

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO M. ABAD (ALIAS PAQUITO), DEFENDANT AND APPELLANT.

G.R. No. L-430. July 30, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

In a decision penned by Judge Angel S. Gamboa, concurred in by Judges Jose Bernabe and Emilio Rilloraza, all of them of the People's Court, accused Francisco Abad was found guilty of the complex crime of treason with homicide and sentenced to death, to pay a fine of P15,000, to indemnify the heirs of Osias Salvador in the amount of P2,000, and to pay costs.

The information charges appellant of the crime of treason as defined and penalized under article 114 of the Revised Penal Code by giving aid and comfort to the Empire of Japan and the Japanese Imperial Forces during the period comprised between December 24, 1943, and September 26, 1944, as follows:

"1. That on or about the 24th day of December, 1943, in the municipality and province aforesaid, Francisco Abad (alias Paquito) the accused herein, serving as an informer and spy of the Japanese Army, did then and there, join and participate in a raid conducted by about fifteen Japanese soldiers of the Military Police at the house of Magno Ibarra, and did then and there apprehend the said Magno Ibarra, charging him of possession of a revolver which had been previously surrendered by Magno Ibarra to the Japanese authorities, but because of the insistence of the herein accused that Magno Ibarra still had the revolver, the latter was confined in the Japanese garrison.

"2. That on or about March 11, 1944, in the same municipality and province aforesaid, the said Francisco Abad (alias Paquito), as such informer of the Japanese Army, wilfully, unlawfully, feloniously and treasonably did, then and there, cause the arrest and incarceration, for more than two months, of one Mr. Francisco, whose first name is still unknown, for having remarked that the Americans would soon return because many places in the Philippines had already been retaken.

"3. That on or about September 28, 1944, also in the municipality of Camiling, Province of Tarlac, the herein accused, as such informer of the Japanese Army, did then and there wilfully, unlawfully, feloniously and treasonably force, coerce, and compel Osias Salvador and his two brothers Epifanio Salvador and Liberato Salvador to go, as they did go to the Japanese garrison where the said Osias Salvador and his two brothers, at the instance of the herein accused and in his presence, were tortured as guerrilla suspects, and although Epifanio and Liberato Salvador managed later to escape from imprisonment, the said Osias Salvador was unable to do so and died from the tortures and injuries inflicted upon him.

"4. That on or about November 12, 1944 and on the occasion of a stage show held in the said municipality of Camiling, Province of Tarlac, the herein accused, taking advantage of his connection and influence as informer and spy of the Japanese Army, did then and there unlawfully, wilfully and feloniously hand over one Francisco Donato to the Japanese soldiers who slapped and kicked the said Francisco Donato, for an incident in which

the accused was entirely to blame in that the said accused annoyed Flora Esteban, wife of Francisco Donato, by throwing sugarcane butts at her."

The lower court found the accused guilty on the first three counts.

Nine errors are assigned in appellant's brief.

The first question raised by appellant is that the lower court erred in finding the accused guilty on the first count, notwithstanding the fact that only one witness testified to the overt act alleged therein.

Two witnesses were called by the prosecution to prove the first count, Magno Ibarra and his wife, Isabel. The latter testified that when appellant, accompanied by his brother and Japanese soldiers, went to their home, demanding the surrender of a revolver of her husband, the husband was out supervising the harvest of their palay, and the latter happened to learn of the incident by information from the wife. Magno could not, therefore, corroborate his wife as to the latter's testimony concerning appellant's coming to their house.

The testimony of Magno Ibarra as to what happened to him in the garrison, where he was told by appellant to produce his revolver, is not corroborated by his wife nor by anybody else.

The Solicitor General advances the theory that where the overt act is simple, continuous and composite, made up of, or proved by several circumstances, and passing through stages, it is not necessary that there should be two witnesses to each circumstance at each stage. The theory is not well taken. The two-witness rule must be adhered to as to each and everyone of all the external manifestations of the overt act in issue. Appellant's going to the Ibarra house, in search of the revolver, is a single overt act, distinct and independent from appellant's overt act in requiring Magno Ibarra, when the latter went to the garrison, to produce his revolver. Although both overt acts are inter-related, it would be too much to strain the imagination if they should be identified as a single act or even as different manifestations, phases, or stages of the same overt act. The searching of the revolver in the Ibarra house is one thing and the requiring to produce the revolver in the garrison, another. Although both acts may logically be presumed to have answered the same purpose, that of confiscating Ibarra's revolver, the singleness of purpose is not enough to make one of two acts.

