

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO T. VILLANUEVA, DEFENDANT AND APPELALNT.***G. R. No. L-9529. August 30, 1958*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9dbd9fb4efc6/>**PER CURIAM:**

Appellant Pedro T. Villanueva was sentenced to death by the Fifth Division of the defunct People's Court for the crime of treason. On March 10, 1948, the case was elevated to us (G. R. No. L-2073) not only by virtue of the appeal duly interposed by the accused but also under the provisions of Section 9 of Rule 118 of the Rules of Court which provides mandatory review by this Tribunal of all decisions or judgments of the lower courts imposing death penalties. Meantime, it was discovered that the transcript of stenographic notes taken down on October 8, 1947, before the People's Court was missing and unavailable, by reason of which and upon recommendation of the Solicitor General, we promulgated a resolution on August 1, 1952, remanding the case to the Court of First Instance of Iloilo for the retaking of the missing testimonies of the four witnesses who testified before the People's Court, namely, Gregorio Gatton, Ambrosio Tuble, Basilia Taborete, and the accused himself. Thus the case was sent to that court.

On August 24, 1953, appellant filed a petition with the Court of First Instance of Iloilo praying that he be allowed to withdraw his appeal so as to avail himself of the benefits of the Executive clemency granted to all prisoners convicted of treason, including those whose cases were pending appeal, on condition that such appeals be first withdrawn. Whereupon the Court of First Instance of Iloilo returned the case to us for whatever action we may take in view of the withdrawal requested, for, at all events, the case had to be reviewed by us regardless of defendant's appeal. The case was included in the agenda prepared by the Clerk of Court for September 21, 1953, only on the basis of the motion for withdrawal of appeal by appellant, without calling the attention of the Tribunal that defendant had previously appealed from a decision sentencing him to death, which decision called for an automatic review and judgment by us. Accordingly, and following the practice of this Tribunal of acting favorably on petitions for withdrawal of appeals where briefs had not been filed, as in the present case, said petition for withdrawal was granted by resolution of September 21, 1953. However, at about 3:00 o'clock in the afternoon of the same date, and after the passing of the resolution, appellant filed directly with this Court a petition reiterating his request for withdrawal of appeal previously made with the Court of First Instance of Iloilo, attaching thereto two documents said to be copies of the conditional pardon granted him and of the letter of the Legal Assistant in the office of the President addressed to the Director of Prisons. It was only on considering this second petition when we realized the nature of the case and that the withdrawal of appeal granted on September 21, 1953, was a mistake and contrary to legal precedents. So, in a resolution dated October 19, 1953, this Tribunal reconsidered its resolution of September 21st granting withdrawal of appeal, and again remanded the case to the Court of First Instance of Iloilo for the retaking of the testimonies above referred to, with instructions that a new decision be rendered based on the said testimonies and on the standing evidence adduced before the People's Court. The resolution of October 19th read as follows:

"By a decision dated November 19, 1947, the Fifth Division of the defunct People's Court after trial of appellant Pedro T. Villanueva on a charge of treason on several counts, found him guilty of treason and murder

and sentenced him thus—

'IN THE VIEW OF THE FOREGOING CONSIDERATIONS, the Court, finding the accused Pedro T. Villanueva guilty of the complex crime of treason and murders as defined in Article 114 of the Revised Penal Code, in connection with Article 48 of the same Code, sentences him to suffer death penalty, with the accessories of the law, to indemnify the heirs of Cosme Calacasan in the amount of P2,000, to indemnify the heirs of Julia Cabilitasan in the amount of P2,000, to indemnify the heirs of Sofia Tambirao in the amount of P2,000, and to pay a fine of Twenty Thousand Pesos (P20,000) and the costs of the proceedings.'

"Villanueva duly appealed to this Court. The records were sent up to us not only by virtue of the appeal but also under the provisions of Rule 118, Section 9, of the Rules of Court which provides for review and judgment by this Tribunal of all cases in which the death penalty shall have been imposed by a court of first instance, whether the defendant shall have appealed or not.

