

95 Phil. 209

[ G.R. No. L-4928. June 11, 1954 ]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. AMADO VENEGAS, ET AL., DEFENDANTS, AMADO VENEGAS, PEDRO RODRIGUEZ AND ALEJANDRO VICENTE, DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**CONCEPCION, J.:**

This is an appeal taken by defendants, Amado Venegas, Pedro Rodriguez, and Alejandro Vicente, from a decision of the Court of First Instance of Bataan convicting them of the crime of robbery with double homicide, and sentencing them to life imprisonment, to indemnify the heirs of the deceased Valeriano Soriano and Francisco C. Quezon, in the sums of P580, representing the value of the stolen goods, and P10,000, and to pay the costs.

It appears from the evidence for the prosecution that, on November 18, 1948, several persons forming part of Squadron 18 of the Hukbalahap organization, under the leadership of Jose Gabun alias Tuñgol, descended from the mountains of Bataan and entered the barrio of Bilolo, municipality of Orion, province of Bataan, for foraging purposes. Upon arrival, Tuñgol sent for his "contact men," appellants Pedro Rodriguez, who was the barrio lieutenant, and Alejandro Vicente. Tuñgol wanted a jeep borrowed, and, when it appeared that this was not feasible, he bade Vicente and Rodriguez to call another Huk "contact man," Amado Venegas. As Rodriguez and Vicente came back with Venegas, Tuñgol told him that the organization needed rice. Venegas replied, in the presence of Vicente and Rodriguez, that said commodity was difficult to secure, because Valeriano Soriano and his nephew-in-law, Francisco Quezon, stood in the way and should, therefore, be first

liquidated, adding that, otherwise, it would be impossible to obtain provisions for the Huks. Soon thereafter, Tuñgol instructed Venegas and Rodriguez to ascertain the whereabouts of Soriano and Quezon. Hence, said appellants repaired to the Poblacion of Orion. Later on, they returned with the desired information. Then Tuñgol and other members of his squadron, including two men, nicknamed Malugod and Macatao, accompanied by Venegas, proceeded towards the poblacion.

It appears that in the house of Councilor Francisco Quicho therein, Quezon was then playing chess and Soriano, *mahjong*.

It was about 10:00 p.m. One of the Huks, wearing a white jacket, khaki trousers and a fatigue helmet, who, seemingly was Tuñgol, entered said house, his right hand on the butt of the gun at his waist. Stating that he was a volunteer guard and that his companions were waiting in a truck parked in front of the municipal building, he inquired from one of the *mahjong* players, Esteban Quiambing, whether Huks used to come and play in said house and whether any of the men present had a firearm. Upon receipt of a negative answer and after being introduced to the players—including Quezon, Soriano and Mrs. Quicho—he called Quezon aside and conversed with him in a low voice. Then Quezon called Soriano and, after a brief conference, the three left. About an hour later, they, together with Malugod, Macatao and appellant Venegas, headed towards the house of Soriano. Venegas stated that the rice was ready and told his companions to take charge of Soriano and Quezon. After receiving Tuñgol's affirmative answer, Venegas left. Then Tuñgol went up said house, accompanied by Soriano, and ransacked the premises in search of firearms. Subsequently, Tuñgol proceeded to the ground floor, where Malugod and Macatao were waiting. There he took Soriano's old rifle and his two pairs of shoes, worth P50; a typewriter, worth P300; a portfolio, worth P50 belonging to Quezon; and the wrist watch of his wife, Leoncia Losame, worth P160. Later on, Soriano and Quezon were taken to a place about 15 meters from said house, where they were riddled with bullets and killed.

Although not specified in the record, it may be deduced therefrom that the actual killers were, in all probability, Tuñgol, Malugod and Macatao, they being the persons closer to the victims. The other Huks,

including Bernardo Jimenez, one nicknamed Zipper, and appellant Alejandro Vicente, were in the same place, but a few meters away. The evidence for the prosecution is, likewise, silent on the whereabouts of appellant Rodriguez at that very moment. Later on, the Huks headed towards the barrio of Sabitan, accompanied by Alejandro Vicente, who carried the stolen typewriter. Upon reaching said barrio, Tuñgol bade Vicente to call the other members of the squadron, and when the same was complete, it returned to the mountains, passing by the barrio of Bilolo, where appellant Vicente remained.

