

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. GORGONIO PONCE ALIAS GREGORIO PONCE, DEFENDANT AND APPELLANT.

G.R. No. L-2482. January 31, 1950

Ponente: TUASON, J.

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TUASON, J.:

Gorgonio or Gregorio Ponce was prosecuted in the People's Court charged with the crime of treason on five counts. The court found the defendant guilty of all these counts and sentenced him to reclusion perpetua and to pay a fine of P10,000.00 and the costs.

The question goes to the credibility of the witnesses. The court found these witnesses' testimony to be true. After reading the record, we are satisfied that the lower court did not commit any error in its findings.

The People's Court summarized the evidence as follows:

"SEGUNDO LIBOTLIBOT, first prosecution witness testified in support of the allegations in Count 2 of the Mended Information. In substance, after identifying the accused in open court, he declared:

"That on November 11, 1944, he was staying in his house-at barrio Tayud, municipality of Liloan, Cebu; that on that day the herein accused, Gorgonio Ponce, accompanied by Miguel Maglasang and Ben Valencia, came up to the house occupied by him and his family; that two Japs were also in the company or group; that they arrived at the house at 5*00 a.m.; that the members of the said group searched and ransacked the house ; that his son by the name of Santos who was standing at the door of the house was asked of the whereabouts of his (brother of Santos) brother who was a soldier; that it was the accused who directed the question; that his son Santos replied that he did not know the whereabouts of his brother; that Santos was ordered to come down from the house and was immediately seized, and bound by the accused; that once tied the accused rent the shirt of Santos, and with the piece taken, Santos was blindfolded; that his son was ordered to kneel and immediately the herein accused, Gorgonio Ponce, cut the neck of his son with a scythe; that the head was not severed completely from the body; that after Santos had fallen to the ground he was still alive and Valencia got hold of another weapon and gave him another slash on the neck which severed the head from the body; that his son died; that he, the witness, buried the corpse of his son in the premise of his house. Continuing his testimony he further averred that the name of his other son about whom the accused and his companions were interested in finding out was Filemon who is at present serving in the U.S. Army in Japan. He also testified that he has known the accused for a long time, because he used to live near his house; that aside from that occasion or incident when his son Santos was killed, he had also seen the accused accompany Jap patrols prior to the date of this occurrence because there was a Japanese garrison in Liloan at that time.

"On cross-examination he declared that his son Santos was killed because he had a brother who was a member of the guerrilla. With regard to the execution of his son the witness testified that he was present at a distance of about four meters from the place of execution,

"EULOGIA JALANG, second prosecution witness, who corroborated the first witness, after identifying the accused, in substance, declared:

"That she had known the accused Gorgonio Ponce, because his house was situated in a place adjacent to the barrio of Tayud, Liloan, where she was residing; that the herein accused nicknamed "Onyong", that is, Gorgonio, accompanied by Miguel Maglasang and Ben Valencia and some Japs came up to their house at 12:00 o'clock in the morning; that the party searched their house and also saw her son by the name Santos; that he (Santos) was asked where his brother was, referring to the brother who was a soldier, that her son, Santos, replied that he did not know if he was still alive, because he was apprehended by the undercovers; that her son was brought down from the house and bound; that he was ordered to kneel and after tearing his shirt he was blindfolded with a piece taken from it; that it was Gorgonio Ponce or Gregorio Ponce who blindfolded him; that it was the accused who ordered him to kneel down; that while in the kneeling position the accused Gorgonio Ponce cut the neck of Santos with a scythe; that she told the people in the group not to execute her son but the accused told her to keep away; that as a consequence he (Santos) died; that the group after the execution went away; that she wept for the death of her son; that the corpse was buried in the premises of the house; that the brother about whom Santos was subjected to questioning was Filemon who was then a guerrilla; that before the war said Filemon was a soldier; that two persons took part in the slashing of the neck of her son, Santos; that the accused Gorgonio Ponce and his companion Miguel Maglasang were the persons who inflicted the wound; that the corpse of her son was buried ten "brazas" away from her house,

"CIPRIANO CUYOS, third prosecution witness who was called to testify in support of the allegations in counts 3, 4 and 5 of the Amended Information, after identifying the accused in open court, in substance, declared, as follows:

