

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTIAGO FAMILAR @ MORI CUI, DEFENDANT-APPELLANT.

G.R. No. L-431. April 27, 1949

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal from a decision of the People's Court convicting Santiago Familiar, alias Mori Cui, of the supposed complex crime of treason with murder and robbery, aggravated by the circumstances of superior strength and cruelty, and sentencing him to suffer the penalty of death, to pay a fine of P20,000 and costs.

Santiago Familiar, a Filipino citizen, who had adopted the alias of Mori Cui shortly after the invasion of the Philippines by the Japanese Forces, enlisted in the Philippine Constabulary under the Occupation Government sometime in 1943. As a member of such organization, he was seen on many occasions wearing its uniform, armed and in the company of Japanese soldiers in quarters and on patrol duty. This has been proven by the testimonies of several witnesses including companions in the force, one of whom was a friend from boyhood. The fact that Familiar used to carry firearms was proven also by his own admission during the trial.

On March 14, 1944, a patrol of Japanese soldiers and Constabularymen known as PC, including Familiar, raided the barrio of Tolenda, municipality of Carcar, Cebu, in search of guerrillistas. Led by a Captain Jaucian, Familiar with other PC went up the house of the Nacua family and demanded information about the guerrilla forces. One of those asked was Joaquin Nacua who answered that he had no such information. Whereupon, Captain Jaucian stabbed him on the breast and pushed him down the stairs into the waiting arms of Familiar and a certain Roman Vilo, who were then ordered by Captain Jaucian to bring Nacua to be "finished" by the Japanese who were waiting below. Familiar and Vilo immediately obeyed and Joaquin Nacua was bayoneted to death by the Japanese with the help of a PC called Manuel Hernandez. The corpse of Nacua was thrown into a cornfield where it was recovered by his widow who had witnessed the entire tragedy.

This event comes under Count No. 2 of the Information filed before the lower court and has been fully proven by the testimonies of the following witnesses:

- 1) Sergio Alcover, a drafted helper of the patrol composed of Japanese soldiers and PC, who knew Familiar as a member of said patrol and had witnessed the raids undertaken by said group;
- 2) Ramon C. Pagusara, a boyhood friend of Familiar and also a drafted helper of the patrol;
- 3) Matilde Tamara de Nacua, widow of the deceased Joaquin Nacua, who was present during the arrest, torture and killing of her husband and who had recovered his corpse from the cornfield.

On March 16, 1944, the same patrol of Japanese and PC, of which Familiar was an "enthusiastic and active" member, raided the barrio of Liboron, municipality of Carcar, Cebu, and arrested one Vicente Solon on suspicion of guerrilla activities. Solon was brought to the Constabulary headquarters where he was severely maltreated while -being grilled. Captain Jaucian, who was conducting the investigation, struck Solon with the rifle butt and

Familiar did the same. Is soon as Solon doubled up from the .blows, Familiar kneed him in the groin. Then, Manuel Hernandez held Solon by the shoulders and pushed him against Familiar who had crouched behind the prisoner, and Solon fell back hitting his head against the floor. Solon, still alive, was handed over by Captain Jaucian to the patrol to be killed, and this was done later in the barrio of Bolinawan.

The foregoing narration constitutes Count No. 1 of the Information and has been indubitably proven by the testimonies of -

- 1) Sergio Alcover (also a witness to Count No. 1);
- 2) Ramon G. Pagusara (also a witness to Count No. 1); and
- 3) Nicolasa Sadticas, widow of the deceased Vicente Solon.

Count No. 3 of the Information was abandoned during the trial, and Count No. h is but a reiteration of the first two counts and no separate evidence was introduced in its support.

The evidence of the defense, in general, is meagre, prejudiced in its source, and in contents, even prejudicial to the cause of defendant-appellant. First of all, the defense counsel offers the theory that mere membership of Familiar in the PC cannot be considered treason. This point, besides having already been settled by this Court, is irrelevant to the case because the charge of treason is based not on the mere membership of Familiar in the PC, but on specific acts committed by him. : The other theory presented by the defense is that if he did commit the acts "imputed to him, Familiar did so under superior orders and duress. Orders from superiors can never justify the acts committed by Familiar. The duress alleged has not at all been proven. On the contrary, the element of volition in the treasonable activity of Familiar has been proven by the evidence of the prosecution and finds partial corroboration in the evidence of the defense.

The witnesses for the defense are all either detained or under charge of treason, and the gist of their testimony consists in denying Familiar's guilt and at the same time conceding that Familiar did take part in the events which constitute the charges against him. Familiar's own testimony is strongly contradictory and incredible. For example, he first categorically denies that he was ever armed with a rifle and then admits that he had shot a man by means of a rifle. He did not present a single witness whose testimony could be considered unpolluted, and he himself admitted on trial that he knew of no reason why the witnesses of the prosecution testified against him. No theory or evidence of the defense can cloud with the slightest doubt the clear guilt of defendant-appellant Santiago Familiar.

The aggravating circumstance of the use of superior strength, being an inseparable ingredient of the crime charged against defendant-appellant cannot be considered as separately aggravating. The aggravating circumstance of excessive cruelty has not been clearly proven in the specific participation by defendant-appellant in the events which constitute the crime of treason committed by him.

In view of all the foregoing, the judgment of the People's Court is modified to the extent that the sentence imposed is life imprisonment; a fine of P20,000.00; indemnity in the amount of P2,000.00 to the heirs of Joaquin Nacua and P2,000 to the heirs of Vicente Solon; and costs.

It is so ordered.

Paras, Feria, Pablo, Bengzon, Briones, Tuason, Montemayor, and Reyes, JJ., concur.

Perfecto, J., We concur, except that the indemnity should be raised to P6,000.00 for each group of heirs in accordance with the decision in *People vs. Amansec*, L-927.

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