

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NEMESIO L. AGPANGAN, DEFENDANT AND APPELLANT.

G.R. No. L-778. October 10, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellant stands accused of treason, committed between December, 1944, and January, 1945, in the Province of Laguna, on only one count alleged in the information as follows:

"That on or about December 20, 1944, the accused, a member of the Ganap, a subversive pro-Japanese organization, joined the Pampars, a military organization supporting the Imperial Japanese Army and designed to bear arms against the army of the United States and the Commonwealth of the Philippines and the guerrillas in the Philippines; that he was equipped with a 1903 Springfield rifle, caliber 30, and was made to undergo 10 days training, consisting of military drill, manual of arms, and target practice; and that from or about January 12, 1945 to March 15, 1945, the said accused was assigned to guard duty once a week; that he was armed with a rifle with orders to shoot any of the Filipino prisoners whom he was guarding who might attempt to escape and also any guerrilla or American soldier who might approach the Japanese garrison."

The lower court found him guilty and sentenced him to reclusion perpetua, with the accessory penalties provided by law, and to pay a fine of P10,000 and the costs.

Three witnesses testified for the prosecution.

Tomas C. Serrano, 46, farmer, resident of Siniloan, Second Lieutenant in the Marking's guerrilla organization, testified that in December, 1944, he saw the accused in the Japanese garrison in Siniloan, "he was a member of the Makapili organization;" "he was doing guard duty, with a rifle, with a bayonet at his side;" "he was at the entrance of the garrison and he made all civilians passing through the entrance bow to him." If they did not bow, "he dragged them by the arms and brought them to the captain of the garrison;" he served as guard "since November, 1944, when the Japanese garrison was established in Siniloan, up to the time I was arrested on March 25, 1945;" he saw the accused on guard duty in the garrison "many times;" "I often saw him confiscating foodstuffs such as rice, fruits, calabasa, and other vegetables, for the support of the Japanese soldiers;" "he was with arms accompanied by Japanese soldiers and other members of the Makapili;" "I often saw him accompanied by Japanese soldiers and other Makapili members, arresting suspected guerrillas and sometimes they were patrolling or camping in the hideouts of the guerrilla forces, I cannot tell how many times, but I often saw him;" the witness was arrested on March 25, 1945, by Japanese soldiers and Makapilis, with whom the accused was; "the next morning we, the thirteen prisoners, were brought to the place where we were to be executed; but luckily while we were on our way to the barrio, the American planes came roaring, so the guards took cover;" "they were pulling the rope that tied us, and luckily I was able to slip away because I was the second to the last man in the line, and the rope was cut;" "I could not run fast because I was lame;" the rest were executed, naming the following: "Alejandro Serrano, Custodio Adaro, Emilio Javier, Peter Sardal, Elias Rodolfo, Ignacio Cavano, Beato Optis, Napoleon Pagtakhan, Bienvenido Agapangan, and myself;" Miguel Palma "was in my back to the

last, so we two remained, and Pacifico (Adopina) remained untied" because he was carrying food, and when the Japanese ran, "he escaped." Asked to explain how he knew about the lot of those who were executed, the witness said that he went home when the town was liberated, and he visited the place "because I know the place," and when he reached the spot "I smelled very bad odor, and I recognized the soil which swelled, so I said to myself that this is the place where our son was buried;" "I went home and told the other parents of the victims" about the spot; "the next month, about thirty days," the witness and the other parents requested the municipal authorities to be allowed to exhume the bodies; when his son was being taken to the place of execution. "I had not seen him that time;" the witness based his knowledge as to appellant's being a Makapili on Exhibit A and he saw him armed, guarding the Japanese garrison, confiscating foodstuffs for the Japanese, and arresting guerrilla suspects in the town; Bienvenido Agapangan, one of those who were executed by the Japanese, "was the son" of appellant; "I cannot tell you whether he (appellant) was reporting to his officers any guerrilla;" Angel Javier and Custodio Adaro were arrested by a party of which the accused was a member, and "I know because he was with them when they were arrested;" the witness does not know whether the accused was present during the execution "because there was nobody present; only God had witnessed the killing of those persons."

Mauricio Adaro, 47, farmer, resident of Siniloan, testified that in December, 1944, he saw the accused in the Japanese garrison in Siniloan; "he was mounting guard;" asked from what date to what date he saw him in the garrison, the witness answered that "I cannot remember the month in 1944 because we used to go out of Siniloan every time;" appellant "was getting food supplies from the civilians and giving them to the Japanese;" "the accused and the Japanese companions of his arrested my son (Custodio) in our house;" the witness was not arrested, "because I was able to hide;" he saw defendant mounting guard in the Japanese garrison "many times;" "more than ten times;" the garrison was located "in the school building."

