

**THE PEOPLE OP THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CONRADO SANTIAGO @ CARDING, ET AL., DEFENDANTS.***G.R. No. L-2181. May 25, 1950*

Ponente: TUASON, J.

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The appellants—Conrado Santiago, Serafin Velasquez and Zoilo Dimatulac—were prosecuted in the Court of First Instance of Pampanga for murder. Upon trial, Velasquez and Santiago were found guilty as principals and sentenced to reclusion perpetua, and Dimatulac as accomplice and sentenced to an indeterminate penalty of from two years, four months and one day of prision correccional to 12 years and one day of reclusion temporal, with accessories of law. Further, Santiago and Velasquez were sentenced to pay an indemnity of P2,000, jointly and severally, and Dimatulac P500 to the heirs of Venancio Concepcion, and the three to pay one-third of the costs each.

Santiago and Velasquez do not deny participation in the crime but allege that they were Huks operating as guerrillas and that the deceased was a spy for the Japanese and was slain in furtherance of the guerrilla movement. Dimatulac prays for acquittal on the ground of insufficiency of evidence against him.

The facts surrounding and preceding the killing are these, according to the evidence for the prosecution: Salvador Ayson was the owner of a ricemill in sitio Telasilid, barrio Mining, Angeles, Pampanga, where he had his home. Managing the rice mill was his nephew, the late Venancio Concepcion, a lad of 17 years at the time. One day in January, 1943, a band of Huks led by a certain Ben Liwanag, having gotten wind of the fact that Ayson was keeping firearms in his rice mill, came to Telasilid to seize them. It so happened, according to Ayson, that one of his employees, Juan Nunag had revealed to the Huks the existence of those firearms. Ayson told the Huk leader that it would not be prudent to give him the weapons in broad daylight and suggested that they come back at night. Before night came, at 4 o'clock in the afternoon, two constabulary soldiers came to Ayson's house, having been told that the Huks had kidnapped Ayson. Ayson related to the constabulary what happened but concealed from them his actual possession of firearms. He made them understand that he had lied to the Huks telling them he had firearms in order that they would allow him to go home safely. The constabulary expressed intention to raid the barrio at 6 o'clock in the evening but promised not to do so upon Ayson's representation that if they did his business would be ruined and the Huks would go after him. Nevertheless, constabulary soldiers did come that night and stormed the barrio with bursts of fire. Fearing possible reprisals from the Huks, Ayson decided to close up his mill and took his family to Manila where they stayed for the duration of the war, leaving his rifles behind.

Venancio Concepcion also quit Telasilid and alternately lived at Ayson's house in the poblacion of Angeles and with his mother in Capaz, Tarlac. In November, 1944, Concepcion returned to Telasilid for reasons which are not very clear. Apparently, he wanted to be in the good graces of the Huks operating in that region, and to this end he decided to give them the firearms which he knew his uncle had hidden in the rice mill. He requested Juan Nunag to present him to the commander of Huk Squadron 26 based in barrio Baliti, San Fernando, and under the command of Serafin Velasquez, in which squadron Conrado Santiago was a private and Zoilo Dimatulac a

"political instructor." Nunag suggested that the aid of one Teofila Salunga, who was close to the Huks, should be enlisted for the purpose of contacting Commander Velasquez. This was done and Teofila Salunga complied, accompanying the two men to the house of appellant Dimatulac's father-in-law in barrio Baliti where Velasquez was staying. Velasquez, who apparently did not know Concepcion, asked who the young man was. After the introduction, a conversation between Concepcion and Velasquez followed, in the course of which, according to Salunga, Concepcion told Velasquez that he had some guns and ammunition to give to the Huks, consisting of five firearms and one-half sack of ammunition. According to Felipe Guzman, Concepcion and Velasquez also agreed to go to the ricemill and get the arms. Before the appointed time, at about 4 o'clock, Concepcion made a flying visit to Maxima David, a young woman to whom he was paying court, it would seem. He did not stay long with Maxima David, however, explaining to her that he had an important engagement that night. That was on November 24, 1944.

