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SECOND DIVISION

[G.R. No. L-23465. October 31, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CASTO ALEJANDRINO *alias* "TORRES" *alias* "GUAN YEK" *alias* "GY" *alias* "G.I" *alias* "TATANG,"** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; TWO-WITNESS RULE; NOT VIOLATED IN CASE AT BAR.— Nor is there any substance to the allegation in the last two errors that the two-witness rule was violated. As was pointed out in the able decision of the then Judge Vasquez, the conference of the Huks at Telabastagan, a barrio near Angeles, Pampanga, in the first week of March, 1958 was testified to by prosecution witnesses Ricardo Mendoza, Juan Singian, Melencio Guevarra and Exequiel Santiago. Equally so, two witnesses, Lazaro Esteban and Rufino Aqueza, who admitted that they were former Huks declared that they were assigned as security guards in the conference held at Biak-na-Bato in November, 1957 and that appellant Casto Alejandrino was among those present at such conference. It lasted about two days. As far as the encounter between the Huks and the government forces at Telabastagan in the last week of March, 1958 is concerned, the evidence of record discloses the testimony of prosecution witnesses Ricardo Mendoza, Juan Singian, Melencio Guevarra and Exequiel Santiago. There is, therefore, proof, to quote from the decision "that the accused led one of the groups of Huks that participated in that encounter that the exchange of shots with troops lasted for about thirty minutes; that the accused carried two firearms on that occasion, namely, an automatic carbine and a German Luger pistol which he used in firing in the direction of the government forces; and that the accused exhorted his men to fight."

2. ID.; EVIDENCE; FINDINGS OF FACTS OF TRIAL COURT; ACCORDED RESPECT.— It bears repeating that this Court, in the language of *People v. Mahinay*, "has consistently adhered to the doctrine of according respect to findings of fact of the trial judge, unless it could be shown that a fact or circumstance has been overlooked or has been misinterpreted."

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APPEARANCES OF COUNSEL

Solicitor General Arturo A. Alafriz, Assistant Solicitor General Pacifico P. de Castro, Solicitor Bernardo P. Pardo and *Special Prosecutor Buenaventura B. Fernandez* for plaintiff-appellee.

Marcial G. Natividad & Ahmed Garcia for defendant-appellant.

D E C I S I O N

FERNANDO, *C.J.*:

A decision by the then lower court Judge Conrado V. Vasquez, subsequently a Justice of the Court of Appeals, now retired, convicting Casto Alejandrino for violation of the Anti-Subversion Act,[1] is assailed in this appeal. The principal contention is that such a statute is unconstitutional for being violative of the *ex post facto* and freedom of speech and assembly guarantees. Our decision in *People v. Ferrer*[2] upholding its validity and foreclosed that question. The last two errors assigned in the appeal deal with the alleged failure of the evidence to demonstrate the guilt of appellant beyond reasonable doubt. A careful scrutiny of the decision as well as the records of the case easily reveals the weakness of such a submission, the evidence being more than sufficient to demonstrate the culpability of appellant. Affirmance is thus indicated.

The facts may be culled from the well-written decision of the then Judge Vasquez: "The evidence presented in this case consisted almost wholly of that presented by the prosecution. After the prosecution rested, the accused waived the presentation of any testimonial evidence in his behalf, and rested the case upon presentation and admission of Exhibits 1 to 6. The inquiry in this case becomes, therefore, a determination of whether or not the prosecution has complied with the two-witness rule

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[1] Republic Act No. 1700 (1957).

[2] L-32613-14, December 27, 1972, 48 SCRA 382.

