

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
AMADO MENOR, DEFENDANT AND APPELLANT.***G.R. No. L-2237. January 31, 1950*

Ponente: TORRES, J.

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Amado Menor was charged before the People's Court with the crime of treason on five counts set forth in the information. He entered a plea of not guilty and the prosecution, having abandoned counts Nos. 1, 3 and 5, submitted evidence in support of counts Nos. 2 and 4 by the testimony of at least two witnesses for each count. The People's Court found him guilty of treason under those counts and, taking into consideration the attendance of the mitigating circumstance of lack of education, sentenced him to 14 years, 8 months and 1 day of reclusion temporal, with the accessory penalties of the law, to pay a fine of P7,000 and the costs. Amado Menor was likewise credited with one-half of the preventive Imprisonment he has undergone.

He appealed from said judgment and, in this instance, his counsel de oficio assails the correctness of the judgment of the People's Court by alleging that the evidence adduced by the prosecution does not justify the conviction of the accused of the crime of treason charged in counts Nos. 2 and 4 of the information, and that the conclusion that all the elements of the crime of treason under Article 114 of the Revised Penal Code exist in this case, is unfounded, because "only one was even doubtfully proven."

Upon perusal of the record of this case We gather that this appellant, a Filipino citizen, has, according to the prosecution, committed the following acts.

As regards count 2. On December 1, 1944, with the active cooperation of a group of Filipinos, among whom was Amado Menor, the Japanese established a "military cordon" in the barrio of Tipas, municipality of Taguig, province of Rizal, in order to prevent the inhabitants from leaving the place. They gathered . all the inhabitants, particularly the men, and caused them to parade before a group of hooded persons, known as "magic eye." As each person was caused to pass before the "magic eye," the latter, by a nod of the head, indicated to the Japanese whether or not a particular individual was a guerrilla or connected therewith. Those who were not pointed out as guerrillas were sent to the Catholic church and later released, while those who were designated to have connections with the guerrillas were sent to the Aglipayan church, maltreated, loaded in trucks and then taken to Fort Santiago in Manila or to other unknown destinations. After this, the group of persons who were classified as guerrillas were never seen or heard from thereafter.

The above facts were testified to by Rosa Salazar, Conrado Bonifacio, Anselmo Eustaquio, Cirila Cruz, Lucila Mario sea, Mateo Gregorio, Avecinia Sumulong, Julita Gregorio, Rosario Nazario, Alumna Trinidad, Patricia Dingdingbayan, Margarita Bunye, Luis Eustaquio, Antonio Rodriguez, Maria Umali, Rafael Saña, Felicisimo Santos, Felisa Ocampo, Maximo Cruz, and Ricardo Angel. By their testimonies the prosecution has thus overwhelmingly established the charge made by the prosecution in count No. 2 that this defendant) by actively cooperating with and executing the unlawful designs of his Japanese masters, not only adhered to the enemy but

with positive acts gave the Japanese aid and comfort in carrying out their plans of destroying the underground resistance movement and thus consolidate their occupation of the country.

The evidence submitted by the prosecution in support of count No. 4 shows that Ernesto Buenviaje, then a guerrilla, on December 30, 1944, came from his mountain hideout to visit his family in the barrio of Sagad, Pasig, Rizal. His wife Mercedes Mendiola warned him that he was being hunted on account of his guerrilla activities, whereupon Buenviaje and his wife hurriedly left their house and took refuge in the house of their cousin Zacarias, in the barrio of Caniogan, Maybunga, Pasig, Rizal. They had been in that place only a few minutes when the accused Amado Menor, accompanied by Brigido Cruz, Agaton Martin, Santiago Damian, Modesto Ferrer, Leonardo Marquez, and a Japanese military police, arrived in search for Ernesto Buenviaje. The accused Amado Menor pointed his gun at Buenviaje, -while his companions dragged their victim downstairs, and there tied and thereafter taken away. Since then nothing was heard of Ernesto Buenviaje.

Mercedes Mendiola, wife of Ernesto Buenviaje, said that on December 30, 1944, her husband came to visit her. She told him to go away because he was wanted; she accompanied him to the house of his cousin and soon after they arrived at the place in barrio Caniogan, Maybunga, Pasig, Amado Menor, appellant herein, accompanied by Brigido Cruz, Agaton Martin, Santiago Damian, Modesto Ferrer, and Leonardo Marquez came looking for her husband. Amado Menor pointed his gun at Ernesto Buenviaje, while his companions dragged her husband downstairs and tied him. She could not exactly remember the number of Japanese military police accompanying Amado Menor and his Filipino companions, but the Japanese surrounded the house while the Filipinos went upstairs to get her husband, When Mercedes Mendiola was asked by the prosecution to identify and point out this appellant, she, without hesitation, pointed her fingers at Amado Menor among the various other accused whose cases were also being tried.

