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lots a wire fence and placed armed men on the premises to make the ouster of the respondents and their laborers effective. After a careful examination of the record before us, we find said conclusions to be correct. It is significant that the petitioners admit the existence of a contract in favor of the respondents for the purchase of the lots in question, and that said contract preceded the alleged deeds of sale executed by the Realty Investments, Inc. on December 28, 1946, in favor of the petitioners. More significant still is the stubborn fact that there are actually on the lots four houses of strong materials about to be finished, the construction of which by the respondents in December, 1946, is not denied by the petitioners. These circumstances strongly militate against petitioners' pretense that they had ever been in peaceful possession of the lots prior to that of the herein respondents.

The legal question that arises is whether the issuance of a writ of preliminary mandatory injunction, such as that ordered by the respondent Judge, is proper, in view of the established rule that injunction generally will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law. (*Rodulfa v. Alfonso*, G. R. No. L-144, promulgated February 28, 1946, 42 O. G. 2439, citing earlier cases.)

We are of the opinion that the respondent Judge did not gravely abuse his discretion in granting the injunction. We hereby reiterate the general rule pointed out in *Rodulfa v. Alfonso*, *supra*, but we consider the case at bar as not falling thereunder. Rather, it is a situation contemplated in the following passages of said decision:

"But the fact that the petitioner might have been in sporadic possession of all or some of the lands in question, in the last months of 1945, having entered the same, by means of threats and intimidation, will not prevent the issuance of a writ of preliminary injunction in favor of herein respondent, as defendant in said civil case No. 8939, in whose name said lands had been registered under the Torrens System, and who has been in possession thereof, during the last 20 years, as said possession of the petitioner is completely and absolutely illegal.

"The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last actual peaceable uncontested *status* which preceded the pending controversy. (*Frederick vs. Huber*, 180 Pa., 572; 37 Atl., 90.)

"In cases involving the issuance of a writ of preliminary injunction, the exercise of sound judicial discretion by the lower court will not generally be interfered with; and the refusal of the trial court to permit the plaintiff in this case to file a counterbond cannot be considered as an abuse of sound judicial consideration, bearing in mind particularly the admission made by the plaintiff himself that sometime in 1945, or thereabouts, he occupied and took possession of all or some of the lands in question, without waiting for the final de-

cision of the competent courts in said civil case No. 8930. It is a general principle in equity jurisprudence that 'he who comes to equity must come with clean hands.' (*North Negroes Sugar Co. vs. Hidalgo*, 63 Phil., 664.)" *Rodulfa v. Alfonso*, *in pra.*

The action of the petitioners in encircling the lots in question with a wire fence and in guarding the place, may at most be considered as a mere interference with or disturbance of respondents' possession and, as such, is even of less extent than the possession admittedly held by the petitioners in the case of *Rodulfa v. Alfonso*, *supra*. We have therefore, a much better instance in which a preliminary injunction may be availed of "to preserve the *status quo* until the merits can be heard." Said *status quo* is the "last actual peaceable and uncontested" possession of the herein respondents which preceded Civil Case No. 129, and certainly not the guarded possession of the petitioners. The necessity of restoring the parties in this case to their former situation is called for by the fact that the suspension of the construction of respondents' houses may result in a much greater damage than the granting of the injunction upon the filing of a bond which can amply indemnify the herein petitioners.

The injunction was granted by the respondent Judge almost two months after the filing of the complaint, and only after the parties had argued the point in open court and after considering the verified pleadings with their supporting papers. Again, the petitioners were able to file a motion for reconsideration, which was also denied by the respondent Judge after taking into account all the considerations invoked by the petitioners. We are thus unable to hold that the respondent Judge acted hastily in the matter and without a hearing. Of course, it was not yet necessary for the respondent Judge to require and receive such evidence as may be sufficient to settle the question of title, which should be decided after the trial on the merits. It is needless to state in this connection that the complaint in Civil Case No. 129 clearly makes out an action to quiet title.

Wherefore, the petition is hereby dismissed with costs against the petitioners. So ordered.

Feria, Pablo, Perfecto, Hilado Bengzon, Briones, Padilla and Tanson, JJ., concur. Moran, C.J., concurs in the result.

