

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE JAVIER ALMODOVAR, DEFENDANT AND APPELLANT.

G.R. No. L-1080. June 27, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Jose Javier Almodovar was charged in the People's Court with the crime of treason under five counts, was found guilty thereof, and sentenced to life imprisonment with the accessory penalties of the law, to pay a fine of P15,000, without subsidiary imprisonment in case of insolvency and to pay the costs.

For purposes of reference, we are reproducing that portion of the information containing the five counts:

"(1) With intent to aid and comfort the enemy, being affiliated with the Sakdal Ganap party and with evident pro-Japanese leanings, the said accused wilfully, feloniously, unlawfully, and traitorously after joining the Municipal Police Force in Sta. Rosa, Laguna, in August 1943, thereafter joined the Japanese Military Police as agent, spy, and informer, and guide, accompanying them in their patrols on military operations against the guerrillas and served as driver in their trucks on military operation;

"(2) That in or about November 1944, with intent to aid and comfort the enemy, the said accused wilfully, feloniously, unlawfully, and traitorously, by use of strategem, craft, and deceit, capture an American air pilot, Lt. Leslie, whose plane had been forced down in Laguna Lake, and having captured the said Lt. Leslie, wilfully, feloniously, unlawfully, and traitorously, with intent to aid and comfort the enemy, did then and there, take the personal belongings of Lt. Leslie, appropriating the same for himself as booty and thereafter wilfully, unlawfully, feloniously, and traitorously, deliver said Lt. Leslie to the Japanese Forces;

"(3) That in or about November 1944, with intent to aid and comfort the enemy, with treachery and cruelty, the said accused wilfully, feloniously, unlawfully, and traitorously, did then and there, apprehend, torture, and inflict serious physical injuries upon Francisco Malapitan, Aurelio Lazarte, Emiliano Concepcion, Lucio Aguilar, Wenceslao Carpena, Reynaldo Carpena, and others for their guerrilla activities;

"(4) That in or about the said month of November 1944, with intent to aid and comfort the enemy, with treachery and cruelty, in conspiracy with the Japanese Military Forces, the said accused, unlawfully, feloniously, wilfully, and traitorously, did then and there arrest, torture, and cause the killing of Aurelio Lazarte, Emiliano Concepcion, and Lucio Aguilar, among others for their guerrilla activities;

"(5) With intent to aid and comfort the enemy, in the month of December 1944, the said accused wilfully, feloniously, unlawfully did then and there join the Makapili, an association organized to fight the Liberation Forces of the United States in the Philippines, and wilfully, unlawfully, feloniously and traitorously, joined the movements and operations of said organizations against the Liberation Forces; that in or about January 1945, with intent to aid and comfort the enemy, said accused wilfully, unlawfully, feloniously, and traitorously, did then and there, align himself with the Japanese Forces in fighting against the guerrillas in the barrio of Sto. Domingo, Sta. Rosa, Laguna, and upon the imminence of American entry, on or about February 3, 1945, said accused, wilfully, unlawfully, and feloniously, did then and there escape with the Japanese Forces to the mountains."

Under count No. 1, it has been amply established by the evidence for the Government that appellant Almodovar is a Filipino citizen; that he joined the Municipal Police Force of Sta. Rosa, Laguna, sometime in August, 1943, and remained there until liberation; that although a member of the Police force he spent a considerable portion of his time in going around with Japanese soldiers confiscating chickens, horses, palay and other foodstuffs for the use of the Japanese Armed Forces; that dressed in Japanese military uniform and armed with either a rifle or a revolver, he accompanied Japanese soldiers in raiding parties, pointed out guerrilla suspects to them and participated in and aided the Japanese Military Police in apprehending guerrilla suspects; that he was a member of the pro-Japanese organization called "Makapilis" and the Scout Battalion, a military organization attached to and working hand in hand with the Japanese Armed Forces. The evidence under this count is abundant and was given by more than two witnesses.

