

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LEONIDAS RASAY, DEFENDANT AND APPELLANT.***G. R. No. L-5361. February 24, 1953*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Davao finding appellant Leonidas Rasay, a Filipino, guilty of treason under three counts (Nos. 1, 2, and 4 of amended information), and sentencing him to suffer imprisonment of twelve (12) years and one (1) day of reclusion temporal and to pay a fine of P7,000 and the costs. On the first count, the evidence shows that in the month of October, 1943, a patrol of Japanese soldiers went to barrio Malatibas, municipality of Tagum, province of Davao, for the purpose of apprehending guerrillas. They were accompanied on that occasion by defendant-appellant Leonidas Rasay and two others named Caramol and Dacudoy. Appellant and his Filipino companions were armed with rifles. The patrol went to the house of Justo Geraldo in the said barrio and asked Geraldo, his wife, and his son-in-law for the whereabouts of a guerrilla lieutenant by the name of Ponsing. The family had furnished the guerrillas with food, and they were investigated regarding this matter. Geraldo denied having any knowledge of the whereabouts of Ponsing, so the Japanese soldiers beat him with the butts of their guns until he fell down. (Three days after the maltreatment Justo Geraldo died.) After beating him, the Japanese soldiers went up and ransacked the house and took away P500 in cash and P150 worth of jewelry. While the Japanese were in the house conducting the investigation and ransacking it, the appellant and his Filipino companions were posted near the house acting as armed guards. Two witnesses testified for the Government, and they declared that it was the appellant and his companions who had guided the Japanese soldiers to the place, because the Japanese had not gone there before the war and did not know the house, and so they could not have located it without appellant.

The evidence submitted by the prosecution on the second count is to the effect that about the middle of the month of November, 1943, twelve Japanese soldiers went to Tagpuri, Tagum, Davao, for the purpose of looking for the whereabouts of the same Lieutenant Ponsing, the same guerrilla officer mentioned in the first count. On that occasion they were again accompanied by defendant-appellant herein and some Filipinos. The appellant was carrying a Japanese automatic rifle and a pistol. The Japanese and the appellant came to the house of one Florencio Briones, where Florencio and his father and brothers were living. Upon reaching the house appellant tied the hands of Florencio Briones together. Briones, his father, his sisters, and several others were taken to the Japanese stockade at Tagum. That same morning Filomeno Briones had also been arrested at a neighboring house and brought to the same station. In the station they were investigated for having given supplies to the guerrillas, which they had been actually doing. Two witnesses for the Government, Julio Briones and Florencio Briones, testified to the above facts. They also testified that their brother, Filomeno Briones, was seen by them at the prison at Tagum, together with other persons who had been arrested that day and taken to the station. Florentino Briones was released after investigation, but Filomeno Briones and others failed to come back.

No evidence appears to have been introduced to support the charge contained in count No. 4, which alleges that

the defendant-appellant acted as a policeman for the Japanese Navy Troops at Tagum, Davao, and wore an arm band indicating his said position and authority, unless those already set forth above may be considered for the purpose.

The defendant-appellant did not deny the acts imputed to him by the witness for the prosecution, or introduce any witness on his behalf.

The court found the defendant-appellant guilty under the first count, i.e., of having guided the Japanese patrol to the house of Justo Geraldo. Under the second count, it found the defendant-appellant guilty of helping the enemy in having tied together the hands of Florencio Briones, thus aiding in an effective campaign against the resistance movement. Under the fourth count, it found defendant-appellant as having formed part of the police, working under orders of the Japanese in Tagum, Davao, as part of the patrol organized for the suppression of the resistance movement. Against the judgment the defendant-appellant has appealed, assigning various errors, which we will now proceed to consider.

