

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUGENIO GUTIERREZ, DEFENDANT AND APPELLANT.

G.R. No. L-4041. August 30, 1952

Ponente: PADILLA, J.

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PADILLA, J.:

Eugenio Gutierrez is charged with treason in an information couched in the following terms:

The undersigned special prosecutor hereby accuses Eugenio Gutierrez of the crime of treason under article 114 of the Revised Penal Code, committed as follows:

That in or about the period comprised between December 8, 1941, and September 2, 1945 in Laguna and other provinces in the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being a foreigner but a Filipino citizen owing loyalty and allegiance to the United States of America and to the Commonwealth of the Philippines, with the intention of betraying his country and the United States of America, did then and there willfully, unlawfully, feloniously and traitorously adhere to their enemy, the EMPIRE OF JAPAN, against which they were then at war, giving said enemy aid and comfort, to wit:

That during the period and in the place above-mentioned, the herein accused, for the purpose of giving and with intent to give aid and comfort to the enemy, then act there acted as its informer or agent, bore arms, did guard duty for the enemy, joined and accompanied Japanese soldiers on patrol in search of and for the apprehension and arrest of guerrillas and in commandeering vehicles, food and other provisions for the use and benefit of the said enemy, helped and took part in recruiting of forced labor for the enemy and finally joined and fled with the enemy in the latter's retreat to the mountains.

CONTRARY TO LAW.

Upon arraignment he entered a plea of not guilty.

It appears that one day in the month of August 1943, a loyalty day program sponsored by the Japanese Military Administration was held in the City of San Pablo. On that occasion Eugenio Gutierrez delivered a speech saying that he knew the Japanese very well because he had stayed in Japan for seven years, extolling their generosity and other virtues and calling them the real emancipators of our country. He further said that the American forces could not return because of the Japanese emplacements in the Pacific basin and for that reason he asked the people to cooperate with the Japanese; that the guerrilla movement was useless and for that reason they should come out of their mountain hide-outs and surrender; and that for several days he was seen going freely around the Japanese garrison and consorting with the Japanese soldiers.

It also appears that on 13 August 1943 a "tupadahan," a cockpit or a place where roosters or cocks are made to fight, was being conducted in the sitio of Awas, barrio of Santo Nino, City of San Pablo, attended by a crowd of about 70 people. The game started at 8 o'clock in the morning and was to continue the whole day. At about 3 o'clock in the afternoon Eugenio Gutierrez, Avelino de Guzman and Ceferino Catipon, armed with revolvers, led a patrol of 20 Japanese soldiers. Upon seeing the patrol approaching the crowd started to run away but someone in

the crowd advised the people not to run away because the Japanese might shoot them. So the crowd stayed and Eugenio Gutierrez tapped Gabriel Austria's shoulder and did the same thing to Pedro Alimagno, to a certain unknown person from Caang and to Felipe Hernandez, one after another, and after the tapping their hands were tied on the back by the Japanese. The four persons whose hands were thus tied were brought to the Japanese garrison in San Pablo. The following day after Gabriel Austria's arrest his wife Florentina Hernandez reported it to his commanding officer, Col. Vicente San Pedro, who told her that he would see what lie could do for him.

On 16 August, the same year, the same three individuals, Eugenio Gutierrez, Avelino de Guzman and Ceferino Catipon appeared at the house of Gabriel Austria and asked his wife Florentina Hernandez where her husband's gun was. As Florentina denied she knew anything about it Eugenio Gutierrez walked to a nearby spot and underneath a heap of dry coconut leaves took forth a gun and showing it to Florentina he asked her whether she would still deny that her husband was a guerrilla. After that the three individuals departed, Gutierrez taking the gun along with him. Florentina Hernandez saw her husband at the Japanese garrison with his hands tied but after that she saw him no more. The information about her husband was that he had been executed. The fate of Pedro Alimagno and the unknown person from Caang is still unknown but Felipe Hernandez was released on the fourth day of his confinement.

The incident of 13 August was testified to by Florentina Hernandez, Francisco Esguerra and Felipe Hernandez. That of 16 August was testified to by Florentina Hernandez and Francisco Esguerra.

It appears further that at about 6 o'clock in the morning of 22 November 1944, while Vicente San Pedro, a guerrilla colonel, was in a shack where he lived with his wife, children and Sotero Alcantara, he saw passing by on the way to the barrio of Santa Isabel, where his camp was located, a detachment of about 90 Japanese soldiers led by one unidentified Filipino and Eugenio Gutierrez whole carried arms. Before that day Reynaldo Catipon hinted to San Pedro that the Japanese might attack his camp. Taking a short cut he rushed to the camp to warn his men of the approach of the Japanese soldiers but hardly had he arrived there when the Japanese soldiers started the attack from three different points. As a result of that attack which was beaten off eight guerrillas and 69 Japanese soldiers were killed. After that skirmish the camp was moved to Tayak.