At night, Concepcion and some Huks repaired to Ayson's ricemill to get the firearms, but only one rifle and one shotgun were there instead of five. When Velasquez learned of this he was indignant and ordered Felipe Guzman, "political director" in Velasquez's outfit, to have Concepcion executed. As Guzman saw no sufficient reason for the order, according to him, he did not carry it out. The next morning, Velasquez saw Concepcion and Santiago having breakfast at the house of Dimatulac's father-in-law and reproached Guzman for his disobedience. Velasquez then called Conrado Santiago aside and ordered Santiago to kill Concepcion himself.

In the meantime, Victor Velasquez, another member of the squadron and a cousin of appellant Velasquez, upon instruction of the latter, ordered Francisco Deang to dig a grave near the railroad track. To this grave Santiago, accompanied by Dimatulac, brought Concepcion and told the latter that it was for him. Apparently astounded beyond measure, Concepcion, according to Deang, exclaimed, "Mother, so they are going to kill me!" According to appellant Dimatulac, Concepcion's exclamation was, "My God, what has happened to me, I am not guilty." Santiago then struck Concepcion in the right temple with the butt of a .45 caliber pistol. Although the blow was delivered with such force that Concepcion's head bled and the wooden part of the pistol was splintered, the victim remained on his feet. After that blow Santiago stripped the deceased of his cloths and tied his hands behind his back with Concepcion's own belt. While Santiago was doing all this, Dimatulac was posted on the other side of the grave and was warned by Santiago to be on the alert. The tying of Concepcion's hands concluded, Santiago picked up the shovel of one of the grave diggers and whacked him on the nape with the shovel blade. This blow opened another big cut and knocked Concepcion squarely into the pit. Santiago immediately jumped down the pit and removed Concepcion's ring from his finger. Afterward, he ordered the grave to be filled and left with Dimatulac. Before leaving, Santiago put on the murdered man's denim pants, and after the shirt had been washed by Dimatulac's wife but before it was thoroughly dry, he put it on too. The ring was turned over to Velasquez.

The appellant's evidence is compressed in their brief. Their version is that in 1943, Velasquez, as commander of Huk Squadron 26, with Hukbalahap commanders Marangal and Tarzan and some soldiers, knowing that Salvador Ayson and Venancio Concepcion had some connections with the Japanese and the Philippine Constabulary and were keeping firearms, came to see Ayson and Concepcion in Telasilid and tried to win them over to the resistance movement, to persuade them to give up their pro-Japanese activities. As a ruse to trap the Hukbalahaps, Ayson and Concepcion feigned willingness to give the visitors firearms on the night of that day. At the appointed hour Velasquez and some of his men came back to the ricemill but they met in the vicinity thereof only Venancio Concepcion, who told them to wait, saying that he was going to get the key to the warehouse from Ayson's house in Angeles. They waited but Concepcion did not come back; instead they were attacked by Japanese and constabulary soldiers and, as a result, Velasquez sustained a gunshot wound in the shoulder.

Previous to that incident, Salvador Ayson and Venancio Concepcion, specially the latter, were in the

Hukbalahap's wanted list. Realizing their precarious situation, Ayson and Concepcion left Telasilid, the former evacuating to Manila and the latter joining his mother in Capaz, Tarlac.

On November 23, 1944, Venancio Concepcion, in order to be able to loiter freely in barrio Telasilid and the neighboring barrios without fear of molestation from the Huks, and in order to get more information about the Hukbalahap movement for the benefit of his Japanese employers, came to see Juan Nunag, who Concepcion knew had connections with the Hukbalahap organization, and requested Nunag to accompany him to the house of Maxima David, with whom he was making love, and afterward to Commander Serafin Velasquez. Juan Nunag suggested to Concepcion that they see Teofila Salunga who was close to Velasquez and who could better arrange a meeting between Concepcion and this defendant. And so it went. When Teofila Salunga and Juan Nunag introduced Concepcion to Velasquez in barrio Baliti, Concepcion was ordered by Velasquez to remain in the house under guard and Salunga and Nunag were told to go and leave Concepcion. That was on November 24, 1944.