The lower court erred consequently in not pronouncing that the first count of the information was not proven.

Whether accused caused the arrest and incarceration of Fausto Francisco, as alleged in the second count of the information, is the next question raised in appellant's brief.

In the afternoon of March 10, 1944, while conversing with a group of about ten persons, Francisco, who had just arrived from Manila, stated that the Americans were coming nearer to the Philippines and, on noticing a Japanese plane flying over them, added that in the very near future they will see American planes flying over the Philippines. The accused was among those present in the group. Jose Tamurrada and Adriano Reyes were also among them. At night of the same day Francisco attended the dance held in the auditorium of Palimbo, Camiling, on the occasion of the barrio fiesta. A group of Japanese soldiers, accompanied by appellant and his brother Mariano, arrived. Appellant pointed at Francisco saying, "That is the man;" whereupon, Francisco was arrested and was imprisoned for almost two and a half months, during which time he was subjected to torture and made to undergo hard labor for being an American propagandist. These facts were testified by several witnesses for the prosecution.

Appellant, who has resorted to an alibi as defense, made an almost exhaustive analysis of the declarations of the witnesses for the prosecution in a forceful effort to discredit them. A careful reading of said declarations leads us to the conclusion that they deserved credibility and by them it was proved beyond all reasonable doubt that appellant was present in the group which in the afternoon heard Fausto Francisco make statements in favor of the

Americans and that he caused the arrest of Francisco in the auditorium by pointing him to the Japanese soldiers who arrived with him at the place.

Among the arguments in appellant's brief relating to the second count in question, the one in which appellant alleges that no one has ever heard that, after the afternoon statements of Fausto Francisco, appellant went to the Japanese garrison and informed the Japanese soldiers thereof, appears to be stronger. In fact, there is no evidence as to what the appellant did during the time intervening between when appellant heard Francisco's afternoon statements and when appellant went at night to the auditorium to have Francisco arrested by the Japanese soldiers accompanying him and his brother Mariano. But the natural relationship between the two incidents makes unnecessary any evidence as to appellant's conduct and actions during the intervening period. Besides, it is not alleged in the information that it was appellant who denounced Francisco to the Japanese for the afternoon statements in question, and even if we should disregard any connection between the afternoon incident in which appellant heard Francisco's statements and the incident in which Francisco was arrested, and, furthermore, even if we go to the extent of disregarding completely the first incident, the fact that appellant caused the arrest of Francisco at the auditorium night dance, by pointing him as the man sought for to the Japanese soldiers who accompanied him and his brother Mariano, in itself alone is sufficient to find him guilty of adherence to the Japanese enemies and of giving them aid in the attainment of their war purposes, among them the suppression of American or anti-Japanese propaganda.

Upon this our conclusion, appellant's insistence that there were well-known Japanese spies, instead of him, who must have given the tip to the Japanese as to Francisco's statements, is of no consequence.

The next question raised by appellant is the third count of the information upon which the appellant's brief dealt in three assignment of errors, 3, 4, and 5.

