then and there, wilfully, unlawfully, feloniously and treasonably conduct and carry out a so-called mopping up operation for the purpose of suppressing guerrillas and other elements engaged in resistance against said enemy, and as a result thereof, ten guerrillas were killed.

"4. That on or about and during the period comprised between September, 1944 and November, 1944, in the City of Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and the Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, did, then and there, wilfully, unlawfully, feloniously and treasonably help in the construction of air raid shelters for the protection of Japanese soldiers against Allied air raids and did help in the acquisition of, as he did acquire food supplies for the enemy in preparation against the expected landing of American forces.

"5. That on or about August 18, 1944, in the municipality of Minglanilla, Province of Cebu, Philippines, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and the Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to the said enemy, in company with Japanese Military soldiers of the Japanese Military Police and other Filipino enemy spies, did, then and there wilfully, unlawfully, feloniously and treasonably arrest, maltreat and otherwise torture Primitivo Cansancio in an effort to force the latter to disclose the whereabouts of Lt. Antonio Karedo, a guerrilla officer, and to cause said Primitivo Cansancio to confess his guerrilla activities.

"6. That on or about December 7, 1944, in the municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and the Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, in company with a patrol of Japanese soldiers of the Japanese Military Police and other enemy spies and informers, did, then and there, wilfully, unlawfully, feloniously and treasonably apprehend and arrest Francisco Larrobia and did kick said Francisco Larrobia, strike him on the face and head with a pistol and subsequently bayoneting and killing said Francisco Larrobia on the suspicion that he was a guerrilla.

"7. That on or about September 6, 1944, in the municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this court, the accused, Cucufate Adlawan, adhering to the enemy the Empire of Japan and its Imperial Japanese Forces, and the treasonable intent to give, as he did give aid and comfort to the said enemy, in his capacity as chief undercover man for the Japanese Military Police, Cebu District, in company with Japanese soldiers and Santiago Bernaba, another Japanese spy, did, then and there, wilfully, unlawfully, feloniously and treasonably arrest Numeriano Bellesa on suspicion of being a guerrilla, thereafter taking said Numeriano Bellesa to Inayawan, Cebu, City, and thereat herein accused did investigate said Numeriano Bellesa about the latter's firearms in order to help said enemy in gathering up arms in furtherance of their hostile designs, and did strike said Numeriano Bellesa on the face and body and otherwise maltreat him in the course of said investigation.

"8. That on or about August 18, 1944, in sitio Tubod, municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy of the Japanese Military Police, Cebu District, and in company with Japanese soldiers of the Japanese Military Police, did, then and there, wilfully, unlawfully, feloniously and treasonably apprehend and arrest Cipriano Trazona, and did investigate the latter as to the whereabouts of guerrillas especially Nicolas Adlawan, food procurement Officer of the guerrillas, and upon his denial of knowledge of said whereabouts, herein accused did torture said Cipriano Trazona by hanging the latter by the arms so that his body dangled down, striking his stomach, and head with an empty bottle, inflicting wounds on his head and finally, striking his mouth with a flashlight splitting said Cipriano Trazona's lower lips.

"9. That on or about October 2, 1944, in the municipality of Talisay, Province of Cebu, Philippines and within the jurisdiction of this court, the accused, Cucufate Adlawan, adhering to the enemy, the Imperial Japanese Government and her armed forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy in the employ of the Japanese Military Police, Cebu District, in company with other informers said Military Police, did, then and there, apprehend and arrest Albina Alpez and accused herein did wilfully and treasonably investigate said Albina Alpez as to the whereabouts of her husband, Ponciano Alpez, a guerrilla, attached to the 2nd Division, Cebu Area Command, and when said Albina Alpez denied knowledge of her aforesaid husband's whereabouts, herein accused did slap, kick and throw her to the ground, hang her by the arms, strike her on the breast with his revolver, threaten her with a dagger pointed at her throat and otherwise maltreat and torture said Albina Alpez.