Later in the afternoon of that day, Concepcion, accompanied by Velasquez and his men, went to the ricemill in Telasilid to get the promised firearms and ammunition, but Venancio Concepcion gave them only two guns and no ammunition. This broken pledge added to the Huk's anger at Concepcion, who they knew was a Japanese spy.

Thereafter Concepcion was subjected to an investigation by Commander Velasquez while Conrado Santiago kept watch on him. In that investigation Concepcion readily admitted that he was a spy for the Japanese. In fact there was found on his person a credential written in Japanese characters. Concepcion likewise admitted that he had been instrumental in the raid by Japanese on Commander Velasquez and other members of the Hukbalahaps in 1943, in Telasilid. For this betrayal Concepcion begged Velasquez to forgive him. Velasquez agreed to pardon Concepcion but as a precautionary measure, and also to test Concepcion's loyalty, Velasquez had Concepcion attached to the squadron for observation of his conduct.

On the night of November 24, 1944, Concepcion, while under the surveillance of appellant Conrado Santiago, attempted to flee. He jumped from the house and ran to the field, but Santiago and other Hukbalahap soldiers pursued and caught up with him. Brought back to the house, Concepcion explained that true to his oath as a Japanese spy and having contracted an obligation to serve his Japanese employers, he wanted to escape in order to transmit to the Japanese and the constabulary the information he had gathered. Early the next morning, November 25, 1944, Concepcion's frustrated flight was relayed to Commander Velasquez who had slept in another house. As Concepcion gave Velasquez the same explanation he had given Santiago, the Huk commander decided then and there that it was for the safety of his organization and its members and in furtherance of the resistance movement that a dangerous man like Concepcion should be eliminated. Accordingly, Velasquez commanded Santiago to kill and bury Concepcion and ordered other men of his squadron to dig a grave.

While Conrado Santiago was marching Concepcion in the field to be executed, he met appellant Zoilo Dimatulac and invited the latter to come along, and in compliance with his superior's order, Santiago killed the now deceased.

Assuming the truth of his statement of the evidence as just set out, counsel contends that Velasquez and Santiago are entitled to the benefits of the guerrilla amnesty proclamation and that Zoilo Dimatulac should be absolved of all responsibility for the crime. We will take up these two propositions separately.

The mere reading of the defendant's evidence reveals at once its incorrection in its essential features. The Solicitor General is right in calling this evidence flimsy and of the most transparent kind.

We are constrained to share the opinion of the court below that Concepcion was not a spy. If he had been a spy,

would he have the temerity and stupidity to visit no less than the Huk chieftain in his lair, specially if, as the defendants would have us believe, he was in the wanted list and the Huks had a score to settle with him? After all, the Huks at that time were not so well organized, were not hiding in the mountains, and did not have important secrets, except perhaps their whereabouts which could be learned from a distance. Much more foolhardy would it have been for a spy to be carrying Japanese army credentials, which he had absolutely no necessity to have in his pocket, in the headquarters of the people he was spying upon and who naturally would look upon him with misgivings. No right-thinking man could have failed to realize that possession of such compromising documents under those circumstances would not only defeat his purpose of establishing friendly relations with the Huks but would be positively suicidal.

In the testimony of witnesses who, though introduced by the government, had every reason to be in sympathy with the accused rather than with the prosecution and who heard the conversations between Concepcion and the defendants, there is not the slightest hint that the now deceased was charged by Velasquez or any other Huk with collaborating with the Japanese.

