

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO DE LOS SANTOS, DEFENDANT-APPELLANT.***G. R. No. L-1975. December 21, 1950*

Ponente: PADILLA, J.

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Francisco de los Santos is charged with treason. He was tried, found guilty and sentenced to death, to pay P20,000 fine and to indemnify the heir or heirs of each deceased person, namely, Castro de la Vega, Cresencio Timpangco, Ponciano de la Chica and Domingo Jimenez, in the sum of P1,000; Florencio Sebastian in the sum of P3,020; and José Lim in the sum of P5,700, for the goods unlawfully taken from them, and to pay the costs. He has appealed from the judgment.

The amended information filed in this case sets out six counts. The prosecution did not introduce evidence in support of the fifth and sixth counts.

It appears that the appellant is a Filipino citizen and on the dates referred to in the amended information owed allegiance to the United States of America and the Commonwealth of the Philippines.

It also appears that in the afternoon of 23 January 1945, the appellant, together with Eligio Torres and twenty Japanese soldiers, all armed, raided the house of Cresencio Timpangco at Campana, City of Zamboanga, and there found several persons, among whom were Castro de la Vega, Mariano Alfonso, Domingo Jimenez, Ponciano de la Chica, Liberata Cabaya Cruz and Cresencio Timpangco. They searched the house and asked the people found in the place about the bandits in the hills, meaning guerrillas. As the people denied to have any knowledge about the bandits, the men were tied and maltreated. Liberata Cabaya Cruz was illtreated also, because she was suspected to be the mother of the guerrillas surnamed Cruz and when, as a result of the illtreatraent, she was about to fall to the ground, Eligio Torres kicked her. The following day, the five persons who had been tied were taken to Presa Mayor, City of Zamboanga. On their way, Eligio Torres continued to investigate Castro de la Vega and, because of his refusal to admit his connection with the guerrillas, Eligio Torres, with a saber taken from one of the Japanese officers, cut Castro's right foot and neck causing his death. At Presa Mayor, Domingo Jimenez, Cresencio Timpangco, and Ponciano de laChiesuwere killed. Mariano Alfonso was able to escape.

It further appears that on 2 March 1945, at about 6:00 o'clock p.m., the appellant, together with Eligio Torres, another Filipino named Julian, and ten Japanese soldiers, all armed, after taking dinner in the house of Florencio Sebastian, asked the whereabouts of José Fernandez and the latter's son-in-law, who, according to him (the appellant), was a bandit. Florencio Sebastian said that he did not know the whereabouts of the son-in-law of José Fernandez. The appellant tied Florencio's hands on the back and brought him to the house of Felipe Sinelega, where the same question as to the whereabouts of Fernandez' son-in-law was repeated. Upon receiving the same answer, the appellant untied Florencio's hands and told him to lie down and to spread his arms and legs, covered his face with a handkerchief, and poured oil mixed with water into his mouth. Eligio Torres, on his part, lighted a cigarette, burned Florencio's legs and ears, 'rubbed the blisters and again burned the same spots. As long as

Florencio refused to give the desired information the torture was repeated. When Florencio could no longer endure it, he told them that José Fernandez was in Lumiyac. The burns healed in twenty days with medical treatment. Then, the appellant asked Florencio where he kept his money. As the latter said that he had no money, the appellant poured again oil mixed with water into Florencio's mouth. The appellant asked Florencio for his .45 caliber pistol and trunk, but as the latter said that he did not have, the former resumed pouring oil mixed with water into Florencio's mouth, until unable to endure the torture any longer he told the appellant that the trunk was in the house of Juan Sebastian. While Florencio was being tortured by the appellant in the manner just described, Eligio Torres sat on Florencio's belly. They repaired to the house of Juan Sebastian, and there took away the trunk of Florencio. In the trunk they found one genuine P20 bill and P1,000 Japanese notes, clothing materials and a bolt of cloth, all valued pre-war at P1,000. From the house of Juan Sebastian they proceeded to the house of José Lim where the appellant and his companions took away nine trunks containing goods worth P5,000. In the last mentioned house, the appellant took away a bag containing jewelry, consisting of a ring which he put on his finger, a wrist watch which he placed on his wrist, seven pairs of gold earrings, nine rings, all valued at P700, two American gold coins used as buttons, a pair of gold bracelets, one lady wrist watch, twenty genuine pearls, one loose diamond stone, P6.00 cash, and three sweepstakes tickets. The appellant took also from the house several neckties worth P25.