"It appearing that the stenographic notes taken of the testimony of the witnesses who testified on October 8, 1947, could not be located, and following the recommendation of the Solicitor General, a resolution was promulgated on August 1, 1952, remanding the case to the Court of First Instance of Iloilo for the retaking of the testimony of said witnesses.

"Thereafter before said court defendant-appellant Villanueva filed a petition dated August 24, 1953, stating that about July 4, 1953, the Chief Executive granted executive clemency to all prisoners convicted of treason, including those whose cases were pending appeal, on condition that such appeals be first withdrawn, supposedly to give finality to the judgment of the lower court, and asking that he be allowed to withdraw his appeal. Acting upon said petition the Court of First Instance of Iloilo issued an order dated September 10, 1953, directing the return of the case to this Court for whatever action it may take in the premises, in view of the petition for withdrawal of the appeal filed by appellant and because the case had to be reviewed by the Supreme Court anyway regardless of the appeal by the defendant.

"The case was considered by us on September 21, 1953. The agenda of this Court on that date as regards this was prepared by the Clerk of Court's Office only on the basis of the motion for withdrawal of appeal by the defendant. Our attention was not called to the fact that defendant had previously appealed from a decision sentencing him to death, which decision called for an automatic review and judgment by us. So, following the practice of this Tribunal of acting favorably on petitions for withdrawal of appeals where the briefs have not yet been filed, as in the present case, said petition for withdrawal of appeal was granted by resolution of September 21, 1953. On the same date, however, and presumably after the passing of the resolution, appellant Villanueva filed directly with this Court a petition reiterating the request for withdrawal of his appeal previously made with the Court of First Instance of Iloilo, attaching to his petition Exhibits 'A' and 'B', said to be copies of the conditional pardon and of the letter of the Legal Assistant in the Office of the President addressed to the Director of Prisons. It was only on considering said petition that we realized the nature of the case and the decision appealed to this Court, the withdrawal of which appeal had been granted by the resolution of September 21, 1953.

"An accused appealing from a decision sentencing him to death may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed, but his withdrawal of the appeal does not remove the case from the jurisdiction of this Court which under the law is authorized and called upon to review the decision though unappealed. Consequently, the withdrawal of the appeal in this case could not serve to render the decision of the People's Court final. In fact, as was said by this Court thru Justice Moreland in the case of *U.S. vs. Laguna*, 17 Phil. 532, speaking on the matter of review by this Court of a decision imposing the death penalty, the judgment of conviction entered in the trial court is not final, and cannot be executed and is wholly without force or effect until the case has been passed upon by the Supreme Court en consulta; that although a judgment of conviction is entered by the trial court, said decision has none of the attributes of a final judgment and sentence; that until it has been reviewed by the Supreme Court which finally

passes upon it, the same is not final and conclusive; and that this automatic review by the Supreme Court of decisions imposing the death penalty is something which neither the court nor the accused could waive or evade.

"Furthermore, when the case was remanded to the lower court for the purpose of retaking the testimony of those witnesses who testified on October 8, 1947, the case was virtually remanded for new trial. Of course, the evidence and the testimony received during the trial before the People's Court which is still intact and available shall stand and the new trial will be confined to the testimony of the same witnesses who testified on October 8, 1947, the stenographic notes or transcript of which cannot now be found. Under these circumstances, it is necessary for the trial court to render a new decision because the new trial is being held before a new Judge and there is no assurance that the witnesses testifying, altho the very same ones who were on the witness stand on October 8, 1947, would testify to the same facts and in the same manner that they did at the former trial, altho they are supposed to do so. (See *Demetria Obien de Almario vs. Fidel Ibañez, et al.*, 46 O. G. No. 1, p. 390). Going over the record of the case, we find that it would not be too difficult for the trial judge to see to it that the said witnesses as far as possible confine themselves to the same points on which they testified on October 8, 1947, because the testimonies of said witnesses including the defendant are referred to and described in the decision of the People's Court on pages 87, 123, and 124 to 129, and that there are only four witnesses including the accused himself.

