

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROBERTO BAUTISTA (ALIAS ERIBERTO OCAMPO), DEFENDANT AND APPELLANT.

G.R. No. L-1655. January 31, 1950

Ponente: TORRES, J.

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TORRES, J.:

Sentenced to reclusion perpetua by the People's Court upon his conviction for treason on five out of six counts embodied in the information filed against him, Roberto Bautista alias Eriberto Ocampo has appealed to this Court in an effort to secure the reversal of said judgment.

In substance the challenge of the correctness of the judgment of the People's Court is predicated on the ground that the facts on which the People's Court based the conviction of the accused appellant has not been fully substantiated. From our study of the evidence we find the following:

As to count No. 1. It has been shown by the prosecution that Roberto Bautista, by his own admission, a "Filipino by birth and blood," at the outbreak of the war in 1941, was an enlisted man of the Air Corps of the Philippine Army, assigned to the Seventh Air Observation. Squadron Outfit with station in Lahug Field, Cebu City. He surrendered to the Japanese forces when the latter occupied Cebu. Later on, he became widely known not only in Cebu, but also in Bohol, as an undercover agent of the Japanese, carrying a revolver, and accompanying Japanese soldiers and other spies, and participated in their raids against, apprehension and investigation of, guerrilla suspects.

In support of count No. 1, prosecution witness Virginio Garces testified that he saw the appellant in the municipality of Clarin, Bohol, in company with members of the Japanese kempei-tai, when at midnight of June 24, 1944, the Japanese were conducting a mopping operation, during which Virginio and one Conrado Gerali were captured in the barrio of Bonbon, Clarin, by a group of about twenty members of the kempei-tai, composed of Filipinos and Japanese, and appellant, armed with a revolver, was with said group. Garces was taken to the municipality of Inabanga, investigated by Captain Tsuriyama and one Lolong Sanchez as a guerrilla suspect, was tortured by one Jesus Ocampo, and during his confinement he saw Mrs. Gallardo in this cell.

Another witness, Gloria Lavilles, stated that during that month of June, 1944, she saw appellant armed with a revolver in company with Japanese and "Filipino members of the kempei-tai., when they arrested her uncle Jovito Sorio in his house in Clarin, Bohol, and took him to the school building and later to the municipality of Inabanga, where the prisoner was tortured by one of the spies. In one of her visits to her uncle during his detention, Gloria saw other prisoners, among whom were Mrs. Gallardo, wife of Major Gallardo, and Captain Garcia of the Bohol guerrillas and Mr. Mercado} the mayor of Inabanga. Gloria Lavilles further said that she saw appellant on various occasions with Japanese soldiers and undercover agents patrolling the municipality of Clarin, always armed with a revolver. A third witness, Maria Consuelo Gallardo, corroborating the testimony of Virginio Garces and Gloria Lavilles, testified that in the afternoon of July 3, 1944, she saw appellant with Japanese soldiers and spies,

including Jesus Campos (or Ocampo), Antonio Recaza, Margarito Campo, Perfecto Libre, Irineo Gorro and Julio Nolasco, all of them armed with rifles and revolvers, when she was arrested by them with her child and servant, and one Mr. Tendencia and Segundino Sison of the Bolo Battalion and mayor De Millos. She was brought first to the school building in Clarin where she was investigated, and then transferred to the town jail of Inabanga from which place? after ten days, she was transferred to Cebu and released on parole. During her detention, appellant, who was her guard, had been boasting that he was a graduate of the PMA. (Philippine Military Academy) and that while patrolling the place with the Japanese he had been confiscating goods from civilians.

Count No. 3.—In connection with this charge, it has been shown, that Lieutenant Pacifico Resales, Intelligence Officer of the G-2 Bohol Area Command, in company with Eriberto Abellana and other guerrillas of the Bohol Command, met the appellant in a certain panciteria in Sikatuna street, Cebu City, and questioned this appellant regarding the activities of the Japanese. But this accused, instead of furnishing the information desired of him, tried to convince Lieutenant Rosales and his companion that they should surrender and join him in his undercover work for the Japanese; in fact he told them that this guerrilla business was "just foolishness;" and by way of warning the accused further said, "Give us time to think it over."