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requirement for conviction of the accused for the offenses with which he is charged in the above quoted information. Insofar as the membership of the accused in the Communist Party of the Philippines is concerned, the record contains an express admission by the accused of such membership. In one of the hearings of this case held on February 15, 1962, the accused asked the Court's permission to read a written petition for postponement which he was allowed to do. The written petition was then submitted and made a part of the record. Although the accused refused to sign the same, it was marked as Exhibit C for the prosecution and adopted as Exhibit 2 for the defense. It reads in part: 'I am asking for the postponement of the trial until after the Supreme Court renders decision on the constitutionality of Republic Act 1700. If the Act is voided the case is dismissed. On the other hand, if the constitutionality of Republic Act 1700 is upheld then all that this court had to do is pass judgment because *I am not denying my membership in my Party which this Court could interpret as the same party that is outlawed by Republic Act 1700.* In either case, all concerned will be saved the trouble of a long trial.' * * * It could thus be seen from the above document presented by the accused himself that he admits his membership in the party which was outlawed by Republic Act No. 1700. Considering that this manifestation was made on February 15, 1962, it also constitutes an admission that such membership was after the effectivity of Republic Act No. 1700, which was approved on June 20, 1957. Said membership was also shown by the testimonies of a host of witnesses presented by the prosecution. The overt acts committed by the accused on which at least two witnesses of the prosecution testified to are the following: (1) The conference of the Huks at Telabastagan, a *barrio* near Angeles, Pampanga in the first week of March, 1958; (2) the armed encounter between government troops and the dissident group headed by the accused in the same place in the last week of March, 1958; and (3) the conference of the Huks held in barrio Biak-na-Bato, San Miguel, Bulacan, in mid-November of 1957. The conference of the Huks in the sugarcane fields at Telabastagan in the first week of March, 1958 was testified

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to by prosecution witnesses Ricardo Mendoza, Juan Singian, Melencio Guevarra and Exequiel Santiago. They testified that they were in group of Huks that stayed at barrio Telabastagan; that in the first week of March, 1958, a conference was held thereat; that present in the conference were the accused who presided the same, Pedro Taruc, Linda Bie, Davidson, Sumulong, Ignacio Dabu, and others; that the conference lasted three or four days; and that these witnesses acted as guards around the place where the conference was held. The conference at Biak-na-Bato, San Miguel, Bulacan, in November of 1957, was testified to by prosecution witnesses [Lazaro] Esteban and Rufino [Aquesa] who both declared that they were former Huks; that they were assigned as security guards in the conference held at Biak-na-Bato in November, 1957; that present in the conference were [Casto] Alejandrino, Pedro Taruc, Linda Bie, Davidson, and others; and that the conference lasted about two days. The encounter between the Huks and government forces at Telabastagan in the last week of March, 1958 had been testified to by prosecution witnesses Ricardo Mendoza, Juan Singian, Melencio Guevarra and Exequiel Santiago. They similarly declared that the accused led one of the groups of Huks that participated in that encounter that the exchange of shots with government troops lasted for about thirty minutes; that the accused carried two firearms on that occasion, namely, an automatic carbine and a German Luger pistol which he used in firing in the direction of the government forces; and that the accused exhorted his men to fight."[3]

As noted at the outset, the judgment appealed from must be affirmed.

1. There is no need to discuss anew the question of the validity of the Anti-Subversion Act. The very extensive opinion of the late Chief Justice Castro, both when the case was first decided and subsequently in the motion for reconsideration, had explained in detail why such a statute is not susceptible to the reproach of its being violative of the constitutional guarantees

[3] Decision, Appendix to Record on Appeal, 99-103.

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of prohibiting an *ex post facto* legislation as well as the respect to be accorded freedom of expression and freedom of peaceable assembly. While the writer of this opinion dissented from the decision of the Court, it must be respected, constituting as it does the express and manifest will of this Tribunal.[4]

2. Nor is there any substance to the allegation in the last two errors that the two-witness rule was violated. As was pointed out in the able decision of the then Judge Vasquez, the conference of the Huks at Telabastagan, a *barrio* near Angeles, Pampanga, in the first week of March, 1958 was testified to by prosecution witnesses Ricardo Mendoza,[5] Juan Singian,[6] Melencio Guevarra[7] and Exequiel Santiago.[8] Equally so, two witnesses, Lazaro Esteban[9] and Rufino Aqueza,[10] who admitted that they were former Huks declared that they were assigned as security guards in the conference held at Biak-na-Bato in November, 1957 and that appellant Casto Alejandrino was among those present at such conference. It lasted about two days. As far as the encounter between the Huks and the government forces at Telabastagan in the last week of March, 1958 is concerned, the evidence of record discloses the testimony of prosecution witnesses Ricardo Mendoza,[11] Juan Singian,[12] Melencio Guevarra[13] and Exequiel

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[4] The motion for reconsideration was denied on April 30, 1974 as reported in 56 SCRA 793. The writer of this opinion dissented anew. Cf. *Lava v. Judge de Veyra*, L-23761, September 4, 1979. As pointed out in the concurring opinion of Justice Teehankee in this case, when the motion for reconsideration was denied, he filed a concurring and dissenting opinion.