"Examining Exhibits 'A' and 'B' submitted by appellant in relation to his petition for the withdrawal of his appeal, we find that although his name appears in the list of prisoners convicted by the People's Court and supposed to be pardoned conditionally, the pardon itself refers to the remission of the 'unexpired portions of the prison sentence terms and the fines of the prisoners listed below who were convicted by the defunct People's Court of treason and committed! to the new Bilibid Prison to serve their sentence.' It is highly doubtful that the pardon could have contemplated and included appellant herein because his sentence of death does not merely involve a prison term which expires in time. Besides, a death sentence is not exactly served but rather executed. Moreover, Exhibit 'B' says that 'those prisoners whose cases are still pending on appeal shall be released only after their appeal has been withdrawn.' The implication is that the withdrawal of the appeal rendered the decision of the People's Court final, resulting in conviction, this to bring it into harmony with Art. VII, Sec. 10(6) of the Constitution which requires conviction as a condition precedent to the exercise of Executive clemency. As we have already stated, despite defendant's withdrawal of his appeal from the decision imposing the death sentence, there is no definite conviction or sentence until and after this Tribunal has reviewed the case and rendered its own decision affirming, modifying or reversing that of the lower court, unless of course in the new decision of the trial court based on the new trial a sentence other than death is imposed, in which case there would be no automatic review by us.

"Let the record of this case be again remanded to the Court of First Instance of Iloilo for new trial and thereafter, for a new decision."

At the new trial, only the testimonies of witnesses for the defense, Ambrosio Tuble and Basilio Taborete, were introduced. Appellant also presented documentary evidence relative to the conditional pardon allegedly granted him. The Court of First Instance of Iloilo found nothing in the newly adduced evidence to disturb the decision of the People's Court, and, reproducing said decision, rendered judgment on October 11, 1955, sentencing appellant to capital punishment. The case was again elevated to us for automatic review and judgment and given the present docket number.

In the amended information filed before the People's Court, appellant was accused of treason on ten counts, but the prosecution adduced evidence only on seven of them, namely, Counts 1, 2, 6, 7, 8, 9 and 10. The lower court found that Counts 1 and 2 were not proven, and convicted the accused on Counts 6, 7, 8, 9 and 10.

The prosecution established that during the Japanese occupation, appellant, who is a Filipino citizen, and owing

allegiance to the United States of America and the Commonwealth of the Philippines, gave the enemy aid and comfort by rendering service with the Japanese Imperial Army as secret agent, informer and spy, of its Detective Force in the province of Iloilo, and that in the performance of such service, he participated actively and directly in the punitive expeditions periodically made by the Japanese forces in the guerilla-infested areas of the province of Iloilo, and committed robberies, arson and mass-murders, specifically as follows:

Count No. 6. Anent this Count, the amended information recites:

"6. That on or about June 10, 1943, at the barrios of Baroc and Atabayan, municipality of Tigbauan, Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Pedro T. Villanueva, with intent to adhere as he did adhere to the enemy, and with treasonable intent to give as he did give said enemy aid and comfort, in his capacity as agent, informer and spy of the Detective Force, Imperial Japanese Army, and in company with other Filipino spies and several Japanese soldiers, did then and there, willfully, unlawfully, feloniously and treasonably arrest Vicente Garrido, Juan Tatlonghari, Clodovio Trieco, Melchor Trieco, Cosme Tobias, Leoncio Tumamudtamud, Quirino Toranto, Napoleon Luceno, Modesto Torremoro and Dionisio Belandrez on the charge that they were guerrilla soldiers and/or sympathizers and did investigate, maltreat and torture them; that subsequently the persons above-mentioned were taken away and were not seen or heard of since then; that on the occasion of the aforementioned patrol, the above-named accused and his companions, with intent of gain and without consent of the owners thereof, did then and there, willfully, unlawfully and feloniously loot the house of Jose T. Belandrez, taking therefrom genuine Philippine currency in the amount of P300; emergency notes in the amount of P1,200; jewelry valued at P500; clothing valued at P200; and other personal effects; and from the house of Toribia Taleon, jewelry, watches, clothing and other personal effects with a total value of P160 more or less."

