

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ROMEO APOSTOL, DEFENDANT AND APPELLANT.

G.R. No. L-1992. November 23, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

The witnesses for the prosecution testified in substance as follows:

Maria A. Saquitang, 24, widow, 1158 Cazañas, Manila, testified that Antonio R. , her brother, was seen by her the 1st time on September 6, 1944, at 7 o'clock in the evening at the Central Hotel. The next day at 8 o'clock in the evening she went with her husband to the Central Hotel to give the money asked for her brother's release, and she saw him bleeding, with hands and feet tied together. (2). Her brother was arrested at 7 o'clock in the evening of September 6, 1944, by three Filipinos, Japanese spies, two of whom., Pazing and Pedring, were known to her. (3)The next day after the arrest, Jose Paza came to see the witness to tell her about the punishment of her brother, to inform her that the three who arrested him were Pedring, Pazing and Romy, and to ask P10,000.00 for the release of her brother. The witness said that she would give P8,000.00 and the rest later on. That same evening, the witness and her husband went to the hotel and met Jose Paza with the three Filipino spies. They were taken to the third floor where they handed the money over to Jose Paza. The witness was able to see her brother for two minutes. That was the last time she saw him. Jose Paza promised that her brother would be released at 8 o'clock that evening, but the promise was not fulfilled. (4). Three days after the money was given, on a Sunday, Jose Paza saw the witness and asked her to sign a receipt stating that the money was returned to her, threatening her that he would have her picked up if she did not sign the receipt. The witness signed it but the money was not returned. When the witness gave the money to Paza, the accused was present. Romy is the same accused. Her husband's name is Eduardo P. Saquitang. He was arrested on November 20, 1944 by the Japanese, and she did not see him again. The witness never saw again Pazing and Pedring. (5). The witness saw the accused three times when he arrested her brother, at the Central Hotel, and at the hearing of the case. The witness was able to identify the accused by the mole and scar he has under his left eye. (6).

Trinidad Azarraga, 30, widow, pharmacist, 1304 Dapitan, Manila, testified that her husband, Antonio , was picked up by three men on September 6, at their home at 1304 Dapitan. The three men arrived at about 7 o'clock in the evening asking for Antonio Azarraga, who did not arrive yet. They waited for him. He arrived after two minutes and they placed him under arrest showing an identification card. The witness happened to know later that the three persons who arrested her husband were Pedring, Pazing and Romy. One of them is the accused. Her husband did not come back and maybe he is dead, otherwise he would have come home already. (9, 10). The witness recognized the accused because he has a mole and scar below the left eye. (11).

Cirilo Custodio, 31, married, electric contractor, 927 Rizal Avenue, Manila, testified that at 10 o'clock of October 6, 1944, while he was in his office at 927 Rizal Avenue, three persons approached him and flashed to him their identification cards saying that they were Japanese Kempei-Tai. They were Pazing, Doring and Romy, one of them being the accused. They said that the witness had in his possession a .38-caliber revolver with a license

issued by the Philippine Constabulary. They arrested him and took him to the Far Eastern University. They said that they arrested him because he had a revolver and he was a guerrilla. (16). The witness suggested that he be brought to Rizal Restaurant, the meeting place of different units of Kempei-tai, telling them that he had there a friend by the name of Danding Gonzales, connected with the Kempei-tai. Pazing, Doring and Romy talked with Danding Gonzales at the Rizal Restaurant. After this talk, all of them, including the witness, went to the latter's house. Danding Gonzales told the witness to lie low until he could fix his case with the military police, saying that he would be released if he gave some money. The witness told Gonzales that his drawer was open and that they could get the amount of money that was in it. Gonzales got P2,000.00 and gave it to Pazing. After that they went away and started huddling around. They took also the witness's revolver. (17). Eligio Custodio, brother of the witness, was at the latter's office when he was arrested by the three persons. Danding Gonzales was taken by the witness to the United States in 1937 and came back ahead of him. Gonzales was married to the sister-in-law of Imamura, a Japanese. (18). The witness often saw the accused in 1944. The three persons who arrested the witness, including the accused, all had a .45-caliber chromium-plated revolver. (19). When they went back to the witness's house and Gonzales took the money from the drawer, the accused was present as well as the younger brother of the witness, Jose Custodio. His elder brother, Eligio Custodio, was the one present when the three persons went to the office for the first time. (20).

