

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ISIDRO PERALTA, DEFENDANT AND APPELLANT.***G.R. No. L-4497. February 18, 1953*

Ponente: BAUTISTA ANGELO, J.

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The accused was originally charged before the People's Court with the crime of treason on two (2) counts. When said Court was abolished, the case was transferred to the Court of First Instance of Ilocos Norte where the crime is supposed to have been committed. Thereafter, the information was amended twice with the result that the accused was charged with treason on eleven (11) counts. No preliminary investigation having been conducted with respect to the additional counts, counsel for the accused objected to their inclusion in the information, but his objection was over-ruled. After trial, the accused was found guilty of counts 3, 4, 6, 7 and 10, and was sentenced to suffer reclusion perpetua

to the accessories of the law, to pay a fine of P10,000, and the costs. From this judgment the accused appealed.

The only counts which in our opinion deserve consideration in this appeal are counts 6 and 7. These two counts in substance are: On the morning of August 25, 1942, at about 8:00 o'clock, while Lino Ratuira and Segundo Rubio were taking a bath in a river east of the town of Pasukin, Ilocos Norte, Isidro Peralta and five policemen arrived and arrested them. Both were taken to the presidencia where Ratuira was hit by Peralta with the butt of his rifle rendering him unconscious. Peralta inflicted the same punishment on Rubio. Ratuira and Rubio were then brought to Laoag, where Ratuira was placed in jail, while Rubio, with his hands tied, was brought to the west and was never seen since then. Ratuira was later released after giving Peralta the sum of P200.

On a certain day in August, 1942, Pedro Balatico, a resident of Pasukin, was sent for by Peralta and thrown into jail, refused food and forbidden to urinate. The motive for Balatico's arrest was the supposition of Peralta that he killed a Japanese.

The count which refers to the arrest of Lino Ratuira and Pedro Balatico appears supported by their own testimony and by that of Urbano Guerrero and Monico Caldito. It appears that Lino Ratuira was arrested because he used to give food to the guerrillas. Appellant contends that the testimony of Ratuira is unworthy of credence because on cross-examination he failed to state the names of the policemen who accompanied the appellant at the time of his arrest in spite of the fact that they were all residents of Pasukin like himself. This assertion is not quite correct. When questioned on the matter, Ratuira categorically answered that he knew at least two of the policemen who arrested him, namely, Cariaga and Tagabilla. He even stated that when they arrived at the presidencia, it was policeman Prospero Ratuira who helped the appellant in maltreating him.

Counsel for appellant also assails the credibility of Pedro Balatico for the simple reason that he failed to tell the year he was arrested, as well as when he saw Lino Ratuira with his hands tied, limiting his statement to the laconic assertion that it might have been in 1942 or 1944. This is true. But, since eight years had elapsed since then, it is not strange that the witness should commit some lapse of memory.

It is true that Ureano Guerrero did not make mention of the arrest and maltreatment of Lino Rautita, but he bore testimony with regard to the maltreatment of Pedro Balatico, which added to the testimony of this victim, complies with the requirement of the two-witness rule.

With regard to the testimony of Monico Caldito, which is also assailed by counsel as in violation of the hearsay rule, it appears that what Caldito testified as having learned through information refers to other matters and not to the act of maltreatment of Lino Rautita as to which he testified of his own personal knowledge.

With respect to count 7, which refers to the arrest and subsequent disappearance of Segundo Rubio, the same appears substantiated by the testimony of Lino Rautita and Monico Caldito.

The defense of appellant merely consists of negative testimony. He and his witnesses merely denied the imputation made against him by the witnesses for the prosecution. Obviously, such negative testimony cannot prevail over the clear and positive testimony of the prosecution witnesses.

The observation made by the lower court in this matter is significant. It says: "It is obvious that the question is one of credibility. All the witnesses for the prosecution know the accused Isidro Peralta very well, and almost all of them have known him since their childhood, or because he is their townmate. x x x. The motives alleged by the accused for the said witnesses to declare falsely against him have not only been proven, but they have also been validly denied and contradicted by the same witnesses. The denial and alibi of the accused cannot prevail over the true and positive testimonies of the witnesses for the prosecution, who actually saw, recognized and identified the accused in the commission of the overt acts imputed to him and proven at the trial, witnesses whose sincerity and truthfulness the court has no reason to doubt.

As regards the alleged lack of preliminary investigation relative to the additional counts, it suffices to state that this issue has already been dismissed for lack of merit in G. R. No. L-3880 affecting the same accused.

Finding no error in the decision appealed from, the same is hereby affirmed, with costs.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, JJ., concur.
Feria, J., did not take part.

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