Under count No. 2, it has been proven that on November 29, 1944, an American fighter plane piloted by one Lt. Leslie, crash landed on Laguna de Bay, said forced landing having been witnessed by many people including the Japanese. Appellant Almodovar accompanied by Angel Beato and others boarded a banca and rowed to the spot where the plane had landed, for the purpose of arresting him. Upon arrival at the place, however, the defendant found that Lt. Leslie had already been rescued by persons from barrio Cupang and was already in their banca. Almodovar and Beato with some pressure and with veiled threats, forced the persons from Cupang to give up Leslie, who then was transferred to the banca of the appellant. While in the banca and on their way to the shore Almodovar secured the overalls worn by Lt. Leslie and used them himself, leaving Leslie with nothing on but his short drawers and sleeveless undershirt. He also confiscated Leslie's .38 caliber revolver and a box of ammunition. Upon reaching the shore, Almodovar and Beato triumphantly announced to the Japanese soldiers and to a Japanese civilian named Miyakawa, who were all waiting there, the success of their mission. After tying their prisoner's hands behind his back, the two delivered him to the Japanese Garrison in Sta. Rosa. After some investigation Lt. Leslie was subsequently executed by the Japanese. At least two witnesses testified under this count No, 2.

Under count No. 3, the evidence shows that early in the morning of November 24, 1944, riding on a truck, a raiding party composed of Japanese soldiers and Filipino adherents including appellant herein dressed in Japanese military uniform and armed with a rifle, arrested Emiliano Concepcion, in his house in Sta. Rosa, tied his hands behind him and tossed him inside the truck. Concepcion's arrest was due to his being a guerrilla suspect. He was later executed at the Japanese garrison.

Following the arrest of Concepcion, the same raiding party led by a Japanese civilian named Miyakawa went to the house of Aurelio Lazarte in Sta. Rosa and arrested him also as a guerrilla suspect. The defendant was in this raiding party and helped in loading Lazarte whose hands were tied behind him in the truck. The defendant even mocked Lazarte on that occasion, saying to him "you are already caught," Lazarte was subsequently executed behind the Japanese garrison.

Early in the morning of November 16, 1944, a raiding party composed of Japanese soldiers and Makapilis among the latter, the appellant who was dressed in Japanese military uniform and armed with a rifle, entered the house of Wenceslao Carpena in the same town of Sta. Rosa, and arrested him and his son Reynaldo. Wenceslao was taken as a guerrilla suspect. In fact he was a Captain in that organization. Wenceslao was subsequently executed by the Japanese soldiers.

About 2 o'clock in the morning of November 24, 1944, six persons including the appellant herein went to the house of Lucio Aguilar and arrested him as a guerrilla suspect and loaded him in their truck and took him to the Japanese garrison. On that occasion appellant was dressed in Japanese military uniform. Although he did not go up the house of Aguilar, he posted himself as guard in the balcony and helped in loading Aguilar into the truck

after his hands and feet had been tied by a soldier. Aguilar was then taken to the Japanese garrison where he was subsequently executed.

From the house of Aguilar, the same raiding party went to and surrounded the house of Florencio Malapitan. Three Japanese soldiers went up the house, brought him down, tied his hands behind him and loaded him in the truck. At the time, the appellant was seen driving the truck.

Under count No. 4, it was proven that all the Filipinos arrested as described under count No. 3, including others, among them, Aurelio Lazarte, Lucio Aguilar, Wenceslao Carpena and Francisco Malapitan, were taken to and herded in the Japanese garrison, kept there for two days without food and all the time with their hands tied and with their backs against the wall. During that period, members of the Scout Battalion, among them the appellant Almdovar, all dressed in Japanese uniform and armed with rifles, were walking back and forth about the place keeping guard over them. Early in the morning of November 26, 1944, all the prisoners including Carpena, Concepcion, Lazarte and Aguilar were stripped of their clothes and taken down from the garrison one by one and executed. Florencio Malapitan was the last one to be taken to the place of execution. He made a desperate and reckless dash for liberty, dodged the shots fired at him by the guards and executioners, plunged into the river and escaped, later joining his guerrilla unit. He is one of the witnesses for the prosecution.

