

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOSE SEROY, DEFENDANT-APPELLANT.*G.R. No. L-2815. May 31, 1950*

Ponente: BENGZON, J.

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Acting upon this appeal of Jose Seroy, a Filipino citizen, who has been held guilty of treason with murder by the court of first instance of Davao, we find the following facts:

In the evening of May 7, 1945, Tiburcio Acuario, Crispin Cuario, Pedro Cuario and Miguel Umbay evacuated from Bago Doce Mil, Davao, with members of their families, eleven women and children in all. They proceeded to Tagapan, intending to escape the brutality of the Japanese forces who were already killing people right and left in the wake of their inglorious retreat. At midnight, after resting for a while in Caramihan, they resumed their march but unfortunately they stumbled into a Japanese firing line and found themselves surrounded by some Japanese soldiers who stopped them and made questions through appellant Jose Seroy, who was then dressed and armed like a Nipponese warrior. After asking the evacuees whence they had come and whether they had noticed any American soldiers, and other similar questions, Seroy informed the four men (Tiburcio Acuario, et al.) that they needed to obtain passes from "the Captain". Accordingly he and two Japanese soldiers led the four away from the group, but upon reaching a creek about four hundred meters distant, he ordered them to stop and line up. The four did as ordered; but when they became aware that their captors were about to attack them with bayonets, they scampered to safety in the bushes nearby. They did not go far: their families were in the hands of the Japanese: they stayed hidden among the foliage only to witness the terrible mass-killing of their women and children. They saw this appellant and his two Japanese companions leading their wives and children to the same creek and mercilessly bayonetting the whole group to death. They also observed that appellant and his companions covered the bodies of their victims with ramie leaves. The women were: Inocencia Pinsoy, Honoria Alcala, Julia Miones, Hermogena Magsayo and Asuncion Mutia. There were six children.

It happened that one of the women (Inocencia Pinsoy, wife of Miguel Cuario) miraculously survived the massacre and lived to confirm to her husband, several days later when they met again, that appellant was one of the slayers.

It should be stated in this connection that after beholding the bloody spectacle, and afraid they might be hunted, the four husbands sought shelter in the neighboring forest and did not return to their homes until several days had elapsed, when Davao was liberated.

The above story of the slaughter was related before the Hon. Enrique A. Fernandez, Judge of the Court of First Instance of Davao by Tiburcio Acuario, Crispin Cuario and Miguel Umbay. (Pedro Cuario had already died). These unanimously identified the herein appellant as the Filipino turncoat actively helping the Japanese soldiers who had run amuck, to wreak vengeance upon innocent Filipino civilians. The three saw Seroy wounding and killing Perlita Cuario (a child, two years old), while Tiburcio and Crispin saw him attacking Asuncion Mutia and Julia Miones. The three knew him before; had seen him accompanying Japanese soldiers in Tugbok; could not be

mistaken because the moon was shining bright; and they were hiding and observing about twenty meters away.

This moonlight is one of the principal points upon which defense counsel touched. Citing Exhibit 2, he asserted that "the night was very dark and there was no moon at all". According to this Exhibit, the moon rose at 2:11 a.m. that night. Wherefore, inasmuch as Tiburcio Acuario testified that the bayonetting by defendant and the Japanese took place at 3:00 a. m. (pp. 4, 7, s. n.) the argument has no merit. It is true that one of the witnesses said that the moon rose at ten o'clock. But this same witness affirmed that they were arrested by the Japanese at about two o'clock, which implies that the killing took place later, i.e., when the moon had already risen. And Miguel Umbay said that "it was nearly dawn". (p. 45).

It is earnestly contended that the version offered by the eyewitnesses is improbable, and therefore incredible, because according to them, when they escaped the Japanese did not pursue them and did not even fire at them. There is nothing improbable in this. Inasmuch as the four escaped in different directions the appellant and the Japanese probably thought it useless to look for them one by one in the dense foliage; or even dangerous because the pursuers could be ambushed. But more probably the captors considered it unnecessary to catch the men, because they had the women and children, and they had enough.

Why did they not fire on the fleeing captives? Possibly because they did not want the women and children to perceive their danger and run away. Probably because they desired that the people in the vicinity, principally the Americans, may not discover their presence in that spot. In war, concealment and surprise are time-honored tricks.

Wherefore, we see nothing unlikely in the account given by the witnesses for the People.

On the other hand, the trial judge, analysing the evidence introduced to support defendant's alibi, found it unworthy of credit, for reasons that need not be repeated here. Anyway that feeble defense may not prevail in the face of the positive assertions of the three eyewitnesses who are not shown to have reasons purposely to falsify the events and happenings they had admittedly seen with their own eyes.

For all the foregoing, we must hold that there was no error in declaring this appellant guilty of the crime charged in the information. And as the penalty imposed on him (life imprisonment, plus fine of P20,000.00) accords with the statute [1] and the decisions of this Court [2], the judgment is affirmed, with costs. So ordered.

Ozaeta, Actg. C.J., Pablo, Tuason, Montemayor, and Reyes, JJ., concur.

[1] Article 114, Revised Penal Code.

[2] *People v. Arambulo*, G. R. No. L-2053, April 29, 1950; *People v. Logo*, G. R. No. L-2158, April 29, 1950.

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