

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ELEUTERIO CAÑA, DEFENDANT AND APPELLANT.

G.R. No. L-1678. November 10, 1950

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The appellant Eleuterio Cans, was charged in the People's Court with treason under seven counts. After trial, he was sentenced to fifteen (15) years of reclusion temporal, with the accessories of the law, to pay a fine of P5,000, plus costs.

This is relatively an old case. The reason for the delay in the determination of the appeal is that it was first received in this Court and later, because of the penalty imposed by the trial court, was endorsed to the Court of Appeals which apparently had Jurisdiction over it. However, said Court of Appeals subsequently returned the case to this Court because according to its resolution, it was of the opinion that the penalty applicable is reclusion perpetua.

For purposes of reference, we are reproducing the first five counts under which the People's Court found the appellant guilty:

"1. That said accused, Eleuterio Caña, with intent to give aid and/or comfort to the enemy, wilfully, feloniously and treasonably acted and served as puppet Mayor of the Japanese in the municipality of Abuyog, Leyte, Philippines, from June to October, 1942, and from November, 1943, to August, 1944, and as such puppet Mayor he wilfully, feloniously and. treasonably performed the following acts:

"(a) That he, forced the people of Abuyog including government employees to dig trenches and wholes and build stables for the Japanese Armed Forces;

"(b) That, he told the people of Abuyog that the Americans would not return to the Philippines and that he was not afraid of the Filipino soldiers and guerrillas because the Japanese Armed Forces were behind him;

"(c) That the people of Abuyog must obey his orders and tell the guerrillas and their relatives to surrender; and

"(d) That he provided the Japanese soldiers with houses to live and ejected the Filipino civilians of Abuyog out of their houses to give room to the Japanese.

"2. That the herein accused, Eleuterio Caña, with intent to give aid and/or comfort to the enemy, during his incumbency as puppet Mayor of Abuyog, Leyte, Philippines, especially in November. 1943, February and May, 1944. wilfully, feloniously and treasonably led, guided and accompanied Japanese patrols to the barrios of Abuyog to apprehend guerrillas, guerrilla suspects and their supporters and also to locate their hideouts.

"3. That during the months of April and May, 1944, the herein accused, Eleuterio Caña, with intent to give aid and/or comfort to the enemy, and taking advantage of his position as puppet Municipal Mayor of Abuyog, Leyte, did then and there wilfully, feloniously and treasonably force the people to harvest palay in the outlying farms,

and did confiscate the palay taken therefrom, giving part of it to the Japanese soldiers,

"4. That the herein accused, Eleuterio Caña, with intent to give aid and/or comfort to the enemy, during the time of his incumbency as puppet Municipal Mayor of Abuyog, Leyte, did then and there lead, guide and accompany patrols composed of Japanese and Constabulary soldiers to the barrios of Himara, Mahapalag, Union, Ogis. Mahayahay, Polahongon, all in the Layog District, and in the barrios of Bayabas. Dingle, Combes. Laray, Talegue, Habadyang, sitio Malasiga, sitio Maitum, parts of barrio Anglad, all of Hogasaan District, which patrols machinegunned and burned the houses in the above-mentioned places.

"5. That sometime during the month of July, 1944, the herein accused, Eleuterio Caña, with intent to give aid and/or comfort to the enemy, during his incumbency as puppet Mayor of Abuyog, Leyte, wilfully, feloniously and treasonably informed the Japanese soldiers that Basilio Pacatan who was then detained in the Japanese garrison of Abuyog as a guerrilla suspect, was the father-in-law of the guerrilla lieutenant named Nicolas Camintoy. and due to this information, said Basilio Pacatan was investigated, imprisoned and tortured by the Japanese soldiers for a period of over thirty days."

In open court the accused admitted that he was and had always been a Filipino citizen.

The following facts are not disputed. In the last elections held before the last World (Pacific) War, Pedro Gallego and the defendant Eleuterio Caña were elected Mayor and Vice Mayor respectively, for the town of Abuyog, Leyte. When the Japanese forces went to Abuyog in June, 1942, they found the town without a Mayor because Gallego served as town chief executive only up to May, 1942, after which he went to the mountains and joined the guerrilla forces as a Major. The appellant being the Vice Mayor-elect, was designated Acting Mayor by the Provincial Governor and he acted as such from June to October, 1942, when the Japanese garrison was removed from the town. Again, he acted as Mayor from November, 1943 when another Japanese garrison was stationed there, until August, 1944, when the garrison was withdrawn. The acts of treason of which he was accused were supposedly committed during his incumbency as Acting Mayor of Abuyog.