V

People of the Philippines, plaintiff-appellee, vs. Pilar Barrera de Reyes, defendant-appellant, G.R. No. L-397, November 23, 1948, PERFECTO, J.

CRIMINAL LAW; TREASON; EVIDENCE; WITNESSES; INHERENTLY IMPROBABLE OR CONTRADICTORY TESTIMONY OF WIT-

NESSES.—Although there were two or more witnesses who testified to an overt act of treason, if their testimonies are contradictory in themselves or inherently improbable, the Court cannot hold that the guilt of the accused has been established beyond reasonable doubt.

Atty. Enrique Ramirez for the defendant-appellant.

The Solicitor General for the plaintiff-appellee.

DECISION

PERFECTO, J.:

Pilar Barrera de Reyes appealed against the lower court's judgment finding her guilty of treason and sentencing her, in accordance with the provisions of Article 114 of the Revised Penal Code, to *reclusion perpetua*, with the accessories of the law and to pay a fine in the amount of ₱10,000.00 and the costs.

The prosecution accuses her of having caused, by pointing them to Japanese officers and soldiers, the arrest of three Filipino guerrilla suspects, Pelagio Cabutin, Ignacio Mejia and Alejandro Tan, who, after having been apprehended inside the air raid shelter where they were hiding inside the ruins of the Santa Rosa College, Intramuros, Manila, were tortured and then brought to Fort Santiago where they were killed, the treasonous denunciation having been committed on February 15, 1945.

Two witnesses, Modesta B. Son and her daughter Lourdes B. Son, testified for the prosecution to show appellant's responsibility for the arrest, torture and killing of the three victims of Japanese brutality. According to the two witnesses, on February 5, 1945, all the male residents in Intramuros, about 400 of them, were taken by the Japanese and herded in Fort Santiago, while all the females, about 300, and the children, were herded inside the ruins of Santa Rosa College. The three victims, members of a guerrilla outfit in Laguna, who went to Intramuros to visit their relatives and observe the activities of the Japanese, were among the males who were rounded up, tied, tortured and brought to Fort Santiago on February 5, 1945. On February 9, 1945, they were able to secure permission from a Japanese lieutenant to go out for the purpose of visiting two girls, Rosing and Magdalena, Cabutin's nieces, who were among the women herded in the Santa Rosa College compound. (The statement in the government's brief that the three victims managed to escape is not based on any testimony on record.) Once inside the ruins, Cabutin and companions hid from the Japanese, dug an air raid shelter, covered it with wood and earth, and on top built a shack for Rosing and Magdalena to stay in. The accused, who was living in another shack with

her child and a maid and wherein her husband, a Japanese officer, passed all night from 6 p.m. to 6 a.m., used to make rounds to spy on males hiding in the compound, pretending to barter foodstuffs. On the morning of February 15, 1945, she discovered the presence of the three victims and reported the fact to her husband who, in turn, called three Japanese soldiers and all of them, including the accused, went to the hiding place and the three Japanese soldiers apprehended the three victims and tortured them. The accused told the Japanese officer to take the three guerrillas and bring them to Fort Santiago. The arrest of the three guerrillas took place in the morning, and in the afternoon of the same day the accused told the witness that the three had already been killed. On the following day, February 16, at 11 o'clock, Arcadio Son, Modesta's husband, who was hiding in their shack since February 5, was also taken by the Japanese soldiers, tortured and brought to Fort Santiago, because the accused happened to hear of his presence in the place on February 15, and denounced him then to her husband, the Japanese officer. Arcadio Son never returned since he was brought to Fort Santiago. From February 5 to 20, there were in Santa Rosa College compound many women married to Japanese, all of them spies who used to go around the shacks to look for men in hiding. Those other women peeped into the shack of Arcadio Son three times looking for men.