This incident is testified to by Vicente San Pedro and Sotero Alcantara.

Upon this evidence the Court of First Instance of Laguna found Eugenio Gutierrez guilty of treason and sentenced him to suffer reclusion perpetua and to pay a fine of P20,000 and costs. He has appealed.

Counsel contends that as the information does not plead specific acts constituting treason, the introduction and admission of evidence to prove such acts, despite objection to it, is a reversible error. Under section 5, Rule 106, the information filed in this case is sufficient. Granting, however, that it is insufficient or defective, section 2, Rule 113, points out the way to object to a defective or insufficient information. It must be by a motion to quash. A defendant in a criminal case who believes or feels that he is not sufficiently informed of the crime with which he is charged and not in a position to defend himself properly and adequately could move for specifications. In the instant case the defendant moved to quash the information on the ground of amnesty but the motion was denied. Instead of moving for specifications, his counsel objected to the introduction of evidence showing specific acts which constitute the crime of treason with which he is charged. Failure to move for specifications or for the quashing of the information on any of the grounds provided for in the Rules of Court (section 2, Rule 113) deprives him of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms but which sufficiently charges the defendant with a definite crime. Furthermore, counsel for the defendant cross-examined the witnesses for the prosecution on such specific acts. So it may well be said that he was not taken by surprise nor was he deprived of his opportunity to confront or face

and crossexamine the witnesses presented against him. The appellant's contention, therefore, on this point is not well taken.

The appellant admits he is a Filipino citizen. He does not deny the arrest of four persons on 13 August 1943 and the skirmish on 22 November 1944 between the guerrillas and the Japanese detachment, but claims and insists that he was not present on those two occasions and invokes the testimony of Nemesia Alvarez, the mother of Gabriel Austria, one of the arrested persons, and Hospicio Cornista, both of whom testified that they were present in the "tupadahan" on 13 August 1943 but did not see the appellant. But granting that both witnesses told the truth, yet because of the "commotion" caused by the approach of the Japanese patrol, it was possible, nay, even probable, that both of them did not see the appellant and his other Filipino companions leading or accompanying the Japanese patrol who came to the sitio of Awas where "topadas" were being conducted. As a matter of fact Nemesia Alvarez testified that she could not "tell how many were arrested, because the people scam-pered" (pp. 102, 105-106, t. s. n.) and "because we were afraid we left the place at once" (p. 103, t. s. n.). She said the arrest took place at 3 o'clock in the morning (p. 102, t. s. n.) and left the "tupadahan" at 11 o'clock in the morning (p. 103, t. s. n.).

Appellant's stay in Japan for seven years during which he learned the Japanese language might have contributed, led and prompted him to join the Japanese in their attempt at suppressing the resistance movement by apprehending the guerrillas so that peace and order would be restored. His own daughter Melba Gutierrez attested to the fact that her father was pro-Japanese, And although she later on testified that she had been made to sign the affidavit while she was sick in her aunt's (Pacita Catipon's) house where she was living then, the evidence shows that Melba had voluntarily gone to the People's Court building where said affidavit was prepared and signed by her. In one of the letters written to her aunt, Pacita Catipon, Melba Gutierrez charged her father with causing the arrest and disappearance of Reynaldo Catipon, a half-brother of her mother and aunt Pacita.

The claim that Eugenio Gutierrez, as physician, together with Francisco Morelos, Julian Pangilinan and Jovita Pangilinan, went to the camp of Col. Vicente San Pedro in Tayak to treat wounded guerrillas on 22 November 1944 is denied by San Pedro.

The evidence does not disclose any reason why the witnesses for the prosecution would point to the appellant as the one who tapped the shoulders of the four persons arrested and brought to the Japanese garrison in the City of San Pablo on 13 August 1943 and who was present and led a detachment of 90 Japanese soldiers which engaged the guerrillas in a skirmish on 22 November 1944 if it is true that he was not present on those two occasions. The testimony of Col. San Pedro to the effect that had the appellant fallen into his hands he would have shot him is not a sufficient motive to cause San Pedro to pervert the truth. It was a feeling of righteous indignation for the treasonous activities and acts of the appellant.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Pablo, Bengzon, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

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