

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO MANAYAO ET AL., DEFENDANTS, PEDRO MANAYAO,
DEFENDANT-APPELLANT.***G.R. No. L-322. July 28, 1947*

Ponente: HILADO, J.

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Appellant Pedro Manayao and Filomeno Flores and Raymundo Flores were charged with the high crime of treason with multiple murder in the People's Court. The Floreses not having been apprehended, only Manayao was tried. Convicted of the offense charged against him with the aggravating circumstances of (1) the aid of armed men and (2) the employment or presence of a band in the commission of the crime, he was sentenced to death, to pay a fine of P20,000, an indemnity of P2,000 to the heirs of each of the persons named in the third paragraph of the decision, and the costs. He has appealed from that decision to this Court.

On or about the 27th of January, 1945, the guerrillas raided the Japanese in sitio Pulong Tindahan, municipality of Angat, Province of Bulacan. In reprisal, Japanese soldiers and a number of Filipinos affiliated with the Makapili, among them the instant appellant, conceived the diabolical idea of killing the residents of barrio Banaban of the same municipality (Exhibits A, C, and C-1). Pursuant to this plan, said Japanese soldiers and their Filipino companions, armed with rifles and bayonets, gathered the residents of Banaban behind the barrio chapel on January 29, 1945. Numbering about sixty or seventy, the residents thus assembled included men, women and children—mostly women (Exhibits A, C, and C-1; pp. 3-16, 29, 30, 65, 102, t. s. n.).

The children were placed in a separate group from the men and women—the prosecution star witnesses, Maria Paulino and Clarita Perez, were among the children (pp. 3, 40, t. s. n.). Presently, the Japanese and their Filipino comrades set the surrounding houses on fire (pp. 14, 48, 70, 71, 103, t. s. n.), and proceeded to butcher all the persons assembled, excepting the small children, thus killing, among others, those known by the following names: Patricia, Dodi, Banda, Tana, Uyang, Mina, Marta, Sana, Eufemia, Doroteo, Andres, Perly, Tisiang, Urado, Pisan, Dorang, Felisa, and Eulalia (pp. 8, 10, 13, 14, 31, 32, 47, 48, 61, 62, 63, t. s. n.).

Appellant alone killed about six women, two of whom were Patricia and Dodi whom he bayoneted to death in the presence of their daughters, Maria Paulino and Clarita Perez, respectively (pp. 8, 10, 13, 31, 32, 35, 47, 48, t. s. n.). Patricia and Dodi pleaded with appellant for mercy, he being their relative, but he gave the callous answer that no mercy would be given them because they were wives of guerrillas (pp. 10, 42, 43, 49, t. s. n.).

Appellant would also have killed the small children including Clarita Perez and Maria Paulino if he had been allowed to have his way. For when all but the small ones had been butchered, he proposed to kill them too, but the Japanese soldiers interceded, saying that the children knew nothing of the matter (pp. 15, 49, 51, 66, 67, t. s. n.). Appellant insisted in his proposal, arguing that the children would be wives of guerrillas later when they grew up, but the Japanese decided to spare them (p. 22, t. s. n.).

The foregoing facts have been clearly established by the testimony of eye-witnesses—Clarita Paulino, Maria Perez,

and Policarpio Tigas—to the ruthless massacre of Banaban. There is a complete absence of evidence tending to show motive on the part of these witnesses for falsely testifying against appellant—such a motive is not even insinuated by the defendant. Indeed, appellant's counsel frankly states (p. 3, brief) that he "does not dispute the findings of fact of the People's Court." Speaking of the testimony of Clarita and Maria, both aged ten years, the People's Court, who heard, observed and saw them testify, had the following to say:

"The testimony of the last two in particular is entitled to very great weight. They are simple barrio girls, only ten years old, whose minds have not yet been tainted by feelings of hatred or revenge or by any desire to be spectacular or to exaggerate. They were straight-forward and frank in their testimony and did not show any intention to appeal to the sentiments of the court. They could not have been mistaken as to the presence and identity of the accused for they know him so well that they referred to him by his pet name of 'Indong Pintor' or Pedro, the painter. They could not have erred in the narration of the salient phases of the tragic events of January 29, 1945, in Banaban, for they were forced eye-witnesses to and were involved in the whole tragedy, the burning of the houses and the massacre committed by the accused and his Japanese masters took place in broad daylight and were not consummated in a fleeting moment but during a time sufficient for even girls of tender age to retain a trustworthy mental picture of the unusual event they could not help but witness."

