

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. CARMELITO VICTORIA, DEFENDANT AND APPELLANT.

G.R. No. L-369. March 13, 1947

Ponente: PERFECTO, J.

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PERFECTO, J.:

Sentenced to the supreme penalty of death and to pay a fine of twenty thousand pesos and costs, Carmelito Victoria comes to us to seek for the reversal of the decision of the People's Court.

He is accused of treason in an information which reads as follows:

"The undersigned Special Prosecutor accuses Carmelito Victoria alias Carlito Victoria, Carling Victoria, Carlos Victoria of the crime of treason under article 114 of the Revised Penal Code committed as follows:

"That during the period comprised between March, 1942 to December, 1944, more specifically on or about the dates hereinbelow mentioned, in the different places hereunder stated, and within the jurisdiction of this Honorable Court, the said accused not being a foreigner but a Filipino citizen owing allegiance to the United States and the Commonwealth of the Philippines, in violation of his said duty of allegiance, wilfully, unlawfully, feloniously and treasonably did knowingly adhere to their enemy, the Empire of Japan and the Imperial Japanese Forces in the Philippines, with which the United States and the Commonwealth of the Philippines were then at war, giving to said enemy aid and/or comfort, in the following manner, to wit:

"1. That on or about October 6, 1944, the accused, a member of the Intelligence Unit attached to the Kempei Tai in Lucena, Tayabas, for the purpose of giving and with the intent to give said enemy aid and comfort, joined an armed enemy patrol composed of about eight spies and a Japanese soldier, which went to the house of Federico Unson in the barrio of Malaking Labak Bocohan, Lucena, Tayabas, and accused Federico Unson of hiding guerrillas; that said patrol was arresting said Federico Unson when some guerrillas appeared and killed one of the spies and the patrol left; that said accused directed several men in the patrol in picking up the dead spy and carrying him away; and that, in the afternoon of the same day, the same party of spies, including the accused and eight members of the Japanese Military Police, went again to the house of said Federico Unson and did feloniously, wilfully, unlawfully and treasonably arrest him, together with Isaías Perez and Ruben Godoy, who happened to be at the house; that with their hands bound, the three were tortured and then taken along by said patrol after setting fire on the house of Federico Unson and stealing all the chickens and pigs they could find in the premises; and that on the following day, the dead body of Federico Unson and that of Isaías Perez were found lying nearby with numerous bayonet wounds; and that Ruben Godoy was taken to the Japanese garrison in Lucena, Tayabas, and there killed.

"2. That on or about December 21, 1944, the accused, accompanied by other Japanese spies, Pedro Raviñera, Jose Bondoc, Jacinto Pineda, Abelardo Calawit, Bernardo Santiago, and others who were all armed, for the purpose of giving and with the intent to give said enemy aid and comfort, went to the house of Jose Unson, in Lucena, Tayabas, and arrested said Jose Unson and brought him to the Japanese garrison on the charge that he had a short wave radio; that he was furnishing radio information to the guerrillas and at the same time supporting them; that said Unson was released on the same day, but on the next day he was again arrested and

brought to the Japanese garrison at Lucena, Tayabas; that said Jose Unson never returned.

"3. That on or about February 10, 1945, the accused, in company with Jacinto Pineda, Leonardo Coronel, Jose Bondoc, Abelardo Calawit, and Pedro Raviñera, all members of the Intelligence Unit of the Kempei Tai, were all armed, for the purpose of giving and with the intent to give said enemy aid and comfort, went to the house of Felixberto Romulo in San Pablo, Laguna, placed him under arrest as a guerrilla suspect, and turned him over to the Japanese Military Police who on that occasion were concealing themselves near the house of Romulo; and that, since the arrest of said Romulo, nothing was heard of him.

"4. That on or about December 21, 1944, at about 5 o'clock in the morning, the accused, accompanied by two Japanese Military Police and two undercover operatives, for the purpose of giving and with the intent to give said enemy aid and comfort, went to the house of Hermogenes Caluag in Lucena, Tayabas, and apprehended said Hermogenes Caluag; that said two Japanese Military Police and the accused conducted a search of the house and afterwards brought Caluag to the Japanese garrison where he was subjected to inhuman torture on the charge being pro-American and adviser of the Hunters ROTC Guerrillas.