Liberato Salvador testified that in 1944 he was a member of Major Ramsey's Guerrilla, which he joined on March 5, 1942, he having been formerly in the Recruiting Division of the Philippine Army. On September 28, 1944, he went to Camiling with his brother Osias to find out the strength of the Japanese garrison stationed there, and to said effect "we brought along with us five gallons of coconut oil just pretending to sell it in the public market in order that we cannot be detected by the spies of our enemy, the Japanese." Then they saw the accused "who was about five meters away from us." Felix Abad asked for a ride back to Mangatarem. While Osias was talking with Felix, the accused "winked his eye and then, immediately, Magdalera drew his revolver and pointed at me. He winked with a motion indicating that I was to be captured. My brother Osias approached me; We were asked to raise our hands." Because Liberate protested that he was not making any trouble and at first did not raise his hands, Magdalera said: "No, you are a member of the guerrillas, you are fighting against the Japanese." Then Epifanio Salvador approached his brother Liberate and told him: "Raise your hands because he is a spy of the Japanese," referring to Cristoper Magdalera. Then Felix Abad suggested to Magdalera that the Salvador brothers be brought to the Japanese garrison, 25 meters away from the market. The incident took place at about 3 o'clock in the afternoon. At the garrison "we were tied up against the wall of the building. At about 6 o'clock in the afternoon we were given water to drink (about five or six gallons) and maltreated. They hung me and tied in the wrist with the rope around my neck. They hung me with my toes barely touching the floor. Then they boxed me and beat me with a baseball bat until I was unconscious. I did not regain consciousness until they stuck a lighted cigarette in my face at about 8 o'clock already in the evening."

When he regained consciousness, he heard his brothers shouting for help and groaning. Witness was about six meters away from them, but he has not seen them being tortured because "I could not move." After 8 o'clock in the evening, "we were brought again to the porch and tied our neck in the same way they tied us before, with our hands tied at the back. At about 4 o'clock in the morning of the 29th, my brother Epifanio Salvador, who was

sitting side by side with Osias Salvador, was able to untie his rope and then, all of a sudden Epifanio left us. The sentry who was just sitting in front of us with a rifle at fixed bayonet was sleeping. When the sentry was awakened he asked: 'Where is your brother Epifanio Salvador?' I answered the sentry: 'I do not know.' Then, at first he was planning to release us to look for our brother Epifanio. We consented to be released, but the sentry changed his mind and got another big rope with which he whipped us again right and left. Then they went to our house, the house of Epifanio, and looked for him. And when they were not able to locate him they got my sister-in-law Inocencia Manson de Salvador and she was also questioned as to where was my brother Epifanio, and tied up her hands as they have done to us. After that, Osias Salvador and myself were brought to the room just behind the one we were tied up and they got an electric wire and tied us again, but putting on a bench and the bench was too short that the legs of my brother Osias was on top. We were tied and then rolled with the wire from my head up to the head of my brother, aside from tying us from neck to leg. We talked, my brother and I, to escape if we can. After ten minutes, a Japanese entered the garrison and he had a bamboo with which whenever we asked for water and food they beat us. They questioned us: 'Where is the machine gun you are hiding? You are hiding six machine guns and automatic rifles; where are the rifles and revolvers? Where are the Americans now?' That was done to us many times. At about 5 o'clock in the afternoon one of the Japanese came to us and cut our hair and said: 'Kayo dalawa patay mamayang gabi.' We answered: 'Ngayon na.' The Japanese said: 'No, tonight.' Then in my struggle to remove the rope around my leg I was able to untie it without my knowledge. One of the Japanese entered to find out what we were doing, but he did not inspect me and left again. Although my hands were bleeding, with my courage to live still I grabbed the electric wire and cut it through continuously doing this (witness showing the act of twisting something with his fingers), and unbound myself. When the sentry entered, I allowed the electric wire to be placed as it was. Then it was 6 o'clock (on September 29) from the bells of the church. My brother Osias said: 'I can not escape, I am weak. My face is bleeding. I cannot walk. If you are untied, the thing for you is to live, if you can run for your life. Never mind for me. If I am dead, never mind. Now we are fighting our common enemy, the Japanese. I want you to find out what will be the result of this war.' Then he kicked me, because I was untied already up to the knee. I tried to remove the rope at his back, but he said: 'No, I can not run.' And he shouted: 'You better run for your life.' Then I saw one Japanese that heard that, and I jumped outside and when I fell to the ground I saw another Japanese watching and shouting words that I can not understand. I just ran. Between the municipal building and the street there was a barbed wire fence and jumped it over and then passed to the rear of the municipal building, passing between the house of Mr. Javier and the Treasurer's, and then to the bank of the river. I passed under the bamboo groves and I went to the house of my friend (Gregorio Javier) and I was able to go up and then fell down weak." Osias was the commanding officer of the guerrilla unit in which Liberato was a second lieutenant and Epifanio, a volunteer without grade. Since then Liberato did not see Osias any more, but he was able to locate Epifanio in Bayambang, Pangasinan.