Not only this, but the testimony of Clarita Perez and Maria Paulino is so clear, positive and convincing that it would be sufficient for conviction without any further corroboration. Yet, there is ample corroborative proof. Thus, Tomas M. Pablo declared that he had seen the corpses of the massacred residents of Banaban shortly after the happening of the heinous crime (p. 136, t. s. n.). And appellant himself admitted his participation in the massacre in two sworn statements—one made on August 28, 1945, before Lt. Jesus Cacahit, Detachment Commander of the Angat 23d MP Command (Exhibit A; pp. 75-77, t. s. n.) and another made on September 5, 1945 before Feliciano F. Torres, Assistant Provincial Fiscal of Bulacan (Exhibits C, C-1; pp. 150-159, t. s. n.).

In No. 1 of his assignment of errors, appellant's counsel contends that appellant was a member of the Armed Forces of Japan, was subject to military law, and not subject to the jurisdiction of the People's Court; and in No. 2 he advances the theory that appellant had lost his Philippine citizenship and was therefore not amenable to the Philippine law of treason. We cannot uphold either contention. We are of the considered opinion that the Makapili, although organized to render military aid to the Japanese Army in the Philippines during the late war, was not a part of said army. It was an organization of Filipino traitors, pure and simple. As to loss of Philippine citizenship by appellant, counsel's theory is absolutely untenable. He invokes in its support paragraphs 3, 4, and 6 of section 1 of Commonwealth Act No. 63, providing:

"* * * A Filipino citizen may lose his citizenship in any of the following ways and/or events:

* * * * *

"(3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more;

"(4) By accepting commission in the military, naval or air service of a foreign country;

* * * * *

"(6) By having been declared, by competent authority, a deserter of the Philippine Army, Navy, or Air Corps in time of war, unless subsequently a plenary pardon or amnesty has been granted."

There is no evidence that appellant has subscribed to an oath of allegiance to support the constitution or laws of Japan. His counsel cites (Brief, 4) the fact that in Exhibit A "he subscribed an oath before he was admitted into the Makapili association, 'the aim of which was to help Japan in its fight against the Americans and her allies.'" And counsel contends from this that the oath was in fact one of allegiance to support the constitution and Laws of

Japan. We cannot uphold such a far-fetched deduction. The members of the Makapili could have sworn to help Japan in the war without necessarily swearing to support her constitution and laws. The famed "Flying Tiger" who so bravely and resolutely aided China in her war with Japan certainly did not need to swear to support the Chinese constitution and laws, even if they had to subscribe to an oath, upon entering the organization, to help China fight Japan. During the first World War the "National Volunteers" were organized in the Philippines, pledged to go to Europe and fight on the side of the Allies, particularly of the United States. In order to carry out that mission—although the war ended before this could be done—they surely did not have to take an oath to support the constitution or laws of the United States or any of its allies. We do not multiply these examples, for they illustrate a proposition which seems self-evident.

Neither is there any showing of the acceptance by appellant of a commission "in the military, naval, or air service" of Japan.

Much less is there a scintilla of evidence that appellant had ever been declared a deserter in the Philippine Army, Navy or Air Corps—nor even that he was a member of said Army, Navy, or Air Corps.

Further, appellant's contention is repugnant to the most fundamental and elementary principles governing the duties of a citizen toward his country under our Constitution. Article II, section 2, of said Constitution ordains:

"SEC. 2. The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal, military or civil service." (Italics supplied.)