"5. That on or about March 9, 1944, in Pasay, Rizal, the said accused then acting as an informer of the Japanese Kempei Tai, with intent to aid said enemy, did wilfully, feloniously and treasonably cause the Japanese Military Police to arrest and apprehended Antonio San Agustin, a guerrilla officer, who was thereupon brought to Fort Santiago and there tortured and unlawfully detained up to September 20, 1944.

"6. That on or about June, 1944, the accused accompanied by an armed group of undercover operatives, for the purpose of giving and with intent to give said enemy aid and comfort, went to the house of Melecio Labalan, Sr., and arrested and brought him to the Japanese garrison in Lucena, Tayabas, where he was tortured on the charge of being a guerrilla.

"7. That on or about February, 1945, the accused, a member of the Ganap, a pro-Japanese party, wilfully, unlawfully, feloniously and treasonably joined the Makapili organization designed to support the Imperial Japanese Forces in levying war against their enemies; that he took military training from the Japanese and bore arms and joined the enemy forces as a Makapili soldier, taking orders from the Japanese; that he participated in the raid and burning of the barrio of Bautista, San Pablo, Laguna, upon orders of the Japanese; that he carried ammunitions and foodstuffs for the Japanese Army from Bautista to the mountains of Susong Dalaga and Mt. Malipuno, Laguna; that he performed sentry duty for the Japanese Army in Mount Malipuno, where he was stationed with Japanese and other Makapili soldiers.

"That the commission of the above-mentioned acts was attended by the aggravating circumstances of treachery, the aid of armed persons to insure or afford impunity, and deliberately augmenting the crimes by causing other wrongs not necessary in the commission thereof."

Upon the testimonies of Mrs. Federico Unson, jr. and Dolores Kalakasan, the lower court found that the mutilated corpses of Federico Unson, jr., and of Isaias Perez were found rotting in the vicinity of the houses of the victims which were burned and looted by the same hands, on the day following the arrest, effected by the accused in the company of a Japanese soldier and several spies of the enemy. The body of Unson which was still tied to a tree showed that it had been disemboweled by several bayonet thrusts and the corpse of Perez appeared ankleless and mutilated. Ruben Godoy, who was arrested at the same time as Unson and Perez, since he was imprisoned in the garrison of the Japanese kempei, was never heard of. Appellant's testimony to the fact that, although admitting his presence in the previous morning raid, he did not come along with the party that conducted the afternoon raid in which the actual arrest of Unson, Perez and Godoy took place, was not given by the lower court enough weight to prevail over that of the prosecuting witnesses, thus finding the accused guilty on the first count.

With respect to the second count, the lower court states that the accused admitted having taken part in the raid of the house of Jose Unson and in the latter's arrest, but claims that he tried to save Unson, only the latter was given

away by Hermogenes Caluag, an explanation not accepted by the lower court, in view of appellant's behavior as recalled by witnesses Mercedes Unson, Alejandro Unson, and Eugenio Ramon Unson. The last that was seen of Jose Unson, was his skull as exhumed in a school yard in Lukban, several months after the arrest, the exhumation having been effected with the aid of those who claimed to have seen how his life was ended. These facts relate to the second count.

With respect to the third count, upon the declarations of Elena Romulo and Enriqueta Alviar, the lower court found that on February 10, 1945, in the company of Japanese kempei and Filipino spies, the accused raided the house of Felixberto Romulo in San Pablo and arrested him as alleged guerrilla. The accused simply alleged in his defense the alibi that on said date he was in Gagalangin, Manila.

In regard to the fourth count, the accused alleged that he was merely asked by the Japanese kempei to accompany them in the raid on Hermogenes Caluag's house and admitted that he was present throughout the investigation and torture of Caluag who, according to the accused himself, was tied suspended in the air for fully twenty minutes, but the lower court did not accept this defense, considering it rather as corroborative of the facts alleged in the information and proved by the witnesses for the prosecution.