Jose T. Belandrez, Salvador Toranto, Toribia Taleon and Maria Mendoza, corroborating one another, testified that at dawn of June 10, 1943, appellant, accompanied by some Filipinos and Japanese soldiers, went to the house of Jose T. Belandrez situated at Tigbauan, Iloilo, and took therefrom P1,200 in cash, jewelry worth P300, and clothing valued at P200; that they also arrested Dionisio Belandrez, Modesto Torremoro and Napoleon Luceno, members of the Bolo Battalion, an auxiliary unit of the guerrillas; that since that fateful day, the said three members of the Bolo Battalion never returned.

Count No. 7. The amended information respecting this Count, reads as follows:

"7. That on or about the 9th and 10th day of August, 1943, in the municipality of Tigbauan, Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Pedro T. Villanueva, with intent to adhere as he did adhere to the enemy, and with treasonable intent to give, as he did give said enemy, aid and comfort, in his capacity as agent, informer and spy of the Detective Force, Imperial Japanese Army, and in company with other Filipino spies and Japanese soldiers, did then and there wilfully, unlawfully, feloniously and treasonably arrest and apprehend several persons suspected of guerrilla activities, among whom were Federico Tinamisan, Eustaquio Doga, Roque Tiologo, Salvador Tedor, Tomas Trompeta, Agapito Trompeta, Andres Tayo, Victorio Tuante, Manuel Teano, Matias Tirante, Rufo Tolate, Celedonio Tupino, Alfredo Trompeta, Hilarion Toga and several others, who were gathered in the Chapel at barrio Napnapan, where the persons aforesaid were investigated, maltreated and tortured, as a consequence of which Salvador Tedor died of the beating and torture inflicted upon him by the herein accused and his companions; that the following morning about thirty-seven persons were taken to the yard of Valentina Amandoron's house, where Jesus Astrologo, Carlos Palma, Filipino co-spies of the accused, and the Japanese killed by beheading Andres Tai, Victorio Tuante, Roque Tiologo, Manuel Teano, Matias Tirania, Rufo Tulato, Agapito Trompeta, Tomas Trompeta, Celedonio Tupino, Simeon Ledesma, Hermenegildo Taleon, Marcelo Turid, Magdaleno Turid, Enrique Turid, Jose Tamon, Cornelio Taghap, Eustaquio Doga, Eugenio (LNU), Francisco (LNU) Lucio (LNU), Juan (LNU), Casimiro (LNU), Gorteo (LNU), and several others whose names are unknown, while Alfredo Trompeta and Hilarion Toga were struck and wounded on their necks but miraculously escaped death."

Six witnesses testified on this Count, namely, Severa Gua, Natividad Duga, Alfredo Trompeta, Hilario Taghap and Valentina Amandoron who, corroborating one another, stated that on August 9 or 10, 1943, which was a Monday, at about six o'clock in the evening, while Eustaquio Duga and his family were at their home in Tigbauan, Iloilo, he saw Japanese soldiers and some Filipinos approaching their house; that Eustaquio Duga notified his wife and they immediately started to flee; that unfortunately, they were overtaken by the Japanese soldiers, and Eustaquio Duga was arrested by herein appellant who was in company with said Japanese soldiers; that Eustaquio Duga was taken to the nearby barrio of Napnapan; that sometime later, Severa Gua found the dead body of Eustaquio Duga, with his head almost severed, among other corpses in the yard of the house of Valentina Amandoron.