"That on November 11, 1944 at barrio Tayud, Liloan, province of Cebu, very early that morning, while it was still dark, he was fetching water with a bamboo tubg container, he met the undercovers who were serving the Japs, namely, Gorgonio Ponce, Ben Valencia and Miguel Maglasang; that after grabbing away the bamboo tube he was carrying, the accused addressed him saying, "You are a soldier"; that he (witness) told them that he was not a soldier but a mere civilian; that they then told him that he was lying; that they smashed the bamboo tube against the ground; that he was maltreated by the accused and his two companions, slapping and giving him blows in the body; that he was tied with his hands behind; that he was taken to the house of Bonifacio Pitogo; that on reaching the place of said Bonifacio Pitogo the accused and his two companions ordered Pitogo to come down and was investigated about his side-arm; that Bonifacio Pitogo was also maltreated by the accused and his two companions and bound, his hands behind him; that he was also slapped and given blows in the body; that from that place, place of Bonifacio Pitogo, they proceeded to the house of Eleuterio Pitogo who was also apprehended, tied, and maltreated; that from the house of Eleuterio Pitogo they proceeded to the house of Benito; that he (witness) was all the time with the group; that on reaching the house of Benito Makilan, they went up the house and ordered the two sons of Benito Makilan to go down; that the two sons were Sixto and Candido Makilan; that Sixto Makilan and Candido Makilan were investigated whether or not they were guerrillas; that they denied/ that they were punished and tied; that the shirt of Candido Makilan was torn and a piece from his shirt was used for blindfolding him and while in kneeling position a Jap with a scythe

slashed his neck and then Miguel Maglasang followed and made the finishing blow; that there was a little portion of the neck that remained uncut and Candido Makilan fell to the ground and died; that with regard to Sixto Makilan, the members of the patrol took him to the house of Severo Hudaya that after reaching the place of Severo Hudaya, he was ordered together with Damiano Hudaya to come down from the house; that the former was the father of the latter; that while the patrol was in the premises of the house of Severo Hudaya, Sixto Makilan managed to run away but the three undercovers fired at him and he was hit but succeeded in escaping; that after the group which composed the patrol has left the house of Severo Hudaya, they proceeded to Cumbado, that is, the provincial road; that ultimately he was taken to the Kempei Tai headquarters which was, as he was told, in a place called Estancia, within the province of Cebu and there imprisoned; that on the following day he and others were taken to the place of execution; that while in that place some people carrying bananas passed by and the Japs and the undercovers ran after them; that a captain was left on guard; that soon after shots were heard that captain joined the other members of the patrol, leaving him (witness) and his companion prisoner; that on that moment he was tied to his fellow-prisoner and they both ran away and hid, and their hiding place was not discovered. Said witness further testified that the whereabouts of Eleuterio Pitogo and Damiano Hudaya are to the present unknown. He (witness) also testified on cross-examination that while he was bound in both hands, his fellow-prisoner to whom he was joined, was only tied in one hand; that they were separated by his fellow-prisoner by gnawing the rope until they were separated; that although he (witness) remained bound while escaping, his binding was ultimately loosened when he met a guerrilla.

"BONIFACIO PITOGO, 4th prosecution witness who was called to testify in support of the allegations in Count 3 of the Amended Information, after identifying the accused in open court, in substance declared:

"That on November 11, 1944, he was living in his house at barrio Tayud, municipality of Liloan, province of Cebu; that on that day the accused together with his companions came to his house; that immediately upon arrival some Jap soldiers and other persons surrounded his house; that the three, namely, Gorgonio Ponce, Miguel Maglasang and Ben Valencia, immediately came up the house, and seeing his son who was very robust, and for that reason he was suspected as being a guerrilla, they immediately investigated him; that his son insisted that he was not a guerrilla; that the name of his son was Eleuterio Pitogo; that upon going down he was immediately bound by the three persons, the accused, Ben Valencia and Miguel Maglasang and then he was taken and from that fateful day of his apprehension, he has not returned and he has not been heard of in spite of the fact that he (witness) has exerted efforts to locate him.