There is no way of determining with absolute certainty whether Modesta and Lourdes B. Son testified to the truth or not. While the record offers no clue that mother and daughter's testimonies should be imputed to bastard motives, there are flaws in their declarations that preclude us from accepting them at their face value. We notice several contradictions that have not been explained. But even if they can be explained, there are improbabilities in the testimonies, from accepting which conscience recoils. That Cabutin, Mejia and Tan, after having been confined in Fort Santiago since February 5, were on February 9 given permission by a Japanese lieutenant to go out for the exclusive purpose of visiting Cabutin's nieces, Rosing and Magdalena, appears to be fantastic. That the three guerrillas were allowed to go out, that they went out without any Japanese guard or escort, and that, upon their failure to return, the Japanese did not right away comb all places including the Santa Rosa College for their arrest, are things incompatible with the ways of the Japanese. If the Japanese lieutenant could have believed that to visit his nieces was enough reason to allow Cabutin to go out from Fort Santiago, such reason could not be applied in favor of his two companions who had nothing to do with the girls. If the three guerrillas wanted to hide, they could not have been so dumb to go to and stay at the very spot

where Rosing and Magdalena were staying, as it would be the logical spot, to anyone's mind, that the Japanese would have search first, because the Japanese lieutenant must have known that to visit the two girls, they must have had to go to their place.

If it is true that the accused had been making daily rounds in order to detect males hiding in the Santa Rosa College compound, it is incomprehensible how it took her six days, from February 9 to February 15, to discover the presence of the guerrilla trio and to denounce them to the Japanese officer. According to Modesta and Lourdes, the air raid shelter dug by the trio was situated at a few meters distance from the shack of the accused. Before the three guerrillas had been able to dig the hole, all of them must have been exposed to the full view of the accused and they remained so while they were working in the excavation, to perform which it would have taken days or many hours. The earth and stones taken from the hole must have been piled on the surface. When the three guerrillas undertook the work of placing wooden planks and earth on top of the shelter and then they built the shack for Rosing and Magdalena, they could have also been seen by the accused. There is no pretence that the accused suffered blindness during the hours and days needed the three guerrillas to complete the whole job.

Modesta's story of the Japanese officer who every night slept with the accused, is surprising. The conduct of the Japanese appears to be that of a civilian employee rather than that of a military officer or, at any rate, of a man enjoying the blessings of undisturbed peace. It is unbelievable that a Japanese officer should leave his garrison for whole nights, and much more at the time when the American Army was already in Manila and was showering bombs and cannon shells in Intramuros.

Modesta would make us believe that the accused made denunciations to the Japanese officer in a way that she could hear them, that the accused was almost ordering the Japanese officer to bring the victims to Fort Santiago, and even bragged that they were already killed. A Filipina in her mind could not have done such things, considering the well-known fact of the overwhelming feeling in our population against the Japanese, and much more on February 15, 1945, when the victorious Americans had already surrounded Intramuros. It would have been suicidal for the accused to have done what Modesta attributes to her because it would have exposed her to reprisal or revenge.

Modesta would make us believe also that the presence of her husband, Arcadio Son, in the compound was discovered by the accused since February 15 and denounced on the same day to the Japanese officer, but the arrest took place only at 11 o'clock the

next morning. No Japanese officer could have been so slow as that.

On the other hand, Modesta's assertion that she was outside of her shack when she witnessed the arrest of the guerrilla trio on February 15, is belied by Asuncion Dueñas, a witness for the prosecution, who said that when the three victims were caught by the Japanese, Modesta was during the whole time inside her shelter.

When after liberation, Modesta and her daughter denounced to the authorities the Japanese arrests in the Santa Rosa College ruins, but mentioned the apprehension of the guerrilla trio, but not the arrest of Arcadio Son. They failed to do so twice, first when they made the denunciation to Froilan Bungue, United States Army soldier, and the second time when they were investigated on March 15, at about 10 a.m., by the American CIC at General Solano Street. Modesta's explanation was that at that time her mind was perturbed, and that of Lourdes was that she simply forgot about it. That a husband, a father, had in that way been forgotten by his wife and daughter who, nevertheless, were prompt in remembering the names of three acquaintances or friends, is a thing that cannot fail to cast doubt on the mother and daughter's credibility.

As regards Lourdes, there is her positive testimony that on November 16, 1945, she was beaten by her husband because she said on one occasion that the accused was not the same woman who pointed the three men caught by the Japanese at the Santa Rosa College and killed in Fort Santiago, that her husband told her to point the accused as the one, and that if she should tell again that it was not the accused, he would beat her again. This revelation cannot fail to affect her testimony against the accused.

