

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FILEMON DELGADO, DEFENDANT AND APPELLANT.

G.R. No. L-1446. March 04, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Before the People's Court the appellant Filemon Delgado was charged with treason under five counts, was found guilty under four counts of "the crime of treason complexed with the crime of murder," and sentenced "to death penalty by electrocution," with all the accessories of the law. He is appealing from that decision.

Because of the nature of the offense, especially the extreme penalty imposed, we have carefully and painstakingly examined the evidence in this case. From said examination we are convinced of the guilt of the appellant. The pertinent facts of this case may be briefly stated as follows: During the month of July, 1944 in the town of Talisay, province of Cebu, a Japanese Navy truck and a train coach operated by the Japanese troops were ambushed by the resistance and guerrilla forces. As a measure of reprisal, on July 29, 1944, a mass arrest or concentration of the male inhabitants of Dolho, Talisay, Mambaling and Basak was effected. Many Japanese soldiers accompanied by Filipino spies and undercover men, among them the appellant Filemon Delgado, rounded up a great number of men, some through arrests, others by invitation and order to go to the Basak Schoolhouse for a supposed meeting. In the morning of that day Tereso Sanchez, a guerrilla soldier and Antonio de la Cerna were arrested in Mambaling and were lodged at the Mambaling chapel. They were later transferred to the Basak Schoolhouse where they found hundreds of men, among them Jose de la Cerna and Fidencio Delgado and it was there where they saw the appellant armed with a revolver, and other Filipino undercover men working with and helping the Japanese soldiers tying up the hands of those arrested, investigating and torturing them in order to obtain information about the guerrillas and about firearms they were suspected of possessing. Tereso Sanchez, Antonio de la Cerna and Fidencio Delgado saw Jose de la Cerna being suspended in the air and punched and beaten with an iron bar by appellant Filemon Delgado during his investigation. After extreme torture Jose de la Cerna finally admitted that he had a firearm in his house, after which, the appellant accompanied by other undercovermen accompanied him to his house and took said firearm. Thereafter Jose de la Cerna was taken to the Japanese Military Police Headquarters and after a months confinement he was released. Antonio de la Cerna was also maltreated together with other prisoners by the defendant. Fidencio Delgado was himself tied up, but before his time came to be investigated and possibly maltreated by the appellant, he happened to mention that his surname was Delgado and upon its verification with his Residence Certificate, said appellant released him from confinement, saying that had he known it, Fidencio should have been released earlier.

The following morning or rather on July 30, 1944, a number of the persons confined in or around the Basak Schoolhouse were taken toward the mountains of Toong. Among them, were Tereso Sanchez and Antonio de la Cerna. Upon arrival there, the Japanese and Filipino undercovermen among them the appellant, proceeded with their decision to summarily execute those prisoners who insisted that they did not have any firearm to surrender. After seeing that several of his companions had already been shot to death, Antonio de la Cerna told his captors

that he really had a revolver in his house and he was separated from the group and his life was spared presumably to give him a chance to get the said firearm and surrender it to the Japanese. Tereso Sanchez was less fortunate. He had no firearm to surrender. Neither did he make any pretense that he had one which he would surrender were it only to stall for time, suspend his execution and live even only on borrowed time. So the appellant simply told him to turn around which he did and Filemon Delgado immediately fired at him, hitting him on the back of the head on the occipital region, the bullet coming out thru his left eye. As he fell to the ground the appellant pushed him down into a ravine. Because he was still moving down below some undercover men fired parting shots at him, wounding him in the back. Miraculously, however, Sanchez did not die. After the Japanese and Filipino undercover men had left him, friends and guerrillas finding Sanchez to be still alive helped him up and carried him to a hut where he upon regaining consciousness found himself. There, he stayed for about a month, his wounds being treated with coconut oil and he lived to tell this gruesome tale. His testimony of being shot at by appellant was duly confirmed by the testimony of Antonio de la Cerna.

About August 24, 1944, while plowing his rice field in Banilad, Mandaue, Cebu, Leonardo Ouano was arrested and taken to his house where he found the defendant Filemon Delgado together with about nine undercover men and two Japanese soldiers surrounding his house. His house was ransacked by them. He was questioned about his brother Sulpicio Ouano, a guerrilla soldier. Later in the afternoon Eduardo Ouano and Patricio Suico under custody were taken to said house. Patricio was suspected of being a lieutenant in the volunteer guards. In the evening, the three arrested men were taken to the Japanese Military Police Headquarters at the City of Cebu. There, Leonardo and Patricio were hanged and suspended in the air and beaten with a wooden stick by the appellant and other undercover men in their effort to make them admit connection with the guerrilla forces, and to reveal the whereabouts of Sulpicio Ouano, brother of Leonardo. Eduardo Ouano was not maltreated, but his hands were tied behind his back. Late that night the three men (Leonardo, Eduardo and Patricio) were taken back to the house of Leonardo in Banilad, Mandaue, where they were closely guarded with their hands tied behind their backs. The following morning Leonardo and Patricio were hanged and suspended in the air and severely punished and maltreated by the appellant and his fellow undercover men. All this and what follows was testified to not only by Leonardo but also by Eduardo who that morning was made to pound rice for the food of the Japanese and Filipino undercover men and by Arcadio Ceniza who had also been taken to the house of Leonardo and ordered to slaughter and dress a pig for the mess of the appellant and his companions. While performing their appointed tasks, Arcadio and Eduardo saw all that was happening and was being done to Leonardo and Patricio. After continued beating, Patricio pleaded with the appellant, telling him that he could not bear the torture any longer. Filemon Delgado told him that he should be made to suffer longer and more, but evidently seeing that Patricio was collapsing, he ordered him lowered to the floor and then he directed three undercover men to take Patricio to the neighboring house of Nicanor Ouano in order to look for hidden firearms? On the way and at a distance of about 300 yards Patricio collapsed and fell to the ground and no amount of threat on the part of the undercover men could make him get up. By order of the appellant Patricio was dragged back to the house of Leonardo where he was placed on a native sled. Taking hold of a wooden pestle the appellant began to beat up and belabor Patricio who was lying motionless on the sled, and noticing no reaction to the beating and suspecting that Patricio might be unconscious or dead, the appellant ordered a fire to be built under the sled, just below the head and buttocks of Patricio. His face was burned and his clothing set on fire and still Patricio did not move. He was dead. By order of the appellant the sled with the body of Patricio on it was dragged to a spot about 300 yards from the house, where the body was taken from the sled and dumped under a buri palm. Pulling out his bayonet, the appellant slashed the throat of Patricio with it and then thrust the bayonet into the right and left breast of Patricio. The following day, under the buri palm, Patricio's widow named Rosario Remedio found her husband's body with the face burned and the neck slashed, and with the help of friends and relatives gave it a decent burial.