Appellant's participation in the arrest of Melecio Labalan, alleged in the sixth count, according to the lower court, has been abundantly established, disbelieving appellant's feigned ignorance of the arrest because appellant himself testified that he promised to see what he could do about Labalan and accepted three chickens from the hitter's wife which he gave to the interpreter at the kempei office.

Counts five and seven were not proven.

Upon the record, it appears that the lower court's conclusions on the overt acts alleged in counts one, two, three, four, and six of the information are fully supported by the evidence. A perusal of appellant's brief alone, in which counsel made a complete summary of the declarations of the witnesses, will convince anyone that the lower court's conclusions of fact are well taken. It is highly significant that, although appellant's brief comprises one hundred thirty printed pages, it failed completely to point out any specific error in the conclusions of fact of the lower court, counsel limiting himself into raising legal questions, maintaining that the penalty imposed is unjustified, and that the acts committed by the accused do not constitute treason but ordinary crimes against the victimized persons.

Admitting that appellant's conduct during the Japanese occupation has not been impeccable, counsel wants us to consider what the accused did in behalf of the guerrillas in mitigation of his criminal responsibility, and that the purpose of a penalty, not being to satisfy public vengeance, but to attain the correction of the guilty person, such purpose will not be attained with appellant's death as decreed by the lower court.

Appellant tried to show in his testimony that he was not a spy; that he joined the Japanese in their raids only because he was forced to do so; that in the instances he had to go to the Japanese garrison he did it either in obedience to a summon of his friend Captain Yuki or to intercede in behalf of some prisoners; that he remained in Lucena heeding the advice of Sor Constancia, who appealed to him not to go to the mountains so he may continue helping those who were detained by the Japanese; and that in October 1943, he was arrested by the Japanese for aiding the guerrillas, and that he was released only after he had been made to promise to indicate who the guerrillas were but, notwithstanding the involuntary promise exacted from him, he did not cause the arrest of any guerrilla. Even if we accept this testimony of appellant it cannot overthrow the clear, positive, and straightforward declarations of the witnesses, for the prosecution. Appellant's claim that he, too, was a guerrilla, had helped the resistance movement, and in fact, succeeded in interceding for some Filipino prisoners, does not relieve him from criminal responsibility for the acts he had committed as alleged in the counts in the information which were

declared proven by the People's Court.

The performance of righteous action, no matter how meritorious they may be, is not, as correctly stated by the Solicitor General, a justifying, exempting, or mitigating circumstance in the commission of wrongs, and although appellant had saved the lives of a thousand and one persons, if he had caused the killing of a single human being to give aid and comfort to the enemy, he is, nonetheless, a traitor. It was already said that: "For whosoever shall keep the whole law, and yet offend in one point, he is guilty of all" (James 2:10).

We do not find any merit in appellant's allegations that the acts committed by him are not punishable as treason and that the People's Court who tried him had no jurisdiction, they being merely upshots of the wrong theory of suspended allegiance and sovereignty.

Although this Court is unanimous in finding appellant guilty of treason as found by the lower court, there is disagreement as to the penalty that should be imposed, because, while nine of the ten members taking part in the decision of this case voted for the affirmance of the death penalty imposed by the lower court, the writer of this opinion takes the position that the penalty the accused deserves is that of reclusion perpetua, the medium penalty provided by law.

The Solicitor General recommends the imposition of the supreme penalty of death in view of the presence of the aggravating circumstances alleged in the information as follows:

"That the commission of the above-mentioned acts was attended by the aggravating circumstances of treachery, the aid of armed persons to insure or afford impunity, and deliberately augmenting the crimes by causing other wrongs not necessary in the commission thereof."

The majority are of the opinion that these circumstances should be considered as aggravating, while the undersigned maintains that in appellant's case, the circumstances in question are essential elements of the treason he has committed. The crime is of such a nature that it may be committed by one single act, by a series of acts, or by several series thereof, not only in a single time, but in different times, it being a continuous crime as was held by this Court in *Guinto vs. Veluz* (77 Phil., 801), so much so that there are some accused of treason for just one count and there are others for several counts, their number not changing the nature of the offense committed.