"BENITO MAKILAN, the 5th prosecution witness, who was called to testify in support of the allegations in Count No. 4, of the Mended Information, after identifying the accused, Gorgonio Ponce alias Gregorio Ponce, in substance, gave the following testimony:

"On November 11, 1944 at barrio Tayud, municipality of Liloan, Cebu, where he and his family were then residing, the herein accused, Gorgonio Ponce alias Gregorio Ponce, and two Filipino companions, Miguel Maglasang and Ben Valencia and some Japs came up to their house. That group of Japanese and Filipinos who composed the patrol, first surrounded their house and then some came up to the house and ordered him at the point of the gun to go down. It was about 6:30 in the morning. While these three Filipinos were in the house they noticed the presence of his (Benito Makilan) two sons, namely, Sixto and Candido Makilan, whom they dragged down from the house. After maltreating, slapping and giving them blows in the body, they (Sixto and Candido Makilan) were asked questions as to whether or not they were members of the guerrilla and also regarding their side-arms. Sixto and Candido Makilan told them they were not members of the guerrilla nor

members of the volunteer guards; that they were merely simple civilians. Gregorio Ponce was the person who bound Sixto and Candido Makilan with a rope while Miguel Maglasang and Ben Valencia were helping. Their hands were tied behind. Miguel Maglasang took hold of Candido Makilan and pushed him toward a Jap at the same time saying, "O.K. Sang, let us kill them". The Jap got hold of Candido Makilan and tore a part of his shirt and after that, with a piece of the cloth, said Jap blindfolded him. On seeing that, he (witness) approached the Jap and told him that he had a Japanese pass but the Jap simply shook his head meaning that he had nothing to do with it. After pleading the Jap to spare the life of his son, who paid no attention to his pleading, he approached Ben Valencia and reiterated his plea to spare the life of his son, Candido, for the reason that he was not a member of the guerrilla but said Ben Valencia told him, "You get away, if you don't I will kill you" Out of fear he kept away and stayed at a distance of three meters, Miguel Maglasang ordered his son, Candido, to kneel down on the ground and while in that position, with his head slightly bowed, the Jap got hold of a scythe and slashed him, hitting him on the neck. It was not thoroughly cut and Miguel Maglasang took his turn and using the same scythe, slashed the neck of his son. Candido Makilan fell on the ground and died. Only a small portion of the skin was left. After the killing of Candido, the group of Filipinos and Japs started away, the accused, Gregorio Ponce taking away his other son, Sixto, in the direction of the house of Severo Hudaya. In the group he (the witness) saw also Eleuterio Pitogo and Cipriano Cuyos who were tied and other persons whom he did not know. He believed they were all prisoners. After the Japs and their Filipino companions had left away, he (witness) carried the dead body of his son, Candido, and placed it on the floor of his house and covered it with a mat. Soon after he heard shots and noise of people running in all directions, and five minutes after, Gregorio Ponce, the herein accused, accompanied by Miguel Maglasang went back to his house and asked him where the dead body of Candido was. He informed the accused he had taken care of the corpse and placed it inside the House. Gregorio Ponce then made the following remark, "The brother of this would have been saved if he did not run away." From that statement the witness understood that his other son, Sixto, was also killed. During that day he went to the place of Severo Hudaya which was not very far from his home and there he found Sixto Makilan lying on the ground with his face downward with wounds produced by bullets. He allowed an hour to elapse before recovering the corpse of Sixto which was buried together with the corpse of his brother, Candido. The place of burial was near their house at Tayud.

"The witness also testified that his two sons, Sixto and Candido, were members of the guerrilla and who in life had given aid to that organization. He also testified that the accused had the opportunity to know that his two sons were giving aid to the guerrilla, because he used to frequent their place and had been to their house before the incident.

"On cross-examination, the witness testified that while the Jap and Maglasang were inflicting wounds on Candido, the accused Gorgonio Ponce was present at a distance of a "braza" more or less.

"DIOSDADA HUDAYA, 6th prosecution witness who was called to testify in support of the allegations in Count No. 5 of the Amended Information, after identifying the accused in open court, in substance gave the following testimony:

"On November 11, 1944, he was living in a house at barrio Tayud. He was living then with his father, Severo Hudaya, his brother Daminiano Hudaya, Rufina Pepito, his sister-in-law, her elder sister, Juliana, and her three children. Barrio Tayud is within the municipality of Liloan, province of Cebu on that date, November 11, 1944, their house was surrounded by Jap soldiers and Filipino undercover at about 8:00 o'clock of that fateful morning. Among the Filipino undercover were Gregorio Ponce, Ben Valencia and Miguel Maglasang. After

