

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PRIMITIVO OSI, DEFENDANT AND APPELLANT.***G.R. No. L-2688. February 27, 1950*

Ponente: TORRES, J.

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This is an appeal from a judgment of the Court of First Instance of the province of Quezon, which found Primitivo Osi guilty of treason in all the five charges contained in the information and sentenced him to suffer the penalty of reclusion perpetua, with the accessory penalties of civil interdiction and perpetual absolute disqualification from public office, to pay a fine of P15,000 and the costs.

This appellant is a native born Filipino citizen, married and a resident of Sariaya, province of Quezon, formerly enrolled in the first year of the high school and, before the last war, was an employee of the Manila Electric Company as lighting inspector. From Our perusal of the record, We find that the prosecution has established the following facts in connection with each count.

Under the first count, it has been shown that between 1931 and 1935, Primitivo Osi was the secretary of the Sakdalista Party in the municipality of Sariaya under Benigno Ramos. At the beginning of the Japanese occupation, he was the chief electrician of the Electric Light Plant in said municipality, and in 1943, Mayor Mendoza of Sariaya appointed him president of the Japanese organization known as the neighborhood association in the barrio of Mamala, Sariaya. On October 20, 1944, he voluntarily joined the "Mataichi Kabushiki Kaisha," otherwise known as Nacoco, as its foreman No. 3 with a monthly compensation of P150. At the same time, he acted as interpreter of the Japanese manager of the Nacoco. On January 31, 1945, Espiridion Saracas and Leopoldo Luce, the first and second foreman respectively of the Nacoco, having been killed by the guerrillas in Mamala, Sariaya, his Japanese employers promoted this accused to the position of foreman No. 1, with the rank and title of "Captain." Since then, he had under his command between 300 and 400 Makapili soldiers of the Nacoco Military Police, whom he was seen drilling regularly. Soon after appellant's promotion, he and his soldiers, jointly with the Japanese, were seen conducting punitive campaigns against guerrillas and their sympathizers in the municipalities of Sariaya and Candelaria; he and his men, without compensation, commandeered foodstuffs from the residents of the neighboring barrios, which were turned over to the Japanese garrison and the Nacoco Military Police. In December, 1944, this appellant posted his men at the main highways leading to the poblacion of Sariaya in order to prevent the infiltration of the guerrillas. Finally, upon the return of the Americans, Primitivo Osi and his Makapili soldiers, with the Japanese civilian officials of the Nacoco, retreated to the Sierra Madre mountains in the province of Laguna and with his Japanese masters surrendered to the American forces.

In support of the charge made in this count, several witnesses were put on the stand for the prosecution. Leonila Albiela, a resident of Candelaria, province of Quezon, testified that she knew Primitivo Osi as captain of the Makapili Filipino soldiers who caused the arrest of guerrilla, suspects, and ordered the burning of houses. Captain Osi was seen by her always carrying a revolver and a hand grenade. She learned that her sons and daughter-in-law

were arrested by the Makapilis and upon receiving such information she visited Captain Primitivo Osi in his headquarters. Osi told her that he caused their arrest because they were suspected as guerrillas. Upon her supplications, Captain Osi told the witness that her sons and daughter-in-law would be released provided they leave the poblacion of Candelaria. After having been detained for about four days, the suspects were in fact released, but were soon arrested again.

At about midnight of Sunday, February 11, 1945, Captain Osi came to the house of the witness to re-arrest the same persons who have been released, namely, Iñigo Javier, Bernardo Javier, Rufino Javier, Crisanto Cristobal, Jovito Albiela, Marcelo Castillo, Ananias Dimayuga, and the brothers Quintin and Simeon. Upon the suggestion of one of the Makapili soldiers, the witness, Leonila Albiela, went to the Makapili garrison with food for the captives. After the second arrest of those persons, the witness never saw them again and neither knew what happened to them. Replying to questions propounded by the court, the witness said that Captain Osi was always seen in the town of Candelaria giving commands to his soldiers, the Makapilis. At about midnight of Sunday, February 11, 1945, the Makapilis burned the houses; led by Captain Osi, they were seen holding dried coconut leaves which they used as torches to burn the houses of the poblacion for three consecutive nights.