This constitutional provision covers both time of peace and time of war, but it is brought more immediately and peremptorily into play when the country is involved in war. During such a period of stress, under a constitution enshrining such tenets, the citizen cannot be considered free to cast off his loyalty and obligations toward the Fatherland. And it cannot be supposed, without reflecting on the patriotism and intelligence of the Legislature, that in promulgating Commonwealth Act No. 63, under the aegis of our Constitution, it intended (but did not declare) that the duties of the citizen solemnly proclaimed in the above-quoted constitutional precept could be effectively cast off by him even when his country is at war, by the simple expedient of subscribing to an oath of allegiance to support the constitution or laws of a foreign country, and an enemy country at that, or by accepting a commission in the military, naval or air service of such country, or by deserting from the Philippine Army, Navy, or Air Corps.

It would shock the conscience of any enlightened citizenry to say that this appellant, by the very fact of committing the treasonous acts charged against him, the doing of which under the circumstances of record he does not deny, divested himself of his Philippine citizenship and thereby placed himself beyond the arm of our treason law. For if this were so, his very crime would be the shield that would protect him from punishment.

"But the laws do not admit that the bare commission of a crime amounts of itself to a divestment of the character of citizen, and withdraws the criminal from their coercion. They would never prescribe an illegal act among the legal modes by which a citizen might disfranchise himself; nor render treason, for instance, innocent, by giving it the force of a dissolution of the obligation of the criminal to his country." (Moore, International Law Digest, Vol. III, p. 731.)

"696. No person, even when he has renounced or incurred the loss of his nationality, shall take up arms against his native country; he shall be held guilty of a felony and treason, if he does not strictly observe this duty." (Fiore's International Law Codified, translation from Fifth Italian Edition by Borchard.)

As to the third assignment of error, the Solicitor General agrees with counsel that it is improper to separately take into account against appellant the aggravating circumstances of (1) the aid of armed men and (2) the employment of a band in appraising the gravity of the crime. We likewise are of the same opinion, considering that under

paragraph 6 of article 14 of the Revised Penal Code providing that "whenever more than three armed malefactors shall have acted together in the commission of an offense it shall be deemed to have been committed by a band," the employment of more than three armed men is an essential element of and inherent in a band. So that in appreciating the existence of a band the employment of more than three armed men is automatically included, there being only the aggravating circumstance of band to be considered.

As to appellant's fourth assignment of error, the contention is clearly unacceptable that appellant acted in obedience to an order issued by a superior and is therefore exempt from criminal liability, because he allegedly acted in the fulfillment of a duty incidental to his service for Japan as a member of the Makapili. It is obvious that paragraphs 5 and 6 of article 11 of our Revised Penal Code cannot be construed as sanctioning as legal acts done in compliance with duties to or orders from a foreign sovereign, any more than obedience to an illegal order. The construction contended for by appellant could entail in its potentialities even the destruction of this Republic.

The contention that as a member of the Makapili appellant had to obey his Japanese masters under pain of severe penalty, and that therefore his acts should be considered, as committed under the impulse of an irresistible force or uncontrollable fear of an equal or greater injury, is no less repulsive. Appellant voluntarily joined the Makapili with full knowledge of its avowed purpose of rendering military aid to Japan. He knew the consequences to be expected—if the alleged irresistible force or uncontrollable fear subsequently arose, he brought them about himself freely and voluntarily. But this is not all; the truth of the matter is, as the Solicitor General well remarks, that "the appellant actually acted with gusto during the butchery of Banaban." He was on that occasion even bent on more cruelty than the very ruthless Japanese themselves as regards the little children. And his Japanese masters—so fate willed it—were the very ones who saved the little girls, Clarita Perez and Maria Paulino, who were destined to become the star witnesses against him on the day of reckoning.

Conformably to the recommendation of the Solicitor General, we find appellant guilty of the crime of treason with multiple murder committed with the attendance of one aggravating circumstance, that of "armed band," thus discarding the first aggravating circumstance considered by the trial court. A majority of the Court voted to affirm the judgment appealed from, imposing the death penalty, convicting defendant and appellant to pay a fine of P20,000, an indemnity of P2,000 to the heirs of each of the victims named in the third paragraph of the lower court's decision, and the costs. But due to the dissent of Mr. Justice Perfecto from the imposition of the death penalty, in accordance with the applicable legal provisions we modify the judgment appealed from as regards the punishment to be inflicted, and sentence defendant and appellant Pedro Manayao to the penalty of reclusion perpetua, with the accessories of article 41 of the Revised Penal Code, to pay a fine of P20,000, an indemnity of P2,000 to the heirs of each of the victims named in the third paragraph of the lower court's decision, and the costs. So ordered.