The assertion that Concepcion tried to escape is, in our opinion, also hollow; it does not fit into the admitted fact that Concepcion took great pain to contact the Huks and give them arms and ammunition. That Concepcion sought Velasquez, bothering other people to accompany him to the Huk commander, only to flee after he had found the man and given him guns, seems senseless. Defendants' testimony to the contrary notwithstanding, all indications are that Concepcion's intentions towards the Huks were honest and his desire to ingratiate himself to them sincere. Nor does it appear that he had noticed any sign of hostility towards him on the part of the Huks which could have led him to suspect that his security or his life was in danger. The treatment afforded him by the Huks was, on the surface at least, cordial and friendly throughout the time he was with them. He was not restrained in his movements. After his initial conversation with Velasquez, he was allowed to leave and call on his sweetheart. There was no obstacle then for him to go home if he desired, but he returned. The next morning he had breakfast with Santiago apparently oblivious to his impending doom. In brief, he did not appear to be aware that Velasquez had issued order to kill him until the moment he reached the place where he was to be executed. His reaction upon being shown his grave by Santiago was that of one dazed and dumbfounded by the suddenness and unexpectedness of the dreadful information. His exclamations were expressive of a complete surprise and innocence.

The lower court surmised that the reason for Concepcion's execution was not that he had done Velasquez or the Huks any harm but because it was supposed that by killing Concepcion, Velasquez would get even with Ayson, Concepcion's uncle, whom Velasquez suspected of having tipped off the constabulary to the Huks' presence at the ricemill. Another factor that probably drove Velasquez to his decision to do away with Concepcion was, according to the trial court, Concepcion's belated effort to give satisfaction or apologize for what occurred at the ricemill ten months before. The weight of evidence does not sustain these conjectures. Contrary to the defendants' evidence, it was not Velasquez and his men who were fired upon by the constabulary in 1943 in Telasilid. We believed Ayson's testimony that it was Ben Liwanag's outfit which the constabulary pounced upon, and that it was Liwanag who was wounded.

We are inclined to believe with the Solicitor General that Concepcion was murdered as a direct result of Velasquez's exasperation over Concepcion's failure to produce the number of guns he had promised. Significantly, it was immediately after the delivery of two guns that Velasquez instructed Guzman to have Concepcion executed. The defendants themselves and their witnesses gave the court to understand that this failure, which counsel characterized as a "broken pledge," had added fire to Velasquez's wrath. Felipe Guzman gave a more direct and concrete proof of Velasquez's displeasure over what Velasquez called Concepcion's deception and

perfidy. According to Guzman, Velasquez told him, when he asked why Concepcion was to be killed, that the now deceased was not a good man because he had fooled Velasquez. Guzman also said that he heard Velasquez ask Concepcion why there were only two firearms and there was no ammunition. Finally, Guzman, in answer to the question whether Velasquez was sorry, said that this accused "was not only sorry but angry."

Concepcion's alleged non-fulfillment of his promise, judged by the normal reckoning of human impulse, might seem too trifling to produce indignation to the point of precipitating the taking of a man's life. For once, Guzman reacted conformably to the general pattern; he ignored, if he did not defy, Velasquez's decree for Concepcion's execution because, as he declared at the trial, there was no sufficient ground for it. But as the Solicitor General observes: "The appellants were men hardened and brutalized by war, living by the sword, governing by terror, and made drunk and giddy by their rapid rise from peacetime anonymity to the possession of absolute powers of life and death within their little domain. To men such as the appellants, killing one human being in a fit of irritation was like swatting a fly that annoyed them. So calloused had they become and so completely devoid of ordinary human feelings that one of them, the appellant Santiago, who killed Concepcion in the cold-blooded and brutal manner already related and who did not even think of giving his victim a merciful death, stripped Concepcion of his clothes before killing him, and as casually as if they had just come from the tailor, immediately put on the pants of his victim. * * * And the Huks did not neglect to cart away five cavans of rice which the deceased had deposited with a merchant in Angeles, Pampanga. This was accomplished by means of a letter which presumably the Huks compelled Concepcion to write."

