

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. VICENTE TUMANDAO, DEFENDANT AND APPELLANT.

G.R. No. L-1653. January 28, 1949

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f170cb77edec/>

PARAS, J.:

This is an appeal from a judgment of the People's Court convicting the appellant of treason and sentencing him to reclusion perpetua and to pay a fine of two thousand pesos, plus the costs.

The information imputed to the appellant eighteen counts, but the People's Court found him guilty of only five charges, namely:

"1. The herein accused, with intent to give aid and comfort to the enemy, sometime in the year 1943, wilfully and treasonably accepted the position of second in command of the 3rd Leyte Company at Dulag, Leyte, Philippines, within the jurisdiction of this Honorable Court, of the Japanese-sponsored Bureau of Constabulary, and discharged the duties of the said office until the American returned.

"12. The herein accused, with intent to give aid and Comfort to the enemy, sometime on or about the 18th of Janaury, 1944, wilfully and reasonably led a patrol to sitio Masonting, Malitbog, Leyte, Philippines, to arrest Simplicio Ajero alias Dodong, an ex-USAFFE soldier, and on which occasion Dodong Ajero being away, and said accused took and carried away, with intent of gain, jewels, such as earrings, medal, and shoes, polo shirts and trousers belonging to the family, and likewise brought the mother and younger brother of Dodong Ajero to the municipal jail for investigation and held them as prisoners.

"13. The herein accused, with intent to give aid and comfort to the enemy, sometime on or about January 19, 1944 wilfully and treasonably led a patrol of soldiers to Concepcion, Dulag, Leyte, Philippines, in order to arrest men suspected as guerrillas, and on which occasion eight men were arrested and brought to the military police headquarters for investigation.

"14. The herein accused, with intent to give aid and comfort to the enemy, sometime on or about January 22, 1944, wilfully and treasonably led a patrol to Concepcion, Malitbog, Leyte, Philippines, within the jurisdiction of this Honorable Court, to arrest Jose Lastima, another USAFFE soldier, and whose mother and brother were also taken to the MP headquarters for investigation when the said Lastima was not found in his house.

15. The herein accused, with intent to give aid and comfort to the enemy, on or about January 22, 1944, wilfully and treasonably led a patrol of Japanese military police and Constabulary soldiers to a barrio in Malitbog, Leyte, Philippines, in order to arrest Jose Lastima whom they failed to arrest on a previous occasion, and on which occasion Jose Lastima being away still at the time, the whole family of Jose Lastima was taken and kept as hostages in the Japanese military garrison."

With regard to count 12, the appellant testified that he and five of his Constabulary men went with fifteen Japanese soldiers and two Japanese interpreters, led by a spy named Lucas, to the barrio of Masonting, Malitbog, Leyte, wherein the appellant was ordered by the Japanese to have his men surround the house of Melania Ajero; that the Japanese officer and an interpreter went up the house; that he neither broke any trunk and took away

therefrom jewelries and clothes nor arrested Melania Ajero and her son Rodrigo Anduyo; that the latter were arrested and detained by the Japanese; that upon order of the Japanese, the appellant investigated Melania and Rodrigo Anduyo. Appellant's testimony was corroborated in the main by Domingo Cruz and Bibiano Daga.

As to count 13, the appellant, corroborated in the main by Domingo Cruz and Bibiano Daga, testified that the raid made on January 19, 1944, in barrio Concepcion, Malitbog, Leyte, was not led by him but by a Japanese; that he and his Constabulary men went with the Japanese without knowing the latter's purpose, although the appellant took charge of his men so that they would not commit any abuse; that he asked his men to surround the house of Anastacio de la Cruz upon order of the Japanese who, likewise, were the ones who arrested and jailed eight persons.

As to count 14, the appellant testified that on January 22, 1944, he was ordered by the Japanese to go with their patrol and to surround the house of Andrea Penisilda in barrio Binit I, from which the Japanese took Andrea and his son Hermogenes Lastima; that he neither hit Andrea on the eyes nor went up her house and took her money from her trunk; that he did not suspend Hermogenes in mid-air; that on the following day, he investigated Hermogenes as to the whereabouts of his brother Jose, as ordered by the Japanese; that he told the Japanese that Hermogenes had not seen his brother for a long time and had nothing to do with his case, so that the Japanese released Hermogenes; that his men delivered food to Andrea and Hermogenes secretly; that he did not maltreat them. Domingo Cruz corroborated substantially appellant's testimony.

