

THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FERNANDO MARTIN (ALIAS VASQUES), DEFENDANT AND APPELLANT.

G. R. No. L-2537. January 10, 1951

Ponente: JUGO, J.

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JUGO, J.:

Fernando Martin alias Vasques was accused before the Court of First Instance of Batangas of treason, the information containing four counts. During the trial, on motion of the fiscal, Count 4 was dismissed for lack of evidence. After the trial, the court found him guilty on three counts and sentenced him to death. He appealed.

We find from the evidence presented by the prosecution that the following facts have been established:

Fernando Martin alias Vasques, 19 years of age in the year 1945, is a native-born citizen of the Philippines, with residence in Lopez, Quezon Province.

Count No. 1.—During the Japanese occupation of the Philippines, the appellant joined the so-called Yoin society, the main purpose of which was to aid the Japanese forces in their campaign against the Fil-American army and the guerrillas. Later, he became an officer of the Makapili organization which had similar purposes to those of the Yoin society. He received military training from the Japanese. He was provided with arms and used the Japanese military uniform. Later on, he took charge of the training and instruction of the Makapili members. Sometimes he acted as an informer.

The above facts were testified to by Josefinita Jusay de Villanueva and her sister Bella.

Count No. 2—On January 25, 1945, the appellant, with several companions composed of Filipinos and Japanese, entered the store of Felisa Latisa in barrio Maraoy, Lipa, Batangas, looking for Primitivo Lazat and one Baldomero Soriano. They did not find them in the store. They searched another house in a nearby field and there they found Primitivo Lazat whom they arrested and tied. After a while, they found also Baldomero Soriano. The appellant asked him whether he was a guerrilla lieutenant. Soriano emphatically denied it. As Soriano persisted in his denial, not even admitting that he had any connection with the guerrillas, the appellant struck him with a big stick one meter long. As Soriano still denied the imputation, the appellant shot him to death with a rifle. Lazat was taken away by the appellant and his companions, and nothing has been heard of him thereafter.

Just before the above incident, the appellant and his companions entered the house of Pablo Magsino looking for guerrillas. They fired shots at the many people who were gathered in the house, killing Crisanto and Mariano Reyes. The other people who tried to escape were caught and tied by the appellant's group, but said people were later released due to the intercession of Marcelina Tesico, who assured the raiders that those people were not guerrillas.

The above facts were testified tp by several witnesses.

Count No. 3.—In the afternoon of February 9, 1945, Josefinita Jusay de Villanueva and her sister Bella, with their

parents and some relatives, were traveling toward the mountains in the barrio of San Antonio, Sto. Tomas, Batangas. On their way, they were arrested by the appellant who was accompanied by some Japanese soldiers, for the reason that their father was suspected of being a guerrilla. The appellant tied the hands of the father. All of them were taken to the main road where they were ordered to board a truck that brought them to barrio Sulok. Upon arriving at that place, the father and mother and other prisoners were lodged in the Japanese barracks. Josefinita and Bella were taken to the house of Primo Quinto, whose wife was their relative. The next morning they were allowed to visit their parents in the barracks. They noticed that the faces of their father and of some of the other detainees were swollen and their clothes torn. Later in the evening, they heard their mother screaming very loudly. They have never seen their parents again.

Josefinita Jusay and Bella Jusay together with other witnesses testified to the above facts.

The defendant denied any participation in the above acts charged against him.

He testified that on December 25, 1944, he was arrested by the Japanese in Lucena, Quezon Province. On January 2, 1945, he was taken to the Japanese garrison in Lipa, Batangas, to be investigated by Primo Quinto. After the investigation, he was taken to the airfield in Mataas na Kahoy where he was ordered to work. On January 8, he was taken to Alaminos, Tayabas (Quezon Province), where he stayed up to February 15. He was brought back to barrio Sulok where he stayed continuously up to March 17. In barrio Sulok he became acquainted with Josefinita Jusay. He disclaims any knowledge of acts charged against him.

The above testimony, which is uncorroborated, cannot prevail over the positive, direct, and straightforward testimony of the witnesses for the prosecution, some of whom were victims who had survived the ordeal. There was no motive absolutely for said witnesses to testify falsely against the accused. The defense of the appellant is a sort of alibi, which is generally weak and more so in view of the circumstances of this case. The defendant displayed too good a memory for dates to establish his uncorroborated alibi.

The penalty of death imposed by the trial court should be reduced to reclusion perpetua with the accessory penalties of the law, in view of the fact that eight Justices of the Court failed to reach a decision on it as provided for in section 9 of Republic Act No. 296, otherwise known as the Judiciary Act of 1948.

The judgment appealed from is hereby modified by imposing upon the appellant the penalty of reclusion perpetua, with the accessory penalties of the law, a fine of P10,000, without subsidiary imprisonment in case of insolvency. Without costs. It is so ordered.

Moran, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Reyes, JJ., concur.
Paras, J., concurs in the result.

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