The defense has shown that since February 11, 1945, the child of the accused had been ill and that she remained all the time attending to said child until it was killed by a shrapnel on February 18, and that it is not true that the accused had any Japanese sleeping with her or committed the acts attributed to her by the witness for the prosecution. A witness for the defense had shown that the witnesses for the prosecution could have confused the accused with other women, with similar features. When Modesta approached Froilan Bungue to denounce the arrests, the accused was not present, and among those arrested by Bungue as a result of the denunciation was one Asuncion Mendoza, while other witnesses testified that among the women spies were two, called by the name of Fely and Perla.

The prosecution has the *onus probandi* in showing the guilt of an accused. "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary

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is proved." (Sec. 1 [17], Art. III of the Constitution.) The evidence of the prosecution in this case does not show beyond all reasonable doubt that the accused has committed the overt act imputed to her. The presumption of innocence in favor of appellant has not been overturned.

With the reversal of the appealed judgment, appellant Pilar Barrera de Reyes is acquitted and, upon promulgation of this decision, she will be immediately released.

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

Reyes, J., takes no part.

TUASON, J., dissenting:

Three-eye-witnesses, not two, testified for the prosecution in this case.

Modesta B. Son testified that on February 5, 1945, the Japanese gathered all the menfolk in Intramuros, bound their hands, and took them to Fort Santiago. She saw about 200 men thus arrested. Pelagio Cabutin, Ignacio Mejia and one Alejandro, whose surname she did not know, were among them. On February 9, they appeared at Sta. Rosa College; they said that they were able to get out because they talked to a Japanese lieutenant. From that time the three men stayed at Sta. Rosa College. They made a hole "deep enough," put planks of wood and galvanized iron sheets on top, and covered these with earth. On top of the covering they built a small shack for Rosing and Magdalena who were Pelagio Cabutin's nieces. The witness does not know whether Magdalena and Rosing were still alive because she had never seen them after liberation. On February 15, Cabutin, Mejia and Alejandro, by the indication of Pilar Barrera Reyes, were found and told to come out of the hole, and after they did, a Japanese officer and three Japanese soldiers slapped, kicked and bayoneted them, after which they were taken to Fort Santiago.

Before that date, the witnesses had known Pilar Barrera Reyes, when she was living at No. 73 Bateria street. Pilar used to call on witness, landlord. That began as early as February 15, 1944. Pilar Barrera Reyes was then living at No. 50 Legaspi street. She lived with a Japanese officer who used to come to her house day and night. Witness supposed he was an officer because he carried a sword and a pistol.

At Sta. Rosa College, Pilar Barrera Reyes frequently went from shack to shack to barter food. But this was a mere pretext, her purpose being to find out if there were males in the shacks. When she pointed to the Japanese hideout of Cabutin, Mejia and Alejandro she, the accused, was standing at the door of her shack. Then the Japanese officer fetched three Japanese soldiers. That was the time when the four Japanese arrested Cabutin, Mejia and Alejandro.

Modesta B. Son also testified that Pilar Barrera Reyes had witness' husband, Arcadio San, arrested by the Japanese. That was on

the 16th. Pilar informed the Japanese that Arcadio Son was inside the shack. Three Japanese soldiers came, pulled him out, tied and slapped him, and carried him away. This time Pilar Barrera Reyes was in front of the witness' shack when the arrest was made. Arcadio Son, when he was spied by the accused, was inside an air-raid shelter covered with pillows and mats and wearing a woman's dress. The accused happened to see Arcadio Son on February 16 when she was bartering foodstuffs and peeped into the shack.