On the same day, while Alfredo Trompeta and his companion Roque Teologo were walking in a barrio road in Napnapan, Tigbauan, Iloilo, they were arrested by Japanese soldiers who were with the appellant; that Trompeta and Teologo were taken to the barrio of Ermita, of the same municipality, where they were investigated together with about thirty persons who were suspected as guerrillas; thence they were brought to the house of Valentina Amandoron where appellant and his companions killed in cold blood Trompeta's companions as well as those persons who were brought there earlier. Among the twenty-five persons killed on that occasion, were Andres Tayo, Tomas Trompeta, Rufo Tolato, Roque Teologo, Jose Taucon and Matias Tiranea.

Count No. 8. The information equally recites:

"8. That on or about August 12, 1943, in the municipality of Leon, Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Pedro T. Villanueva, with intent to adhere as he did adhere to the enemy, and with treasonable intent to give as he did give said enemy aid and comfort, in his capacity as agent, informer and spy of the Detective Force, Imperial Japanese Army; and in company with other Filipino spies and Japanese soldiers, did then and there wilfully, unlawfully, feloniously and treasonably arrest Cosme Calacasan, Nazario Calimutan, Alberto Caborique, Nazario Calacasan, Marcos Sobrevega, Jose Canillas, Aurelio Calacasan, Graciano (LNU), Juan (LNU), and three others, names unknown, on the charge that the persons aforesaid were guerrilla soldiers or guerrilla sympathizers; that thereafter these persons were taken to barrio Taal municipality of San Miguel, where the accused and his companions set fire to and burned several houses in the aforesaid barrio; and later to barrio Baguingin, municipality of Leon, where the above-named accused and his companions investigated, maltreated and tortured them; that the above-named accused further adhering to the enemy did then and there, wilfully, unlawfully, feloniously and treasonably, and with evident premeditation and treachery, bayoneted to death Cosme Calacasan, while tied to a tree with hands tied behind his back; while Nazario Calimutan was bayoneted and killed in the same manner by Jesus Astrologo, Filipino co-spy of the herein accused; while Graciano (LNU) and Juan (LNU) and two others (names unknown) were bayoneted to death by the Filipino and Japanese companions of the accused; that after the killing of the aforesaid persons, the above-named accused and his companions did gather the corpses of their victims in the house of Juan Caya and thereafter did set fire to and burn that house with the dead bodies inside."

Aurelio Calacasan and Jose Canillas, corroborating each other, testified that at about eight o'clock in the morning of August 12, 1943, while Aurelio Calacasan, Cosme Calacasan, Anazario Calimutan, Alberto Caborique, Nazario Calacasan, Marcos Sobreveja and Jose Canillas and several others were in the barrio of Anonang, Leon, Iloilo, they were arrested by Japanese soldiers and taken to the barrio of Taal, of the same municipality, where they saw appellant and his companions. After setting afire the houses in said barrio, appellant and his companions brought the prisoners to barrio Agboy, of the same municipality, where they were investigated regarding their guerilla activities or connections; that during the investigations, appellant stabbed to death Cosme Calacasan who was a member of the Bolo Battalion, an auxiliary unit of the guerrillas; that after several prisoners were killed, their corpses were gathered and placed in a house which was set on fire.