Delfin Redor, 55, mayor of Siniloan, since 1937, testified that appellant "has been my barrio lieutenant;" he belongs to Pampar Makapili and Pampar and Makapili, "I believe are the same;" from December, 1944, to March, 1945, the witness saw the accused "in the Makapili garrison, in the Siniloan plaza;" "I believe that he was a member of the Makapili;" "Sometimes he was detailed as guard in front of the garrison with arms and ammunitions—bayonet;" he saw him as such "many times;" the witness was not a mayor during the Japanese occupation because "in 1944, March, I escaped because, you know, I was wanted by the Japanese because I was also a guerrilla; before that, "I was a mayor of the town;" "during December, 1944, up to March, because, you know, I left the office, I was still in the town of Siniloan collecting some supplies for the guerrillas;" after abandoning the office of mayor, the witness "remained living in the poblacion of Siniloan;" he "never stopped living in the poblacion;" "I had three times seen the accused accompanied by the Japanese in raiding outside the poblacion;" the accused commandeered foodstuffs "and took them to the garrison for food;" "the Japanese garrison was in the Intermediate Building and the Makapili garrison is in Baybay Academy, about one kilometer distant;" the witness saw the accused "in Makapili garrison;" the witness was a captain of the guerrillas and was arrested by the Japanese four times, and in those occasions he did not see the accused in the garrison; the witness does not know of anybody who had been pointed out by the accused to the Japanese and was arrested by the same.

The Constitution provides that "in all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved." (Article II, section 1 [17].) To overcome this constitutional presumption, the guilt of the accused must be proved beyond all reasonable doubt. The evidence presented by the prosecution in this case does not offer that degree of proof. None of the several overt acts alleged in the information has been proved in accordance with the two-witness rule provided in article 114 of the Revised Penal Code.

It is imputed to appellant, in the first place, that he is a member of the Ganap, "a subversive pro-Japanese organization," and "joined the Pampar, a military organization supporting the Imperial Japanese Army and

designed to bear arms against the Army of the United States and the Commonwealth of the Philippines and the guerrillas in the Philippines." No witness has testified that appellant is a member of the Ganap. Only one witness, Redor, testified that appellant belonged to Pampar, but he did not testify as to its nature.

The next allegation of the information is that appellant "was equipped with a 1903 Springfield rifle, caliber 30, and was made to undergo ten days training, consisting of military drill, manual of arms, and target practice." No evidence has been presented in support of this allegation.

The third allegation against appellant is that "from or about January 12, 1945, to March 15, 1945, the said accused was assigned to guard duty once a week." The fourth and the last allegation is that "he was armed with a rifle with orders to shoot any of the Filipino prisoners whom he was guarding who might attempt to escape and also any guerrilla or American soldier who might approach the Japanese garrison." In connection with these two allegations, the only thing that the prosecution attempted to prove is that appellant did guard duty and was armed with a rifle. But the attempt does not meet the test under the two-witness rule.

The first two witnesses for the prosecution testified that they had seen the accused doing guard duty in the Japanese garrison in Siniloan "many times," more than "ten times," but neither of them has mentioned any specific time, day and hour. They were able to mention only years and months. There is no way of concluding that the two witnesses testified about the same overt act. The "many times" or more than "ten times" mentioned by them may refer either to two different sets of moments, not one instant of one set coinciding with any one of the other, or to only one and identical set of instances or, although referring to two sets, some of the instances are the same in both. As there is no basis on record upon which we may determine which, among the two alternatives, is the correct one, the doubt must be decided by taking the first alternative, the one compatible with the presumption of innocence stated in the fundamental law. The case for the prosecution is further weakened by the fact that its first two witnesses are contradicted by the third, who testified that appellant did guard duty "many times," more than "ten times," in the Makapili garrison, located in the Baybay Academy, one kilometer from the Intermediate School building, where the Japanese garrison was located.

To meet the test under the two-witness rule, it is necessary that, at least, two witnesses should testify as to the perpetration of the same treasonous overt act, and the sameness must include not only identity of kind and nature of the act, but as to the precise one which has actually been perpetrated. The treasonous overt act of doing guard duty in the Japanese garrison on one specific date cannot be identified with the doing of guard duty in the same garrison in a different date. Both overt acts, although of the same nature and character, are two distinct and inconfusable acts, independent of each other, and either one, to serve as a ground for conviction of an accused for treason, must be proved by two witnesses. That one witness should testify as to one, and another as to the other, is not enough. Any number of witnesses may testify against an accused for treason as to a long line of successive treasonous overt acts; but notwithstanding the seriousness of the acts nor their number, not until two witnesses, at least, shall have testified as to the perpetration of a single but the same and precise overt act, can conviction be entertained.