Lourdes B. Son, Modesta's daughter, 17 years old, testified substantially as follows: On February 5, 1945, the Japanese seized and arrested about 400 men in Intramuros, maltreated them and took them to Fort Santiago. All the women were sent to Sta. Rosa College which had already been destroyed by fire. Among the males taken to Fort Santiago were Pelagio Cabutin, Ignacio Mejia and one Alejandro. About February 9, 1945, these three men appeared at Sta. Rosa. She asked them how they were able to get out and they answered they begged a Japanese officer to let them see and talk to their nieces Rosing and Magdalena. Then they hid themselves in an air-raid shelter. They dug a hole, put wood shafts inside and covered the top with galvanized iron sheets and earth. On top of these, they built a shack for Rosing and Magdalena. On February 15, Pilar Barrera Reyes was bartering rice at every shack. She heard voices in Rosing's shack and appeared surprised. She peeped in through a hole and saw the three men inside. After that she returned to her shack and one-half hour afterward her Japanese husband showed up. To the Japanese Pilar Barrera Reyes pointed the shack where she had heard men's voices. Thereupon the Japanese officer went out and brought back three soldiers. The Japanese removed the iron sheets from the shack and told Magdalena and Rosing to step out. Then they told the three men to come out. Once outside the hole, the three men were tied, slapped, beaten with the butts of guns and fists, stabbed with bayonets and, when they fell, were put back on their feet. While this punishment was being inflicted, Pilar Barrera Reyes was near the Japanese officer. The three men were taken to Fort Santiago and never heard from again.

On February 16, at 9 o'clock, the witness left her family's shack and when she returned she saw her father being tortured by three Japanese soldiers and the Japanese husband of Pilar Barrera Reyes. Her father was bleeding; at that time Pilar Barrera Reyes was beside the Japanese officer. Pilar Barrera Reyes was laughing and saying, "You are hiding yet, probably you are also a guerrilla." (Nagtatago ka pa, marahil ay guerrilla ka rin.)

Asuncion Dueñas testified that on February 5, 1945, she was at the Cathedral with her husband, a cousin, and her three

children. From the Cathedral, the women were sent to Sta. Rosa College while the males were taken to Fort Santiago by the Japanese. Among the women at Sta. Rosa College was Pilar Barrera Reyes whose shelter was about three brazas away from hers. In moving to Sta. Rosa College witness first took her three children and told her husband to wait at the Cathedral. Later she came back, put on him her own clothes, covered his head with a kerchief, and accompanied him to Sta. Rosa. On February 15, she saw Pilar Barrera Reyes talking with two Japanese officers who came to her shack. Pilar pointed her shelter to the Japanese and said that a man was hiding there. Then the Japanese officer led her husband out, stripped him of his woman's apparel and the towel with which his head was wrapped, after which they struck him with fists and bayoneted him on the left shoulder. Witness heard Pilar say that it would be better to take him to Fort Santiago because he was hard-headed; he did not want to join the males. This happened about 3 o'clock in the afternoon.

At 11 o'clock a.m. of that day, she also saw Cabutin, Mejia and Alejandro being maltreated by three Japanese. They were tied, slapped, boxed and bayoneted. She heard Pilar tell the Japanese that they had better take the men to Fort Santiago.

Asuncion Dueñas also testified that once, on the 15th, Pilar Barrera Reyes saw her (witness') child crying; that when, in answer to the defendant's question why the baby was crying she said it was its habit to cry most of the time, Pilar remarked that witness should throw the child away. She also testified that on the 25th when they were liberated she and Pilar saw each other again at the San Lazaro Race Track. She said that she knew Modesta for the first time when they met at Sta. Rosa College.

The defense is a complete denial of any complicity, on the part of the accused, in the atrocities stated by government witnesses. Other women cohabiting with Japanese, it was alleged or insinuated, were the spies responsible for those atrocities.

The decision would tear down the testimony of the witnesses for the prosecution on assumed, not established or alleged, facts. On some points it theorizes from premises that are contrary to actual facts; on still others, the conjectures are not, in my judgment, sound even in the realms of speculation and psychology; for the rest, the discussion in the decision is immaterial in the light of defendant's defense or admission.

The Court disbelieves the evidence that Pelagio Cabutin, Ignacio Mejia and Alejandro came out of Fort Santiago with the permission of a Japanese officer. Truly, there is room for doubt as to the permission. We can not say for certain how these three men succeeded in getting out of that camp of

horrors. If we indulge in speculation, the best guess is that they escaped. It is a matter of general knowledge that scores of prisoners were able to do that in those hectic days of Japanese sadism and brutality, perhaps due to the fact that there were too many prisoners there to attend to closely. There was more than a probability that when the men said they had obtained permission of a Japanese officer, they lied. Two of them were mere friends of the Sons, and one was the son of a distant cousin of Modesta. They were in an extremely perilous situation at the time when the carnage was at its worst. Lying men even to immediate members of one's family was demanded by ordinary prudence. Their security from rearrest and almost certain death was undoubtedly enhanced by concealment of the truth that they had fled from Fort Santiago.

