

EL PUEBLO DE FILIPINAS, QUERELLANTE Y APELADO, CONTRA PEDRO MARCAIDA, ACUSADO Y APELANTE.

G.R. No. L-953. September 18, 1947

Ponente: PABLO, J.

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PABLO, J.:

Se trata de una apelacion interpuesta por Pedro Marcaida que fue condenado por el delito de traicion, despues de la vista correspondiente, a la pena de reclusion perpetua con las accesorias prescritas por la ley, y al pago de una multa de P10,000 y las costas del juicio. El apelante señala tres errores en que incurrio, segun el, el Tribunal del Pueblo. 1.º Al declarar que la ciudadania y lealtad del acusado estaban suficientemente probados; 2.º Al dar credito al testimonio de los testigos de la acusacion; y 3.º Al declarar culpable al acusado del cargo No. 3.

La defensa contiene que las pruebas obrantes en autos no prueban la ciudadania filipina y alianza del acusado al gobierno del Commonwealth. La transcripcion de las notas taquigraficas dice que el acusado es natural de Lopez (a native of Lopez). La defensa alega que el testigo declaro en Tagalog diciendo: "Taga Lopez" y no dijo "ay panganak sa Lopez." No aparece tal cosa en el expediente. Si fuese cierto, es extraño que el abogado no haya pedido al Juzgado que ordenase al taquigrafo que hiciera constar asi en sus notas. Cuando una parte no esta conforme con la traduccion de una declaracion de un testigo debe pedir que se haga constar en autos no solamente la traduccion sino tambien la declaracion original traducida; en su defecto, se presumira correcta la traduccion del interprete oficial.

Pero aun admitiendo—dice la defensa—que el acusado fuese natural de Lopez, provincia de Quezon, su ciudadania filipina no esta debidamente probada. En apoyo de esta contencion invoca el articulo IV de la Constitucion, que entro en vigor el 15 de noviembre de 1935. (Articulo XVI, seccion 6, Constitucion.) La vista de esta causa tuvo lugar el 15 de julio de 1946. Si el acusado ha nacido, por ejemplo, un dia despues que entro en vigor la Constitucion, en el dia de la vista no tendria mas que diez años y ocho meses de edad, y entonces cometio el delito a la edad de unos nueve años. Aunque no consta en autos la fecha de su nacimiento, estamos seguros sin embargo que no era un niño de tal edad cuando entro en vista. No le hubiera querellado el fiscal de un delito tan grave. Indudablemente, nacio antes y no despues de entrar en vigor la Constitucion. No puede acogerse, por tanto, a sus disposiciones.

El articulo 2 de la Ley Jones aprobada por el Congreso el 29 de agosto de 1916, dispone asi: "Que todos los habitantes de las Islas Filipinas que el once de abril de mil ochocientos noventa y nueve eran subditos españoles y que a la sazón residían en dichas Islas, y sus hijos nacidos con posterioridad a aquella fecha, serán considerados y tenidos como ciudadanos de las Islas Filipinas, exceptuándose a aquellos que hayan preferido conservar su lealtad a la Corona de España, de acuerdo con las disposiciones del Tratado de Paz entre los Estados Unidos y España, firmado en París el diez de diciembre de mil ochocientos noventa y ocho, y con excepcion de aquellos otros que despues de dicha fecha se hayan hecho ciudadanos de algun otro pais: * * *."

El articulo 4 de la ley constitutiva de Filipinas de 1.º de julio de 1902, es del tenor siguiente: "Todos los

habitantes de las Islas Filipinas que residan en ellas y que el once de abril de mil ochocientos noventa y nueve eran subditos españoles residentes en dichas Islas y sus hijos nacidos con posterioridad a aquella fecha, serán considerados y tenidos como ciudadanos de las Islas Filipinas y como tales con derecho a la protección de los Estados Unidos, exceptuándose aquellos que hayan elegido conservar su lealtad a la Corona de España, de acuerdo con las disposiciones del Tratado de Paz entre los Estados Unidos y España firmado en París el diez de diciembre de mil ochocientos noventa y ocho."

El acusado se llama Pedro Marcaida. Por su nombre y apellido, puede ser filipino, español o sudamericano. No hay prueba de que era residente de Filipinas y subdito español el 11 de abril de 1899. Si era residente y no era subdito español no podía adquirir la ciudadanía filipina porque continuaría siendo extranjero.

