

## THE PEOPLE OP THE PHILIPPINES PLAINTIFF-APPELLEE, MACARIO HERNANDEZ, DEFENDANT-APPELLANT.

*G.R. No. L-2310. December 28, 1951*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

Macario Hernandez was charged with treason on four counts, but was only found guilty on counts 1 and 4, and sentenced to reclusion perpetua, with the accessory penalties of the law, and to pay a fine of P10,000, plus costs. From this judgment he appealed.

Counts 1 and 4 may be considered jointly because they refer to one continuous overact, namely, the arrest by the accused of the guerrilla suspects Sixto Padua, Emilio Legaspi, Leopoldo Garcia, Jose Garcia and Eusebio Javier in the night of June 23, 1943.

The evidence shows that at about midnight of June 23, 1943, while Emilio Legaspi and Leopoldo Garcia were in front of the municipal building of Rosario, Cavite, the accused, a Filipino citizen, and a member of the Philippine Constabulary, arrived with some Japanese. The accused pointed to Legaspi as a guerrilla and then and there he tied his hands, whereas the Japanese tie the hands of Leopoldo Garcia. Then both Legaspi and Garcia were taken to a truck where they were left under the custody of a Japanese. After sometime, the accused and his companions returned to the truck bringing with them as prisoners Sixto Padua, Eusebio Javier and Jose Garcia, who were all placed in the truck and brought to General Trias, Cavite. There they were all tied to a tree until the following morning when they were again placed in the truck and taken to a Japanese garrison in Imus, Cavite. In Imus, they were again tied to a tree, and taken later to the Military Police Headquarters in Cavite, except Eusebio Javier and Sixto Padua who were left in Imus. During their confinement in Cavite, they were tortured and three months thereafter, Legaspi was released.

Jose Garcia's version of his arrest is as follows: In the night of June 23, 1943, while he and his family were sleeping in their house in Rosario, Cavite, the accused arrived with a Japanese and pointed to him as a guerrilla. Then the accused held him by the arm and dragged him to a truck where he saw Sixto Padua, Eusebio Javier, Emilio Legaspi and Leopoldo Garcia. They were all placed in the truck and brought to General Trias, Cavite, where all were tied to a tree under the vigilance of the accused and some Japanese. The following morning they were taken to Imus, where they were again tied to a post, and they remained so for a week. Thereafter, Jose Garcia and Emilio Legaspi were taken to the garrison of the Military Police in Cavite, where Jose Garcia was tortured. He was hanged from 8:00 to 12:00 o'clock in the morning, while Emilio Legaspi was hanged in the afternoon. After one and one-half month, Jose and Leopoldo Garcia were taken to a place in Azcarraga where for a period of two months they were ordered to alt down and were prohibited from getting up from 8:00 o'clock in the morning to 9:00 o'clock in the evening. Both were tried by the Japanese Military Court on the charge of being, / guerrillas and were sentenced. Jose got three (3) years of imprisonment and Leopoldo fifteen (15) years. Later they were taken to Muntinlupa Prison. Jose stayed there until the coming of the Americans, while Leopoldo was taken to Davao before liberation.

Sixto Padua's version of his arrest is as follows: On June 23, 1943, while he was sleeping in his house in Rosario, Cavite, the accused arrived with a Japanese and pointed to him as a guerrilla. They tied his hands and took him to a truck where he saw Eusebio Javier, Emilio Legaspi, Leopoldo Garcia and Jose Garcia. The prisoners were taken to a garrison in General Trias, Cavite, where they were tied to a tree. The following morning they were taken to Imus and were again tied to a tree. Sixto Padua stayed there for one and one-half month and later was taken to Cavite where he was tortured by the Japanese. After one and one-half month he was released.

The accused set up as his defense that he was a guerrilla belonging to the PQOG Unit which planted him in the Constabulary as a spy, and was honorably discharged on March 12, 1945. He said that on November 13, 1944, he saved two American pilots, whose planes fell in Manila Bay, and he safely brought them to the Mag-Iriog Division, Cavite guerrillas; that he had an encounter with the Japanese and their fellow companions in the battle in Tanza in 1944; that he denounced the Sakdals to the Iroquin Division Commander and the Sakdals were later killed; and that as a merchant he gave rice to the guerrillas.

Counts 1 and 4 which, in substance, charge the accused with having participated in the apprehension of guerrilla suspects Sixto Padua, Emilio Legaspi, Leopoldo Garcia, Jose Garcia and Eusebio Javier appear to have been established by at least two witnesses: namely: Emilio Legaspi, Jose Sagpao and Pedro Caganap testified as to the circumstances leading to the arrest of Emilio Legaspi and Leopoldo Garcia; Eliodora Sarili corroborated the testimony of her husband Jose Garcia as regards the latter's arrest; Sixto Padua and Emilio Legaspi did the same regarding the arrest of Sixto Padua; and Jose Garcia, Sixto Padua and Emilio Legaspi testified regarding the arrest of Eusebio Javier. Sixto Padua, Emilio Legaspi and Jose Garcia have all testified as to their arrest by the accused and his companions and the torture to which they were subjected. All these facts show that the accused gave aid and comfort to the enemy.

The claim that the accused was a guerrilla and was planted in the Constabulary only as a spy has not been clearly proven as he failed to point out any single act indicative of his actuation as such spy. Granting *arguendo* that he was a guerrilla, such, however, cannot justify the treasonous acts he has committed of which we find convincing proof. The testimony of Leopoldo Abueg, corroborating in part the accused, is not free from suspicion, he being his boyhood friend. The testimony of Lino Abueg, also corroborating the accused, appears to be hearsay and as such is inadmissible. The only proof left are the retractions made by Emilio Legaspi and Sixto Padua, two prosecution witnesses, but the reasons given for their retractions are too flimsy to be believed. It appears that if Emilio Legaspi changed his testimony it was only because the accused succeeded in convincing him that he was mistaken as to his identity, but it is significant that he kept silent for two years before he made the supposed retraction. This retraction cannot impair his original testimony.

In view of the foregoing, we find that the accused is guilty of counts 1 and 4 with which he is charged. And considering the nature of the acts committed, we are of the opinion that the penalty of reclusion perpetua imposed by the People's Court is in accordance with law.

Wherefore, the Judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Pablo, Bengzon, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.  
Feria, and Padilla, JJ., took no part.

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