

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLE, VS. MARCELO GOROSPE, DEFENDANT AND APPELLANT.

G.R. No. 2317. December 12, 1951

Ponente: TUASON, J.

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TUASON, J.:

Charged with treason on four counts, the appellant was found guilty on Counts 2 and 3 by the Second Division of the People's Court and sentenced to 12 years and one day of reclusion temporal and to pay a fine of P1,000.00 and the costs. There is no finding or judgment on Counts 1 and 4 and these will be left out in this decision.

Following is a digest of the evidence for the prosecutions

Count 2. On the evening of December 10, 1944, the appellant, an Aringay, La Union, municipal policeman, summoned Cipriano Apolinar, Bruno Ronquillo, Severo Roldan and three other inhabitants to the town cemetery and commanded them to dig three graves, which they did in his presence. After the graves had been made, Liling Mapalo and Valeriano Parentela, also policemen, arrived with four prisoners whose hands were tied behind their backs. Apolinar, Ronquillo and Roldan were unable to recognize the prisoners except one, Dominador Dulay. The accused made each of two prisoners stand on the edge of each of two of the graves and the other two prisoners; on the edge of the third grave; and, telling them they were guerrillas, he stabbed them one by one in the back with a bolo, thereby shoving them into the pits. Thereafter the graves were refilled with earth on defendant's orders.

Count 3. On December 15, the same witnesses were again ordered by the defendant to dig a grave at the cemetery, while Parentela and Mapalo brought Federico Abellera, hands bound at the back, when the work had been finished. Like the first mentioned victims, Abellera was placed on his feet close to the grave, face forward, by the accused, and once in that position, he was pierced in the back with a sharp bolo and Abellera tumbled into the hole. Seeing that Abellera was still alive, the appellant jumped after him and gave a finishing blow. Abellera, like those slain five days before, was suspected of being a guerrilla.

These killings, testified to by three eye-witnesses, constituted overt acts. In addition to the grave diggers' testimony that Gorospe told the victims they were to be executed because they were guerrillas, proof of adherence to the enemy, which is not comprehended by the two witness principle, was supplied by Federico Galano.

Galano swore that he was seized on December 6 by three policemen in barrio Sto. Rosario, Aringay, and taken to the municipal building, thence to the Japanese garrison located at the approach of the bridge. When the witness arrived with his captors in the garrison, Mariano Carreon and Guillermo Mabanta were already there as prisoners. The next day Dominador Dulay was brought in by a policeman and two civilians whom Galano did not know, and on the third day, Querubin Bautista and Gerson Amigo were added to the number of persons under arrest. These prisoners were maltreated by policemen from Agoo and also by Marcelo Gorospe. The accused beat them up because they would not admit that they were guerrillas, Gorospe, according to Galano, told the prisoners: "You confess, I know that you are guerrillas and you are the ones who killed Sevilla." Galano himself, he declared, was maltreated by Gorospe and several other policemen and by Japanese soldiers, charged with being in the

underground movement.

The defendant's testimony, which is very brief, is practically limited to a general denial that he liquidated the guerrilla suspects above mentioned. This denial squarely put in issue the prosecution witnesses' credibility.

Simple and uncomplicated, the evidence needs no detailed discussion. It is enough to say that the People's Court found beyond doubt that the defendant committed the acts narrated by the witnesses, and that the record discloses no circumstance of any weight which warrants reversal or modification of the lower court's finding. Defense counsel himself does not seem to dispute the truth of the accusation that the defendant slew Abellera, Dulay and three others. The so-called discrepancies and inconsistencies on which appellant's brief dwells, relate to what the Government witnesses said were Gorospe's remarks to the deceased, namely, that they were guerrillas; and it would seem that the point the defense wants to make is, not that the defendant did not do the slaying but that the elements of treason have not been shown.

If this is the underlying aim of the argument, the appellant does not stand to profit by the effort. Rather the contrary. Stripped of treasonable intention, the killings would be five plain murders for each of which there should be a separate penalty.

However, we are satisfied that, as on the fact of killing, Galano told substantially the truth when he stated that the appellant frequented the Japanese garrison and had a part in rounding up the suspects; and that Gorospe maltreated them in the Japanese headquarters. We are also satisfied from the other witnesses' testimony that the defendant informed the prisoners that they were to be executed because of alleged subversive activities in which they had been engaged. That there is not sufficient evidence those unfortunate men were in fact guerrillas, as counsel stresses, is immaterial.

The court below found the mitigating circumstance of lack of instruction.

The defendant had finished third grade, and the fact that he was a regularly appointed member of the police force and the fact that of all the policemen who intervened in the arrest and execution of the five deceased he played the leading and most conspicuous role, are eloquent refutation of the court's finding on the degree of the appellant's education and intelligence. The defendant's stoicism to our mind was not a manifestation of mental weakness or infirmity but rather of the strong will and cool head that he had demonstrated by his conduct. Did he not chide one of his fellow-policemen for his refusal or reluctance to act the part of executioner? and was it not he who recruited grave diggers and supervised their work besides performing the horrible business personally?

The punishment assessed in the appealed decision is therefore too light. It should be reclusion perpetua and this is the penalty, besides P1,000.00 fine, that is hereby imposed, with costs.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Reyes, and Jugo, JJ., concur.

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