The attorneys for the appellant argue that only one witness was presented to prove the charge in count 15; and the prosecution admits this, with the qualification, however, that "while the arrest of Leona Cadayuna and her father by appellant has been proven by only one witness—Leona Cadayuna herself—because her father died long before the trial (p. 8, t. s. n.), their incarceration and investigation by appellant has been demonstrated by the testimonies of Leona, Andrea Penisilda and Hermogenes Lastima (pp. 6, 15, 19, 20, t. s. n.)."

We have weighed carefully the evidence for both sides and have come to the conclusion that the appellant has not been proved guilty of treason beyond a reasonable doubt. At the outset, we have the uncontroverted facts that the appellant was an officer of the Philippine Army even before the outbreak of the war in 1941, and he was one of those who made a last stand in Bataan, and for his splendid services he was decorated with a Purple Heart medal; that after the surrender, he was a participant in the "Death March"; that he was one of those imprisoned in the Capas Concentration Camp; that he was never officially released as a prisoner of war, since, after his concentration in Capas, he was made by the Japanese to undergo training in the Constabulary barracks in Gagalangin, Tondo, Manila, after which he was sent to the Constabulary unit in Leyte; that there were many Japanese soldiers in his station.

It is hard to believe that the appellant, who had rendered splendid service in Bataan, and fresh from the risks and hardships that were his in Capas, would readily, much less voluntarily have allowed himself to become a willing tool of his former war enemies. Upon the other hand, we are inclined to think that he had no choice in the matter. Indeed, we know as a matter of public notoriety that the Filipino soldiers released in Capas endeavored to enter in the government service in any capacity with a view solely to escaping the possibility of being drafted into the Japanese army or being suspected as hostile to the military occupants. In this case there is of course no proof that the Bureau of Constabulary during the Japanese occupation either was a part of the Japanese army or even participated in military operations of the Japanese.

We are impressed by the frankness of the appellant in admitting his participation in the raids alleged in the information, an admission which forces us to accept his explanation as to the nature and extent of such participation. The fact that all of those arrested on the occasions in question were released immediately two or

three days after he made his investigations is persuasive enough to show that the appellant had undoubtedly not intended to betray his country and fellow citizens. As there is also no showing that the appellant had previous knowledge of the guerrilla connection of those whose relatives were arrested and detained, it is not safe to assume that the raids charged in the information were made at his initiative or instigation. We rather think that appellant's role in the incidents complained of served to frustrate the barbarous ways of the Japanese if the latter were allowed to run the whole show.

The prosecution directs attention to the fact that, as proof of appellant's treasonable intent, he did not join the guerrillas notwithstanding the circumstance that he had a chance to do so. Aside from the testimony of the appellant that the leader of the guerrilla band (Lt. Bautista) instructed him and some of his men to return to town—after the appellant had expressed his desire to remain with said band on one occasion—we may state that, as well observed by Mr. Justice Bengzon, in *People vs. Godinez* L-895, December 31, 1947, 45 Off. Gaz., 2524[1] "those who refused to cooperate, in the face of danger, were patriotic citizens; but it does not follow that the faint-heart, who gave in, were traitors."

In the view thus taken of the case, it becomes unnecessary to pass upon the contention of counsel for the appellant that count 15 was not proved by two witnesses and that, as to count 1, "No one of the witnesses for the prosecution, * * *, declared that the appellant was second in command of the Leyte Company of the Bureau of Constabulary stationed at Dulag, Leyte."

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

Moran, C. J., Feria, Bengzon, Briones, and Montemayor, JJ., concur.

Perfecto, J., concurs in the result.

[1] 79 Phil., 775

DISIDENTE

PABLO, M.:

Disiento. En mi opinion, el acusado es culpable del delito de traicion.

En cuanto al cargo No. 12, esta probado que en Enero 18 de 1944 el acusado y varies soldados japoneses, todos armados, fueron a la casa de Melania Ajero, aadre de Dodong, conocido guerrilla bajo el mando de Miranda. Al encontrar algunas camisas en el registro, el acusado exclamo: "Estas camisas son de Dodong Ajero." Y se apodero de 5 pantalones, 6 camisas, 2 arretes y una gargantilla. Despues de investigar a la pobre madre de Dodong y porque no habia obtenido de ella contestacion satisfactoria, la llevo con sus compafieros japoneses al pueblo en donde estuvo arrestada por cinco dias en el cuartel del Kempei Tai. Durante ese tiempo el acusado iba siempre uniformado como teniente de la constabularia. Porfiria, Fortunato y Rodrigo, hermanos de Dodong, fueron tambien investigados. Pero por no se sabe que razones, el acusado dejo libres a Porfiria y Fortunato, y arresto a Rodrigo juntaraente con su madre Melania. Creyendo tal vez que Rodrigo podria ayudar en la campana de pacificacion, le dio libertad despues de estar arrestado por tres dias con la condicion de que buscasse a su hermano Moises que tambien era guerrilla. A los tres dias, Rodrigo vio al cuartel para dar cuenta de que no le encontro. EL acusado le solto otra vez con instrucciones de buscarle.

