

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
TIBURCIO ALITAGTAG, DEFENDANT AND APPELLANT.***G.R. No. L-924. August 30, 1947*

Ponente: TUASON, J.

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Tiburcio Alitagtag was prosecuted in the People's Court charged with treason on three counts. Briefly it is alleged (1) that on February 4, 1945, in Santa Rosa, Laguna, the accused participated in the arrest and execution of Augusto Ramirez, a guerrilla suspect; (2) that on the same day the accused took part in the arrest of one Canuto Velandres and two others who are still unknown; and (3) that in the month of December, 1944, the accused enlisted and served as a member of the Makapilis and retreated with Japanese troops upon the approach of the American and guerrilla forces.

After trial, the Fourth Division of the People's Court declared that the overt acts described in counts 2 and 3 had not been duly proven. However, the court considered the evidence adduced on the third count—that the defendant was a Makapili—proof of adherence to the enemy. The court found the overt act alleged in count No. 1 to have been established by the direct testimony of two witnesses. In line with these findings, the court sentenced the accused to reclusion perpetua with the accessories of the law and to pay a fine of P10,000 and costs. The court appreciated the aggravating circumstance of aid by a group of armed men and the mitigating circumstance of lack of instruction and set off one against the other.

This is an appeal from that sentence. The appellant makes ten assignments of error in a lengthy brief which is commendable for the diligent industry and efforts it represents. But almost all the alleged errors turn upon the sufficiency of the evidence and need not be taken up separately.

Four witnesses were introduced by the prosecution and the accused was the lone witness in his own behalf. He denies all the essential allegations and evidence against him save that which refers to his citizenship. One of the prosecution witnesses gave evidence regarding the identity of the signature of one of the alleged founders or organizers of the Makapili organization—Aurelio Alvero. Another witness testified in regard to the organization of a Makapili branch in Santa Rosa, Laguna, and to the alleged inclusion of the accused in the recruitment of Makapilis and his participation in drills and military training under the Japanese army officers. For the purpose of this decision it is only necessary that the testimony of the two other witnesses be given at some length.

Canuto Velandres testified that on February 4, 1945, in barrio Aplaya, municipality of Santa Rosa, Province of Laguna, Julio Garcia, Arsenio Batitis, and one Pandis, seized him and two others at his home and took them to the front yard of one Buenaventura Dichoso's house. He said that he and the two who were arrested with him and whose names he did not know, were, at the time of their arrest, taking a meal. He explained that the two men showed up in his house, said they came from Manila, were hungry, and asked him to feed them. The witness said his and his two guests' hands were tied behind their back before they were marched off to Buenaventura Dichoso's houseyard. In the last-mentioned place, when they reached it, he declared, were Ricardo Beato, Arcadio Beato,

Martin Laurel, Filemon Alitagtag, Tiburcio Alitagtag (the accused), Eugenio Sigue and Melchor Tenorio, all of whom were garbed in blue denim clothes and bore rifles with fixed bayonets. These men had a prisoner who was blindfolded and whom he (witness) could not recognize at the time. That man had his hands tied at his back too, was squatting on his knees and heels with a pit behind him and Tiburcio Alitagtag, the appellant, standing close by Filemon Alitagtag addressing Ricardo Beato asked, "What do you say about Augusto Ramirez?", referring to the man with covered face, to which Ricardo Beato answered that he was to be killed. After this order was given Filemon Alitagtag drove the point of his bayonet into the blindfolded man's left side. That thrust was followed by another on the victim's right side delivered by Tiburcio Alitagtag, also with a bayonet attached to a rifle. Then Martin Laurel pierced Augusto Ramirez on the chest with a similar weapon. The last stab knocked Augusto Ramirez into the pit. Thereupon Ricardo Beato told his men to cover the corpse with earth, which they did. This done, Filemon Alitagtag asked Ricardo Beato what was to be done with Canuto Velandres, the witness, and Ricardo Beato said that he was to be killed also. Beato gave the same order with reference to Velandres's two fellow-prisoners. After these orders had been given, Filemon Alitagtag moved up to Velandres and told him to repent for his sins, to which the witness replied: "I have nothing to repent." At this moment Arsenio Batitis arrived with the news that guerrillas were coming and told his comrades to release the three prisoners, whereupon these were let go. Velandres said he believed Arsenio Batitis had some influence or authority over those who were holding him and his two unknown companions. Velandres's two companions left towards the town after they were set free, while Velandres, by order of Arsenio Batitis, stayed and helped the accused and his comrades load their luggage and effects in six bancas. Tiburcio Alitagtag and his companions boarded these bancas, carrying arms, along with Japanese soldiers who also were armed, and rode in the direction of the Province of Rizal. When they departed they told Velandres to go home. That was two o'clock p. m. He was arrested at about eleven o'clock in the morning.