Si era subdito español y residía en las Islas Filipinas el 11 de abril de 1899, automáticamente se hizo ciudadano filipino a menos que haya optado por conservar la ciudadanía española; pero como no hay pruebas en tal sentido, la presunción es que él es filipino.

Si nació después del 11 de abril de 1899 de padres que eran subditos españoles seguiría la nacionalidad de aquellos: español, si sus padres han querido conservar su lealtad a la Corona de España, y filipino, si optaron por perderla. No hay prueba presentada en un sentido u otro: puede ser entonces español o filipino.

Si nació después del 11 de abril de 1899 de padres filipinos es filipino.

Puede suceder que fuese descendiente de un sudamericano que se haya establecido en la provincia de Quezon después de la firma del Tratado de París; si su padre no quiso acogerse a las disposiciones de la ley de naturalización, entonces el acusado es extranjero: sigue la nacionalidad de su padre.

Si es descendiente de un ciudadano español que haya comenzado a residir en Filipinas después del Tratado de París, continuaría siendo español a menos que se haya naturalizado. Tampoco hay pruebas en este sentido: entonces es español, extranjero.

Paz Chua Uang por el mero hecho de haber nacido en Filipinas no fue declarada filipina porque no era subdita española o hija de un subdito español el 11 de abril de 1899. (Chua contra Secretario del Trabajo, 68 Phil., 649.) Esta doctrina ha revocado implícitamente la de Roa contra Administrador Insular de Aduanas (23 Jur. Fil., 321) y otras posteriores. (Vaño contra Administrador Insular de Aduanas, 23 Jur. Fil., 491; Estados Unidos contra Ong Tianse, 29 Jur. Fil., 352; Estados Unidos contra Ang, 36 Jur. Fil., 915; Go Julian contra Gobierno de las Islas Filipinas, 45 Jur. Fil., 301; Haw contra Administrador Insular de Aduanas, 59 Jur. Fil., 646.) En el asunto de Torres y Gallofin contra Tan Chim se adoptó otra vez la teoría sentada en el asunto de Roa, pero el Tribunal estaba dividido en la proporción de cuatro por tres. El actual Presidente del Tribunal y el Magistrado Imperial eran disidentes. El magistrado Villareal opinaba que el simple nacimiento en Filipinas no le hace a uno ciudadano filipino; pero concurrió en la parte dispositiva porque la doctrina de Roa se estuvo aplicando por más de 20 años. El principio de *stare decisis* es la razón principal que movió a la mayoría a volver a adoptar la teoría de Roa. En su disidencia, el actual Presidente del Tribunal decía:

"The majority says nothing in support of the correctness of the Roa ruling, and seeks simply to justify its continued observance upon the fact that it 'had been adhered to and accepted for more than 20 years before the adoption of the Constitution,' and that 'not only this Court but also inferior courts had consistently and invariably followed it; the executive and administrative agencies of the Government had theretofore abided by it; and the general public had acquiesced in it.' I do not yield to this judicial policy. If we induced the Government and the public to follow and accept an error for some time, it does not seem to be a good policy to continue inducing them to follow and accept the same error once discovered. The rule of *stare decisis* does not apply to the extent of perpetuating an error (15 C. J., p. 918.) It is the duty of every court to examine its own

decisions without fear and to revise them without reluctance (Baker vs. Lorillard, 4 N. Y., 257.) As was well said in a case, 'I hold it to be the duty of this court freely to examine its own decisions, and, when satisfied that it has fallen into a mistake, to correct the error by overruling its own decision. An acknowledged error must be more venerable and more inveterate than it can be made by any single decision before it can claim impunity upon the principle of stare decisis.' (Leavitt vs. Blatchford, 17 N. Y., 521, 523.) 'Precedents are to be regarded as the great storehouse of experience; not always to be followed, but to be looked to as beacon lights in the progress of judicial investigation.' (Per Bartley, C. J., in Leavitt vs. Morrow, 6 Ohio St., 71, 78.) Their 'authority must often yield to the force of reason, and to the paramount demands of justice as well as to the decencies of civilized society, and the law ought to speak with a voice responsive to these demands.' (Norton vs. Randolph, 176 Ala., 381, 383, 58 S. 283.)" (Torres y Gallofin contra Tan Chim, 69 Phil., 518.)