In corroboration of the testimony of Mercedes Mendiola, the prosecution also placed on the stand Alfonso Benito and Patricio Benito who saw Ernesto Buenviaje pass by their house in Sagad, Pasig, Rizal, with his hands tied and escorted by the accused and his above named companions.

In an effort to explain his conduct in the premises, appellant alleged that when the Japanese conducted the zoning in. question, he was forced by them to row their banca which took them to the place of the zoning. While he claims that the Japanese compelled him to row for their banca, he says nothing, however, regarding his active participation in the zoning in question. The fact is that, according to the evidence, this appellant not only rowed the banca for the Japanese, but also took active part in establishing the military cordon and in gathering the inhabitants of the barrio of Tipas, Taguig, Rizal in front of the Catholic churchyard. Moreover, the evidence further shows that he stood guard over the persons who were detained at the seashore in Tipas, Taguig, Rizal and actually intruded in the house of Buenaventura Cruz, also in Tipas, Taguig, Rizal and herded away therefrom the many inhabitants of the house. It is therefore obvious that, in spite of his alleged forced participation in the execution of the crime charged against him, it is very clear that he voluntarily took part in the conduct of the zoning, and irrespective of whether he took active part in all the overt acts described above, he "assumed full responsibility for all that the party did." (People vs. Beato, 44 Off. Gaz., 4838.)

There is no dispute as to the facts which support count No. 4. It has been clearly proven that he took part in the arrest of Ernesto Buenviaje, a guerrillero. It is very significant that Flavio Bernauro, testifying for this appellant stated that Ernesto Buenviaje was arrested by the gang of which Amado Menor was a member on December 30, 1944. As regards appellant's participation in the arrest of Buenviaje the testimonies of Patricio Benito, Mercedes Mendiola and Alfonso Benito are positive that appellant clearly took part in the arrest of Buenviaje.

The active participation of this appellant in the zoning in question and the subsequent arrest of Ernesto Buenviaje

and his disappearance and possible death by killing, undoubtedly constitutes the adherence and giving aid and comfort to the enemy, which constitutes the element of treason under Article 114 of the Revised Penal Code. It cannot be denied that the two counts under which this appellant has been convicted have been sufficiently proven and that the two-witness requirement of the law have been more than sufficiently complied with by the prosecution.

The People's Court, in finding him guilty of having violated Article 114 of the Revised Penal Code, took into consideration the attendance of the mitigating circumstance of lack of instruction of this defendant, with no aggravating circumstance to offset the same, and therefore imposed the penalty prescribed by said Article 114 in its minimum period, that is, reclusion temporal. We are not unmindful of the long-established doctrine of this Court that in the consideration of the circumstance of lack of education of the culprit, under Article 11 of the old Penal Code (now Art. 15 of the Revised Penal Code), the trial court has ample opportunity to estimate the degree of intelligence, instruction, appearance and demeanor of the accused and this Court will not interfere in the exercise of such discretion by the trial court (U.S. vs. Bundal, 3 Phil. 89; U.S. vs. Montecillo, 11 Phil. 109; People vs. Pado, 19 Phil. 111; People vs. Lampacan, 19 Phil. 185; People vs. Bangug, 52 Phil. 87; U.S. vs. Elicanal, 35 Phil. 209).

However, in People vs. Capitania (49 Phil., 475), this Court, departing from said rule, stated that in that particular case the accused had shown sufficient intelligence to be entrusted with the possession of a revolver, indicating a degree of intelligence and instruction beyond that of persons who are entitled to the benefit of said circumstance. In the case at bar, the acts executed by this appellant show that he is in possession of that degree of intelligence as to have capacitated him to act as an able and efficient informer of the Japanese who were bent on disrupting and destroying the guerrilla underground movement which was the main obstacle to the accomplishment of the occupation of these islands. The subservience of this defendant, and his co-members of the Makapili, and those of his ilk, no doubt greatly enhanced the chances of the Japanese to carry out their plan of domination of the Philippines through the aid and cooperation of Filipinos who played traitors to their country. The trial court did not state the reason for the consideration of the circumstance in question, and we are more inclined to think that in this particular instance the mitigating circumstance of lack of instruction should not be entertained.

In view of the above considerations, and for lack of any modifying circumstance, the penalty that should be and is hereby imposed upon this appellant is the medium period of the penalty of reclusion temporal to death prescribed by the law, which is reclusion perpetua.

With such modification, the judgment appealed from is otherwise affirmed, with costs.

Moran, C. J., Ozaeta, Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

Feria, J., no part.

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