Eligio Custodio, 34, married, electrician, 386 Lipa, Manila, testified that at about 10 o'clock of October 6, 1944, he was in the office of his brother Cirilo Custodio. Three fellows came in and took Cirilo because of the revolver they asked, (21). They took him to the Far Eastern University. The witness does not know the names of the three persons but can identify them, and one of them is the accused. His brother returned with the same fellows the same morning and, as soon as they arrived, the witness left at once. The accused has as an identification mark a mole on his left cheek. The three persons who arrested his brothers said that they were Kempei-Tai. (2).

Jose Custodio, 25, married, 906-A Rizal Avenue, Manila, testified that on October 6, 1944, when he came back to the office, there were four men therein. Danding Gonzales took P2,000.00 from the drawer and gave them to the other men. Among those present was Romy, the accused. (23). The witness remembers him because he has a mole under the left eye. After the delivery of the money, the four persons left the office. Danding Gonzales told his brother Cirilo not to get away and that he should stay in the office so that in case he was needed they could find him immediately. The money was handed by Gonzales over to one of the other three. The accused remained in the office for about half an hour. (24).

Vicente Gama, 35, married, manager of Metro Garden and Grill, 212 Mabini, Mandaluyong, testified that in September and October, 1944, he was the assistant manager of the Rizal Restaurant and he was connected with the guerrilla, his work being to keep a close watch on the Japanese movements and as to where they were putting their war materials. (26). He knows the accused Romeo Apostol, alias Romy, because he used to stay in the restaurant and even slept therein. He used to join the buy-and-sell people and sometimes was with the Japanese spies composed of Danding Gonzales, Pazing, Boring and others. (27). Danding Gonzales was the head of the group. The witness saw the accused every day because he was living in the Rizal Restaurant, paying for his lodging. The group used to go with the military police and to arrest persons and bring them, to the restaurant to be investigated and sometimes they brought them to Fort Santiago, (28). They investigated Antonio in the restaurant. He was suspected as a guerrilla supporter. He was taken from his house. After the investigation he was brought to the Central Hotel. The witness saw that he was taken there. After that he did not hear anything about him. Cirilo Custodio is the witness' compadre. On October 6, 1944, he was taken to the Rizal Restaurant by Pazing, Romy, and others. Danding Gonzales joined them. The witness did not hear what they had talked about. (29). The last time the witness saw the accused was in November, 1944. He knew him since July of the same year. (32).

Leodegario Scarlet, 29, married, dental technician, 1752 M. Natividad, Manila, testified that he knows the accused whom he used to see in the Central Restaurant during the Japanese occupation. He sometimes was with Mariano Cabrera and another fellow, and Cabrera told the witness that they were informers. (34)

Maria Saquitang, recalled as a witness, said that her brother Antonio, was helping the guerrilla in the mountains by supplying them with food and money. (38) His rank was that of a captain, as shown in Exhibit A, which she hid in a picture frame. Both her brother and husband went every month to the mountain to bring some foods. Her husband was a first lieutenant. (39,40).

Isidro L. Bejunco, 46, married, public prosecutor, 116 B. Governor Forbes, Manila, testified that he has known Col. James M. Bays, chief of staff of the U.S. Army, because the witness had been a member of the resistance movement. The witness has been acquainted with Bays for about 20 years and both were working together in the resistance movement under the same American units. After the capture of Col. Straugh, the witness separated from the unit. He is familiar with the signature of Bays, and that which appears in Exhibit A is his signature. (42).