Count No. 9. Concerning this Count, the amended information recites:

"9. That on or about August 12, 1943, in the municipality of Leon, Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Pedro T. Villanueva, with intent to adhere as he did adhere to the enemy and with treasonable intent to give as he did give said enemy aid and comfort, in his capacity as agent, informer, spy of the Detective Force, Imperial Japanese Army, and in company with other Filipino spies and Japanese soldiers, did then and there, wilfully, unlawfully, feloniously and treasonably conduct and carry out a raid against and mass arrest of persons suspected as guerrilla soldiers and sympathizers, as a consequence of which, about eighty persons, male and female, both young and old were arrested and gathered in a schoolhouse and chapel in the barrio of Buenavista, and thereat investigated, maltreated and tortured by the herein accused and his companions; that subsequently about thirty persons including women and children were taken to the house of Aquilino Sales, where about fourteen persons were bayoneted and killed by Japanese soldiers, namely, Julia Cabilitasan, Mercedes Calopez, Andrea Cahipo, Eustaquia Cabilinga, Isabel Canag, Rosalia Calopez, Luz Caldito, Estelita Camorahan, Roman Cabilinga, Tomas Canag, Luis Cabalfin, Juan Cabalfin, Macario Cabilitasan and Aurelio Caldito; while Paulina Cantara, Alejandro Calsona and Bienvenido Cabankalan received and sustained bayonet wounds but survived and were able to escape after the house of aforesaid Aquilino Sales was set on fire and burned by said patrol of Filipino spies and Japanese soldiers."

Aquilina Cabilitasan, Bienvenido Cabankalan, Alejandro Calsena and Perpetua Canag, who testified for the prosecution, corroborating one another, stated that at about eight o'clock in the morning of August 12, 1943, several residents of barrio Buenavista, Leon, Iloilo, were arrested by the appellant, who was armed with revolver and bayonet, and his companions consisting of Filipinos and Japanese soldiers; that said barrio residents were brought to the barrio schoolhouse where they were investigated. During the investigation, Julia Cabilitasan was singled out by the appellant who tied her hands behind her back and brought her under a "doldol" (kapok) tree, near a chapel, where she was stripped of all her clothings until she was naked. Appellant investigated her regarding the whereabouts of her husband who was a USAFFE soldier. Appellant, after severely beating Julia Cabilitasan, brought her to the house of Aquilino Sales where there were other Filipino prisoners. Shortly thereafter, appellant and his companions started the massacre of the prisoners. Appellant stabbed Julia Cabilitasan three times with a bayonet. In that massacre, fourteen persons including women and children were killed. Among those killed were Julia Cabilitasan, Macario Cabilitasan, Roman Cabelenga, Andrea Cahipos and Julia Calpit. Later, said house was set on fire.

Count No. 10. Lastly, the amended information regarding this Count, recites:

"10. That on or about March 18, 1944, in the municipalities of Guimbal and Tubuñgan, Iloilo, Philippines, and within the jurisdiction of this Court, the above-named accused, Pedro T. Villanueva, with intent to adhere as he did adhere to the enemy, and with treasonable intent to give as he did give said enemy aid and comfort, in his capacity as agent, informer and spy of the Detective Force, Imperial Japanese Army, and in company with other Filipino spies, Bureau of Constabulary and Japanese soldiers, did then and there wilfully, unlawfully, feloniously and treasonably arrest Rosalio Tambirao, Joaquin Escorido, Carolina Escorido, Romero Escorido, Edgardo Escorido, Editha Escorido, Sofia Tambiras, Raul Tabanda, Nestor Tabanda, Elena Gierza, Natividad Gersalino, Jovita Gersalino, Ernesto Tambirao, Ruly Tambirao, Jesusa Jimenez, Eustaquio Tortugalete, Paz Tabora, Basilisa Taborate, Gloria Escorido, Ciriaco Gierza and several others with unknown names on the charge that the persons aforesaid were either guerrilla soldiers, sympathizers and supporters; that the aforesaid persons were then taken to the house of Jacinto Taborate, where the herein accused, did then and there investigate, maltreat, or otherwise torture Basilisa Taborate, Gloria Escorido and Eustaquia Tortugalete in an effort to make them confess as to their connection with the guerrilla movement and the whereabouts of the guerrilla soldiers; that subsequently the herein accused further adhering to the enemy did deliver to a Japanese executioner Juan Gelario, Felipe Tanato, David Garnica, Juana Tabacoran, Jesusa Jimenez and Luz Tabiana,