Si el acusado ejecuto los actos relatados solamente para contentar a sus "amos", por que dio libertad a Rodrigo con instrucciones de buscar a Moises y traerie al cuartel? No es ello una demostracion clara del deseo vehemente

del acusado de arrestar a toda costa a las guerrillas, para inutilizar la guerra de guerrillas que estaban sosteniendo los filipinos, en protesta contra el regimen japoneses? Podia haber dicho que no podia obtener informacion de Rodrigo y soltarle como solto a la madre, sin condicion alguna. La liberacion de Rodrigo con la condicion de buscar a su hermano Moises y traerle al cuartel revela a la legua la intencion del acusado: aniquilar a las guerrillas. Y es evidente que suprimida la guerrilla, quedaba anulada la guerra de resistencia.

Cuanto al cargo No, 13. El 19 de Enero de 1944, el acusado y varios soldados japoneses acorrolaron la casa de Atanacio de la Cruz a quien se le tenia por guerrilla. Despues de ordenar que se pongan en fila las personas que estaban presentes en el lugar porque entonces se estaba sacrificando un cerdo, el acusado y algunos japoneses requisaron la casa. Por haber encontrado una cadena de balas, De la Cruz fue llevado escaleras abajo y maltratado. Mientras los japoneses le tenian sujetado a De la Cruz por la camisa, el acusado le pego con una penca de coco. Preguntados los siete individuos en fila, Desiderio Cahayag, Marcelo Cahayag, Andres Ocsabo, Tomas Dupao, Cirilo Dupao, Lorenzo Capalaran y otra persona desconocida, si eran guerrillas, Desiderio Cahayag contesto que no. Porque no estuviese satisfecho el acusado de la contestacion, les ato a todos las manos para ser llevados al cuartel del Kempei Tai en Malitbog. El acusado pregunto a Desiderio sobre el paradero del teniente Francisco, y como dijera que no sabia, le pregunto por su rango, y Desiderio contesto que era teniente a lo que acto seguido el acusado le dio un puñetazo en el abdomen diciendo: "No es verdad que ya es comandante?" El acusado tambien pregunto a Andres Ocsabo sobre el paradero del comandante Francisco, y como este dijese que no sabia, el acusado le empujo con tal fuerza que su cabeza se pego contra la barandilla de la casa. Todos estos siete individuos fueron encerrados en los bajos del cuartel por cinco dias sin darles comida por tres dias. No demuestra este procedimiento el deseo manifiesto de sembrar el panico en la poblacion civil y hacer que todos huyan de las guerrillas? No es eso un medio de aniquilar a las guerrillas?

En cuanto a los cargos Nos. 14 y 15, esta tambien probado que en Enero 22, 1944, el acusado y sus cinco compañeros japoneses, todos armados, arrestaron a Hermogenes Lastima en la playa del barrio Binit I, a dos kilometros del pueblo de Malitbog, Leyte, por ser hermano de Lastima, un conocida guerrilla. El acusado fue el que encabezaba el grupo. Pregunto a Hermogenes por el paradero de su hermano Jose y como contestase que no sabia le ato las dos manos por la espalda, dejandole plantado en frente de su casa. El acusado y sus compañeros subieron en los altos y el acusado pregunto bajo amenaza a Andrea Penisilda, donde estaba su hijo, y ella contesto que no sabia. El acusado con un hacha abrio el baul de una hija de aquella, en el cual sustrajo alhajas as avaluadas en P200.00 y P150.00. Andrea y Hermogenes fueron llevados a Malitbog. Mientras iban andando el acusado pego a Andrea con un mecate acertandole en el ojo derecho porque, a una pregunta, ella contesto que no sabia donde estaba su hijo. Cuando estaban en el cuartel de los japoneses en Malitbog, Hermogenes fue preguntado donde estaba su hermano y porque contesto que no sabia, el acusado le abofeteo en ambas mejillas y le pego en la cabeza. Despues de maltratarle, le colgo, dejandole pendiente en el aire por 20 minutos y despues le llevo con la car a ensangretada al calabozo en donde estaba detenida su madre. Ambos fueron puestos en libertad despues de 3 dias de sufrimiento, de ansiedad y de temor. En todo el dia de la investigacion, a Hermogenes y a su madre no se les dio alimento alguno.