Another witness, Urbano Javier, husband of Leonila, landowner and a resident of Candelaria, said that, although at the beginning he did not know his name, Primitivo Osi became a familiar figure in the town of Candelaria since January, 1945. He became well-known in the town as a man who was in command of the Makapili soldiers, who arrested persons suspected as guerrilleros and took from their owners personal belongings, including jewelry. He was responsible for the arrest and detention of many persons including his brother Iñigo Javier, his son Rufino, his nephew Bernardo and Jovito Albiela, and also Crisanto Cristobal, Ananias Dimayuga, the brothers Quintin and Simeon and one by the name Castillo. He had been inquiring about the means to secure their release and he was referred to Captain Osi. Captain Osi told him that they would be released provided they leave the poblacion of Candelaria. In the morning of Sunday, February 11, 1945, the persons arrested were released. But at midnight of the same day, they were arrested again and conducted to the house of Dr. Nadres, which was being used at that time as the Makapili garrison. The witness went to the Makapili garrison and approached Captain Osi who promised that he would do his best for the release of those persons.

A third witness, Marcela Asinas, a resident of Candelaria, strongly corroborated the two previous witnesses regarding the arrest of the above-named persons and the fact that after their second arrest they have not returned to their homes and have never been seen alive again.

Count No. 2. Two witnesses were placed on the stand to testify for the prosecution in support of this charge. Clemente Vallecer, a landowner of Sariaya, stated that at about 5 o'clock in the afternoon of February 1, 1945, in company with Japanese soldiers, a group of about five Makapilis of the Nacoco Garrison, Sariaya, under the command of Captain Osi, called at his house in Sariaya. Captain Osi and two of his Filipino soldiers were each armed with a .45 caliber revolver. They took along his son Dominador Vallecer on the pretext that he was a guerrillero. In the morning of February 2, 1945, the witness found the body of his son in the barrio of Pili with 14 bayonet wounds, together with the bodies of other victims, Dr. Wenceslao Rodrigo, Dominador Lopez and Eusebio Cortez. Captain Osi, who was leading the party of soldiers who arrested and killed his son, was known to him for the previous ten years, had become the head of the Nacoco garrison at Sariaya sometime in January, 1945, and had under his command between 300 to 400 Filipino soldiers. The witness further stated that on another occasion, a group of Makapili soldiers with four Japanese soldiers arrested and killed 15 persons, residents of Sariaya.

The second witness Francisco Lopez, testifying in connection with this second count, said that he was the father of Dominador Lopez, one of those persons who were massacred by the Makapilis in the barrio of Pili on February

1, 1945. His son was arrested by pro-Japanese Filipinos including Captain Primitivo Osi, Bedoyo, Zoilo Remeyo and Florio Ortiola and brought to a nearby barrio and bayoneted to death. At about 8 o'clock in the evening of said day, Dominador Vallecer passed in front of his house under the custody of Primitivo Osi and his soldiers. The appellant, with whom he was acquainted since 1932, was armed with a .45 caliber revolver. His son Dominador and Dominador Vallecer were arrested on suspicion of being guerrillas. The so-called Nacoco garrison composed of Japanese collaborators, and organized as a military group under the command of Captain Osi, without compensation commandeered foodstuffs for themselves and the Japanese members of the garrison in Sariaya and guarded the highways leading to the poblacion of Sariaya to prevent the infiltration of guerrillas.