There is nothing queer in the testimony that the three men came to Sta. Rosa after escaping from Fort Santiago. That, on the contrary, seemed to be the natural thing for them to do. Where else could they go? When they were marched off to Fort Santiago from the Cathedral, the women including Rosing and Magdalena, their relatives and apparently housemates, were told to go to Sta. Rosa. They did not know, when they decided to come to the latter place, that Pilar Barrera de Reyes, the spy, was there nor that she and her Japanese paramour still sustained sexual relation in those critical days. Pilar Barrera Reyes, according to her testimony, moved to Sta. Rosa after February 5.

We do not share the doubt that Cabutin, Mejia and Alejandro made the hideout when they were caught. The way, as related by the witnesses, the three men dug a hole and concealed themselves in that hole sounds plausible. The whole affair, with materials at hand, could have been finished in a matter of hours; and if the men worked at night, as probably they did, that explains why they were not seen while working by Pilar Barrera Reyes or her Japanese friend. The decision assumed or presumed that Pilar and the Japanese officer were at Sta. Rosa all the time. The evidence shows that the Japanese officer was posted with his company or men at the Sto. Domingo church ruins where he stayed and had to stay most of the time, while it appears that the defendant at times went out of the Sta. Rosa premises. Moreover, the place was crowded with women and children.

From the tone and tenor of the Court's findings and of its ratiocination, it would appear that it brands the accusation as a fabrication out of whole cloth: that the alleged presence and arrest of Cabutin, Mejia and Alejandro at Sta. Rosa were a pure concoction. This supposition is more than the defense dared suggest, and I believe that it is far-fetched. The time when the three

witnesses implicated the defendant was early March, 1945. Still stunned by a holocaust; just widowed or orphaned under tragic circumstances; homeless and living on charity, their primary concern was where and how to find food and shelter. They were not in a mood and did not have the motive and the incentive to place upon themselves a new burden and worry by inventing a fantastic story against a woman who, according to that woman, had not done them any wrong. She even denied she knew the witnesses.

These witnesses did not have to use imaginary victims if they merely wanted to send the defendant to prison or to the gallows. It has been seen that Modesta B. Son and Asuncion Dueñas lost their own husbands under circumstances, they said, identical with the arrest, torture and liquidation of Cabutin, Mejia and Alejandro. The torture and arrest of those two men certainly furnished their folk the wherewithal to prosecute the defendant if the witnesses were just after defendant's scalp regardless of defendant's innocence of any connection with the discovery of their husbands' hiding. Yet Arcadio Son's arrest and torture were not made the subject of this information. This, we think, goes to refute the theory that the three women's statements to the authorities concerning the arrests of Cabutin, Mejia and Alejandro were a deliberate falsehood conceived in their imagination for no other reason than to send an innocent woman to her doom.

The truth of the matter is, as has been said, the accused herself has not advanced—at least not openly—the suggestion that the arrest of Cabutin, Mejia and Alejandro at Sta. Rosa College, was a fantasy. On the contrary, her evidence admits that these men were arrested in that college through the betrayal of a woman. Her line of defense is, not that the arrests and tortures were a fake, but that she was not the woman who revealed the three unfortunate men's hideout. It ought to be recorded that Lourdes Son was deceived into signing, or persuaded to sign, a statement prepared and put in evidence by defendant's counsel, in which she was made to say, or made her appear as saying, that she had been taken to the Correctional Institution for Women in Mandaluyong on the 16th of November, 1945, together with a sister of the accused, for the purpose of identifying the latter; that having seen the accused, she (Lourdes) realized that Pilar Barrera Reyes "was not the same woman whom she had seen in Intramuros pointing out to Japanese soldiers, Pelagio Cabutin, Ignacio Mejia and Alejandro, who were taken by the Japanese officers to some place"; that she (Lourdes) actually saw the woman who pointed the above-named Filipinos and heard her say that those three Filipinos are inside a certain air-raid shelter in Intramuros." To make that statement Lourdes was taken to Welfareville by one of

the defendant's lawyers, her two sisters and a Corporal De Vera, husband of the defendant's elder sister Rosa.