Velandres also said that he asked Pandis and Garcia the reason for his arrest, but Garcia, he said, told him to shut up. He believed, he said, that his captors were cooperating with the Japanese as he knew they were Makapilis and had confiscated foodstuffs from civilians and slain other people. The witness admitted, though, that he had no knowledge whether Tiburcio Alitagtag was a Makapili.

Buenaventura Dichoso gave testimony substantially as follows: He lived in barrio Aplaya, Santa Rosa. On February 4, 1945, he was outside his house when Augusto Ramirez came up to him, at about 8 o'clock in the morning, and asked him if he had not seen his cart and carabao, which, Ramirez said, had been seized by the Makapilis and "Scout Battalion." Just as he told Ramirez that what he had seen were Pedro Basco's cart and carabao, the accused Tiburcio Alitagtag, Filemon Alitagtag, Eugenio Sigue, Luis Binaluya, Julio Garcia and Martiniano Laurel, all of whom were wearing denim clothes and Japanese caps and carrying arms, emerged. These men were all Makapilis. Filemon Alitagtag and Martiniano Laurel having the rank of captain, Filemon Alitagtag commanded his companions to arrest Augusto Ramirez because he was a guerrilla, and Tiburcio Alitagtag bound Ramirez's hands at his back. While this was being done the witness went up his house, peeped out through a hole in the window, and saw Ramirez being led to the witness's front yard. Julio Garcia afterwards went out of the yard in the direction of barrio Sinarhan with Arsenio Batitis and Juan Farralis whom Julio Garcia met as he stepped out into the street. After, these three men were gone, Tiburcio Alitagtag dug a grave with a shovel, with the aid of Eugenio Sigue. Luis Binaluya, Martiniano Laurel and Filemon Alitagtag, the grave being about one meter long. When the grave was ready, Pandis, Julio Garcia and Arsenio Batitis arrived with Canuto Velandres and two persons whom the witness did not know. Filemon Alitagtag approached Beato and gave "a bayonet thrust to Augusto Ramirez." Ramirez did not die and Tiburcio Alitagtag gave him another bayonet thrust. Being still alive, Martiniano Laurel delivered a third thrust which finished Ramirez and felled the victim into the grave. Thereafter the appellant and his companions filled the grave with earth. Soon afterward Batitis came

rushing and shouting to release the three prisoners "because the guerrillas might overtake us." The first man to be discharged was Canuto Velandres, who forthwith walked out of the yard through the gate. Velandres was followed by the two men the witness did not know, and he could not tell where they went. Later he saw Canuto Velandres carrying a sack of rice from the garrison in the direction of the lake. The Makapilis and "Scout Battalion" marched to the beach, arranged their belongings and made for the "sea" in six bancas with Japanese troops. Augusto Ramirez's remains, according to the witness, were still in his yard and the grave was being taken care of by him. He said Ramirez was from Calamba, about forty years old. The witness stated that the Makapilis rendered services to the Japanese and pointed out to them people who were suspected of being guerrillas. If they themselves could effect the arrest of suspected guerrillas they did the arresting and execution of the suspects. He said that he saw the (first) arrest of Augusto Ramirez and that of Major Abella in July, 1942.

On cross-examination, Dichoso testified that he was one of the people apprehended by the Americans when the latter arrived. He stated that there were about thirty Japanese soldiers and twenty Filipino Makapilis and "Scout Battalion" who fled in bancas. He said that the guerrillas did not arrive at that time as expected because they were delayed at barrio Malaban. He declared that when Ramirez was arrested he (Dichoso) was generally known by barrio folks to be a guerrilla; that Augusto Ramirez was a guerrilla too, and so was Canuto Velandres; that those who arrested Augusto Ramirez did not know Ramirez, but Filemon Alitagtag had given the order for his arrest because Ramirez was a guerrilla spy. When a strange face was seen in the locality he was suspected as a spy.

The court below believed the foregoing testimony and the record affords no ground for changing the court's findings. Whatever seeming contradictions and incongruities there may be in the evidence are trivial and do not impeach the witnesses' veracity. The defendant's testimony only adds to the conviction that the People's witnesses told the essential truth. His testimony, consisting for the most part of terse denials, is sparing of details or explanation and bare of corroboration which it would not have been difficult to furnish if he had been the innocent victim of a false accusation that he pictures himself to be. The objection to supposed leading questions by the Public Prosecutor and to the alleged "ambiguous, indistinct and doubtful statements of facts" in the decision, do not cut any figure in the final result. They are harmless errors, if errors they be.

With this preliminary observation, the testimony extracted before establishes beyond reasonable doubt both adherence to the enemy and at least one overt act. The overt act consists of the murder of Augusto Ramirez. Ramirez's execution by reason of his connection with the underground movements advanced or was calculated to advance the interest of the enemy and gave him aid and comfort. Inversely it weakened or tended to weaken the power of the forces fighting for the Philippines and the United States.