En los asuntos de Tan Chong contra Secretario del Trabajo, p. 249, ante, y Lam Swee Sang contra Commonwealth de Filipinas, p. 249, ante, hemos declarado definitivamente abandonada esta teoria y adoptado la de Chua contra Secretario del Trabajo. La razon es sencilla. La teoria de jus soli en Estados Unidos es absoluta: el simple nacimiento en America, aun de padres extranjeros, hace a uno ciudadano americano segun su constitucion y la decision en United States vs. Wong Kim Ark (169 U. S., 649). La constitucion americana nunca entro en vigor en Filipinas. La teoria de jus soli en Filipinas de acuerdo con la ley de 1.º de julio de 1902, aprobada por el Congreso Americano que, segun el Tratado de Paris, es el que ha de determinar la condicion politica de los habitantes de Filipinas, es condicional: que el nacido en Filipinas es considerado ciudadano filipino si era residente y subdito español o hijo de un residente y subdito español en 11 de abril de 1899. Si era extranjero o hijo de un extranjero en aquella fecha no puede ser ciudadano filipino.

El acusado pues, de acuerdo con las pruebas obrantes en autos, puede ser filipino o extranjero.

Bajo la ley de traicion No. 292 de la Comision Civil, todo residente en Filipinas que, debiendo fidelidad a los Estados Unidos o al Gobierno de las Islas Filipinas, les hiciere guerra o formare causa comun con sus enemigos ayudandoles y socorriendoles dentro o fuera de dichas Islas, cometia el delito de traicion. El articulo 1.º de esta ley es una simple transplantacion de las disposiciones delCodigo Criminal Americano que es del tenor siguiente: "Whoever, owing allegiance to the United States, levies war against them or adhere to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason." (Sec. 1, Crim. Code; R. S., sec. 5331; Mar. 4, 1909, c. 321, sec. 1, 35 Stat., 1088.)

"Treason against the United States," dice la Constitucion Americana, "shall consist only in levying war against them, or in adhering to their Enemies, giving them aid and comfort." (Section 3 [1], Article III.)

En America tanto los extranjeros como los nacionales pueden cometer el delito de traicion. Los extranjeros deben lealtad al gobierno de America durante el tiempo de su residencia. (Carlisle vs. U. S., 21 Law. ed., 426; Raditch vs. Hutchins, 24 Law. ed., 409.) Los ingleses sostienen la misma teoria. (De Jager vs. Attorney Genenal of Natal, 8 Ann. Cas., 76.) No es necesario ser ciudadano americano para que pueda cometer el delito de traicion. Pero el Codigo Penal Revisado ha excluido a los extranjeros, solamente los nacionales pueden cometerlo. El articulo 114 dice asi: "El que, debiendo fidelidad a los Estados Unidos o al Gobierno de las Islas Filipinas, sin ser de nacionalidad extranjera, les hiciere la guerra o formare causa comun con sus enemigos, ayudandoles o socorriendoles dentro o fuera de dichas Islas, sera castigado con las penas de reclusion temporal a muerte y multa que no exceda de veinte mil pesos." La orden ejecutiva No. 44, reconociendo que no era posible bajo el Codigo Penal Revisado castigar por el delito de traicion a los extranjeros residentes en Filipinas que han ayudado a los enemigos, enmendando el articulo 114, añadiendo un parrafo del tenor siguiente: "Likewise, any alien, residing in the Philippine Islands, who commits acts of treason as defined in paragraph 1 of this article shall be punished by prison mayor to death and shall pay a fine not to exceed 20,000 pesos." (Executive Order No. 44, May 31, 1945.)

Si el acusado es filipino, debe lealtad al Gobierno del Commonwealth y debe ser condenado por traicion; pero si es extranjero no puede ser castigado por actos cometidos por el antes de la enmienda del articulo 114 delCodigo Penal Revisado. Como las pruebas no establecen de una manera clara que el acusado es filipino, no puede ser responsable criminalmente del delito de traicion.

Se revoca la sentencia apelada. Se ordena su inmediata libertad con las costas de oficio.

Moran, Pres., y Briones, M., estan conformes.

BENGZON, M.:

Conforme con el resultado.

CONCURRING

PERFECTO, J.:

Charged in the People's Court with the crime of treason on four counts, appellant was found guilty only on count No. 3 and sentenced to reclusion perpetua, with the accessory penalties prescribed by law, and to pay a fine of P10,000 and the costs.

No evidence was presented by the defense. The prosecution presented the testimonies of four witnesses.

