

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. BENJAMIN NADURATA, DEFENDANT AND APPELLANT.

G. R. No. L-2311. May 21, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

Benjamin Nadurata, a native of Caloocan, Rizal, was charged in the Peoples Court with treason on five counts. After trial the People's Court dismissed counts 1, 2, 3 and 4 for lack of proof, but found Benjamin Nadurata guilty of count 5 and accordingly, sentenced him to reclusion perpetua and its accessories, to pay a fine of ten thousand pesos, plus the costs. From this judgment Benjamin Nadurata appealed.

Count 5 of the information alleges that on July 7, 1944, in the municipality of Oas, province of Albay, the appellant and his men treasonably arrested, tortured and thereafter killed Restituto Seda, Angel Reiteran and Ramon Rebusquillo, guerrilla suspects, the latter (thrown into a pit and taken for dead) having, however, survived.

Ramon Rebusquillo testified in substance that some constabulary soldiers arrested him at about eight o'clock in the morning while he was with the funeral of his sister on the way to the cemetery. The soldiers took his watch and tied him. He was taken to barrio San Ramon with two other tied persons (Angel Reiteran and Restituto Seda) and presented to the appellant, a captain. The latter asked the soldiers to bring them down where they were tied to a post under the heat of the sun. At about twelve o'clock a lieutenant asked Ramon Rebusquillo about two guerrilla leaders, Col. Zabat and Major Llenerizas, and upon answering that he knew nothing about them, Ramon Rebusquillo was tortured by the lieutenant. Afterwards another lieutenant, taking over, repeated the same investigation and torture; whereupon another constabulary soldier investigated and maltreated Ramon Rebusquillo. The lieutenant who first handled Ramon Rebusquillo then turned his attention to Restituto Seda and Angel Reiteran, who were similarly investigated and tortured. At about one o'clock in the afternoon, three platoons of constabulary soldiers under the appellant took Ramon Rebusquillo, Restituto Seda and Angel Reiteran to barrio Balogo. Here the appellant left two platoons. With the other platoon, the appellant took their three subjects to the top of a mountain half kilometer away. In this place, the appellant ordered a lieutenant to shoot Restituto Seda, but the latter did not fall dead until after a second shot. In the meantime, as Angel Reiteran attempted to ran away, the soldiers fired at him three times. The appellant then ordered one of his men to shoot Ramon Rebusquillo who was hit at the back of his neck, the bullet coming out at the side of his face. Ramon Rebusquillo was unconscious for about thirty minutes, after which he came to and felt that he was being dragged and thrown into a pit wherein he found the body of Restituto Seda. At about three o'clock in the afternoon, Ramon Rebusquillo left the pit and started on his way home in barrio Maporong which he reached at about eleven o'clock in the evening by walking after stopping at barrio Balogo where, because he was too tired to talk to the crowd that found him, he wrote on a piece of paper the request that his brother should get him in Balogo with a car or carabao as he could no longer walk. Ramon Rebusquillo stayed at Dr. Fontanilla's hospital for five days. In said hospital some constabulary soldiers appeared to get him, but Dr. Fontanilla did not surrender him. Then he stayed in Dr. Ante's hospital for one month. In this hospital a lieutenant looked for him, but upon seeing him in bed, the

lieutenant merely left. On cross-examination, Ramon Rebusquillo admitted that he was not investigated personally by the appellant, that the latter did not see or hear the investigation made by his men, that said investigation was only as to the whereabouts of Colonel Zabat and Major Llenerizas, and that about thirty-six soldiers went to the top of the mountain.

Alipio Red, the second witness for the prosecution to prove the overt act alleged in count 5, in substance stated that he was a first lieutenant in the Zabat guerrilla outfit and Restituto Seda was his soldier. At about one o'clock in the afternoon of July 7, 1944, the Japanese Philippine Constabulary left San Ramon to Balogo with three prisoners. At the intersection of Balogo, the appellant left some of his men and, with one platoon, went up the mountain with said prisoners. Near the top of the mountain, the appellant ordered one of his officers to shoot Restituto Seda. After the first shot, Restituto Seda did not fall, whereupon one prisoner attempted to escape by running down the mountain, but some soldiers pursued and shot him. Then the appellant ordered that Restituto Seda be again shot. Afterwards the appellant ordered an officer to shoot the next prisoner. Alipio Red was about twenty-five meters away from the scene of the shooting, hiding behind small trees, and he was there because he intended to attack appellant's men upon arrival of reinforcements which he asked from Major Saunar early in the morning of July 7. Alipio Red was accompanied by three bodyguards, and after the appellant and his soldiers had left, Alipio Red and his companions approached the place of the shooting where they found Restituto Seda and another man in a natural pit, but they left the place without doing anything because Alipio Red was disgusted, and went back to San Ramon. Reinforcements arrived at about eight in the evening. On cross-examination, Alipio Red stated that before he received the subpoena he did not know that he would testify in this case; that he had not related the incident to anybody except to the mother of Restituto Seda; that he was not yet a recognized guerrilla; that in July, 1944, he was resting on furlough; that upon learning of the arrest of Restituto Seda, he and his bodyguards were afraid of the constabulary; that his three bodyguards did not see the shooting because they were not watching and were at a certain distance from

