

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FLORENCIO ALIBOTOD, DEFENDANT AND APPELLANT.***G.R. No. L-1588. November 26, 1948*

Ponente: PERFECTO, J.

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The trial court found appellant guilty of treason and sentenced him to reclusion perpetua, with the accessories prescribed by law, and to pay a fine of P10,000.00 and the costs.

Five witnesses testified for the prosecution. At 7 o'clock on January 18, 1945, a group of Japanese soldiers, accompanied by several Filipinos in Japanese uniforms, among whom was appellant, carrying firearms, went to the house of Santiago Felismino in Calo, San Pablo City, for the purpose of apprehending the other as a suspected guerrilla. With the raiding party were two captives, Francisco Felismino and Cipriano Calabon who were tied. The members of the raiding party went up the house searching for Santiago Felismino, who was absent, ransacked the place and looted therefrom many belongings. Severa Caseres, wife of Santiago Felismino, and other inmates were told to go down, and the house was burned down. The raiding party left taking with them two horses and some articles. These facts were testified to by Severa Caseres and her daughter Elena Felismino.

The same raiding party, including appellant, bringing with them captives Francisco Felismino and Cipriano Calabon, went to the house of Bonifacia Biglete, also located in Calo. Upon reaching the house, they ordered all the males (Luis, Cenon, Marcos, and Isidro Mendoza, Pedro Calapini and Alfredo Bunye) to go down, where they were tied. The house was ransacked. The raiding party took with them several things. Cenon Mendoza, while being investigated, was struck with the butt of a gun on his forehead. Then all the males were transferred to the house of Alfredo Bunye. These facts were testified to by Bonifacio Biglete and Pedro Calapini, corroborated by Isabel Biglete.

Pedro Calapini testified further that he was brought later to the seminary building in San Pablo, where he and Francisco Felismino were tortured, and that the next morning, upon hearing that they were to be executed, he attempted to escape by climbing to the ceiling of the room where he was being kept a prisoner. The ceiling gave way and his fall brought about the discovery of his escape. Appellant repeatedly bayoneted him and he received a shot, fired by someone he does not know. He pretended to be dead, and was placed near a hole. Upon being left alone, he managed to crawl away and escape to his home, where his wounds were treated by a doctor. But the testimony of Calapini on these facts is not supported by any other testimony and, therefore, can not be considered. As regards the other males arrested in the house of Bonifacia, neither the latter nor Calapini has ever heard of them up to the trial of this case.

Appellant denied all the facts narrated by the witnesses for the prosecution, and alleged that on January 7, 1945, he was taken by the Japanese as forced laborer, and remained under such captivity until April, 1945, when he was able to escape, and was arrested by the guerrillas. Luciano Aragonés testified that appellant was his partner in a business of selling sweet potatoes and vegetables and that in the afternoon of January 7, 1945, while he was

sleeping, he was arrested by Japanese soldiers. in Florencio Alibotod was also arrested his house. They were taken to a place he does not know because the night was dark, and they were ordered to carry sacks of rice to places which they did not know. Four months later, an American artillery shell exploded in the vicinity of their place, and they were able to escape, and went together to a place known as Santa Ana, where they were met by a group of guerrillas and taken to the CIC.

No valid reason has been given why the five witnesses for the prosecution had falsely to impute to appellant membership in a raiding party of armed Japanese soldieis and Filipinos in Japanese uniforms who raided and ransacked on January 18, 1945, two houses in Calo, burning one of them, that of Santiago Felismino. Their testimonies are convincing. They identified appellant as one of the members of the raiding party, and they could not have been mistaken because the raids took place at about 7 o'clock in the morning, when the day was already very clear, although it was then rainy and windy.

The participation of the appellant in the raids in question constitutes the crime of treason, and shows that he adhered and gave aid and comfort to the enemy.

Although the witnesses for the prosecution have been mentioning him as a Makapili, a thing that appellant and his witness deny, the description is only a conclusion based on the fact that appellant was in Japanese uniform, armed, and in the company of Japanese soldiers, and the witnesses for the prosecution could not give any explanation to their deduction.

There is not enough basis on record to pronounce appellant as a Makapili, which is immaterial in view of the conclusion we reached.

The appealed decision, being supported by the facts proved and by the law, is affirmed, with costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

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