- Illuminada Zurbano, 40 years, widow, residing at Lopez, Tayabas, testified that she knows appellant as a "Japanese soldier," because "he was always carrying a revolver while going around our town, and he used to arrest guerrillas and took them to the garrison." On April 13, 1944, appellant was in the company of San Juan "and they arrested my brother Epimaco Zurbano, in front of the Cine and they took my brother to the garrison." The witness brought food to her brother from April 13 to the 23d. After that she was told by the Japanese that her brother was no longer in the garrison. Since then she did not hear anything from her brother. When he made the arrest, appellant "was in civilian clothing, but always carried a revolver around his waist." There was an organization in Lopez known as "Yoin," founded by San Juan and appellant. The members of the organization "used to go around the houses of the guerrillas and watched them." The witness saw the arrest because "we were in the theater looking at the people going out. I was outside the theater. Outside the building." There were many people; around eighty. The arrest was made about 7 o'clock in the evening. There were lights. Besides Lamberto San Juan, Alejandro Enguanso was also in the company of appellant. The witness did not know whether the weapon carried by appellant was a revolver or a pistol because "it was hidden." When the arrest was made, the witness was at about twelve meters away from appellant. The witness was accompanied by Mariano Catan. She said: "My companion was Mariano Catan," her brother-in-law. The witness does not know where the "Yoin" was organized. "What I know was that he came to our place together with other people to organize it." Epimaco was 23 years old, a guerrillero under General Gaudencio Vera. The witness was at the place because the moon "was then bright" and "we were having a walk."

- Marianito Catan, 34 years, married, merchant, testified that "I remember that on April 13, 1944, while I was in front of the Cine in Lopez, Tayabas, my brother (Epimaco Zurbano) was arrested by the accused." The arrest was made by appellant and Lamberto San Juan. The witness did not ask why. "I simply followed my brother and then went home and reported the case to my parents." His brother was taken to the Japanese garrison, and since his arrest on April 13, the witness has not heard of his brother. The witness did not hear about the organization known as "Yoin." Epimaco Zurbano "is my brother-in-law." He was arrested at 7 o'clock p.m. "in front of the cine" and, answering the question whether he was "the only person present" when the arrest took place, said: "I was the only

one there. I was then taking a walk." Only Lamberto San Juan and appellant were the persons who arrested Epimaco, and the witness was sure that there was "no other." The witness was about ten meters away from them. About half an hour elapsed from the moment of the arrest to the time the witness reported the incident to his parents. Lamberto San Juan was carrying an exposed revolver on his right hip. It had a shell handle. Appellant was also carrying a revolver "on his right hip," also visible because "it was outside the polo shirt." Appellant was wearing a polo shirt.

Illuminada Zurbano said that appellant was carrying his revolver "on his left hip" and was covered by his "camisa china," and that Alejandro Enguanso "was always with" Lamberto San Juan and appellant.

On re-direct examination, Marianito Catan emphasized that he was the only one who was present at the place of the arrest, adding: "I am sure of that. I was the only one who was in front of the cine." No one entered the cine. "A polo shirt is different from a camisa china." The witness knows Alejandro Enguanso who was not in the company of Lamberto San Juan and appellant. Answering also questions from one judge, the witness repeated that he did not see his sister-in-law Illuminada Zurbano in the place of the arrest.

- Domingo Villasoto, 34, married, farmer, testified that he knows appellant because the same arrested his father Sixto Targa on August 12, 1944, because they suspected him of being a guerrilla. "We took food to him (to his father), but after one month we did not know where he was taken. He did not return any more." The witness heard about the "Yoin" which is the "same as Ganap soldiers of the Japanese." Sixto Targa was the father-in-law of the witness. The arrest of Sixto Targa took place at 3 o'clock in the afternoon. Appellant was accompanied by four companions, but he was the only one who went up the house. They were all Ganaps. Those present at his arrest were Pastora Targa, wife of the witness, Porfirio Targa, his brother-in-law and his wife, Flora Salvacion, and Silveria Abmes, wife of Sixto. The witness did not try to follow his father-in-law after his arrest.

- Luisa de Mondragon.—The testimony of this witness was vigorously objected to by the defense, because she is not mentioned in the information as one of the witnesses for the prosecution. The lower court allowed her to testify, and she testified that she is 48 years old, widow, and that at about 7 o'clock of April 13, 1944, "I came from the house of the mayor because I was looking for my husband" who was missing because the Japanese took him. She saw appellant in Real Street watching for people. Epimaco Zurbano was looking around Real Street. Appellant arrested him. Appellant was accompanied by Enguanso and another person. The witness knows Pio Tabien, Dominador Argosina, jr., Mamerto Canlar, Felipe Marquez and Miguel Marquez. All of them were arrested and killed by the Japanese "on orders of these people." When appellant arrested Epimaco Zurbano at about 7 o'clock on April 13, 1944, he was accompanied by Pablo Cortes and Benito Villaruz besides Enguanso. They were only four and no more. Appellant was wearing a white camisa china. "He had a revolver behind his body covered by his camisa." At the time of the arrest of Epimaco there were many people, but the witness recognized only Enguanso and appellant.