Whatever the reason, it can be affirmed with confidence that Concepcion was not a spy for the Japanese; that he had not given cause for suspicion that he was in the employ of the enemy, and that he did not try to escape. Having already discussed these allegations and ruled them out, we conclude that the lower court, like the guerrilla amnesty commission, did not err in refusing to apply the provisions of the guerrilla amnesty proclamation to Velasquez and Santiago. Even if we should go so far as to find that Ayson had doublecrossed the Huks in 1943 and that Concepcion was executed in reprisal for Ayson's treachery, still the crime would not come within the terms of the amnesty. Concepcion's execution did not and was not calculated to promote the interest of the underground resistance, and Concepcion was not aiding the enemy in his war effort.

As to Dimatulac, it is convenient to state in greater detail the evidence against him. The evidence was furnished principally by Francisco Deang, one of the two grave diggers.

Deang declared that he and another man dug the grave in which the late Venancio Concepcion was to be buried by order of Victor Velasquez, Serafin's cousin. He said that after he and his companion had finished their assigned task Santiago and Dimatulac appeared with Concepcion; that Santiago tied Concepcion's hands behind the back on one edge of the pit, and while Santiago was doing that, Dimatulac walked to the opposite side with drawn pistol and stood facing Santiago and the victim; that before Dimatulac moved to the other side of the grave, or when he was already there, Santiago told him to be on the alert lest Concepcion would escape; that Santiago gave this warning as he was binding Venancio's hands; and that before Deang was through filling the grave with earth, Santiago and Dimatulac left together.

What are we to infer from these facts. As Dimatulac Was "political director" in defendant's squadron, and as Concepcion was marched to the place of his execution from the house of Dimatulac's father-in-law, it is more than reasonable to presume that this accused and Santiago were together from the start and that both were charged with the same mission.

Although armed with a pistol, Santiago must have needed a companion to undertake so serious and dangerous a mission as that which he had on hand; dangerous because Concepcion was tall, according to witnesses, and was

only tied minutes before he was killed. Now, it appears that no one else besides Dimatulac and Concepcion came with Santiago. The difficulty, let alone the risk, of entrusting to a single man, even if he was armed, the marching through, and the execution in, a secluded territory of an unshackled prisoner, must have been apparent to anyone, specially if, as the defendants wanted to tell the court, the condemned man had already made an attempt to get away and was at least as strong as his executioner.

Being an officer in the Huk organization and taking a strategic position with a drawn pistol to forestall Concepcion's escape or to help Santiago in case of emergency, is completely incompatible with Dimatulac's claim of innocence. This defendant's testimony that he came along with his co-accused unaware of what the latter was going to do; that Santiago misled him into believing that he was taking Concepcion to Panipuan and that Velasquez wanted to see Dimatulac in that barrio, deserves no serious consideration. If Santiago thought he needed a companion, as undoubtedly he did, he must have asked for one who would be willing and ready to assist him if the condemned man should resist or try to flee, not one who was not even apprised of what he (Santiago) was going to do. Of such men there must have been aplenty. What is more, we do not think that a buck private would dare deceive a high officer, much less if there was no reason for him to conceal his need of the officer's aid.

It is therefore our finding that Santiago and Velasquez were properly found guilty of murder as charged, and that Dimatulac's participation in the commission of that crime makes him not merely an accomplice but a principal. Accordingly, the judgment against Santiago and Velasquez is affirmed, except as to the indemnity, and Dimatulac is pronounced guilty of the same crime as principal and sentenced likewise to reclusion perpetua. The appellants are also sentenced, jointly and severally, to pay the heirs of the deceased an indemnity of P6,000, and proportionately the costs.

Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

TUASON, J.:

I hereby certify that the Chief Justice concurs in this decision.

Judgment modified, indemnity increased.

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