"10. That on or about December 25, 1944, in the municipality of Minglanilla, Province of Cebu, Philippines, and within the jurisdiction of this court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, in company with five Japanese soldiers and fourteen agents of the Japanese Military Police, otherwise known as the Kempei-Tai, and in his capacity as chief undercover man, informer and spy of the Japanese Military Police for the Cebu District did, then and there, wilfully, unlawfully, feloniously and treasonably apprehend and arrest Victoriano Primacio and one Juan Unadia on suspicion of being guerrillas and said accused did box, beat, slap and strike said Victoriano Primacio and Juan Unadia with his rifle several times, and did turn over, said Victoriano Primacio and Juan Unadia to the Japanese Military Police on the ground that said persons were guerrillas and, as a result of which said Victoriano Primacio and Juan Unadia have not been heard of ever since then.

"11. That on or about January 27, 1944, at sitio Tacba, Cebu City, Philippines, and within the jurisdiction of this court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan, and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy of the Japanese Military Police, Cebu District, did, then and there, wilfully, unlawfully, feloniously and treasonably shoot and kill Lt. Miguel Dacallos, a USAFFE officer, in furtherance of the hostile designs of said enemy.

"12. That on or about September 6, 1944, at sitio San Isidro, municipality of Talisay, Province of Cebu, Philippines, and within the jurisdiction of this Court, the accused Cucufate Adlawan, in furtherance of his adherence, to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy of the Japanese Military Police, Cebu District, and in company with Japanese soldiers, did, then and there, wilfully, unlawfully, feloniously and treasonably arrest one Jose Murillo on suspicion that the latter was a guerrilla.

"13. That on or about November 13, 1944 in the city of, Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, did, then and there, wilfully, unlawfully, feloniously and treasonably apprehend and arrest Basilia Arong and did take the latter to headquarters of the Japanese Military Police and thereat, herein accused did question and investigate said Basilia Arong as to the whereabouts of her husband, Pedro C. Arong and one Bohol, suspected by the enemy of guerrilla activities, and when said Basilia Arong denied knowledge of their whereabouts, herein accused did hang said Basilia Arong by her arms, strip her of her clothing, severely beat her and otherwise torture her, finally forcing said Basilia Arong to sign a letter addressed to her aforesaid husband, Pedro Arong, asking the latter to report to the Japanese Kempei-Tai headquarters and when said Pedro C. Arong did report to said headquarters in compliance of said letter, he has not been seen ever since.

"14. That on or about August 10, 1944, at sitio Gapas, Gapas Island, in the Province of Cebu, Philippines and

within the jurisdiction of this Court, the accused Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy of the Japanese Military Police of Cebu District and in company with Japanese Kempei-Tai informers and spies, did, then and there, wilfully unlawfully, feloniously and treasonably apprehend and arrest Pedro Cabanada and did question the latter as to the whereabouts of Alejandrino Ciriaco, a guerilla Intelligence operative, and, in the course of said investigation, the accused did hang said Pedro Cabanada by his arms, strike him with clubs, and an iron pipe thereby inflicting several wounds on his head for the latter's refusal to divulge said guerrilla whereabouts.

"15. That on or about June 2, 1944, in sitio Basac, Mambaling, in the city of Cebu, Philippines and within the jurisdiction of this court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy in the employ of the Japanese Military Police of the Cebu, District, in company with two Japanese soldiers and three other Japanese informers and spies, did, then and there, wilfully, unlawfully, feloniously and treasonably apprehend and arrest Marciano Alejandrino, Carlos Numera, and Jose Rada, killing said Marciano Alejandrino, and Carlos Numera, and wounding said Jose Rada on the charge that said persons had contact with guerrillas.

"16. That on or about October 8, 1943, in the municipality of Tisa, Province of Cebu, Philippines, and within the jurisdiction of this court, the accused Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as an informer and spy of said enemy, did, then and there, wilfully, unlawfully, feloniously and treasonably shoot and kill Bernado Laborte, a guerrilla soldier for the latter's guerrilla activities and resistance to said enemy.