It about 8 o'clock in the morning of July 8, 1944, Lieutenant Rosales was in the house of Francisca Garcia in Pasil, Cebu City, to exchange Philippine currency with Japanese war notes. However, he left the house to attend mass at the nearest church and, upon his return, he noticed that he was being followed by two individuals and soon thereafter another person named Failing also came by. Sensing danger, Rosales went up the house immediately, only to go out again by another stairway, but unfortunately he was stopped by this appellant and the man named Failing who immediately tied him. He was dragged to the seashore, put in a sailboat together with appellant and Failing, while two other men, companions of the appellant, named Badili and Joe Cabrera, took another banca and sailed away. Since then Rosales has never been heard of.

It appears that Badili, is the same Roque Badili who was convicted for treason by this Court in a decision penned by Justice Ozaeta and rendered on June 27, 1949 (People vs. Roque Badili, G. R. No. L-565). One Alberto Bautista (or Roberto Bautista) is mentioned as one of those who arrested Lieutenant Rosales in the premises of Francisca Garcia. We quote the following from said decisions:

"In count No. 8 it is alleged that on or about July 16, 1944, in Pasil, San Nicolas, Cebu City, the accused in conspiracy with the enemy and other Filipino secret agents, with intent and purpose of giving aid and comfort to the enemy, did then and there wilfully, feloniously, and treasonably capture Lt. Pacifico Rosales of the guerrillas, tie and torture him, and did drag him to a sailboat and kill him while at sea. To prove that allegation three witnesses were called by the prosecution, namely, Francisca Garcia, Basillo Argoso, and Pastor Abellana.

"Francisca Garcia testified that she was forty-years of age, married, and a resident of Pasil, Cebu City; that on the morning of July 16, 1944, Lt. Pacifico Rosales came to her house to exchange Philippine currency with Japanese military notes; that since she did not have enough cash at that time, Rosales left to go to church, saying that he would come back later; that soon after Rosales came back, the accused and two other undercover agents named Bautista and Failing, who were then near her house on the seashore rigging up a sailboat, saw Rosales and immediately surrounded her house; that Rosales went out thru the back door in an attempt to escape but was apprehended by Bautista and the accused. By order of the accused Lieutenant Rosales' hands were tied at his back, after which he was dragged to one of the sailboats on the shore. Bautista and Failing boarded another sailboat. The two boats then put to sea, and after that she had not seen nor heard of Lieutenant Rosales any more.

"Basilio Argoso, a twenty-three-year-old fisherman and neighbor of Francisca Garcia, testified that he had known the accused since before the war; that he also knew Lt. Pacifico Rosales; that on the morning of July 16, 1944, after hearing mass he saw the accused and his companions Alberto Bautista and Jose Garcia arrest

Lieutenant Resales in the premises of Francisca Garcia, that after capturing Rosales they tied him and brought him to a sailboat; that the companions of the accused boarded, the boat where they had placed Lieutenant Rosales while the accused boarded another boat, and then the two boats sailed towards the island of Bohol; that he knew that Lieutenant Rosales belonged to the Philippine Army; and that at that time the accused and his companions were armed with revolvers.

"Pastor Abellana, a twenty-seven-year-old merchant of Cebu City, testified that in July, 1944, he was technical sergeant and member of the G-2 of the Philippine Army assigned to the Bohol Area Command; that Lt. Pacifico Rosales was his officer; that, on the morning of July 16, 1944, he went to meet Lieutenant Rosales in the house of Francisca Garcia in Pasil because he had an agreement with him to meet him there; that before he reached the house of Mrs. Garcia he saw Lieutenant Rosales captured by the accused Roque Badili and his companions; that instead of going to Mrs. Garcia's house he went to the house of a friend of his named Godofredo Borres; that from the latter's house he saw Lieutenant Rosales 'being dragged by these people with his hands tied behind him and he was brought to the sailboat'; that he (the witness) was about thirty yards from the place where they brought Lieutenant Rosales, that the accused Roque Badili was the one holding the rope tied to Lieutenant Rosales; that as soon as Lieutenant Rosales was placed in the boat 'they headed for the sea.' When asked who 'they' were, he replied 'Roque Badili, Bautista, Jose Moro, and there were others I did not recognize.' He further testified that as a member of the military organization of Lt. Pacifico Rosales, he made an investigation to ascertain his whereabouts; that according to the members of the crew of the sailboat Rosales was killed and thrown into the sea; that the members of the crew had gone to Mindanao and could not be located at the time of the trial."

