

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ROQUE BADILI, DEFENDANT AND APPELLANT.***G.R. No. L-565. June 27, 1949*

Ponente: OZAETA, J.

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The appellant was accused of treason on eight counts, was found guilty of counts Nos. 1, 2, 7, and 8, and sentenced to suffer life imprisonment and to pay a fine of P10,000. In this appeal the Solicitor General agrees with counsel for the appellant that counts Nos. 1 and 7 have not been established by the testimony of two witnesses. He insists only on counts Nos. 2 and 8.

In support of count No. 2, Macario Castañares testified that on or about August 16, 1944, while he was sitting inside a truck parked in T. Padilla street, Cebu City, the accused Roque Badili arrested him and brought him to the Japanese Kempeitai headquarters, where he was maltreated and released only after nine days of confinement. Another witness named Pedro Baton testified that he saw the actual arrest of Macario Castañares by the accused. No other witness, however, was presented to corroborate the testimony of Castañares as to his maltreatment and confinement by the Japanese military police. We agree with counsel for the appellant that neither has count No. 2 been fully established by the testimony of at least two witnesses.

It remains for us to pass upon the evidence on count No. 8.

It appears that in 1944 the accused was a policeman of the City of Cebu and at the same time served as a secret agent of the Japanese military police and aided the latter in apprehending guerrilla suspects. This fact was established by the testimony of several witnesses who had seen the accused accompanying Japanese soldiers and forming part of their patrols in Cebu in their search for guerrillas and guerrilla suspects. On those occasions the accused was always armed with a revolver.

In count No. 8 it is alleged that on or about July 16, 1944, in Pasil, San Nicolas, Cebu City, the accused in conspiracy with the enemy and other Filipino secret agents, with intent and purpose of giving aid and comfort to the enemy, did then and there wilfully, feloniously, and treasonably capture Lt. Pacifico Rosales of the guerrillas, tie, and torture him, and did drag him to a sailboat and kill him while at sea. To prove that allegation three witnesses were called by the prosecution, namely, Francisca Garcia, Basilio Argoso, and Pastor Abellana.

Francisca Garcia testified that she was forty years of age, married, and a resident of Pasil, Cebu City; that on the morning of July 16, 1944, Lt. Pacifico Rosales came to her house to exchange Philippine currency with Japanese military notes; that since she did not have enough cash at that time, Rosales left to go to church, saying that he would come back later; that soon after Rosales came back, the accused and two other undercover agents named Bautista and Failing, who were then near her house on the seashore rigging up a sailboat, saw Rosales and immediately surrounded her house; that Rosales went out thru the back door in an attempt to escape but was apprehended by Bautista and the accused. By order of the accused Lieutenant Rosales' hands were tied at his back, after which he was dragged to one of the sailboats on the shore. Bautista and Failing boarded the sailboat where

Rosales was and the accused boarded another sailboat. The two boats then put to sea, and after that she had not seen nor heard of Lieutenant Rosales any more.

Basilio Argoso, a twenty-three-year-old fisherman and neighbor of Francisca Garcia, testified that he had known the accused since before the war; that he also knew Lt. Pacifico Rosales; that on the morning of July 16, 1944, after hearing mass he saw the accused and his companions Alberto Bautista and Joe Gabora arrest Lieutenant Rosales in the premises of Francisca Garcia; that after capturing Rosales they tied him and brought him to a sailboat; that the companions of the accused boarded the boat where they had placed Lieutenant Rosales while the accused boarded another boat, and then the two boats sailed towards the island of Bohol; that he knew that Lieutenant Rosales belonged to the Philippine Army; and that at that time the accused and his companions were armed with revolvers.