Under the first count, we find from the evidence that the defendant really recruited laborers to dig trenches, foxholes and air raid shelters around the Japanese garrison and in some streets, and to build stables for the Japanese cavalry houses. It has also been established that the accused had intervened in the commandeering of private dwellings to house the Japanese soldiers and officers stationed in the town, altho there is evidence to the effect that rent was paid by said Japanese forces for the use of these houses. It was also proven that in the poblacion of Abuyog as well as in some barrios, such as Malagikay, Anlag and San Roque he called people to meetings where he made speeches in the Visayan dialect, telling the people that the real government was the one established and sponsored by the Japanese; that the Americans will never come back to the Philippines because they were afraid of the Japanese forces who were stronger; that they must pay their taxes for the support of the Japanese-sponsored government; and that he (defendant) was not afraid of the guerrillas because the Japanese Army was behind him.

Considering the fact that the accused was then acting as Mayor of his town and under orders of the Japanese garrison commander, there is every reason to believe that defendant's act in recruiting laborers for the construction of trenches, foxholes, air raid shelters and stables for the use of the Japanese forces was in obedience to the wishes and orders of the Japanese commander. The same thing may be said of the commandeering of private houses. It is a matter of public knowledge, of which we may take judicial notice, that during the occupation, not infrequently, the enemy forces resorted to forced labor to fill in their military needs and also commandeered indiscriminately private houses not only for their accommodation but even for that of their civilian agencies, and that in such cases the services or intervention of the executive of the town were availed of, voluntarily or otherwise. Furthermore,

we agree with the Solicitor General that these acts of collaboration, including his making speeches during the meetings called by him, endorsing the Japanese regime may be considered as political in nature and are covered by Amnesty Proclamation No. 51 of January 1, 1948, which he now invokes (*People vs. Alvero*, 86 Phil., 58.). We may therefore discard count No. 1.

Under counts 2 and 4, is the following evidence:

Bonifacio Laher, barrio lieutenant of Anlag, Abuyog stated that on February 2, 1944, a Japanese patrol of about 80 soldiers arrived at his barrio, headed by the defendant Caña who was armed with a revolver. Caña called a meeting which about 60 residents attended. The accused made a speech in the Visayan dialect and asked the people about the whereabouts of Major Gallego and Captain Landia of the guerrillas, saying that if they ever came with their forces, the residents should report the matter to him or to the Japanese garrison. He told his hearers that the Japanese government was the real government. The patrol spent the night in the barrio and the witness as lieutenant of the barrio was ordered by the accused to return the following morning to accompany the patrol. The next day, February 3rd, Laher accompanied the accused and the Japanese troops to the mountains. On reaching sitio Malasiga, the patrol passed by the houses of Gonzalo Albanque and Rosendo Fortaleza, and the latter was called from his house and made to join the patrol to the house of Daniel Bolero where the soldiers ate pineapples and papaya. The defendant asked Bolero who were the owners of the two houses they had passed and on being informed that they belonged to Ablanque and Fortaleza, appellant exclaimed: "These are the houses where the guerrillas used to live." Thereafter, the defendant conversed with Capt. Mikawa who commanded the patrol, after which, Mikawa called two Japanese soldiers and ordered them to burn the houses of Ablanque and Fortaleza. At the time said two houses contained agricultural products of different kinds, including furniture and household goods. According to Fortaleza, he pleaded with the defendant not to burn his house, but the accused paid no attention to him and the two houses were burned to the ground,

Laureano Pacia, a Captain of the guerrillas told the court that on February 3rd, a Japanese patrol of about 80 soldiers headed by the accused who was then armed with a revolver, arrived at the barrio of Anlag. The next day the patrol went to the barrio of Malagikay. Pacia followed the patrol at a safe distance in order to observe as per instructions of his superiors. He saw that in Malagikay the Japanese Soldiers shot pigs and chickens for food. The defendant called the people to attend a meeting in front of the barrio school building at which meeting he spoke and asked about the guerrillas, particularly Major Gallego and Capt. Landia. He urged his hearers to fight them (the guerrillas) if they ever came and to report their presence to the poblacion. After the defendant, a lieutenant of the Philippine Constabulary also spoke.

About these doings of the defendant and the Japanese patrol in Malagikay, Pacia was corroborated by Major Gallego who was with Pacia observing what was happening and listening to the speeches, particularly that of the defendant.