In justice to appellant, we feel it necessary to state that our decision to acquit him is not only based on the reasonable doubt we entertain as to his guilt, because the prosecution has not satisfied the requirements of the two-witness rule, but because we are rather inclined to believe his testimony to the effect that a guerrilla member, Vicente Auxilio, was caught by the Japanese in appellant's house, tortured and, finally, killed. For said reason, appellant was called by the Japanese, investigated, and then told to do some work in the garrison, otherwise he would have the same fate that befell Vicente Auxilio. "To save my life, I accepted the order and worked there," he testified, adding: "The Japanese, not being contented with my work, they got my carabao and on March, 1945, they got my son, who was tortured and killed."

This son is the same Bienvenido Agpangan who, according to the first witness for the prosecution, was executed by the Japanese with several other victims. We do not believe that appellant could have adhered to the Japanese, the same who tortured and killed his own son. We do not believe that, in the absence of proof, he can be such a monster.

The decision of the People's Court is reversed and appellant is acquitted. He shall be released from the custody of the agents of the law upon the promulgation of this decision.

Moran, C.J., Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

PARAS, J.:

I concur in the result.

CONCURRING AND DISSENTING

FERIA, J.:

The information filed against the appellant with the People's Court contains only one count to wit:

"That on or about December 20, 1944, the accused, a member of the Ganap, a subversive pro-Japanese organization, joined the Pampars, a military organization supporting the Imperial Japanese Army and designed to bear arms against the army of the United States and the Commonwealth of the Philippines and the guerrillas in the Philippines; that he was equipped with a 1903 Springfield rifle, caliber 30, and was made to undergo 10 days training, consisting of military drill, manual of arms, and target practice; and that from or about January 12, 1945 to March 15, 1945, the said accused was assigned to guard duty once a week; that he was armed with a rifle with orders to shoot any of the Filipino prisoners whom he was guarding who might attempt to escape and also any guerrilla or American soldier who might approach the Japanese garrison."

From the above it clearly appears that defendant is charged with having committed only one overt act, that is, with having joined or become an active member of the Pampars, "a military organization supporting the Imperial Japanese army and designed to bear arms against the army of the United States and the guerrillas in the Philippines." The allegations "that he was equipped with a 1903 Springfield rifle, caliber .30, and was made to undergo 10 days training consisting of military drill, manual of arms, and target practice," and that "from January 12, 1945 to March 15, 1945, the said accused was assigned to guard duty once a week," do not constitute two overt acts separate and independent from the treasonous or over act of joining and becoming an active member of said military organization named Pampars. Each one of those facts is a part and parcel of said treasonous act, since by becoming an active member or soldier of said military organization, the appellant must have necessarily been armed, undergone training and done guard duty.

In the case of *People vs. Alarcon*, G. R. No. L-407,[1] already decided by this Court the defendant appellant Alarcon was charged with the crime of treason consisting, according to the information, of several overt acts alleged separately in several counts. In the first count he was charged with having joined and acted as a member of the pro-Japanese military organization named Makapili; and in the fourth with having retreated in December 1944 with the Japanese forces towards Bongabong, Nueva Ecija, before the arrival of the American forces in Cabanatuan. This Court in a decision unanimously concurred in by all the members who voted, including the Justice who pens the decision of the majority in this case, held that "the acts alleged in the fourth count constitute only a part of the overt act charged in the first count, since the appellant, as one of the members of said Makapili organization, had to retreat with the Japanese soldiers and other Makapilis to the mountains."

In view of the foregoing, it is plain that the following fundamental conclusion in the majority decision is erroneous and misleading. The conclusion says: "The treasonous overt act of doing guard duty in the Japanese garrison on one specific date can not be identified with the doing of guard duty in the same garrison on a different date. Both overt acts, although of the same nature and character, are two distinct and inconfusable acts independent of each other, and either one, to serve as a ground for conviction of an accused for treason, must be proved by two witnesses." We say that it is erroneous and misleading, because the mere act of doing guard duty in a Japanese garrison, independent from that of being a member of the Japanese Army or a military organization of Filipino civilians and allied with the Japanese forces, does not of itself constitute an overt act. Doing guard duty in a Japanese garrison on a specific date, and standing guard in the same or another Japanese garrison on a different date, are but parts or bits of the continuous treasonous act of being an active member of such organization. The mere acceptance of a commission in a traitorous army is not sufficient to constitute overt act of treason. To be so, there must be at least an attempt to act as such. (U.S. vs. Manalo, 6 Phil., 364; U.S. vs. Villariño, 5 Phil., 697; U.S. vs. De los Reyes, 3 Phil., 349; U.S. vs. Magtibay, 2 Phil., 703.)

In view of the failure on the part of the prosecution to establish the treasonous overt act, and of each part or bit thereof charged in the information against the appellant, by the testimony of at least two witnesses, the decision of the People's Court appealed from is reversed and the appellant acquitted. So ordered.

[1] 78 Phil., 732.

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