Under the last count (No. 5), it has been conclusively proven that on January 5, 1945, a patrol composed of about fifteen Japanese soldiers led by the same Japanese civilian Miyakawa and about thirty-five Filipino adherents and undercover men including appellant Almodovar went to the barrio of Sto. Domingo, Sta. Rosa, Laguna and arrested all the men there, young and old, locked them up in an old, vacant building called the Headquarters, and as a precaution against any attack from outside they, aided by Almodovar, dug fox holes. At the time, the appellant was using a Japanese military uniform and was armed with a rifle. In order to rescue and liberate the people locked up in the headquarters, Captain Alinsod leading a guerrilla force of about 200 men attacked this Japanese patrol, losing one soldier on his side but killing one Japanese officer and five Filipinos on the Japanese side. The Japanese group retreated toward Sta. Rosa, Aside from the fact that more than two witnesses had seen and identified the appellant among the Japanese group during the fighting, and that after the skirmish, defendant was seen running to hide in a sugarcane plantation, the appellant himself admits his presence on that occasion and that he may have run away to avoid danger, but claims that he was there only as a driver of a motor vehicle for the Japanese, Upon the arrival of the American army of liberation, and when the remnants of the Japanese forces retreated to the Sierra Madre mountains, the appellant and other fellow Makapilis, obviously to avoid acts of revenge and reprisal from their countrymen for their traitorous activities, escaped with the Japanese soldiers to the mountains but were finally captured in Tanay, Rizal,

After a review of the evidence, we entertain not the least doubt about the guilt of the appellant of the crime of treason. The Government is not holding him responsible for having been a member of the Municipal Police Force of Sta. Rosa, Laguna, but for his other activities which were beyond the scope of his duties as a policeman and which clearly demonstrated not only his adherence to the enemy but also his overt acts in giving aid and comfort to the Japanese forces. Unlike others who had been accused and convicted of treason for merely giving aid and comfort to the Japanese forces, he actually waged war on the Filipino armed forces and fought against them in an skirmish that lasted about two hours.

The defendant claims that although he accompanied the Japanese soldiers in their patrols and raids, it was only to make them believe that he was cooperating with them but that at heart he was and has always been anti Japanese and pro Filipino. We have nothing but his words to support his claim. On the other hand, there is the overwhelming and positive testimony of many of his countrymen who have nothing against him but for his treasonable acts which resulted in the confiscation of their foodstuffs and animals to feed the Japanese Army and

the arrest, torture and execution of their loved ones. Moreover, the evidence shows and the defendant admits that prior to the year 1935, he had been convicted of rebellion and sentenced to several years imprisonment but that he was pardoned in 1945. The Solicitor-General contends that the acts of treason proven against him equally show a violation of the conditional pardon given to him in 1945. Without making any finding as the trial court did not, as to whether or not there was violation of this pardon because of lack of sufficient evidence, this conviction of rebellion surely cannot strengthen his present profession of loyalty to the Philippine Government because this previous act had already conclusively demonstrated his disloyalty by having, even without the aid and cooperation of a foreign enemy, risen publicly and taken arms against that same Government.

While under detention and in the course of the investigation conducted by the Counter Intelligence Corps (CIC), of the United States Army, the appellant signed a written statement which was introduced in court and admitted as Exhibit A. In said statement, the appellant admits that he was a Japanese collaborator, served as a driver to the Japanese, accompanied them in their raid in Sto. Domingo, Sta. Rosa, where there was fight with the guerrillas and that he was then armed with a Japanese rifle, that he recovered or took the American flier, Lt. Leslie, undressed him, was allowed to keep the flier's overalls and that he later delivered the flier to Capt. Ochuki of the Japanese Army; that he joined the Makapili organization on November 11, 1944, the same day that Benigno Ramos, Artemio Ricarte and Pio Duran delivered speeches in Sta. Rosa; that he and about 1,500 other Makapilis joined the Japanese soldiers in their retreat to the mountains, and that he believed in the Japanese policies and was pro-Japanese in his feelings. Although this affidavit may not, under the two witness rule be used to prove his overt acts of treason, it may at least be utilized to impeach the defendant as a witness, because of the conflict between the contents of said written statement and his testimony in court during the trial in support of his pretended innocence and professed loyalty to the Government. Exhibit "A" may be further used to show his adherence to the enemy.

In view of the foregoing and finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against the appellant.

Ozaeta, Paras, Feria, Bengzon, Tuason, and Reyes, JJ., concur.

MONTEMAYOR, J.:

I hereby certify that Mr. Justice Pablo voted to affirm the decision appealed from.

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