Major Gallego in his testimony also told the People's Court that on May 27, 1944 he saw the defendant Caña armed with a revolver at the head of a Japanese patrol composed of about 80 soldiers in the barrio of San Roque, Abuyog. They shot pigs and chickens for food and in the afternoon, they rang the school bell and assembled the people, and at the meeting the defendant made a speech in the Visayan dialect, asking the people if there were any guerrillas in the vicinity, telling them that if they (guerrillas) came, the people should not give them food so that they would starve, and to report their presence to the town so that the Japanese forces could come and catch them. He urged the people to help the government, the real government sponsored by the Japanese, and not to wait for the Americans who will never come back. With sarcasm he told the people that if they were still interested in the Americans, they had better swim across the Pacific Ocean to get to them in America. At the time that the accused spoke, there were no Japanese around him. In his testimony about the arrival of the Japanese patrol in San Roque

and the speech of the appellant, Gallego was corroborated by Felix Balga who added that the defendant in his speech said that to show that the government sponsored by the Japanese was the true government, he (defendant) was accompanying the Japanese patrol.

Pelagio Elmeda stated to the court that on February 2, 1944, he was at his post at barrio Bayabas on duty as captain of the Volunteer Guards attached to the guerrillas under orders of Capt. Landia. On that date, he saw a Japanese patrol of about 80 soldiers headed by the accused pass by the said barrio of Bayabas, apparently the same patrol that later went to the barrio of Anlag and still later to the barrio of Malagikay on February 4th. The accused was then carrying a revolver. When the patrol saw no people in the said barrio the soldiers burned all the five houses in the vicinity. The owners of said houses were then in the mountains, having evacuated thereto because of fear of the Japanese.

Under count 3, Filomeno Tupa and Marcial Costen testified to the effect that the defendant as Mayor asked the people in the poblacion of Abuyog belonging to the neighborhood associations to go out to the farms and under the protection of Japanese soldiers, harvest palay therefrom; that one-half of the harvest was given to the harvester; one-fourth to the municipality and the remaining one-fourth to the Japanese garrison to feed its cavalry forces. The evidence on this point, however, further shows that almost invariably, the owners of these lands had evacuated to the mountains, and that said owners were afraid to harvest their own palay for fear of the Japanese soldiers who might suspect them of harvesting said palay to give to the guerrillas who frequented the farms. There is reason to believe and conclude from the evidence that these harvests of palay directed by the defendant were not made with the intention of aiding the enemy but rather to avoid loss or prevent the ripe palay from rotting in the fields and to utilize the harvest to aid the people. As already stated, one-half of the harvest was given to the people who effected the harvest and one-fourth was given to the municipality, said portion according to the uncontradicted evidence for the defense having been utilized to feed the indigent people, and that a portion of it was sent to the capital (Tacloban) presumably, for the same purpose of aiding the poor in the province.

It will be remembered that during the occupation there was no importation of rice in order to make up for the deficiency, our production being insufficient for the needs of the population, and that if the palay crop belonging to those who had evacuated to the mountains was not harvested the critical food situation would have worsened. It is not difficult to see that members of the neighborhood associations living in the poblacion of Abuyog and needing rice for their consumption, may have even suggested to the defendant to harvest the palay in the outlying districts under the protection of the Japanese soldiers against the guerrillas. Among the farms where palay was then growing and ready for harvest there must have been some which belonged to these very members of neighborhood associations living in the poblacion who, fearing that the guerrillas would interfere with the harvest of their own palay, asked for protection from the Japanese forces.

As to the one-fourth portion of the harvest given to the Japanese garrison, undoubtedly, said portion was given pursuant to the wishes and orders of said garrison for its needs and also in return for the protection services rendered by its soldiers during the harvest. We find that under the circumstances, the defendant cannot be held liable under this count No. 3.

Under count 5, Basilio Pacatan, 69 years of age, stated in court that on June 1, 1944, a Japanese patrol composed of about 44 soldiers headed by the defendant who was then armed with a revolver came to the barrio of Quarry, Abuyog and found him pasturing his carabao. Some of the soldiers in the patrol caught him, tied his hands behind his back and then took him to the main body of the patrol where the defendant was. He was asked about Capt. Landia and Capt. Nicolas Camintoy, his (Pacatan's) son-in-law, both of the guerrillas. He told them that when Col. Kangleon passed by that place he took some of the residents with him, presumably including Camintoy. The defendant Caña told Pacatan that until his son-in-law, Nicolas, surrendered he (Pacatan) will be kept as a hostage.

After being slapped and kicked by the Japanese soldiers he was taken to the garrison in the poblacion and imprisoned there for a month and a half. As regards his arrest and his being tied and taken to the poblacion, Pacatan was corroborated by his stepson Pio Balida who stated that in the Japanese patrol there were four Filipinos, among them the defendant Caña. He said that he saw all this because at the time he was with his stepfather Pacatan altho at some distance from him.