who were all executed and killed one after another; that the killing of Juana Tabacoran, Jesusa Jimenez and Luz Tabiana took place shortly after they were abused and raped by the Japanese and BC soldiers in the house of Jacinto Taborete; that while this was going on, Jovita Gersalino and Lourdes Tabanda were taken to another house by the herein accused, Filemon Palacios, Jr., Vicente Tolosa and a Japanese soldier, where they were abused and raped; that subsequently the persons gathered were asked who of them were relatives of Tranquilino Geonanga for they would be released and when an old woman answered that they were all relatives of Tranquilino Geonanga, the Japanese soldiers at once started to inflict and deliver bayonet thrusts on the persons gathered and as a consequence of which about thirty of them were killed and several were wounded: that subsequently, the herein accused and his companions proceeded to barrio Buluangan, where one Saturnino (LNU) was arrested, investigated, maltreated and tortured by the herein accused and later killed by the Japanese."

Gloria Escrido, Basilisa Gierza and Ciriaco Gierza, testifying in support of this Count, and corroborating one another, stated that at about seven o'clock in the morning of March 16, 1944, while the appellant and several Japanese soldiers were on a punitive expedition in the barrio of Miadan, Guim[^]al, Iloilo, they arrested the barrio residents who fled to the Dalihi creek in Tubongan, Iloilo; that the barrio residents, who were about fifty persons, were brought to the barrio of Laguna, Tubongan, Iloilo, where they were investigated and maltreated; that during the investigation, appellant tied the feet of Gloria Escrido, hanged her with her head downward and beat her with the branch of an "aguho" tree; that appellant likewise brought to the house of Jacinto Batorete three females, namely, Luz Tabiana, Jesusa Jimenez and Juana Tabiana where the said girls were abused by the appellant and his companions; that appellant also bayoneted to death Sofia Tambirao for the simple reason that she was the cousin of Tranquilino Geonanga, an officer of the guerrillas; that appellant and his companions massacred on that occasion around thirty persons, among whom were Jovita Gersalino, Carolina Escrido, Romero Escrido, Sofia Tambirao, and Edgardo Escrido.

We have, therefore, that appellant not only participated actively in the punitive raids made by the Japanese soldiers and in arresting and killing Filipino Guerrillas, but personally manhandled Gloria Escrido, a girl barely 16 years of age at the time (Count 10), and killed in cold blood Cosme Calacasan by bayoneting him three times (Count 8), Julia Cabilitasan by likewise bayoneting her three times, with the added ignominy of stripping her stark naked moments before killing her (Count 9), and Sofia Tambirao (Count 10.) These specific overt acts of appellant as testified to by eyewitnesses who have survived the harrowing massacres, speak eloquently that his adherence to the enemy in giving it aid and comfort, was accompanied by cruelty and ruthlessness, in wanton disregard of the feelings and decency of his fellow citizens.

The foregoing facts were not impugned by any evidence for appellant, his defense in the lower court merely consisting of (1) his denial of the overt acts imputed upon him, and (2) that if he ever served in the detective force of the Japanese Army since January 1st, 1944, it was because he was made to accept the position under duress, and that his acceptance of such position was for the good of the people, He having saved many Filipino lives from Japanese atrocities.

We have carefully analyzed the evidence on record because of the seriousness of the charges against appellant, and we find that the evidence for the prosecution is overwhelming, such that appellant's counse de officio instead of m'ng a brief, made a manifestation dated November 29, 1955, stating that "after a thorough study of the records of the case, he finds nothing therein sufficient to disturb the decisions of the People's Court and of the Court of First Instance of Iloilo imposing capital punishment on the accused." Said counsel further stated that "The accused's only evidence which directly attacked the government's proofs was his denial of what several witnesses testified to." This manifestation was considered by this Tribunal as appellant's brief, in its resolution of December 6, 1955. Certainly mere denial by appellant cannot prevail upon the positive assertion of the witnesses for the

government establishing incriminating facts, for it is a well settled rule of evidence that as between positive and negative testimony, the former deserves more weight and credit.