"17. That sometime in the months of April, 1944, in different places in the Province of Cebu, Philippines, particularly in the area comprised between Tubano and Minglanilla, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan, and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, as a member of the enemy-sponsored constabulary and as informer and spy of the Japanese Army, did, then and there, wilfully, unlawfully, feloniously and treasonably join and take part in the general mopping up operation conducted by the Japanese Army under the command of Sergeant T. YUSHIDA, particularly in the areas of Tubonok to Minglanilla, for the purpose of apprehending guerrillas and other elements engaged in resisting said enemy.

"18. That on or about August 19, 1944, in the municipality of Cordoba, Province of Cebu, Philippines and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief informer and spy under the employ of the Japanese Military Police, Cebu District, in company with the members of said Japanese Military Police under the command of Sergeant T. Yushida of the Japanese Army, did, then and there, wilfully, unlawfully, feloniously and treasonably arrest, maltreat and torture Martin Francisco and did expose the latter's wife and some Filipino girls naked, raping them, and, did steal and carry away the following articles belonging to said Martin Francisco:

2 diamond, rings, a ring and one wrist watch

P500 in Cebu Emergency and Currency Notes

P1,858 in Japanese Military Notes

3 pairs white pants

2 out shirts

2 pairs shoes

1 buntal hat

1 wedding ring

on suspicion that said Martin Francisco was a guerrilla.

"19. That sometime in 1944, at sitio Cabadiangan, Province of Cebu, Philippines, and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire, of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting as an informer to the enemy and in company with soldiers of the Japanese Army, did then and there wilfully, unlawfully, feloniously and treasonably conduct and carry out a raid for the purpose of apprehending guerrillas and, as a result of which, Governor Hilario Abellana of Cebu then in hiding from said enemy, was captured.

"20. That on or about February 12, 1944, in the city of Cebu, Philippines and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief undercover man, informer and spy of the Japanese Military Police, Cebu District, did, then and there, wilfully, unlawfully, feloniously and treasonably beat and strike Vicente Padilla with a baseball bat, hang said Vicente Padilla by the arms, and otherwise torture him in an effort to extract confession of the latter's connection with guerrillas.

"21. That on or about July 19, 1944, at Cebu City, Philippines and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting as chief informer and spy of the Japanese Military Police Cebu District, in company with Japanese soldiers and other agents of the Japanese Military Police otherwise known as the Kempei-Tai, did, then and there, unlawfully, feloniously and treasonably arrest Bartolome Rosal, Antonio de la Serna, and Braulio Padilla and did tie up the hands of said persons, severely inflicting wounds on them, on suspicion of being guerrillas and as consequence of said maltreatment and torture, Braulio Padilla died a few days thereafter.

"23. That on or about December 20, 1944, in the city of Cebu, Philippines and within the jurisdiction of this Court, the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan, and its Imperial Japanese Forces, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as chief informer, spy and undercover man of the Japanese Military Police of the Cebu District, did, then and there, wilfully, unlawfully, feloniously and treasonably arrest at the point of his gun, Paulita Delgado and 'John Doe' her husband, on suspicion that said persons were cooperating and helping the guerrillas and did thereafter bring said Paulita Delgado and her husband to the Kempei-Tai headquarters and once thereat, herein accused did torture them by hanging them by their arms and did otherwise maltreat them.

"24. That sometime in September, 1944, at Pasil Market, Cebu City, Philippines and within the jurisdiction of this Court the accused, Cucufate Adlawan, adhering to the enemy, the Empire of Japan and its Imperial Japanese Army, with treasonable intent to give, as he did give aid and comfort to said enemy, acting in his capacity as member of the enemy-sponsored Philippine Constabulary attached to the Japanese Military Police, did, then and there, wilfully, unlawfully, feloniously and treasonably kill Dionisio Abatol, a guerrilla, for his activities and resistance to the said enemy."