In connection with the imprisonment of Basilic Pacatan in the Japanese garrison in the poblacion of Abuyog, Filomeno Tupa and Marcial Costen in their testimonies said that the accused had, once stated within their hearing that he would oppose the release of Basilio Pacatan unless his son-in-law, Nicolas Camintoy, a captain in the guerrilla first surrendered, and that when a delegation composed of leaders of neighborhood associations went to petition the Japanese captain for the release of Pacatan, saying that he was a good man, the defendant who was present voiced his objection to the release unless his (Pacatan's) guerrilla son-in-law, Nicolas Camintoy, first surrendered, as a result of which Pacatan's release was refused by the Japanese officer. It was further stated that the defendant enjoyed the confidence of the Japanese officers, in proof of which, he had previously obtained the release of three prisoners, C. Tan, Barcelo and Briones who had sons in the guerrilla forces and who promised to have said sons surrender to the Japanese.

In his defense, the appellant with his witnesses tried to prove that although he accompanied the Japanese patrols in their reconnaissance trips to the barrios, he did so not of his own free will but under compulsion by the Japanese officer of the garrison. He also said that he acted merely as interpreter of the Japanese officer who spoke at the meetings held in the barrios. The People's Court did not believe this claim of the defendant and we find nothing in the record to warrant correcting and disturbing this mental attitude and action of the People's Court. There is ample evidence to show that when appellant spoke in the barrios as head of the Japanese patrols, he did not act as a mere interpreter but that he made his own speeches. Many times there were no Japanese around when he spoke because the members of the patrol were either going around the barrio or the houses evidently checking up and looking for guerrillas, or doing things looking toward their accommodation and shelter for the night or preparing their meals from the pigs and chickens they had previously shot. And the vehemence or apparent sincerity of the accused in his speeches wherein he urged the people to support the municipal government which he headed, to report the presence of guerrillas in the barrios and to abandon all hope of the return of the Americans because they were afraid of the Japanese soldiers, sufficiently shows that he went with the patrols voluntarily and of his own free will. He was really determined to suppress the guerrilla movement in his locality as may be inferred from his speeches but also from his strong opposition to the release from the garrison of Basilio Pacatan unless the latter's son-in-law first surrendered. His action in telling the Japanese officer of the patrol in the sitio of Malasiga that the houses of Ablanque and Fortaleza had been occupied by the guerrillas, followed by his private conference with said Japanese officer, after which said two houses were set on fire and burned to the ground despite the pleas of Fortaleza with him, fortifies this belief and finding.

Considering all the evidence submitted, we agree with the People's Court and the Solicitor General that appellant is guilty under counts 2, 4 and 5. Ordinarily, in the absence of aggravating or mitigating circumstances, the penalty should be imposed in its medium degree, namely, reclusion perpetua as opined by the Court of Appeals. However, taking a broad view of the case, we are inclined to impose a lighter penalty as did the People's Court. We must bear in mind that treason is not an ordinary and everyday offense which must be considered and punished according to the presence or absence of aggravating and mitigating circumstances provided for in the Revised Penal Code. It is a very serious crime committed during war by one who, forgetting his loyalty and oath of allegiance to his own country, aids the enemy and gives it aid and comfort. The amount or degree of said aid or comfort given the enemy as well as the gravity of the separate and distinct acts of treason committed by the accused, rather than the circumstances aggravating or mitigating attending its commission, determine the degree

of the penalty to be imposed. This Court as a rule, has imposed the death penalty upon treason inductees proven not only to have aided the enemy but also while giving such aid, to have either tortured or killed their own countrymen, and even then, only when the necessary number of votes was secured. Where the necessary number of votes could not be obtained even when the defendant was guilty of killing or torturing his own countrymen, the penalty imposed has been reclusion perpetua. Where the acts of treason by a defendant in a treason case, consist in acting as a spy for the Japanese, as a result of which guerrillas or guerrilla suspects were tortured or killed by the Japanese forces themselves without any direct participation by the defendant, the punishment imposed has invariably been reclusion perpetua, that is to say, the penalty for treason in its medium period. And when the acts proven against an accused has been acting as informer merely and spy for the enemy resulting merely in the temporary confinement of guerrilla suspects, we have imposed the penalty in its minimum, namely, reclusion temporal. In other words, we have punished the commission of treason on the basis of the seriousness of the treasonable acts, and of the presence or absence of atrocities on the victims, rather than on the presence or absence of aggravating or mitigating circumstances. Here, there has been no killing, not even torture of prisoners, at least not on the part of the appellant. The People's Court may have been imbued with this same attitude and viewpoint when it imposed an imprisonment of 15 years without making any reference to the existence of aggravating or mitigating circumstances. We might add that the fact that the appellant has been in jail since the beginning of the year 1946 when he was first indicted, inclines us to take a liberal and beginning view of his case.

Finding no reversible error in the decision appealed from, the same is hereby affirmed, with costs against appellant.

Paras, Feria, Pablo, Bengzon, Tuason, Reyes, and Bautista, JJ., concur.

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