And the accused and her witnesses, at the trial, amplified this thesis. The gist of their testimony is that at Sta. Rosa, two women (neither of them the accused) who cohabited with Japanese officers, disclosed the presence of the three men to the Japanese; that those two women accompanied Japanese officers in their search for men in the Sta. Rosa compound; that the said women resembled the accused, their names sounded like that of the accused, and they could easily be mistaken for the accused; that the accused bore the pet-name of Pil while one of the two women above mentioned was known by the name of Fely and the other's pet-name was Perla. That is the simple issue. This is a simple case of mistaken identity! The government witnesses, according to the accused and her witnesses, got mixed up; Fely and/or Perla, not Pilar, were the traitors.

The question thus boils down to who cohabited with a Japanese officer, accompanied him in his rounds looking for males, and, discovering the hideout of Cabutin, Mejia and Alejandro, led her Japanese paramour to it.

Now, can we believe the yarn that the defendant was a mere victim of an unfortunate confusion?

The evidence that there were three women at Sta. Rosa College who resembled one another in names, in physiognomy and in general appearance, except the hair, which the defense stressed, has all the traces of a fiction. And granting the truth of such a rare coincidence, there was little or no possibility of the three witnesses for the prosecution committing the same mistake under conditions far from being conducive to errors of identity.

The incident occurred in broad daylight in the immediate presence of the witnesses. The arrest of the helpless men and the stabbing and other forms of torture perpetrated on them must have consumed no little time; and such atrocities were committed not once but three times. Only one woman spy was an active participant in the atrocious acts. The witnesses had known the defendant by sight and by name for a long time before they took refuge at Sta. Rosa, and they were with her in that compound for two weeks after the arrest. Being the concubine of a Japanese officer and not by any means shy or of retiring disposition, as can be gathered from the record, she must have been conspicuous and the object of suspicion if not fear. At the Manila Jockey Club the three witnesses and the defendant were together again after liberation until the accused was arrested in connection with the

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present charge. In the light of these facts, illusions, associations, suggestions, judgment, trick of the memory could not have penetrated into and influenced the witnesses' observations and caused them to mistake another woman for the defendant.

The record will have to be searched in vain for any ill will that could have induced the three women witnesses to trump up a charge for a capital offense against the defendant. At the most, they were moved by a righteous indignation aroused by the treachery of a Filipino who shamelessly aided and comforted with the enemy both in flesh and the wanton butchery of her people during that reign of terror and tribulations that tried men's souls. Asuncion Dueñas' statement that if the accused had not been arrested she herself might have killed her because of so many people she had betrayed, was a genuine and natural reaction of an aggrieved widow against one who had brought her desolation, misery and suffering. Relating as it does to the very atrocities under investigation, her wrath gives vivid substance and reality to her testimony rather than weighs on her veracity.

The decision cites Exhibit 3—Lourdes Son's statement prepared by one of the defendant's attorneys and signed by Lourdes at the Correctional Institution for Women—to impeach Lourdes' testimony. I may mention that from a leading question asked Modesta Son by defense counsel it also seems that the defendant's attorneys were able to exact from her, in their office, a promise that she would stand by them. Needless to say, this procedure was highly reprehensible and unethical. In one aspect Exhibit 3 and Modesta's promise positively favor the prosecution. The defense's effort to win Modesta and Lourdes Son to its side after they had given evidence against the defendant is indication of its realization that there was truth and gravity in what they knew. And the ease with which the effort succeeded is evidence that the witnesses were not unfriendly, and gives the lie to the contention that they were bent on having the accused punished to the point of being capable of committing intentional injury against her.

Referring, on cross-examination, to Exhibit 3, Lourdes declared that she did not know what it said and insinuated that she was intimidated. While we may discount her testimony that she was threatened by Corporal Vera, we should not overlook the great probability that undue influence was brought to bear upon her and her mother to retract their statements made to the CIC and the prosecutors. They said that when they were summoned by De Vera and defendant's two sisters from their temporary quarters at the Gregorio del Pilar Elementary School to come to the lawyer's office, they thought the government lawyer's office was meant. De Vera's intervention could conceivably have disarmed them of

any suspicion of anomaly. De Vera was one of the two non-commission officers who had questioned them at the Manila Jockey Club in March and who, it would seem, arrested the accused. They might not have known that this corporal had married the defendant's elder sister in June and had become defendant's protector. Modesta San and Lourdes San are unlettered.