The appellant admits that on 24 January 1945, in Carapana, City of Zamboanga, Castro de la Vega was investigated and tortured and on the way to Presa Mayor, on the same day and in the same city, was killed. He admits also that Domingo Jimenez, Cresencio Timpangco and Ponciano de la Chica were investigated, maltreated and killed at Presa Mayor, but he and his witnesses testify that all the investigation, torture and killings were done by the Japanese. He claims that he was brought from Misamis, where he had a small business, to Zamboanga on 25 September 1944 to act as interpreter because of the little Nippongo he learned from the Japanese customers in Misamis; that he served as porter of the goods the Japanese soldiers had to carry from one place to another and helped besides in the kitchen at the Japanese headquarters. He denies he took the trunk from the house of Juan Sebastian. The Japanese took it and ordered him to carry it. He also denies he took a bag from the house of José Lim, but admits that he went with the Japanese patrols to Campana and Bagtus and to other places, and that after all the things taken from the house of Jose Lim had been put inside the nine trunks, the Japanese ordered them to carry the trunks away. He swears that he and Eligio Torres did not investigate Florencio Sebastian; that Captain Umihara made the investigation and together with Sergeant Abe and Corporal Sake tortured Florencio Sebastian; that it is not true that he covered with a handkerchief the face of Florencio Sebastian and poured a mixture of oil and water into his mouth; that Sergeant Abe and Corporal Sake did the pouring; that he signed an affidavit of six pages written in long hand and not the document marked Exhibit "B", although the signature at the bottom thereof is his; and that he did not read but was told just to sign the affidavit by a lieutenant of the CIC.

The denial by the appellant of the unlawful acts committed by him and his companion Eligio Torres, as testified to by the witnesses for the prosecution, can not be believed, because the testimony of Rosalina de la Chica, Isidro Francisco, Cristobal Fernandez, Josefa Savillano and Liberata Cabaya Cruz, as regards the participation the appellant and Eligio Torres had in the investigation, torture and killing of Castro de la Vega, Domingo Jimenez, Cresencio Timpangco and Ponciano de la Chica, is so convincing, each corroborating the others on essential parts of the series of incidents witnessed and recounted by them, that one is led to the conclusion that the appellant participated in the arrest, investigation and torture of guerrilla suspects who later on were killed. The evidence fails to disclose any motive on the part of the witnesses for the prosecution which might have prompted them to impute to the appellant the perpetration of acts he had not committed.

Count 1 is established by the testimony of more than two witnesses over the same overt acts, to wit: that of Rosalina de la Chica, Isidro Francisco, Cristobal Fernandez, Josefa Savillano and Liberata Cabaya Cruz; Count 2,

by the testimony of Rosalina de la Chica and Josefa Savillano over the same overt acts; Count 3, by the testimony of more than two witnesses over the same overt acts, namely, Rosalina de la Chica, Josefa Savillano and Liberata Cabaya Cruz; and Count 4, by the testimony of more than two witnesses over the same overt acts, to wit: Florencio Sebastian, Maria Sebastian, Quasi Lim and Isaias Lacasti Santos.

Although the appellant did not participate in the killing of Castro de la Vega and there is no evidence that he took part in the killing of the other three, namely, Domingo Jimenez, Cresencio Timpangco and Ponciano de la Chica, yet his participation in the apprehension, investigation and torture of the victims, makes him responsible for the acts of his companions. There is evidence sufficient in law for a finding that there was conspiracy, common purpose and concerted action by and between the appellant and his companions which render each and everyone of the participants in the unlawful acts perpetrated, no matter how minor or insignificant be his part, responsible for all such acts.

Further proof of the truth of the evidence for the prosecution is the discovery of some jewelry taken from the house of José Lim in the possession of Jovita Torres, a sister of Eligio Torres, which she had to turn over to the prosecuting attorney of the City of Zamboanga upon complaint of Quasi Lim, the wife of José Lim.

The appellant, who is a Filipino citizen owing allegiance and loyalty to the Commonwealth of the Philippines, joined the enemy, giving him aid and comfort by actually helping him in the arrest, investigation and torture of his countrymen engaged in the resistance movement. He is, therefore, guilty of treason.

The indemnity to be paid to Florencio Sebastian should be reduced to P2,020 and to José Lim should be increased to P5,731, as these are the amounts proved to be the value of many of the articles taken from them. The value of the other goods taken from José Lim has not been established. The fine imposed by the trial court is in accordance with law. But the penalty of death should be modified and reduced to *reclusión perpetua*, in view of the fact that eight Justices of the Court failed to reach a decision on it, as provided for in section 9 of Republic Act No. 296, known as the Judiciary Act of 1948.

Judgment is modified as to the penalty, and the appellant is sentenced to *reclusión perpetua*, and the accessories of the law, and as to the amounts of indemnity, the one to Florencio Sebastian is reduced to P2,020 and the one to José Lim is increased to P5,731, without subsidiary imprisonment in case of insolvency of the appellant in the payment of the fine and indemnity. The rest of the judgment is affirmed, with costs against the appellant.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Jugo, JJ., concur.

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