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

PARAS, J.:

I concur in the result because I am convinced that the appellant is guilty of multiple murder and he even deserves the maximum penalty.

CONCURRING AND DISSENTING

PERFECTO, J.:

The main facts in this case upon which the prosecution relies are based on the testimonies of three witnesses, two ten-year-old girls, Clarita Perez and Maria Paulino, and PoUcarpio Tigas.

From the testimony of Maria Paulino we quote:

"Q. You said that you are ten years old, do you know what is the meaning of telling a lie?—A. I do not know.

"Q. Do you know the difference between falsity and truth?—A. I do not know.

* * * * *

"Q. Do you know how to read?—A. What, Sir?

"Q. How to read.—A. No, Sir.

"Q. Do you know how to pray?—A. I forgot how to pray." (Pages 44 and 45, t. s. n.)

From the testimony of Clarita Perez, we quote:

"Q. Please state your name and your personal circumstances.—A. Clarita Perez, 10 years of age, and resident of the sitio of Banaban.

"Q. What town?—A. I do not know.

"JUDGE NEPOMUCENO:

"Q. Is Banaban a sitio in the town of Malolos, or Quiñgua, or Bigaa?—A. I do not know.

"Q. You do not know?—A. I do not know, sir.

"JUDGE ABAD SANTOS:

"Q. What province?—A. I do not know." (Page 4, t. s. n.)

Witness Policarpio Tigas, municipal policeman, testified that about sixty persons, including his sister Eufemia, were killed in Banaban, but he was not killed "because I was with my guerrilla outfit then." He saw the killing "because on the 29th day of January, I came down from the mountains and went to the barrio to see my family to take them away from the place, but upon arriving there I saw that the people were being gathered and placed behind the chapel. After placing the people behind the chapel I saw the massacre of the group begun. In my interest to ascertain the fate of my sister and so that I would not be seen, I crept to a creek and stayed there to find out what would be the end of it all. While I was thus hiding in that creek I saw my sister killed by Pedro Manayao, the painter. After that, convinced of the fate of my sister and knowing the one who killed her was Pedro Manayao, and because I was afraid that if I stayed there longer I might be caught by the people and knowing that if I would be caught I would also be killed, I left the place." (Page 102, t. s. n.) He was fifty meters away from the place of the massacre. "The dead bodies were burned. I left to go to the mountains. I first put my mother in a safe place, and after that I joined my companions and together we returned to the town." Eufemia "was buried by my father" on the "second day after the killing." (P. 103, t. s. n.)

The above are the facts testified in the direct testimony of the witness. That he should come from the mountains and arrive at the place at the very instant when the massacre was about to be executed; that he should have remained hidden in a creek, fifty meters away, to find out the final fate of his sister; that, instead of remaining to witness the gory scene, he did not depart to call his co-guerrilleros who, according to him, were well armed, in order to attack the mass killers and try to save those who were gathered to be killed; that he left precisely after he

saw his sister decapitated, notwithstanding which he testified that the corpses were burned but that the body of his sister was buried by his father the day after the killing,—these, besides other details, are things that lead us to doubt the veracity of the testimony of this witness, thus leaving to be considered only the testimonies of the two girls.

Although we are inclined to believe that appellant must have been seen by the two girls at the place of the massacre in the company of the Japanese, we cannot reconcile ourselves in believing all the details as narrated by them, so as to justify the inflicting of the supreme penalty upon appellant. Although we are constrained to believe in the substantial truthfulness of the two girls, considering their tender age which makes them highly susceptible to suggestions, and the additional significant fact that Maria Paulino does not know "the meaning of telling a lie" nor "the difference between falsity and truth," and history and experience have time and again shown that human fallibility is more pronounced in children of tender age, we vote for the modification of the appealed decision in the sense that appellant be sentenced to reclusion perpetua.

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