The theory of the defense is that the appellant could not have been possibly present in the arrest, investigation, torture and shooting committed by Japanese soldiers and Filipino undercover men on the inhabitants of the province of Cebu, particularly on July 29 and August 24-25, 1944, for the reason that at the time, he was under detention in the Constabulary barracks after he had been arrested by the Japanese forces and was made to work in the Japanese Air Field in Cebu and later delivered to the Constabulary for custody. It was also claimed that Filemon Delgado mentioned and referred to by prosecution witnesses as one of the spies or undercover men who participated in the arrest, investigation, and torture made and committed on those days of July and August, 1944, was a person different from the appellant, though bearing the same name. This defense was rejected by the People's Court not only because it was sought to be established by witnesses whose veracity and responsibility were not believed in by it,—witnesses like Mariano T. Jaucian, Antonio Racaza, and Eduardo Prieto, all treason indictees who at the time they testified had already been convicted and sentenced to death for treason, but also because of the inherent weakness of the evidence for the defense. We are reproducing a pertinent paragraph of the decision of the trial court:

"The facts substantiated by the evidence for the prosecution constituting the overt acts alleged in the amended information under counts 4 and 5, remain unimpeachable, notwithstanding the denial of the defendant. The alibi defense is entirely flimsy as flimsy, is the assertion made by the witnesses for the defense that the person named Filemon Delgado who participated in the mass arrest and looted the inhabitants of Mambaling and Basak, was different from the herein defendant. That he has been thoroughly identified on the record to be the very one who committed the overt acts testified to by the witnesses for the prosecution, is obvious. There is no scintilla of doubt about it. The witnesses for the defense, after all, deserve no credence on the part of this Court, not only because of their being notorious characters, but also because the evidence for the defense itself merits no serious consideration." (page 13, decision of trial court)

On the point of sufficiency of the evidence to convict, we may add that the testimony of the witnesses for the prosecution positively pointed to and identified the appellant not only by name but also by having actually seen him and maltreated by him. As a matter of fact, before the trial, some of the government witnesses had been taken to the stockade where detention prisoners had been kept and Filemon Delgado was positively and unhesitatingly identified by them. Moreover, there is no reason for the belief that said prosecution witnesses had falsely accused the appellant of this grave crime through ulterior motives. On the contrary, at least one of the witnesses, Fidencio Delgado who was a recipient of a favor from the appellant resulting in his release from confinement and perhaps the saving of his life, had more reason to testify in favor rather than against the defendant.

The appellant herein was and is a Filipino citizen. His adherence to the Japanese forces of occupation and giving them aid and comfort by acting as their spy, undercover man, investigator, and even killer when necessary to cow and compel the inhabitants to surrender their firearms and disclose information about the guerrillas has been fully established. His Banner of investigation and maltreatment of some of his victims like Tereso Sanchez and Patricio Suico, was so cruel, brutal and inhuman that it is almost unbelievable; that a Filipino can commit and practise such atrocities especially on his own countrymen. But, evidently, war, confusion and opportunism can and do produce characters and monsters unknown during peace and normal times.

The People's Court found the appellant guilty of treason complexed with murder. The Solicitor General, however, maintains that the offense committed is simple treason, citing the doctrine laid down by this Court in the case of *People vs. Prieto* (80 Phil., 138) but accompanied by the aggravating circumstance under article 14, paragraph 21, of the Revised Penal Code, and not compensated by any mitigating circumstance, and he recommends the imposition of the penalty of death. We agree with the Solicitor General that on the basis of the ruling of this Court in the case of *People vs. Prieto*, supra, the appellant may be convicted only of treason, and that the killing and infliction of physical injuries committed by him may not be separated from the crime of treason but should be

regarded as acts performed in the commission of treason, altho, as stated in said case, "the brutality with which the killing or physical injuries were carried out may be taken as an aggravating circumstance." We refer, in the present case, to the manner Tereso Sanchez was shot, and Patricio Suico was tortured and finally killed. But while a good number of the justices participating in these proceedings believe that the appellant is deserving of the death penalty imposed by the trial court, because of lack of the required number of votes, said penalty is hereby reduced to life imprisonment. In addition, the appellant will pay a fine of P20,000. With these modifications, the decision appealed from, is hereby affirmed with costs. So ordered.

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

CONCURRING

PERFECTO, J.:

We are of opinion that no aggravating circumstance should be considered against appellant and, therefore, concur in the decision, modifying the appealed judgment.

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