

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LUIS NAVEA, DEFENDANT AND APPELLANT.

G.R. No. L-2256. July 06, 1950

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal from a judgment of the People's Court finding the appellant guilty of treason and sentencing him to life imprisonment, with corresponding accessory penalties, and to pay a fine of P10,000, plus the costs, the appellant being entitled, however, to the benefit of one-half of his preventive imprisonment .

The appellant was charged with six counts but was found guilty only of three, 1, 2 and 4.

Under count No. 1, the appellant is alleged to have been a member of a party of Filipinos who captured in the latter part of November, 1944, Lieutenant Leslie of the American Air Force who bailed out from his plane between Binañonan and Sta. Rosa, Laguna. The capturing party delivered the flier to the Japanese soldiers who liquidated him. The skull of Lieutenant Leslie was, found only after the liberation of Sta. Rosa. The witnesses for the prosecution presented in support of this count were unanimous in testifying that the only part taken by the appellant was to pilot the banca in which the capturing party of Lieutenant Leslie rode. The evidence for the defense tends to show that the appellant was compelled to pilot the banca by the Japanese soldiers. In our opinion, the appellant at least is entitled to the benefit of a reasonable doubt, as he merely piloted the banca used by the rescuing party and did not even go with the Japanese soldiers when the latter took over the American flier. No active part is therefore attributable to the appellant in the delivery or liquidation of Lieutenant Leslie.

Under count No. 2, it is alleged that on or about two o'clock in the morning of November 16, 1944, the appellant and David Cose, both armed and clad in Japanese uniforms and army caps, went to the house of the spouses Wenceslao Carpena and Maxima Bato in Sta. Rosa, Laguna. Upon arrival, they took hold of Reynaldo Carpena, son of . Wenceslao, and after he was tied, Reynaldo was brought down to the place where appellant's companions were waiting with Capt. Maykawa of the Japanese Army, thereafter, the appellant and David Cose went tip the house, tied the hands of Wenceslao, and dragged him down. The appellant and his companions then left, bringing with them Wenceslao Carpena. Nothing was heard from Wenceslao since then, and it was known that he was killed only after the liberation when his remains were discovered. Wenceslao Carpena, according to the evidence for the prosecution, was apprehended for being a guerrilla suspect. This count is supported by the testimony of Maxima Bato and Reynaldo Carpena, wife and son respectively of Wenceslao Carpena.

Under count No. 4, it is alleged that on February 14, 195, the appellant, together with Martin Laurel, Filemon Alitaptap, Tiburcio Alitaptap and Higinio Sigue, found Agustin Ramires riding on a bicycle. Thereupon they arrested him. After Agustin's hands had been tied, the group took him to a yard in front of the house of Buenaventura Dichoso where he was fenced to kneel down on the edge of a prepared grave and bayoneted to death by Tiburcio Alitaptap and Martin Laurel. Agustin Ramirez was suspected of being a guerrilla. This count is supported by the testimony of Buenaventura Dichoso and Canuto Velandres.

We are convinced that the appellant is guilty under counts 2 and 4. At least two witnesses testified in support thereof. It is true that, as pointed out in the lengthy brief of appellant's counsel de oficio, there are some discrepancies in the statements of the prosecution witnesses, but as they refer to minor details, said discrepancies rather lead to the conclusion that the witnesses were not fabricated. In view of the lapse of time and different capacities for observation, the witnesses cannot be expected to recall with accuracy or uniformity minor matters connected to the main overt acts. The trial court saw and observed the witnesses during the trial, and we have found no good reason for overruling said court when it gave weight to the testimony of the prosecution witnesses and refused to believe the testimony of the witnesses for the defense. At any rate, the witnesses for the prosecution have not been shown to have had any motive for falsely testifying against the appellant.

The Solicitor General recommends that the appellant be sentenced for the complex crime of treason with murder. We have already ruled, however, that where, as in the present case, the killing is charged as an element of treason, it "becomes identified with the latter crime and cannot 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."

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

Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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