By his plea of guilty appellant admits having committed the treasonous acts alleged in the information. But he now pleads for a modification of the sentence, contending that the lower court erred:

"1. In not taking into consideration, as mitigating circumstances, the following facts: (1) voluntary surrender; (2) the fact that the accused has been and is being utilized as witness by the CIC in cases against Japanese soldiers under trial by the military commission; and (3) the fact that the accused helped and saved the lives of many civilians and soldiers from death in the hands of the Japanese;

"2. In making as a matter of set-off the plea of guilty entered by the defendant-appellant on the strength of the assurance that no death penalty would be imposed upon him;

"3. In considering, as aggravating circumstances, treachery, abuse of superiority, and unnecessary cruelty;

"4. In holding that the crime committed by the accused is a complex crime of treason with murder, rape and robbery;

"5. In sentencing the accused to death and to pay a fine of P20,000."

Taking up first the fourth alleged error, we find merit in the contention that appellant should not have been convicted of the so-called "complex crime of treason with murder, robbery, and rape." The killings, robbery, and raping mentioned in the information are therein alleged not as specific offenses but as mere elements of the crime of treason for which the accused is being prosecuted. Being merged in and identified with the general charge, they can not be used in combination with treason to increase the penalty under article 48 of the Revised Penal Code. (People vs. Prieto,[1] L-399, January 29, 1948.) Appellant should, therefore, be held guilty of treason only.

Appellant's claim of voluntary surrender has not been satisfactorily proved. On the other hand, his admission that he was "taken" from the house of his mother by an agent of the CIC, is proof that he was in fact arrested. Where there has been actual arrest the mitigating circumstance of voluntary surrender cannot be invoked (People vs. Conwi,[2] 40 Off. Gaz. [14th Supp.], No. 23, p. 166; People vs. Siojo, 61 Phil. 307.)

The meritorious acts which appellant claims to have performed in aid of the CIC and his countrymen have not been established by satisfactory proof and may not in any event be considered as mitigating circumstances under the Revised Penal Code.

There is nothing to the claim that appellant entered a plea of guilty on the assurance that he would not be sentenced to death. The claim is not supported by proof. On the other hand, it is denied by both the prosecution and the trial court, the latter stating in its order denying appellant's motion for reconsideration that "No responsible judge can or would advance his opinion in connection with the decision to be rendered in any case before he has properly deliberated on the merits of the same."

There is, however, merit in the contention that the aggravating circumstances of treachery and abuse of superior strength should not have been considered. These circumstances are "by their nature, inherent in the offense of treason and may not be taken to aggravate the penalty." (People vs. Racaza, 82 Phil., 623.) But the facts alleged in the information show that appellant, in committing the crime of treason, deliberately augmented the wrong by being unnecessarily cruel to captured guerrilla suspects, subjecting them to barbarous forms of torture and finally putting them to death, and, as appears in count No. 18, he also chose to add ignominy to his treasonous act in arresting and maltreating a guerrilla suspect by stripping his wife of her clothes and then abusing her together with other Filipino girls. Clearly shown as they are by the allegations of the complaint and deemed admitted by appellant's plea of guilty, these two aggravating circumstances of unnecessary cruelty and ignominy may be appreciated against him. As this Court said in the case of People vs. Racaza, supra.

"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 deed. 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 penalty prescribed for the crime of treason reclusion temporal to death and a fine of not to exceed P20,000. Giving the appellant the benefit of the mitigating circumstance of voluntary confession of guilt, but appreciating against him the aggravating circumstances of ignominy and unnecessary cruelty, the said penalty should be imposed in its maximum. But since five members of this Court are opposed to the imposition of the death penalty in this case, the appellant can only be sentenced to reclusion perpetua and a fine of P20,000.

Wherefore, the judgment below is modified in the sense that the appellant is declared guilty of treason and sentenced to reclusion perpetua and to pay a fine of P20,000, with costs in this instance de oficio.

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

[1] 80 Phil., 138.

[2] 71 Phil., 595.

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