The accused, as lone witness for the defense, testified that it is not true that he went with companions to the house of Maria Saquitang on September 6, 1944, and that he does not know anything about the arrest of Antonio. (46). The accused was Maria Saquitang in December, 1946, at the prosecutor's office where "I heard and felt that I was being identified by her." (47). The witness saw in the office of the special prosecutor Mrs. and Mrs. Saquitang. (48). About the arrest of Cirilo Custodio on October 6, 1944, testified to by the witness for the prosecution, the accused said that "I do not know anything of what happened to him because I was just forced to go with them," referring to Vicente Gama and Eduardo Gonzales. When Cirilo Custodio left his place to be delivered to the Far Eastern University, the accused was with Vicente Gama and Eduardo Gonzales "Because I was the driver of the dokar. Being a driver, I just stayed in the driver's seat." Prior to reaching the office of Cirilo Custodio at 927 Rizal Avenue, he came from Rizal Restaurant. (49). The dokar belonged to Macario Bing's General Merchandise. "I am not a hired driver of that dokar but I was paid as in charge of the delivery. Macario Bing, Eduardo Gonzales and Vicente Gama were companions. They were the three leading the special agents of the Japanese Military Police." Macario Bing was the capitalist of a buy-and-sell business, in which the accused was an employee in charge of the delivery of goods. "After the delivery of the welding rods for Macario Bing to one of the commercial houses in Dasmariñas, I was told to return to him at the Rizal Restaurant. I was asked by Danding And Vicente Gama to take them to the place of Custodio." (50). The witness had nothing to do about the arrest of Cirilo Custodio. "I went there only because I was forced by Eduardo Gonzales and Vicente Gama who were riding in the dokar." The witness does not know anything about the alleged surrender of Cirilo Custodio to Kataniwa, a Japanese in the Far Eastern University. Regarding the P2,000.00 given by Cirilo Custodio and testified to by the witnesses for the prosecution, the accused said: "I saw that he (Cirilo Custodio) was released because it was through me that Danding received the money from Custodio." (51). "I was just asked to deliver" the money. It was not delivered directly to Eduardo Gonzales because Eduardo Gonzales was talking to somebody at that time in the Rizal Restaurant. The money was given "in the dokar where I was sitting," about 6 or 7 meters away, and Danding was inside the restaurant and I was inside the dokar. The witness identified his signature and thumbmarks on page 3 of Exhibit B. (53). The statement in Exhibit B that from November, 1944 to January, 1945, the companions of the accused in Pagsanjan were Danding Evangelista and the owner of a gambling den, was not given by the witness to the guerrilla officer who investigated him. The statement was given by Danding Evangelista. The statement in Exhibit B that the accused was a Japanese spy from August to October, 1944, was not given by him. Asked about the statement that "since I was pointed as a Japanese spy, I have to look after Macario Bing and watch his enemies" appearing on page 3, the accused after having been asked whether he made the statement or not said: "What I can state only is that I was forced to sign this because I was maltreated." The witness does not know the Macario Bing mentioned in his testimony. (54). "There were many Japanese

entering the office of Macario Bing" during the Japanese occupation. The accused was asked if he made the following statement to the guerrilla officer who investigated him appearing on page 2 of Exhibit B: "I became a Japanese spy to save my life because I was arrested by a Filipino and three Japanese on or about June 5, 1944 and confined in Fort Santiago charging me with robbing Japanese truck tires in Leveriza." The answer was: "I do not know about that."¹¹ When the witness signed Exhibit B "there was only one paper and they lighted a match to give light to the place where I have to sign my name." (55). "There were many questions propounded to me and I can not remember any of them because there were many who took turns in questioning me." Rizal Restaurant was located not far from the corner of Rizal Avenue and Azcarraga. Near the Central Hotel. When Cirilo Custodio was taken, "they made me stop in front of the Funeraria Nacional." The witness passed by the Rizal Restaurant only to take Bing, but he did not see him. He was forced by Vicente Gama and Eduardo Gonzales to take them in the dokar, because they said that they had the permission of Macario Bing to use it. (56). "They made me drive it for them and told me to go to the place of Cirilo Custodio near the Funeraria Nacional on Rizal Avenue." They stayed there for about 20 minutes. "They made me wait for them" From the place they went "to the Far Eastern. They made me drive for them" After a while "Vicente Gama went down, they made me bring them to Rizal Restaurant." The witness does not know why Cirilo Custodio was taken to the Far Eastern University. Upon reaching the Rizal Restaurant, Custodio handed the money over to the accused in the dokar. Custodio and to the accused: "Here is the money which is given to you by Danding." "This money is given to you for Danding." The accused worked in the house of Macario Bing from August to October, 1944. Macario Bing, Eduardo Gonzales and Vicente Gama "were companions and were the leaders of the Japanese." (58). The witness knew this from the time he was working for Macario Bing. In October, he went to Pagsanjan with Danding Evangelista. "We established a gambling den." The money he received from Custodio was given by him to Danding, after which he went away and it was 11 o'clock in the morning. When they left the Rizal Restaurant to the place of Cirilo Custodio it was more or less 8 o'clock in the morning. At 7 o'clock the accused delivered welding rods in Dasmariñas to Hito Shosen, a Japanese firm. At 11 o'clock the accused went from the Rizal Restaurant to his office in Elizondo, Quiapo. (59) The accused is a first year high school graduate. (60).

With the permission of the trial court, the prosecution called two witnesses who, in substance, testified:

Dionisio Abando, 39, married, merchant, Pagsanjan, Laguna, identified his signature as a witness in the marriage certificate Exhibit C of Romeo Apostol. He identified also Apostol's signature therein and that of Adela Sarabia whom he married and that of Remedios Villareal, the other witness. (65-67).

