

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE DIMZON, DEFENDANT AND APPELLANT.***G.R. No. L-1565. January 09, 1951*

Ponente: TUASON, J.

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The appellant was prosecuted for treason in the People's Court sitting in Iloilo City and sentenced to 20 years and one day of reclusion temporal. Four counts were laid in the information but evidence was introduced only on counts two, three and four. This however does not entirely eliminate count one since the predominant charge in this court—that the accused adhered to the enemy, gave him aid and comfort, was his agent and informant, etc.—is of general application and an essential element of the rest of the counts.

The state's evidence on counts two, three and four is of the tenor of the information, and a recital of the prosecution witnesses' testimony thereon makes unnecessary a restatement of the said counts in the words of the information. Following is the gist of the evidence:

Count 2. Estrella de Tolentino testified that on April 27, 1943, at four a.m., Japanese troops surrounded her house in Dumaguete, Iloilo, where the family had a fishpond, looking for her husband, a guerrilla lieutenant. She declared that with the Japanese were Marcelo Buenaflor, defendant Jose Dimzon, and Dito Perez; that the Japanese insisted, on being told that Lieutenant Tolentino was in Manila, that he was with Colonel Peralta as a radio operator, a fact which, she said in court, was true. The witness went on: The Japanese carried guns fixed with bayonets and a machine gun. She and all her children, all minors, were apprehended and taken to the municipal building in the poblacion which was being used as Japanese headquarters. In that building the} were kept until about two o'clock the next morning, when they were removed to the Japanese Garrison in the La Paz High School in Iloilo City. She did not see Dimzon when she and her children arrived in La Paz. One day, after her small child whispered to her that she had seen the accused, she waited for him near the stairs, saw him walk by, and begged him to help her and her children. Thereupon Dimzon took her to Matsusaki, Matsusaki told her to "wait a little," and Dimzon seconded the advise, telling her to be patient and assuring her that she and her children would be freed. Nevertheless they were not released until two months later. She and her children were held in the garrison for nine months in all. She said that she and the accused had known each other intimately and he knew her place.

Mariano Tolentino, Mrs. Tolentino's oldest child, who was 18 years of age at the time of the trial, testified that he was only 14 years when he, his mother, brothers and sisters were apprehended. He said that Dimzon was one of the Filipinos who went up their house; that he did not then know Dimzon by name but could identify and remember his face.

Count 3. Tomas Docdocil, 65 years of age, testified that on April 27, 1943, about four o'clock in the morning, he was aroused from sleep by the sound of the breaking of his fence and so went down the house. In the yard, he said, he saw Jose Dimzon and three Japanese. Dimzon, on seeing him, told the Japanese to bind and beat him and

he was bound and beaten twice on the legs and once on the waist. He said he asked Dimzon what fault he had committed and was told that he was feeding the soldiers of the Philippine Army (guerrillas.) He added that, as a matter of fact, he was helping Filipino soldiers but denied to the Japanese doing so. Docdocil said the accused told him to remember that the Allies could not come back in twenty years, and after saying this went into the house with three Filipinos and Japanese. When they came down they were carrying two sackfuls of clothing and he was taken to town. He declared there were about 25 Japanese and four Filipinos in the raiding party, the former being armed with guns fixed with bayonets and the accused with a pistol and a bolo.

On the same occasion, according to Docdocil, Melquiades Manajero was also arrested and "with him was taken to the poblacion whence both of them were carried in a truck, with their hands tied, to the high school building in La Paz. The accused did not, however, ride in that truck, he said. The next day, at noon, he and Manajero were released, and when he got home P200 in genuine bills and P200 in emergency notes were missing.

Docdocil also testified that Dimzon was the first to enter his house, some Japanese following him while others remained outside. He declared that Dimzon is the son of his (Docdocil's) wife's cousin; that when Dimzon was a student the latter stayed in his house; that he regarded Dimzon as his own son and nursed that young man when he was ill and helped him in his industrial work in school.

Segundo Dolar declared that on April 27, 1943, about four a.m., there were alarms and he heard people yelling that there were Japanese in Pagdugui, whereupon he hid his children and wife; that at dawn a group of Japanese passed by his house and he saw Tomas Docdocil and Melquiades Manajero in the middle of the group with their hands bound; that Dimzon and two other Filipinos whom he did not know were mingled with the Japanese; that he did not notice whether the accused was armed because Dimzon "was a little bit far."