From the foregoing, it appears that, although three witnesses testified as to the arrest of Epimaco Zurbano effected by appellant to be later brought to the Japanese garrison, for all legal purposes, it is the same as if no witness had testified at all. The second witness contradicted the first one on very important facts related to the arrest, and the third contradicted both the first and the second. The reciprocal contradictions between them have the effect of engaging the three witnesses for the prosecution in a veritable three-cornered fight. A striking characteristic of it is the fact that the first witness is the sister of Epimaco Zurbano, the arrested person, and the second witness is a brother-in-law of both, the first witness and the arrested person, and both have mutually contradicted each other on the following essential facts to their credibility as witnesses:

- (a) As to the presence of about eighty persons at the scene;
- (b) As to whether Mariano or Marianito Catan was, as stated by Illuminada Zurbano, "my companion;"

- (c) As to the presence of Illuminada Zurbano at the place of the arrest;
- (d) As to whether appellant was wearing camisa china or polo shirt;
- (e) As to whether appellant had his revolver at his left or right hip;
- (f) As to whether said weapon was exposed and visible or not;
- (g) As to whether Alejandro Enguanso was accompanying appellant or was not in the place at the time of the arrest.

To increase the prosecution's predicament, comes Luisa de Mondragon, a third witness in discord, by further belying the first two witnesses when she testified that appellant was accompanied by Pablo Cortes and Benito Villaruz, but not by Lamberto San Juan, the one, who, according to the first two witnesses, was accompanying him.

As a general rule, the testimony of one witness is enough, if truthful or reasonably credible, to prove the truth of a controverted fact in court. The special nature of the crime of treason requires that the accused be afforded a special protection not required in other cases, so as to avoid a miscarriage of justice. The extreme seriousness of the crime, for which death is one of the penalties provided by law, and the fact that the crime is committed on abnormal times, when large portions of the people are undergoing nervous hypertension, and when small differences may and in mortal enmity, which may wipe out all scruples in sacrificing the truth, the law requires that, at least, two witnesses must testify as to overt acts of treason, if the same should be accepted by the tribunals as legal basis to condemn a person as a traitor.

These two witnesses must equally be truthful and credible. It is not enough that the testimony of one of them can be relied upon on the existence of the overt act in controversy, while the other cannot. The requirement of the law is not complied with because three witnesses or any greater number of them have testified as to the same overt act if among them there are not two whose testimonies are believed, by a competent court, beyond all reasonable doubt. In the present case each and every one of the three witnesses for the prosecution testified to the effect of belying the testimonies of the other two, in such a way that it is not possible to accept the testimony of one of them without rejecting at the same time the testimonies of the other two. Even without the two-witness rule in treason cases, there is no legal basis to convict appellant upon the testimony of any one of the three witnesses, as each one is belied by the other two. Each of them is unreliable under the maxim "falsus in unus, falsus in omnibus."

We vote to acquit appellant.

PARAS, J.:

On the merits of the case I agree to the foregoing concurring opinion.

DISSENTING

TUASON, J., with whom concur FERIA, HILADO, and PADILLA, JJ.:

The findings of the People's Court are fully sustained by the testimony of two or more direct witnesses. The defendant did not introduce any evidence. The sole ground of the majority decision for reversing the lower court's judgment is that the defendant has not been shown to be a Filipino citizen.

I disagree with this conclusion. Although there is no direct evidence of the defendant's citizenship, Luisa de Mondragon testified that she "knew him because he is a native of Lopez and he is always there." This testimony has not been denied. "In the absence of proof to the contrary every man is considered a citizen of the country in

which he resides." "A man is * * * to be regarded as a citizen of his native state until it can be shown that he has acquired citizenship elsewhere. Every person at his birth is presumptively a citizen or a subject of the state of his nativity, and where his parents were then both subjects of that state, the presumption is conclusive." (11 C.J., 786, citing numerous authorities including decisions of the Federal Supreme Court and lower U.S. courts.)

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