

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. JOSE ORTEGA, DEFENDANT AND APPELLANT.

G.R. No. L-5194. November 20, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Before the People's Court Jose Ortega was accused of treason on four (4) counts. Upon the abolition of said Court, the case was indorsed to the Court of First Instance of Bulacan. After trial where a number of witnesses for the prosecution and defense testified, Ortega was found guilty under counts 2 and 3 and sentenced to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, to pay a fine of P10,000, and to pay the costs. He first appealed to the Court of Appeals before which tribunal the Solicitor General and the appellant filed their briefs. After studying the case the Court of Appeals arrived at the conclusion that appellant was guilty; but because the crime of treason is penalized with reclusion temporal to death, and in view of the absence of any aggravating or mitigating circumstances, said appellate court is of the opinion that the penalty should be imposed in its medium degree, namely, reclusion perpetua, it certified the case to us for decision.

Counts 2 and 3 read as follows:

"(2). That on or about December 22, 1944, and at the market place of San Ildefonso, Bulacan, Philippines, and within the jurisdiction of this Court, the herein accused, Jose Ortega, for the purpose of giving aid and comfort to the Japanese Army did willfully, unlawfully, feloniously and treasonably join, accompany and lead a Japanese patrol which captured Santiago Samaniego, a guerrilla, who was taken to the Japanese Garrison where he was severely beaten and tortured.

"(3). That on December 28, 1944, in the municipality of San Ildefonso, Bulacan, Philippines, and within the jurisdiction of the Honorable Court, the herein accused, Jose Ortega, with intent to give aid and comfort to the Japanese Imperial Army, did willfully, unlawfully, feloniously and treasonably join, accompany and lead a Japanese patrol which captured Jesus Samaniego, a guerrilla, who like his brother Santiago was taken to the Japanese garrison where he was severely beaten and tortured."

Under count 2, it has been proven through Santiago Samaniego who was then working in the office of the Municipal Treasurer of San Ildefonso, Bulacan, that in the morning of December 22, 1944, while on his way to his office, he was arrested by Japanese soldiers accompanied by appellant Ortega near the market place. He was apprehended for being a guerrilla and as a matter of fact, he was then a member of the Buenavista Regiment, a guerrilla unit operating in the province of Bulacan. He was taken to the Japanese garrison near the market place and investigated. After about two weeks of confinement, he was released. The testimony of Santiago regarding his arrest was corroborated by Bernardo Sanchez.

Under count 3, Jesus Samaniego told the court that in December, 1944, he was a guerrilla Captain in the Bulacan Military Area; that on the afternoon of December 28, 1944, while at a house in Buenavista estate in San Ildefonso, Bulacan, he saw appellant Ortega, Antonio Labao and other Makapilis accompanied by Japanese soldiers approaching the house. Appellant aiming his rifle at Jesus ordered the latter to come down his house, and after

obeying the order, his hands were tied and he was taken to the Pinaog railroad station about three kilometers away. He was told that he would be taken to "Little Tokyo", the Japanese headquarters in the barrio of Sumandig, San Ildefonso, Bulacan, where he would be killed. However, the plan would appear to have been changed, because instead he was taken to the Japanese garrison in the poblacion where his hands and feet were tied. He was investigated by a Japanese officer named Hanai and was beaten and tortured until he lost consciousness. The investigators were trying to make him confess that he was a guerrilla Captain. During the investigation Ortega was present. The testimony of Jesus Samaniego was corroborated by his brother Pacifico Samaniego, an eyewitness to the arrest.

While the charges under counts 1 and 4 were not fully established, because of non-compliance with the two-witness rule, the witnesses under said counts told the court that Ortega was a Makapili and had joined the United Nippon (YOIN), a military organization composed of Filipinos and Japanese subjects which was incorporated into the Japanese Army; that on several occasions appellant was seen dressed in Japanese military uniform, carrying a gun and accompanying Japanese patrols in raiding different places to apprehend members of the guerrilla.

After liberation appellant was investigated by the Counter Intelligence Corps (C. I. C.) of the U. S. Army and he signed an affidavit (Exhibit C) before Special Agent Milton H. Balinslie and two witnesses. We reproduce said affidavit.

"I, JOSE ORTEGA, Unpakan, San Ildefonso, having been first duly cautioned that I need not make any statement, either oral or written, either sworn or unsworn, hereby voluntarily and of my own accord, without duress or compulsion of any kind, with full Knowledge that any statement I may make may be held against me, hereby depose and say under oath:

"I am thirty years of age. In December 1944 I was persuaded to join the United Nippon organization with the full knowledge that this organization was assisting the Japanese in their war against the Philippines. My duties in this organization consisted of guiding Japanese troops to apprehend Guerrillas and also trace rice for the Japanese. In January, 1945, I led the Japanese to the capture of Santiago B. Samaniego and Jesus Samaniego, two Guerrillas, in the market of San Ildefonso. My companions in this capture were Buenaventura Villena, Graciano Dionicio, Nicanor Reyes and Antonio Labao. I do not know where they are now. All guerrillas which I led the Japanese to were bound and tortured.