Count Nos. 4 and 5.—On July 23, 1944, with the help of their undercover agents, including appellant, the Japanese conducted a mass raid against the civilian population of Basak, Cebu City, and apprehended Jose de la Cerna, Antonio de la Cerna, Celestino Padilla and Tereso Sanchez. The captives were brought to the school building of Basak where appellant addressed the group urging them to surrender their firearms, and that if no firearms were surrendered they would all be killed. On that occasion one Filemon Delgado, an undercover man of the Japanese, together with a captured guerrilla soldier named Brigido, pointed Jose de la Cerna as one who had been aiding the resistance movement and that his brother Domingo de la Cerna was the courier of Governor Abellana of Cebu, who was well-known to the Japanese on account of his guerrilla activities. On account of this information, Jose de la Cerna was brought before a Japanese named Watanabe of the Japanese kempei-tai, who gave De la Cerna fist blows on the body which caused the victim to fall to the ground. Then, Recaza, another Japanese spy, stepped on the throat of De la Cerna who thus lost consciousness. Upon regaining his senses, Jose de la Cerna was taken to the schoolhouse, and this appellant tied his hands behind his back and for about three hours had him suspended in mid-air, during which time De la Cerna underwent severe manhandling and the most barbarous tortures. Appellant kicked De la Cerna and with an iron rod and a wooden stick struck him several times and at the same time questioned him regarding the whereabouts of his brother and of Governor Abellana. After being tortured for three hours, he was lowered from his hanging place and another undercover man suggested that De la Cerna being connected with the Custom House might have a firearm in his possession. De la Cerna was then taken home where he surrendered his firearm, after which he was taken back to the schoolhouse and the following morning turned over to the kempei-tai. After one month of incarceration he was released. As the result of his incarceration, manhandling and beating, De la Cerna is still suffering from two broken ribs and a sprain on his shoulder joints. De la Cerna, testifying in this case, stated that he saw other persons being tortured by appellant, he mentioned particularly a person by the name of Padilla, who in his turn saw that De la Cerna was being tortured by this appellant.

In support of these two counts, the prosecution has also shown that on July 30, 1944, the Japanese soldiers and their undercover agents arrested a group of persons who were brought to a nearby mountain, at a place called Sandayon. With that group there was an old man who was being quizzed as to the whereabouts of guerrilla

soldiers, but the prisoner could not give any satisfactory answer and he was suspended in mid-air, beaten, and stoned by his captors. Perhaps in order to secure his release from the Japanese and their spies, the old man told them that they would find guerrillas in a small hut a little further yonder. He was then released and after tying his hands was told to lead the way. Unfortunately, upon reaching the place indicated by him, there were no soldiers or guerrillas to be found, and the old man was not only tortured, but bayoneted to death by appellant with the help of his companions.

There is no question as to the citizenship and allegiance of this appellant, and from the testimonies of the witnesses of the prosecution, there is not the least doubt that from the time when he surrendered to the Japanese after severing his connection with his unit in the air force of the Philippine Army, he completely identified himself with the invaders and became very active by taking part in the expeditions, raids, and other activities conducted by the Japanese for the purpose of suppressing the underground movement, find he did not only accompany the members of the Japanese kempei-tai in their movements in Cebu and Bohol, but he likewise took an active part in the investigation and torture of all his Filipino compatriots who were suspected of being connected with the guerrillas. His adherence to the enemy and treasonous intent and activities amounting to giving aid and comfort to his new masters have been duly proven in accordance with the requirements of the treason law.

Although there is no direct and conclusive evidence by which he can be made personally responsible for the killing or disappearance of Lieutenant Pacifico Rosales, yet, under the facts proven in this case, it cannot be denied that his direct participation in the apprehension of said army officer led to the disappearance of the latter and his eventual death. Finally, with regard to counts 4 and 5, and notwithstanding the counter-evidence of the defense, to the effect- that appellant did not participate in the manhandling and torture of Jose de la Cerna and Celestino Padilla and in the killing of the old man who failed to lead his captors, the Japanese kempei and his undercover men, to the place where the guerrillas were expected to be found, upon going over the evidence in this regard, We are satisfied that said counts have been amply proven by the prosecution.

Predicated on all the foregoing, and since We have not the least doubt that this appellant is guilty of tfeason beyond reasonable doubt, and finding that the judgment appealed from is in conformity with law, and that no errors have been committed by the People's Court in the determination of this case, We hereby affirm the same with costs to be paid by the appellant.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Feria, J., no part.

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