The evidence on count 4, consisting of the testimony of Gregorio and Teodorico Deza, brothers, is summed up in the findings of the trial court which are here abridged:

Since August, 1942, Gregorio, Teodorico, Alejandrita, Coronacion and Loreto Deza and the latter's husband, Tito Famorcan, a priest of the Philippine Independent Church, had evacuated to barrio Agpangan, municipality of Ajuy, Province of Iloilo. On September 19, 1943, the lieutenant of that barrio notified all its residents that by order of the Japanese Army they were to go to barrio Gaong of the same municipality and surrender, with a warning that if they did not do so the Japanese would launch an extermination campaign. Heeding the order, the Deza brothers and sisters, Padre Famorcan and other inhabitants of the barrio set out for Gaong. There they found Japanese troops and Filipino civilians numbering about 1,000, some of whom were tied up and separated from the rest. The civilians were ordered to line up by the Japanese. Padre Famorcan, his wife, his small child and his sisters-in-law Alejandrita and Coronacion, kept together a little far from their brothers Gregorio and Teodorico. The Japanese and their Filipino agents paraded along the lines as if looking for some ones and when the accused spotted Padre Famorcan and the three sisters, he pointed them to the Japanese. Coronacion, Alejandrita and father Famorcan's wife were the sisters of Rizal Deza who had killed two Japanese fliers that were forced to land in Dumangas the previous year. The said three sisters and the priest were taken out of the line, bound up and questioned about the whereabouts of their brother Rizal. During the investigation, Padre Famorcan was made to sit and his lap was weighed down with a heavy log. Then Gregorio and Teodorico Deza slipped away and escaped. The next day they received the news that their sisters and brother-in-law had been taken in a launch to Sara where they were decapitated. The defendant admitted his presence with Japanese when Mrs. Mariano Tolentino, her children, Tomas Docdocil and Melquiades Manajero were arrested, but he explained that he himself was a prisoner or had been drafted as cargador. He also admitted being with Japanese troops on the occasion of the concentration of Filipino civilians at Ajuy, but he said he was on the other side of the creek with another group of Japanese troops when members of the Deza family were picked out at the concentration, and he

denied that he had anything to do with the arrests, tortures and killing of those unfortunates.

Appellant's counsel de officio questions the credibility of the witnesses for the prosecution. In a praiseworthy brief he has made a thorough analysis of the evidence which challenges our attention. Yet, read in its entirety, the record leaves no room for doubt that the accused perpetrated the charges preferred in the last three counts.

There are admitted, undeniable, or clearly established acts of the defendant's which make treason, unless they were committed, as claimed, in furtherance of underground resistance. Among other things, it is admitted that the accused accompanied the Japanese troops who seized Lt. Tolentino's wife and children, Tomas Docdocil and Mel-quiares Manajero. And it has been shown beyond any doubt that Dimzon was one of five men, Japanese and Filipinos, who entered the Tolentino home, and was also with another group which entered Docdocil's dwelling.

There is no sufficient reason for doubting the veracity of Mrs. Tolentino and her son. Mariano Tolentino's testimony does not diverge from that of his mother's, nor was it unreliable or uncertain. Already 14 years old when the raid was made and 18 when he was called to the witness stand, the boy had enough intelligence to get a clear mental picture of and remember the defendant's face though he did not know Dimzon by name when their place was raided and had not laid eyes on him before. It should be noted that this boy was detained nine months and must have seen the defendant in the Japanese garrison in the course of his detention as did his mother and one of his brothers.

Docdocil was the only eye-witness to his arrest in his home, and no one testified as to where and how Manajero was seized. It may be granted that this phase of the third count as an overt act of treason was not substantiated under the two-witness rule. But Segundo Dolar said he saw both Docdocil and Manajero tied and under the custody of the Japanese with whom, he also declared, Dimzon mingled.

As far therefore as Docdocil's and Manajero's capture is concerned, the statutory requisite corroboration is present.

Regarding defendant's part in Docdocil's maltreatment, only this complainant, as has been seen, testified. Nevertheless the court is not precluded from-taking Docdocil's testimony about the defendant's role in his punishment as evidence of adherence and as refutation of the defense that the accused was a prisoner or cargador.

Docdocil's statement that he was tied and beaten by the Japanese upon Dimzon's order is scoffed away on the theory that the accused was nobody to give such orders. But it would not have been unusual for a comrade, specially one who was leading the raiding party, to make suggestions to enlisted men, and it would not have been unusual for these to please him. Viewed in this light, Docdocil's testimony is credible and was properly given credence by the trial court.