[5] T.s.n., Session of January 26, 1961, 9.

[6] *Ibid.*, Session of February 23, 1961, 9-10.

[7] *Ibid.*, Session of March 23, 1962, 4.

[8] *Ibid.*, Session of July 27, 1962, 19-20.

[9] *Ibid.*, Session of August 24, 1962, 8-9.

[10] *Ibid.*, Session of September 28, 1962, 5-6.

[11] *Ibid.*, Session of January 26, 1961, 9-10.

[12] *Ibid.*, Session of February 23, 1961, 10-12.

[13] *Ibid.*, Session of March 23, 1962, 5.

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Santiago.[14] There is, therefore, proof, to quote from the decision "that the accused led one of the groups of Huks that participated in that encounter that the exchange of shots with troops lasted for about thirty minutes; that the accused carried two firearms on that occasion, namely, an automatic carbine and a German Luger pistol which he used in firing in the direction of the government forces; and that the accused exhorted his men to fight."[15]

3. The futility of this appeal is thus obvious. The well-written opinion of the then Judge Vasquez cannot be assailed for having been erroneous in any respect. With the refusal of appellant to present testimony on his behalf, the case had to be decided on the evidence supplied by the prosecution. The outcome was therefore predictable. The testimony thus offered sufficed to prove the guilt of the accused beyond reasonable doubt. The stage of moral certainty was reached. The constitutional presumption of innocence had been overcome. It bears repeating that this Court, in the language of *People v. Mahinay*,[16] "has consistently adhered to the doctrine of according respect to findings of fact of the trial judge, unless it could be shown that a fact or circumstance has been overlooked or has been misinterpreted."[17] Certainly then, there is no basis for overturning the decision of the lower court.

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[14] *Ibid.*, Session of July 27, 1962, 19-21.

[15] Decision, Appendix to Record on Appeal, 103.

[16] L-31654, November 22, 1977, 80 SCRA 273.

[17] *Ibid.*, 276. The following cases were cited: *United States v. Losada*, 18 Phil. 90 (1910); *People v. De Otero*, 51 Phil. 201 (1927); *People v. Cristobal*, 110 Phil. 741 (1961); *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 72 SCRA 259. Cf. *People v. Macaraeg*, L-32806, Oct. 23, 1973, 53 SCRA 285; *People v. Cudalina*, L-34969, April 29, 1975, 63 SCRA 499; *People v. De la Victoria*, L-30037, June 27, 1975, 64 SCRA 400; *People v. Ordonio*, L-33829, Dec. 19, 1975, 68 SCRA 397; *People v. Sarile*, L-37148, June 30, 1976, 71 SCRA 593; *People v. Berame*, L-27606, July 30, 1976, 72 SCRA 184; *People v. Alonso*, L-32163, Oct. 19, 1976, 73 SCRA 483; *People v. Velasco*, L-31920, Oct. 29, 1976, 73 SCRA 574.

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WHEREFORE, the judgment appealed from is affirmed. With costs.

Barredo, Antonio, Concepcion Jr., Santos, and *Abad Santos, JJ.*, concur.

Aquino, J., concurs in the result.

SECOND DIVISION

[G.R. No. L-29414. October 31, 1979]

THE PROVINCIAL BOARD OF AGUSAN, and FELIX M. ZAMAR, SR., as Provincial Treasurer of Agusan, *petitioners, vs.* **PASTOR D. AGO and HON. MANUEL LOPEZ ENAGE as Judge of the Court of First Instance, Br. II of Agusan, and MACARIO C. CONDE, as Provincial Sheriff of Agusan,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; MOTION FOR RECONSIDERATION; WHEN CONSIDERED *PRO FORMA*.— As will be seen, the herein petitioners did not point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions as required under Section 2, Rule 37 of the Rules of Court, but merely pointed out what the trial court had allegedly failed to consider in arriving at its judgment. This Court has ruled in many instances that motions for new trial (motion for reconsideration) on the ground that the judgment is contrary to law, without pointing out the supposed defects as required under Section 2 of Rule 37 are *pro forma* and do not interrupt the running of the period for the perfection of appeals. It results that the motion for reconsideration filed by the herein petitioners is a *pro forma* motion.