On its intrinsic merit, Exhibit 3 is of little or no value. I have to admit that Modesta's and Lourdes' testimony is unsatisfactory on what the defendant's attorneys and De Vera told them and on other things that transpired between them. For reasons that can only be left to conjectures counsel did not press the point, which under normal circumstances would be an important bit of proof for the defense. But whatever the case may be, Exhibit 3 and Modesta's promise not to forsake the accused disproves the insinuation of unreasoned hostility. In the face of the proven facts, they do not impair the witnesses' credibility on the main issue. Their statements to the military authorities in March were made spontaneously and, as has been heretofore said, the witnesses had received no inducement and had no reason to prevaricate. If they agreed with the defendant's lawyers to testify according to the tenor of Exhibit 3, their commitment could not be the truth, nor put in doubt the truth of their previous statements to the representatives of the prosecution.

The very character of the supposed mistake supposedly committed by the witness is, I think, its best refutation. As I trust I have shown, mistaken identity was highly remote. The implication of the accused by Modesta, Lourdes and Asuncion to the authorities was either an outright, deliberate falsehood or an absolute truth. There is no room for a middle ground. That it is the truth is inescapable. If Cabutin, Mejia and Alejandro were pointed out to the Japs by a woman, as the defense at least impliedly admits, and if, as the witnesses said the accused was that woman and so declared to the CIC, no amount of subsequent contrary statements can create any doubt as to the accuracy of their first information, unless it could be shown that they had any base motive to wish the defendant harm and to shield the real culprit. There is not the least indication or insinuation of either. To think that the witness left unmolested the real informer who was instrumental in the killing of members of their families and friends and trained their bitterness and resentment against a guiltless woman for no reason whatever is highly irrational.

Stripped of all cluttering details, the issue is reduced to the credibility of the opposing witnesses. There are no sufficient grounds for this Court to set aside the unanimous findings of fact of the three experienced

judges who saw and heard the witnesses testify.

Montemayor and Pablo, Jr., concur in the foregoing dissenting opinion.

VI

Joaquin Zamora, petitioner, vs. Rafael Dinglasan, Judge, Court of First Instance of Manila, and Isabelo Hilario, respondents, G. R. No. L-750, August 16, 1946, PABLO, J.

1. DESAHUCIO; EJECUCION; MORA EN EL PAGO O DEPOSITO DE LOS ALQUILERES; CASO DE AUTOS.—El demandado deje de depositar los alquileres correspondientes a los meses de abril y mayo. El demandante tenia derecho a pedir la ejecucion de la sentencia, y era deber del Juzgado ordenar la ejecucion de la sentencia apelada.

2. ID.; ID.; ID.; SUSPENSION DE EJECUCION BAJO LA LEY No. 689, CON SUJECION AL PAGO O DEPOSITO DE LOS ALQUILERES VENCIDOS.—No contiene la Ley No. 689 disposicion alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecucion de semejante orden o sentencia, por el periodo que estime conveniente, que no sera mayor de tres meses" (articulo 4) con sujecion a las condiciones prescritas en los articulos 5 y 6. Una de las condiciones de la suspension es "que la persona contra la cual se dicto la sentencia deposite todo el tiempo que dura la suspension o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del cual se dicto la sentencia deposite todo alquiler que pago por el mes inmediatamente anterior a la terminacion del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

JUICIO ORIGINAL en el Tribunal Supremo. Mandamus.

Los hechos aparecen relacionados en la decision del tribunal.

Sres. Padilla, Carlos & Fernando en representacion del recurrente.

Sr. D. Ensebio Morales en representacion del recurrido Hilario.

Nadie comparecio en representacion del Juez recurrido.

PABLO, M.:

En la causa civil No. 1307, titulada "Joaquin Zamora, como administrador, etc. contra Isabelo Hilario, demandado," el Juzgado Municipal de Manila dicto en Enero 14,