The testimony of Liberato Salvador was substantially corroborated by Epifanio Salvador on all what happened from the afternoon of September 28, 1944, when they were arrested in the market place up to about 4 o'clock in the morning of September 29, when Epifanio was able to untie himself and escape from the Japanese garrison, passing in front of a sleeping sentry two meters away from where the Salvador brothers were tied.

Augusto Antonio testified that the accused told him that Osias Salvador was killed, bayoneted by a Japanese soldier, behind the elementary school building, near the closet, where the corpse was later buried. The information was given by the accused in 1945 when the Japanese were still ruling.

Appellant endeavors to discredit Liberato and Epifanio Salvador's testimonies by trying to show the improbability for Liberato to have seen the accused making signs to Cristoper Magdalera for their arrest on the basis of the relative positions of witness and appellant and that Epifanio "apparently" was away and came near the place where Liberato was being arrested only after Magdalera had pointed his pistol at his back.

The fact that, while he was going southwest, he had seen the accused in the northeast making the sign to Magdalera, is satisfactorily explained by Liberato by saying that "because a man wanted by the Japanese begins to observe everything," and he had to observe "because I knew they were making signs," and at that time the accused was "in the left side," and with respect to Epifanio, appellant's surmise that he was "apparently away" appears to be without basis if it is recalled that it was Epifanio who advised Liberato to hold up his hands, when Liberato was refusing to do it, by saying, in allusion to Magdalera, "he is a Japanese spy."

Appellant maintains also that it must have been Felix Abad whom the witnesses for the prosecution saw winking his eye at Magdalera for the latter to arrest the Salvador brothers and not Francisco Abad. But the theory cannot be maintained upon the positive and unequivocal testimonies of Liberato and Epifanio pointing the accused as the one who made the sign. Appellant's insistence to put the blame on Felix Abad, by trying to show that it was he and not the accused who made the sign, even if accepted, will not relieve appellant of all responsibility, because, according to the witnesses for the prosecution, he went along with his brothers Mariano and Felix and Cristoper Magdalera in bringing the Salvador brothers to the Japanese garrison where they were delivered by the accused himself, and it was Francisco Abad who told the Japanese "that we were guerrillas."

In the sixth assignment of error appellant complains that the lower court admitted evidence of supposed treasonable acts of appellant but which are not specifically alleged in any of the counts of the information.

Appellant points specifically to the testimony of Agustin de la Cruz, to the effect that in the month of October, 1944, at around 11 o'clock, while witness and others were around a gambling table, appellant came unnoticed with six Japanese soldiers and demanded of those in the gathering the information of the whereabouts of Lt. Riparip and Sgt. Juan Asuncion, both of the guerrilla army, and that sometime in November, 1944, on the occasion of the shooting of Eustaquio Domingo, the accused was in the Japanese garrison while the Japanese soldiers proceeded to the site of the shooting, gathered all the males found thereabouts, bringing one of them, Benjamin Aremajo, to the garrison to be later dragged to the plaza where he was beaten up, facts which were declared proven by the lower court.

The assignment is well taken as the above facts are not alleged in any of the four counts of the information. The fact that accused is described therein as an informer is not enough, because the description is a conclusion made by the author of the information based on the facts specifically alleged in the four counts. The information alleged that the accused "adhered to and served as an informer of the enemy, * * * giving them aid and comfort in the following manner, to wit:,"—and then follow the four counts.

Furthermore, even if the word "informer" in the information should justify the admission of the evidence in question, the lower court erred in finding the facts proved when the testimony of Agustin de la Cruz about them has not been corroborated by any other witness, thus violating the two-witness rule in treason cases.