Por la mañana del 22 de Enero de 1944, el acusado, armado con revolver, acompañado por varios soldados japoneses con rifles, fue a la casa de Leona Cadayuna preguntando por el paradero de su esposo Jose Lastima, que era guerrilla. Porque contesto que no sabia, la amenazo con cestionarla si no lo revelase. Ella contesto que no podia decirselo porque en realidad no sabia donde estaba. Le arrestaron a ella con su padre Ciriaco Cadayuna, llevandoles al cuartel del Kempei Tai en Malitbog. Despues de estar detenidos en los bajos del cuartel, Leona fue puesta en libertad porque su suegro Ciriaco Cadayuna se presento como fiador.

Si el acusado aparentaba ayudar solamente a los soldados invasores, que necesidad tenia de maltratar a los gae no

podlan darle los informes que deseaba obtener, que necesidad tenia de pegar con un mecate a una pobre mujer por la simple falta de no saber donde estaba su hijo, que necesidad tenia de arrestar y detener a la esposa y suegro de un ausente guerrilla? Cabe duda aun de que el proposito del acusado fue sembrar el terror en todas partes para infundir miedo a los pobres ciudadanos en tener comunicacion con las guerrillas?

En mi opinion, los hechos probados demuestran la ayuda incondicional del acusado a la campaña de exterminio de guerrillas llevada a cabo por el ejercito invasor japones.

Voto por que se confirme la condena.

DISSENTING

TUASON, J.:

I regret to have to disagree with the majority.

We do not only have to give weight to the findings of fact of three experienced judges who heard the witnesses testify, but the records conclusively refute the idea that the appellant "had no choice in the matter."

That the accused admitted going with Japanese, I do not consider as frankness; it was a fact he could not have very well denied, and the admission would not do any harm. He did deny the motive and the nature of his participation which was the incriminating feature of the evidence against him.

These witnesses who, as the court below observed, had no reason to perjure against the defendant, adduced the following evidence:

Count 12. Melania Ajero testified that on January 18, 1944, the accused, armed with a pistol, and in company with Japanese soldiers, came to her house looking for Dodong, the witness's son who was a guerrilla. The Japanese brought the people of the house down while the accused searched the place for firearms and ammunition. He broke open Melania's trunk, pointed to some shirts as belonging to Dodong Ajero, and picked five pairs of trousers, six shirts, two earrings and a locket. He also questioned Porfiria, Fortunato and Rodrigo about their brother Dodong Ajero. Afterward Andrea and Rodrigo were brought to town where they were again questioned and imprisoned in the garrison for 5 days.

Count 13. Desiderio Cahayag and Andres Ocsabo testified that on January 19, 1944 at Malitbog, Leyte, the accused with Japanese soldiers appeared at barrio Concepcion, Malitbog, when he was butchering a pig near Atanacio de la Cruz's house. There were about seven persons who had come to buy pork. The accused and his Japanese companions surrounded De la Cruz's house and searched it, having found a chain made of bullets inside a trunk. They brought De la Cruz down and maltreated him. He was held by two Japanese soldiers by the shirt and beaten by the defendant with the stem of a coconut leaf. The accused ordered the persons around to line up and asked them if they were guerrillas. When Cahayag told him that they were not guerrillas, he tied the hands of those men and took them to town. In the school building which was being used as the garrison of Kempei Tai the accused questioned Cahayag and Ocsabo regarding Lt. Francisco's whereabouts and Lt. Francisco's rank in the guerrilla force. In the course of the investigation, Desiderio was struck on the abdomen and Ocsabo's head was bumped against the railings of the school building. They were kept in the garrison for five days.

