

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EDUARDO PRIETO (ALIAS EDDIE VALENCIA), DEFENDANT AND APPELLANT.

G.R. No. L-399. January 29, 1948

Ponente: TUASON, J.

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TUASON, J.:

The appellant was prosecuted in the People's Court for treason on 7 counts. After pleading not guilty he entered a plea of guilty to counts 1, 2, 3 and 7, and maintained the original plea as to counts 4, 5 and 6. The special prosecutor introduced evidence only on count 4, stating with reference to counts 5 and 6 that he did not have sufficient evidence to sustain them. The defendant was found guilty of count 4 as well as counts 1, 2, 3 and 7 and was sentenced to death and to pay a fine of P20,000.

Two witnesses gave evidence on count 4 but their statements do not coincide on any single detail. Juanito Albaño, the first witness, testified that in March, 1945, the accused with other Filipino undercover and Japanese soldiers caught an American aviator and had the witness carry the American to town on a sled pulled by a carabao; that on the way, the accused walked behind the sled and asked the prisoner if the sled was faster than the airplane; that the American was taken to the Kempetai head quarters, after which he did not know what happened to the flier. Valentin Cuison, the next witness, testified that one day in March, 1945, he saw the accused following an American whose hands were tied; that the accused struck the flier with a piece of rope; that with the American and the accused were Japanese and other Filipinos.

These witnesses evidently referred to two different occasions. The last witness stated that the American was walking as well as his captors, And there was no sled, he said, nor did he see Juanito Albaño, except at night when he and Albaño had a drink of tuba together.

This evidence does not satisfy the two-witness principle. The two witnesses failed to corroborate each other not only on the whole overt act but on any part of it, (People vs. Apolinar Adriano, 44 Off. Gaz., 4300; Cramer vs. U.S., 65 S. Ct. 918.)

The lower court believes that the accused is "guilty beyond reasonable doubt of the crime of treason complexed by murder and physical injuries," with "the aggravating circumstances mentioned above." Apparently, the court has regarded the murders and physical injuries charged in the information, not only as crimes distinct from treason but also as modifying circumstances. The Solicitor General agrees with the decision except as to the technical designation of the crime. In his opinion, the offense committed by the appellant is a "complex crime of treason with homicide."

Counts 1, 2, 3 and 7 are as follows:

"1. On or about October 15, 1944, in the Municipality of Mandaue, Province of Cebu, Philippines, said accused being a member of the Japanese Military Police and acting as undercover man for the Japanese forces

with the purpose of giving and with the intent to give aid and comfort to the enemy did, then and there wilfully, unlawfully, feloniously and treasonably lead, guide and accompany a patrol of Japanese soldiers and Filipino undercovers to the barrio of Poknaon, for the purpose of apprehending guerrillas and locating their hideouts; that said accused and his companions did apprehend Abraham Puno, tie his hands behind him and give him fist blows; thereafter said Abraham Puno was taken by the accused and his Japanese companions to Yati, Liloan, Cebu, where he was severely tortured by placing red hot iron on his shoulders, legs and back and from there he was sent back to the Japanese detention camp in Mandaue and detained for 7 days;

"2. On or about October 28, 1944, in the Municipality of Mandaue, Province of Cebu, Philippines, said accused acting as an informer and agent for the Japanese Military Police, with the purpose of giving and with the intent to give aid and comfort to the enemy, did, then and there wilfully, unlawfully, feloniously and treasonably, lead, guide and accompany a group of Filipino undercovers for the purpose of apprehending guerrillas and guerrilla suspects; that the herein accused and his companions did in fact apprehend Guillermo Ponce and Macario Ponce from their house; that said accused and his companions did tie the hands of said Guillermo Ponce and Macario Ponce behind their backs, giving them fist blows on the face and in other parts of the body and thereafter detained them at the Kempei Tai Headquarters; that Guillermo Ponce was released the following day while his brother Macario Ponce was detained and thereafter nothing more was heard of him nor his whereabouts known;

"3. Sometime during the month of November, 1944, in the Municipality of Mandaue, Province of Cebu, Philippines, for the purpose of giving and with the intent to give aid and comfort to the enemy and her military forces, said accused acting as an enemy undercover did, then and there wilfully, unlawfully, feloniously, and treasonably lead, guide and accompany a patrol of some 6 Filipinos and 2 Japanese soldiers to barrio Pakna-an, Municipality of Mandaue for the purpose of apprehending guerrillas and guerrilla suspects, and said patrol did in fact apprehend as guerrilla suspects Damian Alilin and Santiago Alilin who were forthwith tied with a rope, tortured and detained for 6 days; that on the 7th day said Damian Alilin and Santiago Alilin were taken about ½ kilometer from their home and the accused did bayonet them to death;

"7. In or about November 16, 1944, in Mandaue, in conspiracy with the enemy and other Filipino undercovers, said accused did cause the torture of Antonio Soco and the killing of Gil Soco for guerrilla activities."