Appellant assigned as the seventh error of the trial court in finding him as an informer "on mere assertions of witnesses to that effect without supporting treasonable acts and in making findings of fact not supported by any evidence at all" and makes the complaint, specifically, in relation with the following pronouncement in the appealed decision:

"* * * The accused acted and served as an informer and spy for and in the aid of the Japanese army in Camiling, directing his espionage activities or detecting and gathering informations about the activities of members of the guerrilla organizations, of persons maintaining or providing for the support thereof and of persons possessing firearms or in any other manner connected with the underground resistance movements against the Japanese and spying on the movements of those persons who cherish the return to the Philippines of the Americans, * * *. Proofs adduced by the prosecution of the fact that the accused had been acting as an informer and spy for and in the aid of the Japanese are highly convincing. One after another the various

witnesses for the prosecution has pointed his accusing finger at the accused to have been an informer and spy of the Japanese army. * * *"

The pronouncement appears to be based on the testimonies of Publio Dumauual, Rafael Guillermo, and Agustin de la Cruz, each one of whom testified about facts not alleged in any of the counts of the information, and their testimonies on said facts appear not to be corroborated by another witness, as required by the two-witness rule. The assignment of error is well taken.

Appellant complains in his eighth assignment of error that the court failed to take into account two mitigating circumstances: the fact that the Abad family was persecuted by guerrillas, the persecution ending in the killing of Lino Abad Pine and Antonio Abad, father and brother, respectively, of the accused, and, appellant's age.

On September 26, 1942, a group of around thirty guerrillas took the Abad family to the barrio of Ketegan. On October 17, Lino Abad Pine and Antonio Abad were brought to the schoolhouse, and from that time on they were never seen alive again. On January, 1943, the family was released minus the above mentioned two members, and they proceeded to Camiling where Mariano Abad, the eldest son, was living, as explained by his widowed mother, "to whom I could look after for support inasmuch as he is my living eldest son. He was with the Japs because that was the last resort for him to do inasmuch as if he did not do that he would have been killed by the guerrillas."

These facts cannot be considered to mitigate appellant's guilt as they are not of a similar nature or analogous to those mentioned in article 13 of the Revised Penal Code.

Appellant's age can be considered. He was born on October 20, 1924, and when he committed the acts alleged in counts two and three, the latter on September 28, 1944, he was not yet 20 years old. The fact that his eldest brother, Mariano, was the liaison officer of the Japanese and another elder brother, Felix, was also in the service of the Japanese, coupled by the fact that, as stated by his widowed mother, the accused had to depend on Mariano for his support, the same as the other members of the family, are circumstances from which, in view of appellant's immature age, did not allow him the freedom of initiative and action which should be expected of a person who is aware of the full consequences and responsibility for his acts. The circumstances of this case justify crediting appellant with a mitigating circumstance of similar nature to that of number 2 of article 13 of the Revised Penal Code.

Although we hold appellant as one of those responsible for the arrest of the Salvador brothers, we do not agree with the lower court in finding him responsible also for the death of Osias Salvador, as, according to the evidence, it was the escape of Epifanio, and later the escape of Liberato, which must have enraged the Japanese to the extent of killing Osias Salvador, who, were he not so weak, had the same chance as his brothers to escape. If his brothers did not escape, there is no ground to presume that Osias would have been killed by the Japanese if we take into consideration that, after almost two and a half months of confinement, the Japanese allowed Fausto Francisco to be released. There is absolutely no evidence that appellant was present or had anything to do with the killing of Osias Salvador.

Upon the conclusions we arrived at, it is not necessary to deal with the ninth assignment of error in appellant's brief.

Finding the accused guilty of the crime of treason as punished by article 114 of the Revised Penal Code with the attendance of one mitigating circumstance, as provided in number 2 of article 64 of the Revised Penal Code, with the modification of the lower court's decision, we sentence him to 14 years, 8 months, and 1 day of reclusion temporal and to pay a fine of P5,000 and the costs.

Moran, C.J., Feria, Pablo, Hilado, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I reserve my vote. The decision in the Laurel case is not as yet final.

DISIDENTE**BRIONES, M.:**

Creo que el apelante debe ser absuelto, por duda razonable. Parecia pesar una maldicion sobre la familia del acusado: perseguidos por los guerrilleros, algunos de sus miembros perecieron en manos de estos. El cargo mas grave contra el acusado es el relacionado con la muerte de Osias Salvador. Pues bien; me parece que las pruebas acerca de este cargo no justifican la condena.

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