Alejandro Vicente merely tried to establish that he did not leave his house that evening. Pedro Rodriguez, who did not take the witness stand, limited himself to adopting the evidence of Vicente as his own (Rodriguez) proof. Amado Venegas, in turn, tried to establish that, on November 18, 1948, Mayor Agustin Angeles of Orion brought him from that municipality to Manila; that they spent the night of November 18-19, in Quezon City; and that he did not return to Orion until November 19, at about 10:15 a.m. Mayor Angeles, Hermogenes Villegas (a sergeant of police of Orion) Emilio Gancayco, Emiliano Venegas and Jeremias Carlos, tried to corroborate the alibi of appellant Venegas. The same is refuted, however, by the following circumstances:

1. According to the official vouchers, Exhibits L-5 and L-6, submitted by Mayor Angeles to collect per dimes and the expenses incurred by him in connection with his trip to Manila, he left Orion on November 15, at 6:40 a.m., for the purpose of getting rice from the NARIC in Manila, where he arrived that same day, at 11:00 a.m., and stayed up to November 19, at 6:00 a.m., at which time he departed from the city for Orion, which he reached at 10:15 a.m. Having been in Manila *continuously* from November 15 till the morning of November 18, according to said official record, Mayor Angeles could not have been in Orion on November 18 and brought Venegas to Manila on the same date, as he would have us believe. Indeed, if the theory of the defense were true, Mayor Angeles would have incurred expenses in returning to Orion and, then, coming back to Manila on November 18, and would have submitted, therefore, the necessary vouchers to collect the corresponding traveling expenses, but he has not done so. This

conclusively shows that said expenses were not incurred and that accordingly the aforementioned trip had not been made.

2. Manuel

Garcia, driver of one of the trucks hired by Mayor Angeles for the transportation of said rice, declared that he had not seen Venegas, either in said trucks or in the house in Quezon City where said appellant and Mayor Angeles allegedly spent the evening of November 18-19, 1948.

3. Bernardo Jimenez, a member of the

group of Huks led by Tuñgol that evening, positively testified on the presence of Venegas in Orion, Bataan at the time of the occurrence, and on his aforementioned participation in the commission of the crime charged. Venegas maintains that Jimenez testified as he did because he wanted to be in the good graces of the constabulary. Obviously, this pretense takes for granted that the latter wanted at all cost to secure the conviction of Venegas, even if he were innocent of the offense charged, which is a gratuitous assumption, for the record does not show any particular reason or motive therefor. Apart from the foregoing, His Honor, the Trial Judge, who observed the behavior of the witnesses, during the trial and was, therefore, in a better position than we are to pass upon the credibility of their testimony was particularly impressed by the veracity of Jimenez, and the record does not disclose sufficient facts to justify interference with the conclusions of the lower court in connection therewith.

4. Bernardo

Jimenez was, moreover, corroborated, in several respects, by the testimony of Leoncia Losame, Vicente de los Reyes and Teodoro del Rosario, and by the affidavits, Exhibits C and D, made by appellants Vicente and Rodriguez, respectively, before the Clerk of Court of Bataan, soon after their apprehension.

5. The theory

of the prosecution is bolstered up, and the alibi of Venegas further

weakened, by the fact that, in addition to being a Huk, said appellant has special reasons to perform the acts imputed to him, inasmuch as: a) Soriano and Quezon were his bitter political enemies; b) they dissuaded several persons from contributing to a fund being raised to defray the expenses necessary to secure recognition of a guerrilla organization of which Venegas was a ranking officer; and c) he believed that the political influence of Francisco Quezon was responsible for the stiff penalty imposed upon him in a decision of the Court of First Instance of Bataan, in criminal case No. 4415 thereof, for physical injuries inflicted upon a principal teacher of Orion (Exhibit H), which, on appeal, was affirmed by the Court of Appeals, although the latter reduced said penalty (Exhibit J)

Needless to say, the foregoing circumstances, likewise, lead to the conclusion that the version of the prosecution relative to the acts performed by Venegas was correctly accepted by the lower court.

The *alibi* set up by Vicente—in support of which he introduced his testimony and that of his wife, Felicidad Cruz, and his niece, Maria Cruz—is, likewise, untenable. His presence at the scene of the occurrence was established, not only by the testimony of Bernardo Jimenez, but, also, by that of Vicente de los Reyes, a man 70 years of age, who had no possible motive to commit perjury against said appellant. Moreover, his alibi is inconsistent with his aforementioned affidavit Exhibit D, subscribed and sworn to before the clerk of court.

The next question for determination is whether or not, under the facts proven by the prosecution, appellants are guilty of any crime. The defense contends that they are not, upon the theory that they had not participated, directly or indirectly, in the assassination of Soriano and Quezon. The prosecution has established, however, that appellants were Huks, whose main task, as contact men thereof, was to help the Hukbalahap organization secure the necessary provisions; that, for this reason, upon arrival at Bilolo of Squadron 18, its leader, Tuñgol, got in touch immediately with appellants Venegas, Vicente and Rodriguez; that, thereupon, Tuñgol discussed with Venegas, in the presence of Vicente and Rodriguez, the problem of obtaining rice for