The execution of some of the guerrilla suspects mentioned in these counts and the infliction of physical injuries on others are not offenses separate from treason. Under the Philippine treason law and under the United States constitution defining treason, after which the former was patterned, there must concur both adherence to the enemy and giving him aid and comfort. One without the other does not make treason.

In the nature of things, the giving of aid and comfort can only be accomplished by some kind of action. Its very nature partakes of a deed or physical activity as opposed to a mental operation. (*Cramer vs. U.S.*, ante.) This deed or physical activity may be, and often is, in itself a criminal offense under another penal statute or provision. Even so, when the deed is charged as an element of treason it becomes identified with the latter crime and can not be the subject of a separate punishment, or used in combination with treason to increase the penalty as Article 48 of the Revised Penal Code provides. Just as one can not be punished for possessing opium in a prosecution for smoking the identical drug, end a robber cannot be held guilty of coercion or trespass to a dwelling in a prosecution for robbery, because possession of opium and force and trespass are inherent in smoking and in robbery respectively, so may not a defendant be made liable for murder as a separate crime or in conjunction with another offense where, as in this case, it is averred as a constitutive ingredient of treason. This rule would not, of course, preclude the punishment of murder or physical injuries as such if the government should elect to prosecute the culprit specifically for those crimes instead of relying on them as an element of treason. It is where murder or physical injuries are charged as overt acts of treason that they can not be regarded separately under their general denomination.

However, the brutality with which the killing or physical injuries were carried out may be taken as an aggravating circumstance. Thus, the use of torture and other atrocities on the victims instead of the usual and less painful method of execution will be taken into account to increase the penalty under the provision of article 14, paragraph 21, of the Revised Penal Code, since they, as in this case, augmented the sufferings of the offended parties unnecessarily to the attainment of the criminal objective.

This aggravating circumstance is compensated by the mitigating circumstance of plea of guilty. It is true that the accused pleaded not guilty to counts 4, 5 and 6 but count 4 has not been substantiated while counts 5 and 6 were abandoned.

In his first assignment of error, counsel seeks reversal of the judgment because of the trial court's failure to appoint "another attorney de oficio for the accused in spite of the manifestation of the attorney de oficio (who defended the accused at the trial) that he would like to be relieved for obvious reasons".

The appellate tribunal will indulge reasonable presumptions in favor of the legality and regularity of all the proceedings of the trial court, including the presumption that the accused was not denied the right to have counsel. (U.S. vs. Labial, 27 Phil. 82.) It is presumed that the procedure prescribed by law has been observed unless it is made to appear expressly to the contrary. (U.S. vs. Escalante, 36 Phil., 743.) The fact that the attorney appointed by the trial court to aid the defendant in his defense expressed reluctance to accept the designation because, as the present counsel assumes, he did not sympathize with the defendant's cause, is not sufficient to overcome this presumption. The statement of the counsel in the court below did not necessarily imply that he did not perform his duty to protect the interest of the accused. As a matter of fact, the present counsel "sincerely believes that the said Attorney Carin did his best, although it was not the best of a willing worker," We do not discern in the record any indication that the former counsel did not conduct the defense to the best of his ability. If Attorney Garin did his best as a sworn member of the bar, as the present attorney admits, that was enough; his sentiments did not cut any influence in the result of the case and did not imperil the rights of the appellant.

In conclusion, we find the defendant not guilty of count 4 and guilty of treason as charged in counts 1, 2, 3 and 7. There being an aggravating circumstance and a mitigating circumstance, the penalty to be imposed is reclusion perpetua. The judgment of the lower court will be modified in this respect accordingly. In all other particulars, the same will be affirmed. It is so ordered, with costs of this instance against the appellant.

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

PARÁS, J.:

I concur in the result. Appellant is guilty of murder.

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