

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO GERONA, DEFENDANT AND APPELLANT.***G.R. No. L-4999. May 25, 1953*

Ponente: LABRADOR, J.

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This is an appeal from a judgment of the Court of First Instance of Cebu, Honorable Florentino Saguin presiding, finding Pedro Gerona guilty of treason with robbery, and sentencing him to suffer the penalty of reclusion perpetua, to pay a fine of P10,000.00 to indemnify the offended party Placido Lopez in the sum of P1,600 for the effects that he had taken away, and to pay the costs.

The information under which the herein accused-appellant was tried in an amended information dated October 4, 1950, charging the accused-appellant on five counts. The court found him guilty on three counts, that of having acted as a spy, investigating Placido Lopez of guerrilla activities and robbing him of jewels and clothes worth P1,600.00; that of having investigated Fidel Oberes and Lorenzo Amfre for being guerrillas or volunteer guards and beating them; and that of having caused the arrest of one Victoriano Primacia, investigating him for being a guerrilla, and beating him in the course of the investigation, the said Victoriano Primacia having thereafter disappeared without coming back to him home.

On counts 1 and 2, the evidence for the prosecution shows that in the evening of November 3, 1944, after 9:00 o'clock, accused-appellant went up the house of Placido Lopez at Calamba street, Cebu City, accompanied by Francisco Lopez, Placido's brother. Placido Lopez had just put out the light, and as appellant herein knocked at the door and Placido opened it, appellant immediately gave him a blow on the face with his fist, knocking him down. Placido was asked about one Quirino (Torres), a guerrilla, and for Placido's revolver, and as Placido denied the whereabouts of said Quirino and having any revolver at all, appellant hanged him and beat him. For his part, Francisco was brought to a nearby room and was also investigated and maltreated by Tenebro, a companion spy of the appellant. While the appellant and his companion were investigating and beating the Lopezes, appellant's Japanese companion ransacked the wardrobe and effects of Placido and took away cash, jewels, and clothing all amounting in value to P1,600.00. After the investigation and after taking away the articles above-mentioned, appellant and his companions took Placido and Francisco to a station at the Redemptorist church. From here they were taken the following day to a certain house belonging to one Paulin, which was used as Kempetai headquarters. Here they were again investigated, their hands tied at the back, then suspended from the air, and beaten with a baseball bat. The companions of the appellant in conducting the investigation and maltreating the two brothers were one Ato Adlawan and Tenebro, both well known spies for the Japanese. The two brothers, however, were allowed to go away on the occasion of an American air raid on Cebu City.

The evidence submitted on count No. 5 is to the effect that on December 23, 1944, Fidel Oberes, Lorenzo Amfre, and others started on a sailboat from Cebu bound for Bohol, with the intention of evacuating to Clarin, Bohol. While they were between Talisay and Bag-ong Banua, a Japanese patrol launch detained them and towed them to Cebu City. Fidel Oberes, Lorenzo Amfre, and others were arrested by two Japanese undercovers, Placido

Lastimosa and Isidro Cabonesas, who brought them, with their hands tied at the back, to a place near the San Nicolas church. From there they were brought to the headquarters of the Japanese kempetai, and there they were investigated by a Japanese undercover by the name of Ate Adlawan. Fidel Oberes was later brought to a room where he was investigated by the appellant herein Pedro Gerona. The appellant asked Oberes the amount of fish and corn that his (Oberes') mother had contributed to the guerrillas, but Oberes replied that he did not know as he seldom saw his mother, and the latter had just enough to make a living. After that appellant asked him again who among his companions were volunteer guards, but Oberes denied the charge that any one of them was a volunteer guard. The companions of Oberes were also investigated by the companions of Gerona. Thereafter they were brought to a house on Figueroa street, and while they were brought to a house on Figueroa street, and while they were walking appellant put his arm around Oberes' shoulder and under threats asked him to tell the truth and admit that he was a volunteer guard. When they reached the house at Figueroa street, Tenebro was ordered to tie Oberes' hand at the back, and after he was so tied he was given blows on the face by both appellant and Tenebro. It was while they were thus confined that Oberes saw Victoriano Primacia and Juan Unabia got down from the truck at the house where they were detained, and they were also investigated and maltreated by Gerona. Both Oberes and Amfre were detained in that house on Figueroa street from December 23 to December 31.

In so far as Lorenzo Amfre is concerned, it was the appellant who also investigated him, and questions were asked him whether or not he was a guerrilla or a volunteer guard. As Amfre made denials, Gerona struck him in the mouth and back, as a consequence of which four of his front teeth, two up and two down, were pulled out.