For all the foregoing, there being no unanimity of all the members of this Court in the imposition of the death penalty, the People's Court's decision is modified, and appellant is sentenced to reclusion perpetua and to pay a fine of P15,000 and costs.

Moran, C.J., Pablo, Hilado, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

CONCURRING

FERIA, J.:

I concur with the majority (except Mr. Justice Perfecto) that find the appellant guilty of the crime of treason as alleged in the information, that is, with two aggravating circumstances. Among the atrocities committed by the appellant and companions stand, in bold relief, those testified to by Mrs. Federico Unson, jr, and Dolores Calacasan and related in the same decision of this Court, to the effect that Federico Unson, jr, was crucified against and tied to a tree, and then disemboweled with bayonet thrusts; and that Isaias Perez' body was mutilated with his ankles severed from the trunk and thrown around the place where the crime was committed. And I dissent from the dissenting vote of the writer of the decision, Mr. Justice Perfecto, which prevented the imposition by this Court of the death penalty imposed upon the appellant by the lower court.

The killing of the victim was unquestionably attended by treachery, that is, by means, method or forms in the execution thereof which tend directly to insure its execution without risk to the offender arising from the defense which the offended party might make, and by a deliberate augment of the wrong done by the offense by causing other wrongs not necessary for its commission. But the writer of the opinion says:

"The majority are of the opinion that these circumstances should be considered as aggravating, while the undersigned maintains that in appellant's case, the circumstances in question are essential elements of the treason he has committed. The crime is of such a nature that it may be committed by one single act, by a series of acts, or by several series thereof, not only in a single time, but in different times, it being a continuous crime as was held by this Court in *Guinto vs. Veluz* (77 Phil., 801), so much so that there are some accused of treason for just one count and there are others for several counts, their number not changing¹ the nature of the offense committed."

The reason or ground on which the dissenter bases his conclusion that the aggravating circumstances above specified cannot be taken into consideration in the present case, is clearly wrong. Said aggravating circumstances have nothing to do with the integral elements of the crime of treason as charged and committed by the appellant. The fact that the crime of treason may be committed by a single overt act or a series of overt acts, committed at one and the same time or at different times, does not, by any means, make those circumstances essential elements of the offense committed by the appellant. Said circumstances were not even inherent in or included by the law in defining the crime of treason. The words "treason" and "treachery," as they are used in common parlance, may be confused or taken as one and the same thing, or at least similar. But the word "treason" as defined and penalized in the Revised Penal Code is completely different and independent from "treachery" as an aggravating circumstance provided for in the same Code.

The crime of treason is committed by a citizen, not by merely adhering to the enemy and giving the latter aid and comfort in abstract, but by committing one or more overt acts which constitute aid and comfort to the enemy to which the traitor adheres; and evidently, the commission of such overt act as the killing of the victim in aid of the enemy may be attended by the aggravating circumstances above specified, for they were not necessary in order to give aid and comfort to the enemy. Of course, if one of the aggravating circumstances provided by law is inherent or included in the overt acts charged as in aid or comfort of the enemy, it cannot be taken into consideration as aggravating circumstance attending the commission of that particular crime of treason.

CONCURRING AND DISSENTING

PARAS, J.:

I concur partially in the result. The information and the evidence sufficiently make out at least a case of murder, qualified by treachery. Appellant had committed other atrocities for which he could correspondingly be convicted under the information and evidence of record. As spy, he may also be tried in a military tribunal and, if found guilty, sentenced accordingly. While he might be guilty of a violation of article 114 of the Revised Penal Code, I hold, in conformity with my dissenting opinion in *Laurel vs. Misa* (77 Phil., 856), that said legal provision was not in force at the time of the commission of the crime. The penalty of reclusion perpetua is in accordance with the law, but the provision regarding payment of a fine should be eliminated and the appellant sentenced to indemnify in the proper amount the heirs of the victim.

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