Salvador R. Abuig, 28, married, proprietor, 3279 Int. 14, Juan Luna, Manila, testified that he ordered Victoriano Mateo to arrest the accused. The witness was captain of A Company, Ramsey's First Battalion. The accused was arrested in Caloocan and brought to the headquarters at 2203 Juan Luna. The accused said that he was a Filipino. Pages 1 and 2 of Exhibit B must have been mixed up. The original typewritten words at the foot of page 2 are due to the fact that the carbon paper is shorter than the typewriting paper. It is not true that the accused was tortured by the guerrillas who forced him to sign Exhibit B. "As evidence of that, his wife and mother-in-law were fed by us. And taken we were taking his statement Judge Geronimo was there as our military adviser." (68-71). Exhibit B was typewritten by Lt. Rufino Lim Cullough. (75).

Exhibit A appears to be an appointment of Antonio R. as captain, issued by Col. J. M. Bays, chief of staff under the authority of Major General E.P. Ellsworth, Pil-American irregular troops, dated July 1944.

Exhibit B reads as follows:

"East Central Luzon Guerrilla Area
"Headquarter, First Infantry

MMD

"Manila, February 13th, 1945

"Subject: Espionage" Case No. 2

"Name-Romeo Apostol, born Oct. 7, 1920, Tondo, Manila, 24 yrs. old Identification-Ht. 68 inch. Wt. 120 lbs. Mongo size black mole below the left eye. Three scars on the left cheek as in diagram below.

"Father-Bibianib Apostol, born in Cebu, died at age of 27 at PGH

"Mother-Margarita Salazar, born in San Miguel, Bulacan, died at San Miguel, Bulacan at the age of 27.

"Wife-Adela Saravia, residing at Sampalucan, Caloocan, Gr. Manila.

"Statement: From November, 1944 to Jan. 1945 my companion in Pagsanjan, Laguna is Mr. Danding Evangelista. In Pagsanjan, Laguna I am the owner of a gambling den. From Aug. 1944 to Oct. 1944 I am a Japanese spy. As a spy I receive no salary but with a compensation of (4) four gantas of rice a week.

The following are Japanese spies at Air Port:

"Member of the Organization Quartered at the Central Hotel

"1.

Baluyot— He is considered a No. 1 spy. I had known him as a smart guy. He use to plant evidences in every accused person they arrested. He oftentimes punished the accused, he got money from them and later on put them to jail. Racketeer.

"2.

Max Santos—Wife Mary, a prostitute. This guy is the one planting evidences in every person they like to catch aside from it he is also the verdugo of the Baluyot's organization. He is always with Baluyot.

"3.

Mike—is the one racketing the relatives of the accused persons promising them that the accused person will soon be set free. One of Baluyot's men.

"4.

Antonio Lee—is also the one racketing the relatives of the accused person by promising them that the accused will soon be set free. He is a Chinese mlstizo.

"5.

Angel Barcelonal—He is as I know is considered a tough confiscator. He confiscate whatever he likes from the pitiful persons by force.

"The following are another group also quartered at Central Hotel:

"6. Alvaro Santos—Residing at Peacock Hotel., Ermita, Manila. A tough guy. He is also the manager of said hotel.

"7. Carding—Chinese mestizo. Racketeer. He is a buy and sell to Macario Bing.

"8. Eleuterio—Racketeer. I cannot give any other information other than I know that he is residing at Calero.

"9. Francisco Alias Frank—A racketeer.

"10. Pacing—Ke is residing at Padre Faura, Ermita, Manila. He is the one who shot a guy by the name of Anong (a guerrilla)

"11. Cortez—Baluyo's men. A Chinese mestizo residing at Oroquieta Manila. A framer who use the act as a pistol buyer, but whenever the pistol is presented to them they arrest the seller.

"12. Buis—A Chinese, manager of Rizal Restaurant. He is a swell guy but also an M.P. member.

"13. Romeo Siojo—Baluyot's men. I have no other information aside from the fact that he is also an M.P.

"The following are another group located at Ellzondo Quiapo, Manila. Tel. No. 2-41-63-

"14. Macario Bing—A Chinese Mestizo and a general merchant (buy and sell). He is the buyer of the stolen goods and he is the one who is directly connected with Fort Santiago. He use to give information to the Japanese. As I still remember when I was convicted at the city jail in the year 1940 I found out two real spy of the Japs. Because I found out that they were the ones who sold the map of the Philippines to the Japanese. They are Ignacio Agbay and Macario Cabrera.