On the sixth count, the evidence for the prosecution is to the effect that on December 26, 1944, while Lebiosia Unabia Primacia was at home in Minglanilla, Cebu two Filipino spies came and asked her for her husband, Victoriano Primacia. She told them that he was in the house of Attorney Juezan, where he was playing majhong. After this she saw her husband being conducted from the house of Juezan, with both hands tied at the back, and appellant Gerona with him. Gerona questioned him, charging him with being a G.I. or a guerrilla, and showing a list supposed to contain the names of G.I. members. Primacia's brother was also charged with being G.I. and investigated and maltreated. After the investigation both brothers were taken to the headquarters of the Japanese kempetai. As Gerona and his companions took them away, Victoriano Primacia's wife was told that both her husband and the latter's brother were guilty. Since their arrest Victoriano Primacia has never returned.

The prosecution proved and the appellant admitted that he is a Filipino. The evidence submitted by the prosecution on the above facts satisfies the two-witness rule.

The defense presented by the defendant-appellant are a denial and an alibi. He admits that he had been close to the Japanese because he had a big business selling them tires, batteries, frigidaires, electrical supplies, etc., but claims that he left Cebu before the end of October, 1944, evacuating to Clarin, Bohol, where he was investigated and detained as a Japanese spy and jailed in the guerrilla barracks until March, 1945.

Witnesses were submitted by defendant-appellant to disprove the charge that he was in Cebu acting as spy. The first one is Dario Rama, but his testimony is limited to stating that he did not see appellant in T. Padilla street after the bombing. The evident reason is because by that time the appellant, after leaving his store, which was hit by bombs, joined the Japanese kempetai. Furthermore, this witness declared that he left T. Padilla street and went to live in another place, and merely stated that he did not know what appellant was engaged in after November 20.

Another witness presented by the defense is one Jose R. Makawili, who claims to have seen Victoriano Unabia arrested, then to have evacuated to Clarin, Bohol, with Unabia's family, and to have seen appellant in Clarin, Bohol, then already under detention. But the wife of Unabia denied having been with this witness on their trip to Bohol, which took place on December 31, not December 28, as claimed by this witness. This witness knowledge

about Unabia's arrest is also put to doubt by his allegation that the arrest took place in Unabia's house, whereas Unabia's wife and daughter testified that the arrest took place in another house.

A third witness, Samson Sabalones, declared that he was appellant detained in Clarin, Bohol, one week after October 29, or about November 10. This is in conflict with the testimony of Placido Lopez and Francisco Lopez, who positively identified appellant as the one who arrested them on November 10. It is to be noted that this witness declared that the commanding officer of the battalion or company by whom appellant was detained was one Pedro Camacho, yet this supposed commanding officer was not produced in court to testify.

Appellant himself testified that he left Cebu on October 13, 1944, arriving at Clarin, Bohol, on October 17, 1944, and that thereupon the volunteer guards subjected him to an investigation, and thereafter detained him until March, 1945.

The trial court did not give credit to the denials of the defendant-appellant and his supposed absence in Cebu during the days when his victims were arrested. We find no reason or ground for disturbing this finding. We have carefully read the testimonies of the witnesses, and while those for the prosecution were clear, positive, and direct as to appellant's identity as the spy who caused the arrest, those of the defense are mere denials, general assertions, lacking that concreteness and details as to facts and circumstances characteristic of truthful testimony.

The only argument of counsel for appellant which calls for serious consideration is the improbability of appellant's responsibility for the arrest of Victoriano Primacia in view of the fact that the latter was close to appellant, having been the one responsible for appellant's marriage to Lina Nolasco, a teacher under Victoriano Unabia. It is to be noted, however, that appellant was not alone when Unabia was arrested. He was with two other undercovers, and he could not have evaded his duties. Besides, the wife of Unabia would not have testified against appellant if it were not true that he was with the raiding party.

It can be stated, however, in mitigation of appellant's responsibility, that the evidence does not show that he ever maltreated Unabia or that he was responsible for his execution. Under these circumstances, it would seem that the penalty imposed by the trial court, that of life imprisonment, is not in accord with other decisions of this Court, which have imposed only an imprisonment of 15 years for those who have acted as Japanese spies, maltreating guerrillas, without being responsible for their death or execution.

WHEREFORE, the judgment of conviction is hereby affirmed in all respects, except that the sentence imposed is hereby reduced to imprisonment for not less than 15 years of reclusion temporal. With costs against the appellant.

Paras, C. J., Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, JJ., concur.

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