

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BIENVENDO CAPISTRANO, DEFENDANT AND APPELLANT.

G.R. No. L-4549. October 22, 1952

Ponente: JUGO, J.

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JUGO, J.:

Bienvenido Capistrano was charged before the Court of First Instance of Quezon province with the crime of treason on four (4) counts. He was found guilty by said court and sentenced to suffer life imprisonment and to pay a fine of P10,000 and the costs.

The attorney de oficio of the appellant states in a petition filed with this Court that after having read, reread, and studied the evidence, he finds no substantial error committed by the trial court and prays for the affirmance of the judgment.

The evidence of record establishes the following:

The accused Bienvenido Capistrano admitted being a Filipino citizen.

Count No. I

Alejo Enriquez Wong and Carmen Verdera testified that the defendant was a so-called Yoin, which means an armed soldier of the Japanese. Wearing a Japanese military uniform, he rendered services to the Japanese army as a guard of a Japanese garrison. To the same effect, the witness Placer Canada testified.

The defendant argued at the trial court that there was no evidence showing that he had been appointed a Yoin or that he was a Makapili. While no written formal appointment was introduced in evidence, yet it is clear that he was engaged in the work of guarding the Japanese garrison, armed with a gun and wearing a Japanese uniform and taking part in the military drills of the Japanese army.

Count No. II

At about 3:00 o'clock in the morning of January 8, 1945, the defendant with other Filipino members of the Yoin and several Japanese soldiers, all armed, arrived near the house of Carmen Verdera in barrio Malay, Municipality of Lopez, Province of Tayabas (now Quezon), and ordered the inmates therein to open the door. The appellant and his companions entered the house, raised the mosquito nets and ordered the inmates to rise. The appellant and his companions tied Graciano Fortuna, Carmen Verdera, Alejo Enriquez Wong, Rufino Rivera, Maria Canada, Brisilio Canada, Remedios Anastacio, Dolores Enriquez, Teodora Zamora, Presentation Anastacio, and Placer Canada with a rope which was used as a clothesline. The intruders then searched the premises and seized from Alejo Enriquez Wong \$1,000, U. S. currency, and P4,000, Philippine currency. They took Graciano Fortuna and the other inmates to the Japanese garrison, at Lopez, Tayabas (Quezon) and then to the Yoin garrison in the same town. The motive for the raid was that Pedro Canada, a brother of Placer, was a guerrilla lieutenant in Lopez and Salvador Fortuna, son of Graciano, was a soldier in the said organization. One night, during the detention of

Placer and her companions in the Yoin garrison, the appellant attempted to sexually abuse Placer and her girl companions, but when the women cried and the Japanese came, the defendant escaped. Placer and her companions were released after one month when they paid to the Chief of the Yoin and the appellant the sum of P2,500 in Japanese war notes. This charge was testified to by the several victims.

The accused was more than nine (9) but less than fifteen (15) years of age at the time that he committed the crime charged. However, the court which had the opportunity to see and hear the accused at the trial found that he acted with discernment. It should be noted, furthermore, that he appeared as the leader or commander of the raiding party. Although his minority does not exempt him from criminal responsibility for the reason that he acted with discernment, yet it may be considered as a special mitigating circumstance lowering the penalty by two (2) degrees.

Article 80 of the Revised Penal Code cannot be applied to the accused because he was over eighteen (18) years old at the time of the trial (*People vs. Estefa*, 47 Off. Gaz., No. 11, 5652; 86 Phil., 104).

In view of the above special mitigating circumstance of minority, the penalty Imposed upon the accused is hereby modified by imposing upon him four (4) years of prision correctional, to pay a fine of P10,000 and to indemnify Alejo Enriquez Wong in the sum of P6,000, with subsidiary imprisonment in case of insolvency in the payment of the fine and the indemnity, with costs.

It is so ordered.

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

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