surrounding the house the three undercovers came up their house. At that time her father, Severo Hudaya, her brother, Daminiano Hudaya, his wife, that is, Rufina Pepito, her sister-in-law', and her elder sister, Juliana, were in the house. Severo Hudaya and Daminiano Hudaya were both bound. The accused Gregorio Ponce tied the hands of Daminiano Hudaya. They were subjected to investigations regarding their connection with the guerrilla and their weapons. They were punished severely. The persons who administered the punishment were Gregorio Ponce, Miguel Maglasang and Ben Valencia. While Severo Hudaya and Daminiano were being punished, Sixto Makilan, who was one of the prisoners brought by the group composing the patrol, ran away. And the three, Ben Valencia, Miguel Maglasang and Gregorio Ponce ran after and fired at him. Because Rufina Pepito insisted that Daminiano Hudaya was a mere civilian, the accused Gregorio Ponce struck her with a scythe, hitting her on the head. She fell on the ground, her face downward and died. After the execution of Rufina Pepito, Severo Hudaya was again investigated and because of his insistence that he was not a guerrilla, he was also executed by the accused, Gregorio Ponce, slashing his neck with a scythe twice while he was in a kneeling position. His father, Severo Hudaya, fell on the ground and died. After the execution of Rufina Pepito and Severo Hudaya, the patrol proceeded their way, taking along with them Daminiano Hudaya. That the group composing the patrol brought with them other prisoners, among them were Cipriano Cuyos and Eleuterio Pitogo. Since the apprehension of Daminiano Hudaya, his whereabouts has not been known in spite of the efforts made to ascertain where he is. Severo Hudaya and his son, Daminiano, were members of the guerrilla and had given the resistance movement aid consisting in foodstuffs. The corpses of Severo Hudaya and Daminiano Hudaya were buried in the premises of their house.

"GAUDENCIO PILAPIL, the seventh prosecution witness who was called upon to testify in support of the allegations in count 1 of the Amended Information, after identifying the accused in open court, made the following declaration.

"On November 9, 1944, the witness Gaudencio Pilapil was then giving in his house at barrio Tayud, Consolacion. At about two o'clock in the morning of November 9, 1944, a group of three Filipino undercovers and a Jap came to the house. Casimiro Pilapil, his son, was present on that occasion. He was brought down by the members of the group and asked if he knew some guerrillas around the place, to which question he answered in the negative. His son, Casimiro Pilapil was bound and taken away. Because of the arrest of his son, he (witness) left his house and went to another place near the swamp for fear that the Jap and his companions might return. That patrol consisted of one Jap and three undercovers. Subsequently, and while staying in his new hiding place in the swamp, at a distance of forty brazas, at about ten o'clock in the morning, he saw many people who were tied. The prisoners were taken to a house of a person by the name Posoy, which house was later set to fire. That in that group, his son, Casimiro Pilapil was included. He was then tied with his hands behind. Those prisoners were bayoneted. His son, Casimiro Pilapil was also stabbed twice with a bayonet by the accused, Gregorio Ponce. Upon being wounded, his son cried for help but he could not come to his rescue because he was afraid. That his son was stabbed on the back twice. As a consequence, he fell down, face downward. The other prisoners with his son were also killed. After the killing of his son and his fellow prisoners, the house was set to fire and the group consisting of a Jap and his three companions proceeded their way. During the burning of the house, he remained in his hiding place because he intended to retrieve the corpse of his son as soon as the members of the patrol would go away. After the departure of the patrol, he went to the scene of the killing and he loosened the bindings of his son. Being old he could not carry the corpse of Casimiro Pilapil. He left in order to get help. That on departing he said to his dead sons "Wait because I will get a companion." On being asked to whom did he address those words, the witness explained that he was addressing to the soul of his son, for at that moment he was not sure whether he was still alive or not. Subsequently, he returned with a companion in the afternoon at four o'clock and his companion was his other son, by the name of Andres. They took the corpse to their house and buried him in their cornfield. He

discovered in the cadaver of his son, two wounds produced by bayonet thrusts. One penetrating more than one half of the body and the other went through it.

"FORTUNATA LAURON, the mother of the deceased Casimiro Pilapil, 8th prosecution witness, after identifying the accused in open court, substantially averred, that on November 9, 1944, while she was in her house located in barrio Tayud, Consolacion, province of Cebu, the herein accused, Gregorio alias Gorgonio Ponce, accompanied by one Jap soldier, came to her place. The accused and the Jap soldier arrested her son called Casimiro Pilapil, after searching her house. Casimiro Pilapil was taken away by said two persons, the accused and his Jap companion, and the next day she saw her son already dead. In the corpse of her son she found two wounds, one on the back and another on the abdomen. The cadaver was buried. Casimiro Pilapil, in life, was a member of the volunteer guard.