Anent the defense of duress allegedly exerted by the Japanese upon appellant for which he had to serve in the detective force of the Japanese Army, we agree with the Solicitor-General that "except the lone and self-serving testimony of the appellant that he was coerced to cooperate with and serve the Japanese soldiers, there is not an iota of proof that he was in fact compelled or coerced by the Japanese. Much less is there any evidence showing that the alleged compulsion or coercion was grave and imminent."

"Duress, force, fear or intimidation to be available as a defense, must be present, imminent and impending, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done. A threat of future injury is not enough." (16 C. J., 91).

"To be available as a defense, the fear must be well-founded, an immediate and actual danger of death or great bodily harm must be present and the compulsion must be of such a character as to leave no opportunity to accused for escape or self-defense in equal combat. It would be a most dangerous rule if a defendant could shield himself from prosecution for crime by merely setting up a fear from or because of a threat of a third person." (Wharton's Criminal Law, Vol. 1, Sec. 384).

"Fear as an excuse for crime has never been received by the law. No man, from fear or circumstances to himself has the right to make himself a party to committing mischief upon mankind" (Lord Denman in Reg. vs. Tyler, 8 Car. and P. (Eng.) 616, vs. Duddely, L. R. 14, Q. B. Div. (Eng.) 273).

When the case was remanded to the Court of First Instance of Iloilo for the retaking of lost testimonies, appellant attempted to give the case a new twist by filing a motion to quash on the ground that the pardon extended him has already extinguished his criminal liability and that his conviction by the People's Court had placed him in jeopardy. This motion was denied, but during the trial appellant was allowed to present documentary evidence relative to the clemency extended him, consisting of Exhibit 1 which is a certified copy of his conditional pardon; Exhibit 2, a certified copy of the letter of the Legal Assistant of the President dated June 30, 1953, addressed to the Director of Prisons; Exhibit 3 the motion to withdraw appeal filed before the Court of First Instance of Iloilo; and Exhibit 4, the Tribunal's resolution of September 21, 1953, granting said withdrawal. In addition, appellant presented an Exhibit 5 the decision of the People's Court in the case of People vs. Jesus Astrologo, dated December 11, 1947, sentencing him to death; Exhibit 6 the conditional pardon extended to said accused dated June 27, 1953; and Exhibit 7 the letter of the Legal Assistant of the Office of the President to the Director of Prisons, to show that said Jesus Astrologo who is now enjoying his freedom by reason of the pardon extended, has been allowed by this Tribunal to withdraw his appeal pending review of his death sentence.

Regarding the alleged pardon granted to appellant, we reiterate our ruling in our resolution of October 19, 1953, hereinbefore quoted. As to appellant's contention respecting the applicability of the Astrologo case, we find it untenable, for the Astrologo case (88 Phil., 423) was elevated to us for review on March 4, 1948; he filed his brief on October 21, 1949, and we rendered judgment on March 30, 1951, commuting the sentence to life imprisonment for lack of sufficient vote. The pardon granted him on June 27, 1953, or more than two years after the final judgment, was therefore in order, and cannot be invoked by herein appellant as a precedent.

As to the payment of Indemnity in the amount of P2,000 to the respective heirs of each of the victims of appellant, the Solicitor-General recommends that this amount imposed by the lower court be increased to P6,000. We find this Recommendation to be correct, as it is in consonance with the repeated decisions of this Tribunal on the matter; hence the decision of the lower court should be amended accordingly. Furthermore, although the facts of the case verily justify the imposition of death penalty, yet, for lack of sufficient votes said penalty should be, as it is hereby commuted to reclusion perpetua, in accordance with law.

Wherefore, and with the modifications above indicated, the decision appealed from is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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