Count No. 3. Three witnesses, namely, Leonila Albiela, Urbano Javier and Marcela Asinas, who testified in support of the first count, also gave their statements in connection with this count. According to Leonila, her sons Rufino and Iñigo Javier and her nephews Bernardo and Jovito Albiela, who were arrested by the Makapilis under Captain Osi on suspicion of being guerrillas, and who were detained at the garrison for four days and released, to be re-arrested a few hours afterwards, by order of the appellant, were brought by the Japanese to the municipality of Tiaong where they were killed; in fact, up to the time of the hearing of this case they have not been heard from. She also testified in connection with the burning of the houses in the business district of Candelaria, and in the barrios of Pahigna, Sta. Catalina and Kinatahan of the same municipality, when the Makapili soldiers of the appellant, with dried coconut leaves, set fire to the buildings and houses in obedience to the command of Captain Osi. The accused was also seen zonifying the town of Candelaria, on which occasion several persons were arrested, brought to the Japanese garrison and were presumed to be killed by the Japanese, because of the fact that they were never seen nor returned home.

The testimony of the second witness, Urbano Javier, is of the same tenor, it being practically a repetition of the narration made by his wife Leonila Albiela. This witness made reference, however, to the arrival of Captain Osi and his Makapili soldiers in December, 1944, when they fired a machine gun at the cockpit, and as a result of which, a woman on the family way, was killed.

The third witness, Marcela Asinas, confirming the declarations of Leonila Albiela and Urbano Javier, said that on February 7, 1945, six Japanese soldiers with fixed bayonets and several Filipino soldiers commanded by Captain Osi, arrested several persons including her son Ananias Dimayuga. On that occasion, appellant was armed with a .45 caliber pistol and a hand grenade. Those persons were arrested on suspicion of being guerrilleros and although they were released after having been detained during four days, they were immediately re-arrested, brought to Tiaong and since then have never been seen alive again or heard from.

We now come to the consideration of Count No. 4. Corazon Siscar, a public school teacher of Candelaria, testified that at about 6:30 p.m. of February 11, 1945, her husband Gregorio, together with Father Raymundo Esquinet, a Belgian priest, Isabelo Martinez, Juan Nadres and Florencio Abaca were arrested by a group of ten or eleven Makapili soldiers, accompanied by five Japanese soldiers under the command of Captain Primitivo Osi. Her husband Gregorio was charged with being a guerrillero; his hands were bound and, with his companions, was brought to the headquarters of the Japanese garrison, and then taken to the barrio of Taguan, Candelaria, and bayoneted to death. She learned of the killing of her husband from her cousin Juan Maala who was made to drive a carabao cart which brought the prisoners to the place of their execution. In May, 1945, she recovered the remains of her husband in Taguan and identified the same by a wedding ring which the deceased was wearing when he was taken by the appellant and his soldiers. She also found in the same place the remains of other victims, Father Esquinet, Isabelo Martinez and Florencio Abaca.

Luisa Arceo de Abaca, widow of Florencio Abaca, one of the victims of appellant and his soldiers, testifying about the arrest of her husband and his companions by a group of Makapilis under the command of appellant, said

that the deceased Florencio Abaca was a guerrillero. Florencio and his companions were brought to the barrio of Taguan where they were bayoneted to death. Juan Maala who was present at the execution of Florencio Abaca and his companions informed Luisa about it and sometime after their killing, she recovered the remains of her husband and was able to identify the same by a badge which the deceased was carrying. She likewise stated that she saw the remains of Father Esquinet, Isabelo Martinez, Gregorio Siscar and Juan Nadres. Leonila Albiela, testifying in regard to this count, stated that Father Esquinet and his four companions were arrested and executed by order of appellant. Father Esquinet was executed because he was suspected of having in his possession an American flag.

The fifth count was proven by the prosecution by the testimonies given by Arcadia de Ramos and Mariano Medrano. Arcadia de Raraos, an octogenarian, declared that on February 13, 1945, in the barrio of Malabanban, Candelaria, she was in the house of Mariano Medrano. In the evening, three Japanese soldiers and four Filipinos with appellant Primitivo Osi raided the place and brought along Mariano Medrano and ten members of his family. The witness was left behind because she was too old to be able to walk with the party. Before leaving the premises, appellant who has given order to his men, ordered that the house of Medrano be burned and his men: did it. Appellant, carrying a firearm, ordered his men that only inmates of the Medrano house be bound and as a result of that raid they arrested and took along with them Silvestre Alcantara, Maria Alcantara, Ceferino Manalo, Mariano Medrano and ten members of his family. The captives were conducted to the Japanese garrison and one week afterwards they were brought by the Japanese Makapili to the barrio of Sta. Catalina where they were killed and buried in a foxhole.