"On cross-examination, she testified that the corpse of her son was buried the following day after the incident, at 4:00 o'clock in the afternoon.

"JULIANA HUDAYA, the 9th prosecution witness, after identifying the accused in open court, declared substantially in the following manners

"That on November 11, 1944 she was in her house at Tayud, Liloan, Cebu. On that day, Japs and Filipino undercovers, serving under the Japs, one of them being the accused herein Gregorio alias Gorgonio Ponce, together with Miguel Maglasang and Ben Valencia, surrounded the house occupied by her. Gregorio Ponce, Miguel Maglasang and Ben Valencia came up the house. They ordered the persons in the house to go down, namely, Severo Hudaya, Daminiano Hudaya, Rufina Pepito, Diosdada, herself and children. Daminiano Hudaya, who was an elder brother of hers, was bound by Gregorio Ponce while Ben Valencia was holding him. While in that condition, he was maltreated, investigated by Gregorio Ponce. The subject of the investigation was whether or not he had any connection with the guerrilla. Severo Hudaya, her father, was also tied by Gregorio Ponce, helped by Miguel Maglasang. He was also suspected and investigated as lieutenant of the guerrilla. While the investigation was going on, Gregorio Ponce commented that her father should be killed because he was a member of the guerrilla. While this was going on, Sixto Makilan ran away and she heard shots.

"Rufina Pepito, her sister-in-law, while her husband Daminiano Hudaya was being maltreated, she was crying and shouting. She was told to sit down and immediately the accused, Gregorio Ponce, slashed her with a scythe and she fell on the ground with her face downwards and she died. After the investigation, Severo Hudaya was dragged away about twenty meters and while in a stooping position, was slashed on the back of his neck by the herein accused, Gregorio Ponce, with a scythe. He was slashed twice and he died after the second blow. After he was dead, the group of Japanese and undercovers went away, taking Daminiano Hudaya as prisoner together with others whom she knew, namely, Sleuterio Pitogo and Cipriano Cuyos. The reason why Daminiano was taken away was because he was suspected of being a member of the guerrilla. After the group of Japs and Filipino undercovers had left, the corpse of her father, Severo Hudaya, and of Rufina Pepito, her sister-in-law, were buried near the house occupied by her and other members of the family. On being asked whether or not, at a date when she testified, the mortal remains of her father and Rufina Pepito were still in the place where they were buried, she answered affirmatively. With regards to Daminiano Hudaya, who was taken away, up to the present he has not returned and his whereabouts unknown.

"Coming to the fate of Sixto Makilan who made an attempt to escape, she testified that she came to know that he died of bullet wounds.

"On cross-examination, the witness testified that the reason that her father, Severo Hudaya and Rufina Pepito, her sister-in-law, were executed was because they were suspected of giving aid to the guerrilla. On the question as to whether or not she was actually present at the execution of Severo Hudaya and Rufina Pepito, she testified that she actually saw the execution at the distance of about ten meters away."

The accused and his witnesses testified that the former was himself a prisoner of the Japanese, and was present at the raids and killings related by the government witnesses as such prisoners his hands bound behind his back. He said he had been a guerrilla runner, had been arrested and tortured by the Japanese, and showed marks of violence on his body.

There was no conceivable reason for the Japanese to take a prisoner along in their raids, arrests and killings of civilians. A prisoner could only be a liability, occupying needed space in the truck and necessitating the detail of a guard to watch him. If guides were needed, there were two other Filipinos who accompanied the Japanese. One of them is already serving his term in jail and the other could not be found.

As to the injuries which the accused claimed had been caused by Japanese, the more plausible theory, in the light of all the circumstances, was that they had been inflicted by guerrillas. For we gather from defendant's testimony that shortly after the Americans came he was seized, by guerrillas and kept by them until he was turned over to the GIC of the American forces.

The accused testified that he was 20 years of age; that was on or about January 3, 1948. When the deeds herein charged were perpetuated on November 9 and 11, 1944, he must have been below 18 years of age. This fact places the penalty at prision mayor, one degree lower than the penalty prescribed for the offense committed, which is from reclusion temporal to death. Considering the enormity of the offense proved, the penalty is to be imposed in the maximum degree of that to which the normal punishment is reduced, namely, 12 years of prision mayor.

With this modifications, the judgment appealed from is affirmed, with costs of this appeal against the appellant.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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