Under the first assignment of error, counsel for the defendant-appellant claims that no sufficient evidence was adduced to support the principal charge contained in count No. 1, to the effect that the appellant "led and guided a patrol of Japanese soldiers." This claim is without any foundation, for witness Valeriana Sampiano expressly declared that it was the defendant-appellant and his two companions who "guided the patrol to Malatibas" (t. s. n., pp. 6, 8), and that the Japanese could not have located their house without the defendant and his other Filipino companions (Ibid., p. 9). Even if the act of the defendant-appellant were that of accompanying the patrol alone, the conclusion that he led and guided it can be inferred from the further fact that the place where appellant accompanied the patrol had not been previously known or reached by the Japanese. Count No. 1 alleges many acts of treason, namely, that of "leading and guiding a patrol of Japanese, which patrol searched and raided the house of Geraldo, who was investigated and maltreated, and that of having taken away the sum of P500 in cash and jewelry from the house of Geraldo." All these facts were satisfactorily proved by the two witnesses who testified on the first count.

In the second assignment of error, defendant-appellant's counsel claims that the facts alleged in count No. 2 have not been satisfactorily proved during the trial of the case. In support of his claim, it is argued that count No. 2 charges four specific acts, namely, "(a) joined, guided and taken part in a Japanese patrol to apprehend a guerrilla leader, Lieut. Ponciano Canilangsa alias Posing, and his followers; (b) fired upon and killed one 'Osting' during the course of said patrol; (c) fought side by side with the Japanese during the resulting encounter between the Japanese patrol and the guerrillas; and (d) taken, together with the Japanese, 30 Filipino civilians as prisoners to the Japanese garrison in Panabo, Tagum, Davao, 20 of said prisoners not having been heard of nor seen alive." (Appellant's brief, p. 26.) It is true that no sufficient evidence was introduced to prove that defendant-appellant fired upon and killed one Osting, a guerrilla sympathizer, or that he fought side by side with the Japanese in an encounter that these had with the guerrillas. But failure of the prosecution to prove these specific acts, of which the trial court acquitted the defendant-appellant, is no reason or ground for holding that the appellant can not be convicted under the count, because other acts, also expressly charged in the information, were satisfactorily prove. Count No. 2 charges four specific acts, each of which constitutes a complete act of treason by itself independently of the others, and the failure of the prosecution to prove all does not entitle the accused to be acquitted of the whole count or of all the charges contained therein when any one or more of the acts are proved. A person accused of an offense is not considered as having been charged by the number of counts or paragraphs into which the acts charged may have been grouped in the information, but by the specific criminal acts charged, even if two or more of them are contained in one paragraph or in one count. While it is convenient that each count or paragraph should contain only one offense or one specific act of treason for the sake of clearness, this does not

justify the inference or claim that all of the acts charged under one count or paragraph should be considered as only one act or offense, and proof of all the acts included therein is necessary to prove the charge.

In the fourth assignment of error, counsel for defendant-appellant argues that the fact that the original information, which was filed on March 12, 1946, was amended almost three years thereafter (on March 3, 1949), should be taken into account against the Government because it puts in doubt the truth of the motive or the sincerity of the prosecution. This argument finds no support either in the facts of the case as developed during the trial, or in any provision of law. The original information must have been filed in haste, without careful or complete investigation. If the subsequent and more complete one necessitated a change in the information, it is only in consonance with justice that the information be amended. Anyway, the amendments appear to have been made before the reading of the information, and aside from the fact that this is expressly authorized by the rules, no prejudice to the substantial rights of the defendant-appellant can be claimed to have been caused thereby. This assignment of error must, therefore, be dismissed.

In another assignment of error, counsel for defendant-appellant asserts that the trial court committed an error in finding defendant-appellant guilty under count No. 4. We find this assignment of error to be well taken, the finding of the court on this count appearing to have been merely inferred from the acts of the appellant in leading the Japanese patrol of soldiers in the two occurrences already mentioned above. No evidence was submitted that on this occasion defendant-appellant was a member of the police force employed by the Japanese, or was duly armed and uniformed as such. This error, however, is without prejudice because the evidence proves the guilt of the defendant of the acts charged in the other counts.

Wherefore, we find the judgments appealed from to be supported by the law and the evidence, and we hereby affirm the same, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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