"In two months of my service the above names were known to me personally as Japanese spies in active duty. Baluyot is the head of the Organization and Max Santos is the Verdugo who Inflict corporal punishment to any one arrested by them. I became a Japanese spy to save my life, as I was arrested by a Filipino and three Japanese on or about June 5j 1944 and confined in Fort Santiago, charging me with robbing Japanese truck tires in Leveriza street. We were then caught red handed as we have the truck tires with us. My companion escaped. The cocherito pointed us to the Japanese. He further pointed me to have bullets in my possession, in fact the bullets were found in my pockets. Then I was beaten and tortured by the Japanese in Fort Santiago. When they could not get anything from me, they then set me free on or about June 30, 1944. The whole month of July 1944 after I was set free, I was then put under observation and present myself every other day to the Military Police in Fort Santiago. Then I was placed as body-guard of Macario Bing. On the early part of Sept. 1944 I was given an identification card, in which Japanese characters were written, and a written statement stating that the above named person is permitted to carry fire-arms. But I was not immediately given fire-arms until after two weeks. I was given a .38-automatic then Macario changed it with a 45 caliber automatic. The said revolver was sold by me after I quit my job as Japanese spy. A n incident took place in line with my duty as Japanese spy when one Oscar, identified by me as Ramsey's runner was cornered by Japanese and some of my companion behind the State Theater when they were rounded there. I immediately approached Oscar took his pistol and hid it from the Japanese. I then certify that Oscar is not a guerrilla and is a good peaceful person. Oscar was turned loose and his pistol was returned to him after his release on that same day. A week after his release, he asked for some 45 caliber bullets. I also supplied him. As I had been in the habit of robbing the Japanese as it was mil means of living, I seldom meet Oscar on calle Florentino Torres street and the last time I met him was on or about September, 1944.

"Since I was appointed as Japanese spy I have to look after Macario Bing and watch his enemies but I have never reveal anything against my countrymen. Macario Bing a Buy and Sell men and a Japanese spy give me P100.00 a time and sometime a ganta of rice.

"I hereby accept the above statement as correct and certify that name is my free act and deed.

(Sgd.)

ROMEO APOSTOL

"(Accused)

"Subscribed and sworn to before me by Romeo Apostol who is known to me to be the same person who executed the foregoing statement and acknowledged same as his free act and deed.

(Sgd.)

"Salvador R. Abueg

Captain Co. A 1st Infantry

ECLGA

MMD."

Upon the evidence on record, it appears conclusively that appellant, a Filipino citizen, took active part in the arrest on September 6, 1944, of Antonio Azarraga a person helping the guerrilla, who after having been confined at the Central Hotel was never heard of again. Maria A. Saquitang and Trinidad, sister and wife respectively of Antonio, who testified about the arrest, identified the accused by the mole and scar he has under his left eye. The giving of the sum of P8,000.00 by Maria A. Saquitang at the Central Hotel in the presence of the accused to Jose Paza, one of his companions who promised the release of Antonio, cannot be taken into consideration, no other witness having corroborated Maria A. Saquitang on said fact. Her husband who, according to her, went to the hotel in her company for the purpose of handing the money over to Jose Paza, did not testify.

It has also been conclusively proved by the testimony of Cirilo and Eligio Custodio that the accused was among those arrested. Cirilo and Custodio took him to the Par Eastern University, then to the Rizal Restaurant for a conference with Bandido Gonzales, leader of Japanese spies, and then brought him again to his office, 927 Rizal Avenue, from where he was taken, and that after said Cirilo Custodio had given the amount of P2,000, he was released. These facts were substantially corroborated by the accused himself, although he had tried to make us believe that his participation was simply that of being the driver of the dokar used for the arrest and that the P2,000.00, as consideration for the release of Cirilo Custodio, was handed by the latter over to the accused who immediately delivered it to Bandido Gonzales. The accused testified that he was in the service of Macario Bing, one of the leaders of Japanese spies, and in whose office many Japanese used to enter, and that he was aware of these facts at the time he was working for Macario Bing.

The testimony of the accused and his affidavit Exhibit B have made more conclusive the facts proved by the witnesses for the prosecution that the accused served as a Japanese spy at the time Antonio and Cirilo Custodio were arrested and that their arrest was undertaken to give aid and comfort to the enemy.

The facts proved constitute the crime of treason as punished by Article 114 of the Revised Penal Code.

The trial court sentenced appellant to reclusion perpetua, with the accessories of the law, and to pay a fine of P1,000.00 and the costs, crediting to him one half of the preventive confinement he has suffered. The judgment, being in accordance with law is affirmed.

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

Judgment affirmed.

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