

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. JOSE PALICTE, DEFENDANT AND APPELLANT.

G.R. No. L-1296. March 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 15 years of reclusion temporal, with the accessory penalties provided by law, and to pay a fine of P5,000 plus the costs.

The evidence for the prosecution tends to show that in the month of August, 1943, the appellant led a group of Japanese soldiers and Filipino undercovers to the barrio of Sacsac, Catmon, Cebu City, in search of a guerrilla officer named Mercado. Upon arrival at the place, the appellant and his companions investigated Ambrosio Ares and Cornelio Diores as to Mercado's whereabouts, and when no information was obtainable from them, the appellant and his companions gathered the people together. Thereupon, a Japanese delivered a speech, the appellant acting as interpreter. After the meeting, the appellant and other Filipino undercovers burned the house of Mercado.

The same evidence tends to show that a group of Japanese led by the appellant arrested on October 18, 1943, at about five o'clock in the afternoon, Jose Bontuyan in his house in Sirao, Cebu City, on the charge of guerrilla connections; that the said Bontuyan was boxed and later investigated, and tortured, by the appellant.

The defense set up by the appellant is alibi, in that from June to November, 1943, he was a prisoner of the Japanese Kempei Tai. Appellant's testimony is corroborated by defense witness, Raymundo Santa Cruz.

Counsel de oficio, aside from relying on the alibi, contends that the appellant could not have acted freely on the occasions invoked by the prosecution.

We are inclined to sustain appellant's contention that he had merely followed Japanese orders. Prosecution witness Ambrosio Ares testified that he did not know who ordered the burning of Mercado's house, and that a Japanese captain ordered the soldiers to group together, after which the Filipinos started to get torches and burn Mercado's house. From this it is inferable that, even assuming that appellant was one of those who applied fire to the house, he did so upon orders of the Japanese captain.

With respect to the alleged arrest of Jose Bontuyan, we also believe that the appellant was a mere follower of the Japanese. This is to be deduced from the testimony of prosecution witness, Amada Solon Bontuyan (wife of Jose Bontuyan), to the effect that, "we heard the Japanese who investigated, one called Nagasima; he said come here Jose Palicte, that is the time I know his name." In other words, the one who investigated on the occasion when Jose Bontuyan was allegedly arrested was a Japanese who even called for the appellant.

Another prosecution witness, Cornelio Diores, in referring to the occasion in which Mercado was sought by the Japanese soldiers and Filipino undercovers, testified that the Japanese ordered the people to group together, from

which it is again clear that it was the Japanese who gave commands.

We cannot help entertaining a doubt as to the veracity of witnesses for the prosecution when we take into account some material inconsistencies in their testimony. For instance, while Ambrosio Ares and Cornelio Diores testified that the appellant made his own speech, Mariano Laude emphasized that the appellant only interpreted the speech of the Japanese. While Ambrosio Ares testified that there were six Filipinos, Cornelio Diores stated that there was only one Filipino. Whereas, Cornelio Diores declared that Ares was investigated before the alleged meeting, Mariano Laude testified that the investigation of Ares took place after the meeting.

Another doubtful point engendered by the evidence for the prosecution is that, although Mercado was allegedly sought by the appellant and his companions in August, 1943, there is absolutely no showing as to the reason for the search. The bare fact that Mercado might have been a guerrilla is not sufficient to prove that he was wanted on that ground. The foregoing considerations make it unnecessary for us to discuss appellant's assignment of error with reference to the admission by the trial court of the amendment of the original information after the expiration of the six-month period fixed by Commonwealth Act No. 682.

Wherefore, the appealed judgment is reversed and the appellant acquitted, with costs de oficio. So ordered.

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

TUASON, J., dissenting:

I think the appellant was a wilful collaborator. The Japanese did not coerce unwilling people to do what they themselves could easily do and were experts in burning homes, torturing and massacring people. And unwilling collaborators did not go to the extent of committing such atrocities. I am therefore constrained to dissent.

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