the Huks; that Venegas pointed to the presence of Quezon and Soriano as a major, if not an insurmountable, obstacle to the accomplishment of their purpose, and consequently, to the necessity of eliminating Quezon and Soriano; that Venegas would not have made this observation—which would have been extremely dangerous—if he and his co-appellants were not identified with the Huks; that Tuñgol could not possibly have disregarded said observation, for food is vital to the Huks; that Venegas and Rodriguez, thereafter, ascertained the whereabouts of Soriano and Quezon, upon Tungal's advice, which, they must have known, could have had no other purpose than to carry out the idea suggested by Venegas; that when Tuñgol was proceeding to the house of Soriano, together with the latter and Quezon, Venegas told Tuñgol to take charge of Soriano and Quezon, evidently referring to their liquidation, as proposed by said appellant; and that appellant Vicente was with the group carrying the goods stolen from the house of Soriano, and a few paces from Soriano and Quezon where both were killed. The foregoing series of acts satisfactorily show that, at least, appellants Venegas and Vicente had the same purpose as the other members of the band of Huks above-mentioned—namely, Tuñgol, Malugod and Macatao—and that all of them were united in carrying out said purpose into execution. In other words, said appellants were in conspiracy with the aforementioned members of the Huk organization of which they form part, for which reason the former are liable for the acts of the latter in the same manner and to the same extent as if they themselves had physically killed Soriano and Quezon and abstracted the goods afore-mentioned.

We agree, therefore, with the lower court that appellants Venegas and Vicente are guilty as principals of the crime of robbery with double homicide charged in the information. Although the offense was committed with the aggravating circumstances of treachery and nighttime and by a band, warranting the application of the extreme penalty, the same can not be imposed owing to the absence of the number of votes required by law therefor.

With reference to appellant Rodriguez, we are not satisfied, however, that the evidence on record are enough to sustain the judgment

of conviction rendered against him. The circumstances inculcating Rodriguez are the fact that he is a Huk, being a contact man of Hukbalahap organization ; that he and Vicente looked for appellant Venegas, upon instructions of Tuñgol; that Venegas discussed with Tuñgol, in the presence of Rodriguez and Vicente, the advisability of eliminating Soriano and Quezon; and that, in obedience to Tuñgol's command, Rodriguez and Venegas went to the *poblacion* of Orion for the purpose of ascertaining the whereabouts of Soriano and Quezon. These facts do not necessarily establish that appellant Rodriguez favored or shared the idea of liquidating Soriano and Quezon or that he acted in the manner in which he did for the purpose of assisting in the execution of said plan. In fact, it appears from his statement Exh. C, which is part of the evidence for the prosecution, that, when the group of Huks were nearing the house of Soriano, appellant left his "comrades" upon the pretext that he had to go to a drug store to buy some medicine for his child. Moreover, there is nothing to show that he had profited by the effects of the crime. Obviously, the fact that he is a member of the Huk organization does not suffice to warrant his conviction of the crime of robbery with double homicide, for the charge in the case at bar is based, not upon his aforesaid affiliation, but upon his alleged participation in the commission of said offense. The case, as against appellant Rodriguez, should, therefore, be dismissed for insufficiency of the evidence and the decision appealed from modified accordingly, with the proportionate part of the *costs de officio*.

Appellant Amado. Venegas has filed an "Urgent Motion for New Trial", based allegedly upon newly discovered evidence, consisting of the testimony of Rosalino Macandili, said to be "alias Sampaguita" and Cipriano de Leon, said to be "alias Malugod". It is averred in said motion that these witnesses, who are serving sentences, in the insular prison in Muntinglupa, for other crimes, have made the affidavits, attached to the motion as Annex A and Annex B, respectively, exculpating said appellant; that he could not, with reasonable diligence, have discovered and produced said evidence at the trial; and that said convicts made their aforementioned affidavits in response perhaps to the "qualms of their conscience" upon learning that innocent

men (referring to appellants herein) had been convicted of the crime charged in the present case. In the aforementioned affidavits, Macandili and De Leon substantially state that they were members of the band of Huks who went to Orion November 18, 1948; that Soriano and Quezon were killed by Tuñgol and Bernardo Jimenez; and that appellants herein were not at the scene of the crime, when the same was committed.

In conformity with a resolution of this Court deferring action upon said motion until the case is decided on the merits, we now hold that the motion should be, as it is hereby denied, the evidence in question being merely corroborative and insufficient to alter the result of the case. It tends to show that appellants had not participated in the actual killing of Soriano and Quezon, which is already established by the evidence on record, and were not at the scene of the occurrence, in line with the alibi set up by appellants. Hence, the allegedly newly discovered evidence would seek to prove nothing new, apart from being too weak to affect the outcome of the case.

Modified as above stated, as regards appellant Pedro Rodriguez, who shall be released immediately, and the further modification that appellants Amado Venegas and Alejandro Vicente shall be jointly and severally liable for the payment of the indemnity provided for in the decision appealed from, the same is hereby affirmed, therefore, in all other respects, with costs against said appellants. It is so ordered.

*Paras, C. J., Pablo, Bengzon, Reyes, A., Jugo, and Labrador, JJ., concur.*

---