Alipio Red, though the distance could not be specified; that he hid behind the bushes; that he did not hear any order of appellant and knew that appellant gave the order to shoot because he pointed to the soldier and Restituto Seda. On re-direct examination, Alipio Red, answering a leading question by the special prosecutor, stated that he was investigated by the latter only in the morning of the trial.

The appellant in substance testified that before the war he was acting chief of police of Caloocan, Rizal, and at the same time correspondent of the Manila Daily Bulletin. During the Japanese occupation, he was assigned in Naic as acting lieutenant, but later returned to Caloocan as assistant commanding officer. After having undergone training in the Constabulary Academy by direction of the authorities of the Philippine Executive Commission, he was assigned to Albay, at first as assistant senior inspector and, from June or July, 1944, as acting provincial commander. He lived with his family in Tula, Lopez, Albay. During the time when there was a shortage of rice in Albay, the provincial governor (Atty. Julian Locsin, Jr.) ordered the constabulary to see to it that no rice was taken out of Albay. In June, 1944, the constabulary was able to confiscate in Polangi a truckload of rice which was placed in a warehouse guarded by soldiers. On June 22, 1944, a number of persons raided the warehouse and shot Corporal Caligdan. This led to a barrio-to-barrio investigation. Finding out that the Llenerizas group was responsible for the killing, a constabulary detachment under Lt. Cruz went to Polangi for the apprehension of the assailants. Lt. Cruz and his men were, however, attacked, resulting in the killing of Lt. Cruz and a soldier, Pedro Triumpante. This was on July 3, 1944. Whereupon the appellant, with a picked patrol of about fifty men, went to San Ramon to look for and arrest Llenerizas and his men. On July 7, 1944, a patrol sent out by the appellant came back with nine arrested men. After investigation, three (Angel Reiteran, Ramon Rebusquillo and Restituto Seda) who were found to be Llenerizas' men, were held, while the rest, who were ascertained to be innocent civilians, were released. Ramon Rebusquillo, Restituto Seda and Angel Reiteran having given the information that they

could show the hiding place of Llenerizas in a mountain in Polangi, the appellant with some fifty constabulary soldiers took them to Polangi. As the party were proceeding to the top of the mountain alleged to be the hideout of Llenerizas, the constabulary men were divided into three groups, the advance guard (with Ramon Rebusquillo, Restituto Seda and Angel Reiteran), the main body (with the appellant), and the rear guard, the distance between the advance guard and the main body being about thirty meters. When the advance guard reached the mountain top, shots were heard from that direction. Appellant's investigation showed that, as the three prisoners tried to escape, they were shot by the constabulary soldiers in the advance guard, without any order from the appellant. The appellant had contact with guerrilla leaders (Col. Sandico, Major Ramos, Col. Zabat, Flor and others) from April, 1943, to December, 1944, and even gave the guerrillas supplies.

Julian Locsin, Jr., testified in substance that from September, 1943, to 1944 he was the provincial governor of Albay. He knew Anatolio Llenerizas and his men to be feared by the people of Albay because they went around and robbed and killed people on the highways. The three recognized guerrilla leaders in the province were Major Sandico, Major Zabat and Flor. He had contact with the three guerrilla leaders, when he interviewed in company with the appellant. Said guerrilla leaders never complained about the appellant. As governor of Albay, he prohibited the transfer of rice outside of Albay, and asked the constabulary to carry out that prohibition. Lt. Cruz of the constabulary and a soldier guarding the rice warehouse in Polangi were killed by the Llenerizas men. Llenerizas was disarmed by Zabat several times for molesting civilians, and Zabat himself was afraid of Llenerizas because the latter had his own men. Restituto Seda was a man of Llenerizas.

