

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLE, VS. PEDRO DUBOUZET, ALIAS PERICO DUBOUZET ALIAS FEDERICO DUBOUZET, DEFENDANT-APPELLANT.*G.R. No. L-4739. October 29, 1952*

Ponente: JUGO, J.

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Pedro Dubouzet was accused of treason before the Court of First Instance of Occidental Negros on five (5) counts. He was acquitted on three (3) counts and convicted on two, Nos. II and III, and sentenced to suffer reclusion perpetua with the accessory penalties and to pay a fine of P10,000.00 with costs. He appealed.

The accused admitted being a Filipino citizen.

Count No. II

On the morning of December 11, 1942, there was a commotion among the people in the place called Lamao of barrio Vito, municipality of Sagay, province of Negros Occidental, caused by a group of armed Japanese soldiers accompanied by the appellant, who was also armed, which arrived at said place. Three persons named Oscar Bordon, Alfonso Arellano, and Eduardo Martus ran away and hid in the toilet room of Simplicio Bordon. The accused saw them and called them. Bordon, Arellano, and Martus approached the group, and were ordered to accompany the latter in going toward another place in the same barrio about one-fourth kilometer from Lamao. While the group was on its way, a person, by the name of Juan Piaje, who was on top of a coconut tree, shouted telling the people to run away because the Japanese were coming. The Japanese soldiers opened fire at Juan who fell from the coconut tree. When the group arrived at the poblacion of barrio Vito, the accused told the people not to run away, but they ran. The Japanese fired at them. The Japanese then placed their field artillery in front of the store of one Paterna Santua and opened fire on the boats which were on the sea, near the seashore. Faustina Sotar, 68 years old, was wounded in the left part of her back and Adolfo Esperancilla fell dead with a wound in the chest. After the firing, several persons were apprehended by the group, including Oscar Bordon, Alfonso Arellano, and Eduardo Martus. These persons were investigated and tortured by the Japanese soldiers who inquired from them "as to the whereabouts of the USAFFE's." On this occasion, the defendant approached Paterna Santua and conversed with her, telling her that should the Japanese soldiers ask her whether the persons on the boat were soldiers of the USAFFE, she should answer in the affirmative. After the investigation and maltreatment, the Japanese went away with the defendant.

In support of Count No. II, Oscar Bordon, Simplicio Bordon, Paterna Santua, and Faustina Sotar testified.

Count No. III

On May 19, 1935, the appellant, armed with a revolver and in the company of several municipal policemen of Sagay, went to Lamao to fetch his relatives and bring them to Faraon, the town where he resided. When Simplicio Bordon saw the accused. Simplicio asked him, "Master, why are you coming so frequently here. We are afraid of

you." The accused answered, that "I am looking for Domingo Docil, Lorenzo Abaracoso, Federico Bais, Eleno Eduardo, and Samuel Quiamco," who were wanted by the Japanese. Then Fructuoso Imojada and Serafin Esperancilla approached the accused. Imojada who was an ahijado of the defendant, asked him for some money but the latter said he had none. 'When the appellant was about to leave, after loading his brothers' articles on a truck, the appellant told Imojada to board it, because he, Imojada, was wanted by the Japanese. Imojada tried to put up excuses but finally obeyed the appellant and boarded the truck. When the vehicle started, Imojada jumped to the ground and began running. The policeman Gavino Lemoncito and the appellant chased him, firing at him. During the pursuit Imojada was hit with a bullet and fell wounded. Then Dubouzet with his group left toward a Japanese garrison in Fabrica (or Bateria), taking with him the wounded Imojada. Imojada has not been heard from since then.

Simplicio Bordon, Daniel Gatinao, and Serafin Esperancilla testified in support of Count No. III.

The defendant in his defense alleges that he was forced by the Japanese to follow them, and that the mayor of Sagay, Jose Puey, advised him to obey the Japanese to avoid a greater evil and to help his countrymen. The trial court did not give any weight to this defense, and we believe rightly so. In the first place, no effort was made to present Jose Puey at the trial to corroborate the defendant. Even assuming that Jose Puey had gastric pains at the time of the trial, as the defense alleges, yet some effort could have been made to bring him to court later when he had recovered. But no such effort was made.

The defendant also says that he was himself a guerrilla and helped the guerrilla cause. This is not a valid defense as he was instrumental in capturing, maltreating and killing his countrymen in cooperation with the Japanese (People vs. Carmelito Victoria, 44 Off. Gaz., No. 7, 2230).

In view of the aggravating circumstances of this case, the death penalty would be the proper one for the accused, but for lack of the requisite number of votes, the penalty imposed by the trial court is hereby affirmed in all its parts with costs against the appellant.

IT IS SO ORDERED.

Paras, Pablo, Bengzon, Padilla, Montemayor, Angelo, and Labrador, JJ., concur.

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