Mariano Medrano, one of those arrested in the raid conducted by appellant and his men at about 2 o'clock a.m. of February 13, 1945, testified that it was the appellant who ordered a Filipino Makapili soldier by the name of Abundio Belmo to tie all the inmates of the house. With the exception of Arcadia de Ramos, the rest of the family were brought by the raiders to the garrison at Pulong Niogan. During the raid, some people made an attempt to escape but were fired upon by the appellant and his companions and thus several persons were killed, including Paulino Medrano, brother of the witness, and Genara Magpantay, his mother. They were suspected of being connected with the underground movement and before leaving the house, on orders of the appellant, the raiders burned the same. Upon reaching the barrio of Pulong Niogan, the raiders had already burned about 50 houses. During those operations, the appellant was on horse back and was carrying a revolver. There were about 50 captives who were bound by the hands together, and upon reaching the place, they were brought to a foxhole made near the garrison and were killed en masse by the Japanese and Makapilis. This witness was among those persons who were bound to be executed, but fortunately was able to escape before reaching the place of the execution.

Appellant, testifying in his own behalf, admitted that between 1930 and 1935, he was the secretary of the Sakdalista party under Benigno Ramos in Candelaria; he also admitted that in October, 1944, he voluntarily accepted employment as foreman No. 3 of the Japanese Nacoco in Candelaria with a monthly salary of P150, and acted as interpreter of the Japanese manager of the company until the arrival of the Americans. He likewise admitted having drilled the laborers of the Nacoco and having retreated with the Japanese officials to the Sierra Madre mountains in the province of Laguna when the American forces came to said province.

The rest of the testimony of appellant is a denial of all the charges made against him. A defense witness, Simplicio Badillo, also an employee of the Nacoco in that locality in 1943, stated that there was a raid conducted by the Japanese in the barrio of Sta. Catalina, Sariaya, and as a result thereof, several residents of the barrio were killed and numerous houses were burned by the raiders; that the raid was conducted by the Japanese because it was suspected as hideout of the guerrilla group of one Medrano who testified for the prosecution in this case; in

fact said Medrano was arrested by the raiding party on that occasion. Nevertheless, Badillo claimed that Primitive Osi was not in the raiding party on that occasion. The testimony of Badillo was corroborated by Pedro Luna, a relative of appellant who stated that Primitive Osi was not in the group.

As will be seen from the above, the main defense of this appellant consists at mere denials of appellant's participation in the treasonous acts imputed to him in the five charges; and appellant, believing that he had succeeded in side-stepping the imputations made against him by the prosecution, rested his case. As aptly remarked by the Solicitor General, it is well established in the law of evidence that affirmative testimony is stronger than negative. (*Da Gala vs. De Gala*, 42 Phil. 771). In the ease at bar, our detailed examination of the testimonies given by the witnesses for the prosecution convince Us that they were telling the truth and the facts established by their respective testimonies clinch the case against this appellant.

It follows, therefore, that appellant has failed to substantiate his claim that the lower court erred in its findings. On the contrary, the evidence strongly show not only the adherence of this appellant to the enemy, but also his having given him aid and comfort in the municipality of Candelaria in the manner and form described by more than two witnesses who testified against him in each of the five counts. (*People vs. Adriano*, 44 Off. Gaz., 4300; *Cramer vs. U.S.*, 65 Sup. Ct. 918).

In view of the above premises, We hereby affirm in toto the judgment of the lower court, with costs.

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

Moran, C. J., Mr. Justice Paras voted for the affirmance of the judgment appealed from, but, on account of his being on leave at the time of the promulgation of this opinion, his signature does not appear herein.

Feria, J., no part.

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