Pastor Abellana, a twenty-seven-year-old merchant of Cebu City, testified that in July, 1944, he was technical sergeant and member of the G-2 of the Philippine Army assigned to the Bohol Area Command; that Lt. Pacifico Rosales was his officer; that on the morning of July 16, 1944, he went to meet Lieutenant Rosales in the house of Mrs. Francisca Garcia in Pasil because he had an agreement with him to meet him there; that before he reached the house of Mrs. Garcia he saw Lieutenant Rosales captured by the accused Roque Badili and his companions; that instead of going to Mrs. Garcia's house he went to the house, of a friend of his named Godofredd Borres; that from the latter's house he saw Lieutenant Rosales "being dragged by these people with his hands tied behind him and he was brought to the sailboat"; that he (the witness) was about thirty yards from the place where they brought Lieutenant Rosales; that the accused Roque Badili was the one holding the rope tied to Lieutenant Rosales; that as soon as Lieutenant Rosales was placed in the boat "they headed for the sea." When asked who "they" were, he replied: "Roque Badili, Bautista, Jose Moro, and there were others I did not recognize." He further testified that as a member of the military organization of Lt. Pacifico Rosales, he made an investigation to ascertain his whereabouts; that according to the members of the crew of the sailboat Rosales was killed and thrown into the sea; that the members of the crew had gone to Mindanao and could not be located at the time of the trial.

The defense impugns the testimony of Mrs. Francisca Garcia on the ground that it is prejudiced and biased because on one occasion, according to the testimony of the accused, she asked him to intervene with the Japanese on behalf of her husband who had been arrested by a member of the Japanese navy but that the accused told her that the navy was a different organization from that to which he belonged, and so he could not do anything for her husband. Assuming that to be true, we do not believe it sufficient to destroy the credibility of Francisca Garcia. The accused had not done any harm to her or her husband; and the fact that he was not able to secure the release of her husband by the Japanese navy for the reason explained by him was not sufficient motive for her to testify falsely against him. We cannot believe her testimony to be a pure invention because it was corroborated by that of two other witnesses, Basilio Argoso and Pastor Abellana. Basilio Argoso's testimony is also Impugned by the defense, alleging that on one occasion the accused arrested Basilio Argoso on a charge of theft. But according to the accused he subsequently released Argosoupon the request of the offended party himself. In any event, even if we should doubt the veracity of Basilio Argoso, there is still the testimony of Pastor Abellana, which has not in any way been impeached by the defense.

The accused testified that he did not know Lieutenant Rosales and that on July 16, 1944, he was in Bohol. His alibi is not corroborated by the testimony of any other witness. The only other witness he called was Sergio Gaboya, an eighteen-year-old laborer, who testified that in 1943 (he must have been only fifteen years of age then) he was a soldier belonging to the 85th Regiment; that he and the accused Roque Badili were guerrillas; that he knew Lieutenant Rosales, who he said belonged to the Bohol Unit; and that he saw Rosales in the mountains of

Carmen, Bohol, in December, 1944.

We are convinced from the evidence that the accused served the enemy as a secret agent to apprehend members of the resistance movement, and that with the aid of two fellow agents he captured Lt. Pacifico Rosales, who was a member of the Philippine Army and engaged in the resistance movement; and that as a result of the treasonous acts of the accused and his companions, Lieutenant Rosales was prevented from pursuing his patriotic activities. We make no pronouncement as to whether Lieutenant Rosales was killed or whether he is still alive, although the members of his organization could find no trace of his whereabouts. The evidence on this point is not sufficient upon which to make a definite pronouncement. But whether Lieutenant Rosales was killed or not, the act of the accused in apprehending him and preventing him from pursuing his activities as a member of the guerrilla forces constituted an aid to the enemy.

Considering all the circumstances of the case, the Court is of the opinion that the appellant deserves reclusion temporal.

The sentence appealed from is modified in the sense that the accused shall suffer seventeen years and four months of reclusion temporal. As thus modified, the sentence appealed from is affirmed, with costs.

Moran, C. J., Paras, Feria, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

OZAETA:

I certify that Mr. Justice Perfecto and Mr. Justice Pablo voted to impose the penalty of reclusion temporal on the appellant.

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