Taken singly, Docdocil's testimony about the accused's attitude toward the witness might appear unbelievable in the face of the close relationship between the two and of the many favors Docdocil had done this defendant before the war, taking and feeding him in his (witness') home, caring for him in his sickness, helping him in his school work, etc. But the defendant himself has stated the probable motive which the old man was unable to give for his nephew's behavior. Designed to show that Docdocil bore grudges against him and so was a hostile witness, the defendant's testimony actually showed the other way around. Dimzon told in detail about ill-feelings and "exchange of words" between him and Docdocil arising from what he called "our inheritance." He also spoke of Docdocil having been a supporter of defendant's "arch-enemy in politics." The tone and temper of his testimony seemed to ring with a bitterness that must have rankled in his breast.

The testimony of the Deza brothers, Gregorio and Teodorico, on Count 4 is attacked on two grounds which seem to be quite inconsistent with each other. On the one hand, it is said that their statements are "strikingly very

similar in pattern, a glaring characteristic of fabricated testimony." On the other hand, it is said that "where corroboration was essential, their statements seriously contradict each other, which can only lead to the inevitable conclusion that either they were not present in the scene of the incident or they have offered perjured testimony."

The discrepancies and similarities between the two witnesses' descriptions of what they saw are precisely what we think give their stories the seal of authenticity. The discrepancies were natural and to be expected from two witnesses recounting what they had noticed and what they had not in an event long past and full of confusion, excitement, horror and fears. The occasion, it should be recalled, was the concentration of one thousand people and the processing of wanted men and women with its accompanying tortures and brutalities. At any rate, neither witness could have been wrong in asserting that the accused was with the Japanese and had an active part in the procedure. If Dimzon had done nothing else than that still he would be guilty of treason, unless he acted against his will or with ulterior worthy motive.

The defendant's assertions that he had been forced by the Japanese to come along to Ajuy and that he remained on the other side of the stream with another contingent of Japanese troops were properly given scant attention by the People's Court in the light of his other performances and long connection with the enemy.

The defendant's plea that he himself was a prisoner of the Japanese who arrested the Tolentino children and their mother, Docdocil and Manajero, was a clumsy effort to extricate himself out of his difficulties and is belied by his actions and his own witnesses. His actions showed anything but that of a captured guerrilla. He was carrying a pistol, entered the Tolentino and the Docdocil houses with a selected few, and was otherwise moving about freely, even with an air of authority. Afterwards he was made mayor and was seen frequently in the Japanese headquarters in Iloilo City. At the trial he unwittingly boasted of having been instrumental in Mrs. Tolentino's and her children's discharge from prison as well as in the release of some of his witnesses and several others. By this evidence, which came from his own lips, the defendant made it clear that he wielded great influence with, and enjoyed the confidence of, the masters. The implications of such influence and privileges are too obvious to call for elaboration.

As to his position with the Japanese in Dumangas, there is, besides circumstantial evidence, direct proof contradicting the defendant's testimony that he was taken along by the Japanese as a prisoner or cargador, and this direct proof was supplied by his own witnesses. Two of his witnesses testified that they, too, were used as carriers by the Japanese on that occasion and that they were set free as a result of defendant's intercession in their behalf, after they had requested Dimzon to talk for them with their captors.

The main theme of the defense is that the accused was a guerrilla and that his collaboration was a front designed to mask his underground affinity and to facilitate his work of espionage on the Japanese. As stated, he summoned several witnesses to corroborate him along this line.

These witnesses' testimony is for the most part vague and rambling, possibly reflecting parallel uncertainty and equivocation in defendant's attitude and relation with the guerrillas. If these witnesses are to be believed, what the defendant accomplished or was supposed to do was, at the most, get office supplies, the life histories of local Japanese commanders, and other information of little or no value to the resistance.

If deeds then speak louder than words, there is good ground to believe that the accused was a collaborator first and foremost and a guerrilla last. Whereas his alleged contribution to the guerrilla cause was practically nil, his aid to the enemy was long-continued, effective, valuable and actually harmful to his people. With this contrast in mind, the People's Court was not far wrong, if it was not wholly right, in finding that the accused merely followed the familiar pattern of collaborators' stratagem of burning candles for both sides; and such scheme was perhaps deemed all the more alluring at the time the defendant made the motions of catering to the good will of some

guerrillas, because then the American forces were winging their way back to the Philippines and the approach of the day of reckoning was not hard to visualize.

The judgment appealed from will be affirmed except that the principal penalty shall be 20 years of reclusion temporal instead of 20 years and one day, the last being one day too much under the classification and graduation of penalties in the Revised Penal Code; with costs.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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