At the same time the acts of the accused are evidence of adherence to the Japanese, which is the first element needed to complete the crime of treason. They were positive indication of disloyalty of the accused to his legitimate government and of sympathy with the opposing side. While adherence may not necessarily be constitutive of the element of aid and comfort, the actual giving of aid and comfort, unless induced by compulsion or duress, is also proof of treasonable intent or hostile designs. Duress or compulsion is not pleaded and none is discernible in the record.

Adherence to the enemy has been substantiated by other evidence. The accused was a Makapili, or at least a component of a military contingent whose main object, as may be gathered from the actions of its members, was to assist the Japanese against the Fil-American troops. Like others with whom he was associated and who were his confederates in the murder of Ramirez and in the arrest of Velandres and two others, the defendant wore Japanese-furnished clothing and cap and carried Japanese-furnished arm and ammunition. And with those people, the accused joined the Japanese garrison in Santa Rosa in its escape to the opposite shore of the lake when the superior loyal force was closing in, or supposed to be closing in, on the town.

Whether the military organization to which the appellant belonged was Makapili or not is irrelevant. It is enough that it was a Japanese-sponsored military or semi-military organization, the dominating aims of which were to fight and resist the forces of liberation. But there is clear evidence that the defendant's associates were Makapilis, and two witnesses, Dichoso and Perez, swore that the accused was also a Makapili. Although the statements of these witnesses do not tally as to the occasion when they saw the defendant render service or perform duties as a Makapili, and though the statements do not meet the two-witness requirement as proofs of giving aid and comfort to the enemy, they nevertheless are competent and sufficient proofs of adherence. Adherence, unlike overt acts, need not be proved by the oaths of two witnesses. Criminal intent and knowledge may be gathered from the testimony of one witness, or from the nature of the act or from the circumstances surrounding the act. (*People vs. Adriano*, 78 Phil., 561; *Cramer vs. U. S.*, 65 Sup. Ct. Rep., 918.)

It is said that there is no evidence that the Makapili association was ever formally organized, and appellant protests against this finding of the court below without supporting proof: "There is no denying the fact that the constituents of the Makapili were actual combatants forming an integral part of the Japanese man-power. Consequently, they were warring against the United States and Fil-American Guerrilla Forces."

Section 5 of Rule 123 of the Rules of Court provides that "the political constitution and history of the Philippines," "and all similar matters which are of public knowledge," "shall be judicially recognized by the court without the introduction of proof."

Following this principle, judicial notice may be taken of the existence and purposes of the Makapili organization as matters of public notoriety and interest and as part of contemporary history. (*U. S. vs. Tubig*, 3 Phil., 44; *Unity Co. vs. Gulf Oil Corp.*, 40 Atl. [2d], 25; 156 A. L. R., 297; *Seay vs. Latham*, 182 S. W. [2d], 251; 155 A. L. R., 180; 22 C. J., 118-120.) The courts know as historical facts that the Makapili association was organized under the sponsorship, direction and supervision of the Japanese army; that its aims were as stated in the preamble and purposes of its by-laws, Exhibit A-1; that it was a body of men recruited and armed chiefly for the purpose of warfare and placed itself at the disposal of the enemy; that it received military training and instruction from Japanese military personnel and was equipped by the invaders for combat; that Filipinos joined that association and rendered service in furtherance of the above objectives, fighting side by side with the Japanese, commandeering supplies for the latter, and in many instances excelling their overlords in the commission of atrocities against their own countrymen in a campaign to suppress what they and the Japanese regarded as subversive acts.

There is no merit in the other point strongly emphasized by the defense—that there is no evidence showing that the appellant was appointed or enlisted as a Makapili. Appointment or enlistment in that organization need not be established by direct testimony. It may be inferred from the surrounding circumstances. A person who acted as and was actually engaged in the work of a Makapili, bearing arm, wearing Makapili or Japanese uniform, drilling under Japanese military officers, taking part in the rounding up and execution of guerrillas, joining the Japanese in their retreat, and the like—such person is presumed to have been regularly inducted. It is presumed that things have happened according to the ordinary course of nature and the ordinary habits of life.

What is more, it is immaterial whether the accused was regularly mustered into the organization. It suffices that he formed part thereof regardless of how he got in, performing acts and duties required of its members and, in general, making common cause with the enemy. It was his intention as revealed by his conduct that matters for the purpose of showing adherence to the enemy.

The appellant has been properly convicted and the penalty is in accordance with law. The judgment will be affirmed with costs. So ordered.

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

PARAS, J.:

I reserve my vote. The decision in the Laurel case is not as yet final.

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