Bienvenido C. Lara, a second lieutenant of the constabulary in 1944, fully corroborated the appellant in his testimony as to how Ramon Rebusquillo, Restituto Seda and Angel Reiteran were shot on the top of the mountain in Polangi.

A careful reflection on the evidence on record both for the prosecution and for the defense, readily engenders a reasonable doubt as to the guilt of the appellant. The principal witness for the prosecution, Ramon Rebusquillo, admitted that constabulary men arrested him and no mention was made of the appellant; that the appellant did not see or hear the investigation allegedly made by the appellant's lieutenants; that he was investigated only as to the whereabouts of guerrilla leaders, Col. Zabat and Maj. Llenerizas. It cannot, therefore, be fairly stated that Ramon Rebusquillo was arrested for any guerrilla activity, or that the appellant had any knowledge of his guerrilla connection, if any. Otherwise, his investigation would have dealt with his movements as a guerrilla.

Ramon Rebusquillo testified that when he arrived in barrio Balogo wounded, after his trip from the mountain top, he could hardly talk and in fact merely wrote on a piece of paper the request that his brother should get him in a car or with a carabao, because he could no longer walk. Yet he claimed that he walked his way from Balogo to Maporong, arriving at the latter place at eleven in the evening. This feat is of doubtful probability. He also testified that while he was in Dr. Fontanilla's hospital some constabulary soldiers appeared but the physician did not surrender him, and that while he was in Dr. Ante's hospital a lieutenant looked for him but unceremoniously left upon seeing him in bed. This is similarly incredible, because if he was really wanted, the alleged searching party would surely have taken him under custody or surveillance under the circumstances narrated by Ramon Rebusquillo.

Upon the other hand, the testimony of Alipio Red, presented by the prosecution on the witness stand to corroborate Ramon Rebusquillo, contains glaring improbabilities. Thus, while he admitted that upon learning of the apprehension of his soldier Restituto Seda, he and his bodyguards were afraid, he nevertheless pretended to have been so bold as to follow appellant's party of fifty constabulary soldiers to the top of the mountain where Ramon Rebusquillo, Angel Reiteran and Restituto Seda were shot; posting himself only about twenty-five meters away from appellant's men, allegedly hiding behind bushes. This is hard to believe, because the fifty constabulary

men of the appellant must have been sufficiently careful while proceeding to the mountain top to detect any hostile onlooker. It is also quite improbable that Alipio Red did not relate what he allegedly witnessed on the top of the mountain except to the mother of Restituto Seda, especially because, in answer to a leading question of the special prosecutor on re-direct examination, he testified that he was investigated by the prosecutor in the morning of the trial to which he was called to appear. Moreover, Alipio Red admitted that he did not hear the appellant give any order to shoot.

It is also significant that Carlos Sabile, another witness for the prosecution, declared that he was also investigated by appellant's men about the whereabouts of Col. Zabat and Major Llenerizas, but that upon disclaiming any knowledge thereof, he was released on July 7, 1944. If Ramon Rebusquillo, Restituto Seda and Angel Reiteran were allegedly investigated only as to the whereabouts of Col. Zabat and Major Llenerizas, they would have been released, like Carlos Sabile, upon informing their investigators of their lack of any knowledge.

Another witness for the prosecution, Fernando de Leon, makes himself obviously a witness of doubtful credence when, after three years and without pretending to have ever made a written memorandum, he was able to describe minutely the wounds on the dead bodies of two victims, even specifying whether they were caused by bayonet or bullets.

Upon the other hand, the story given by the appellant serves to increase our doubt that should be resolved in his favor. Mariano T. Aribé, a witness for the prosecution, admitted that Lts. Cruz and Triumpante were killed in Polangi on July 3, 1944, and this is consistent with the theory that the death of said officers led to the apprehension by appellant's men of Ramon Rebusquillo, Angel Reiteran and Restituto Seda. The then governor of Albay, Julian Locsin, Jr., corroborated the fact that he prohibited the exportation of rice from Albay and that he ordered the constabulary to enforce the prohibition. He also confirmed the fact that the appellant was in contact with recognized guerrilla leaders. The testimony of appellant to the effect that he gave supplies to the guerrillas is not contradicted. Governor Locsin assured that Llenerizas and his men were feared as bandits throughout Albay.

Therefore, the appealed judgment will be as it is hereby reversed and the defendant-appellant, Benjamin Nadurata, is hereby acquitted with costs de officio. So ordered.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Jugo, JJ., concur.

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