Count 14 and 15. Hermogenes Lastima, his mother Andrea Penisilda, and Leona Cadayuna testified that around 6 o'clock in the morning of January 22, 1944, Tumandao in company with five Japanese and one constabulary soldier, all armed, arrested Hermogenes on the seashore because he was the brother of Jose Lastima, a guerrilla

soldier. The accused was armed with a revolver and was the leader of the group. He questioned Hermogenes regarding the whereabouts of his brother, and when Hermogenes said that he did not know, the accused tied his hands behind his back and brought him in front of the house. Then the accused followed by the Japanese soldiers went up the house, threatened Andrea Penisilda, and tore open a trunk with an ax. Jewels worth P200 and P150 cash were taken away by him. Andrea and her son Hermogenes were taken to Malitbog. On the way, Andrea was whipped with a rope and hit on the right eye by the defendant because of her persistent refusal to tell the whereabouts of his son Jose. Arriving at 8 o'clock at Malitbog, they were detained in the school building. There they saw Leona Cadayuna and Ciriaco Cadayuna also detained. On the second floor of that building Hermogenes was again investigated by the defendant about the whereabouts of Jose, slapped in both cheeks, and severely beaten in the head and the shoulders. He was warned that if he did not tell the truth the Japanese would kill him on that day. There were five Japanese soldiers, but these left and the accused suspended Hermogenes in midair. After about 20 minutes, he was released by the accused and put in the prison cell with his mother. Andrea corroborated that her son was bleeding. At about 10 o'clock that same morning, the accused armed with a revolver and in company with Japanese soldiers armed with rifles, went to the house of Leona Cadayuna, wife of Jose Lastima, in barrio Sangahon, about three kilometers from Malitbog, looking for Jose. Having failed to obtain from Leona the information demanded, the defendant took her and her father to the Kempei Tai headquarter in Malitbog whence they were transferred to the detention cell on the ground floor of the building. There they saw Hermogenes Lastima and Andrea Penisilda confined in the same cell. She saw Hermogenes with wounds in the wrists and a swollen face when he returned from the investigation conducted by the accused. Andrea Penisilda and Hermogenes were kept in prison for three days. For one day during the investigation they were not given food nor water.

If we are to believe the witnesses, as we should and as the court below did, the defendant's cooperation with the Japanese was not a simulated undertaking. His was the role of a leader, as one of the witnesses said, directing the raids and the arrests, taking charge of the investigations, and personally executing the punishments of the people investigated who could not or refuse to give the information wanted of them. The saying that patriotism is the refuge of scoundrels finds a good example in this case.

If the accused was decorated with a Purple Heart, an assertion that was put forward by defendant in his uncorroborated testimony; if he had fought in Bataan and been wounded in battle and suffered imprisonment—these did not give him privilege and freedom to oppress peaceful inhabitants to ingratiate himself to the Japanese and save his neck, supposing, for the sake of argument, that this was his motive. They rather exacted greater loyalty than was expected of a common citizen. His alleged decoration and his rank in the army imposed upon him an obligation to live up to the fine and manly qualities which were symbolized by that decoration.

The fact is, as his acts eloquently revealed, his collaboration was not a feign but wholehearted and real. His untrustworthy testimony did not prove any connection between him and the underground resistance other than that he gave the guerrillas few rifles and few rounds of ammunition, not even the source of which he deigned to state. Accepting his pretended contribution to the cause of "the patriots who kept the torch of liberty aflame," that contribution, and not his cooperation with the enemy, was a make-believe. Deeds speak louder than words. No amount of protestation of patriotism and lofty intention can set at naught the logical connotation of his actions and the brutality he visited upon innocent men and women in the interest of his master.

His testimony that he was in contact with certain guerrillas and that he furnished them with ammunition and rifles, if true, neither rebut the evidence of collaboration against him nor show that his collaboration with the Japanese was a pretext. We rather believe that his alleged relation with certain guerrillas, if true, was no more than a front

to be used as a defense, as he has: tried to do in the present case, in the event of retribution.

The accused had no "choice", perhaps, to remain aloof, although his age, experience and physical condition fitted him to become a guerrilla, inasmuch as he himself said that at one time he had a notion to go underground. He is not being blamed for undergoing "rejuvenation" training and for joining the Constabulary after his release from the concentration camp. But he did have a free choice between sticking to his functions as conservator of the peace and order and helping the enemy in the latter's prosecution of the war, outdoing and excelling him in his brutal practices. There were thousands of his former comrades-in-arm who did not enter the service of the Japanese with complete safety to themselves and their families, and those who did not succeed in evading such service did not find it necessary nor were they compelled to terrorize peaceful inhabitants in their hours of fears and confusions. This is recent history of which we may take judicial notice.

The majority express serious doubt that the accused could at heart have gone to the side of the enemy in the face of his past record in the Philippine and United States Armies. While the Court's ratiocination is the normal instinct of normal people, and many preferred extreme sacrifice to a betrayal of their country, we do not have to strain our memory to recall notable exceptions. And, going to another epoch, need we cite a noted and capable general in United States history for whose brilliant exploits he received the thanks of Congress, but who delivered information on important military posts to the enemy and escaped to the British lines.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.