

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO CONCEPCION, DEFENDANT AND APPELLANT.

G.R. No. L-1553. October 25, 1949

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court finding the appellant, Francisco Concepcion, guilty of treason and sentencing him to life imprisonment and to pay a fine of P10,000 and the costs.

The appellant was found guilty of treason on three counts, namely: The apprehension on December 7, 1944, in Cebu City, by the appellant (accompanied by Japanese) of Basilio Severino. (Count 3.) The apprehension on December 3, 1944, in Cebu City, by the appellant (accompanied by Japanese and Pablo Labra and Maximo Bate) of Clemente Chica. (Count 5.) The apprehension on January 9, 1944 in Cebu City, by appellant (accompanied by Manuel Cocon and a Japanese) of Gavino Moras. The evidence for the prosecution shows that the three individuals were apprehended by the appellant or at his instigation, due to their guerrilla connections.

The first error assigned by counsel for the appellant as having been committed by the lower court has reference to its action in allowing the prosecution to present evidence of appellant's Filipino citizenship after the prosecution had rested its case and the defense had moved for dismissal. This assignment is untenable, as the matter of reopening a case for the reception of further evidence after either the prosecution or the defense has rested is within the discretion of the trial court (23 C. J. S., par. 1056, pp. 464, 465, 467).

Under the second, third and fourth assignments of error, counsel for the appellant argues that the charges of which the appellant was convicted have not been proven in accordance with the two-witness rule. Specifically it is contended that while prosecution witness Agapito Severino testified that the appellant, with a Japanese interpreter, arrived at their house and inquired if his Brother Basilio Severino was at home, and said that the latter was wanted at the military police headquarters for questioning, the other prosecution witness Edgardo Severino did not corroborate witness Agapito in this respect. Neither did the latter corroborate Edgardo as regards the fact that Basilio Severino was taking a bath and as regards Basilio's statement that the appellant and his companions should wait. There may not be corroboration between the two prosecution witnesses on the points mentioned, but said witnesses are uniform in their testimony that Basilio Severino was arrested on December 7, 1944. The latter important detail constitutes the overt act of treason charged in count 3.

The same consideration may be said regarding the criticism of appellant's counsel that there is lack of corroboration on some details between prosecution witnesses Melchor Ugayong and Victoriano Cagitla, who, however, testified in unison on the overt act charged in count 5, namely, the apprehension by appellant of Clemente Chica.

As to count 6, it is contended by counsel for the defense that the testimony of the principal witnesses for the prosecution is merely to the effect that the appellant was waiting below the house of Gavino Moras (who was arrested), and that it was appellant's Japanese companions who came down from the house with said Gavino

Moras. This argument is also without merit, it having been established by at least two witnesses that the appellant and his companions arrived at the house of Gavino at the same time, from which the conclusion is inescapable that he actually in a way aided in the apprehension of Gavino Moras.

It is lastly pretended by counsel for appellant that the latter was an ex-USAFFE officer and joined the Japanese under duress. There is nothing in the record which tends to indicate that the appellant apprehended or aided in the arrest of his victims under actual and imminent threats of death or bodily harm in case he should do otherwise. Upon the other hand, the evidence shows that he willingly perpetrated the acts of treason of which he was convicted by the lower court.

Counsel for the appellant has filed a motion for new trial based di newly discovered evidence tending to show that the ajrpellant was merely a liaison officer between the Provincial Government of Cebu and the Japanese Military Police; that three of the prosecution witnesses are retracting, and that the Appellant had saved some Filipinos arrested by the Japanese. The first point is sought to be established by affidavits of two Japanese war prisoners. These are not entitled to credit, as their affidavits were executed after the defeat of Japan in the last war, of which fact the Japanese affiants may be assumed to be aware. Besides, the alleged civilian position of the appellant did not prevent him from becoming a traitor to his country. Neither are the three retracting witnesses entitled to credit, since their affidavits are obviously the result of an afterthought, and if they could have lied during their testimony in court for some consideration or motive, they can now by the same token commit another falsity. The alleged circumstance that the appellant helped some of his countrymen arrested by the Japanese certainly does not exempt him from criminal liability.

The appealed judgment, being in conformity with the facts and the law, is affirmed. So ordered with costs.

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

PARAS, J.:

Mr. Justice G. Pablo voted for the affirmance.

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