"I know that what I did in joining the United Nippon was wrong and I am willing to take the consequences for my acts."

In connection with this affidavit which was admitted by the trial court without objection, Ortega claimed during the trial that he was tricked into signing the same by the Samaniego brothers who allegedly told him that if he signed the same, he would receive his backpay. But besides the improbability of said story, the affidavit itself does not show any intervention on the part of the Samaniego brothers; and Ortega introduced no witness to corroborate him on this point.

The prosecution has introduced evidence to prove appellant's Filipino citizenship and appellant does not deny it. On the witness stand Ortega admitted that he was present on the occasions of the arrest of Santiago Samaniego and Jesus Samaniego but claimed that he was then a prisoner of the Japanese and was accompanying them as their servant and errand boy; that he was a member of the guerrilla but was captured by the Japanese soldiers and after being confined for some time, was released but was made to do errands for them, some of his duties being to go to the market and buy foodstuffs and to gather firewood for the Japanese soldiers. He introduced several witnesses to show that he used to be a member of the guerrilla organization but was later captured by the Japanese.

The decision of this case hinges mainly on the credibility of witnesses and the probability or improbability of the story told by them. The trial court rejected the testimonies of the witnesses for the defense and gave its reasons for not attaching any credit to them. After carefully reviewing the evidence we find no reason for disturbing this finding of the trial court. There is reason to believe that the appellant identified himself with the Japanese Armed Forces, accompanied them in their raids, oftentimes dressed in Japanese military uniform and armed with a gun. It is improbable that the Japanese Army would allow a mere prisoner, utilized as an errand boy to wear their uniform, carry a gun and accompany them in their patrols. Ortega not only accompanied Japanese patrols but he took more or less active part in the arrest of guerrilla suspects. If it were true as he claims that he was only a prisoner of the Japanese, it is not explained why some others who were captured by the Japanese soldiers and Makapilis were able to escape. On the other hand, Ortega stayed with the Japanese and helped them until the end. It may not be amiss to quote a part of the decision of the trial court referring to the credibility of witnesses and the reason for rejecting the testimony of the defense witnesses:

"There is no reason whatsoever for not giving full weight and credence to the testimonies of the prosecution witnesses. There is no proof that they were motivated by hatred or ill-feelings or of any other evil motives which would impeach their credibility. It was proven by the prosecution that the victims, Santiago Samaniego and Jesus Samaniego were guerrillas. There is, therefore, reason to believe that they were arrested and tortured for their guerrilla activities, considering that during that time the Japanese and the Yoins and Makapilis were allies and were bent on exterminating the forces of resistance to their established government. The accused could not have been impelled by any other motive than the willful and criminal intent to betray his country to the side of the Japanese. Such acts gave the enemy aid and comfort. They not only diminished the power of the forces of liberation, hut also advanced the cause of the Japanese Empire.

"The witnesses for the defense with respect to the guerrilla activities of the accused in the person of Lt. Leodegario de la Fuente, Fernando Verde, and Anastacio de la Fuente were very doubtful and did not convince the Court. One important question in the testimony of Anastacio de la Fuente was that both he and the accused were detained as prisoners. He, Anastacio de la Fuente, was able to escape. Why is it that the accused was with the Japanese until the last hour? The answer to this is very simple. Anastacio de la Fuente was able to escape because he was a guerrilla and therefore tried to escape and he escaped successfully. On the contrary, the accused was not able to escape because in the first place he did not try because his position was not as a guerrilla, hut as a spy, that is, working together and giving aid and comfort to the Japanese. The Court holds that the arrest of Santiago Samaniego in Count 2 and the arrest of Jesus Samaniego in Count 3 were duly proven."

In conclusion, we find the guilt of appellant under counts 2 and 3 as having been fully established. His adherence to the enemy was also proven. In the imposition of penalties on treason cases we have not followed strictly the rules of the Penal Code regarding the presence or absence of aggravating or mitigating circumstances. We consider rather the gravity or seriousness of the acts of treason established. Where the accused has taken part in the killing and torture of persons apprehended by the Japanese forces through him, we impose the penalty of reclusion perpetua or even death. Where the participation of the accused consisted merely in accompanying Japanese patrols and helping in the arrest of guerrilla suspects, we generally impose the minimum penalty which is reclusion temporal. In the present case under the charges proven, Ortega did not take part in the killing or torture of any person apprehended. And we agree with the trial court that the imposition of the penalty of reclusion temporal sufficiently punishes his treasonable acts.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Jugo, Bautista Angelo, and Labrador, JJ., concur.

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