

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. LUCAS GEMPES, MARCELINO BOSTILLO, AND PROCESO ROCERO, DEFENDANTS AND APPELLANTS.

G.R. No. L-1749. April 02, 1949

Ponente: TUASON, J.

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TUASON, J.:

Found guilty of murder by the Court of First Instance of Mindoro, Lucas Gerapes was sentenced to reclusion perpetua and Marcelino Bostillo and Proceso Rocero to an indeterminate penalty of from 10 years and 1 day of prison mayor to 17 years 4 months and 1 day of reclusion temporal. The three accused were also sentenced to pay the heirs of the deceased, jointly and severally, the sum of P2,000 and each to pay a proportionate share of the costs. Eleuterio Escorpizo, co-accused with the appellants, was acquitted for lack of sufficient evidence.

Sabino Almendras was picked up at his home in barrio Pinagsabañgan, municipality of Naujan, province of Mindoro, by a group of nine men on the night of July 28, 1943, and murdered before dawn of the next day in sitio Viga in the same municipality. By their admission, the defendants formed part of the band but denied that they took part or were present in the actual killing.

The evidence for both sides is wholly oral Jose Nuñez, one of the participants in the crime, gave the main evidence for the prosecution as government witness. The salient points of his testimony are these:

He was a guerrilla. On July 28, 1943, at about 6:30 in the afternoon, he and other members of his outfit were ordered by Sgt. Gempes to accompany him to Sabino Almendras' place, where they arrived at about 10 o'clock p. m. There were nine of them altogether, among them being Proceso Rocero, Marcelino Bostillo, Eleuterio Escorpizo and Gempes. Upon reaching Sabino Almendras' house, Gempes told him and his other companions to get Almendras. He did not go up the house, but saw Rocero, Crispulo Cantos and Melquiades Madula bring Almendras down, bound with a piece of rope. Gempes was at the foot of the stairs. He (witness) was armed with a rifle, Sgt. Gempes with a .45 caliber pistol, Marcelino Bostillo a shotgun, Eleuterio Escorpizo a Chinese rifle and Proceso Rocero an automatic rifle. While Almendras was being led downstairs, an old woman, Almendras' wife, with a lamp followed. From that place Almendras, with his hands tied behind his back, was carried to Mapalo, Naujan, Mindoro, where their camp was located, reaching the camp about one o'clock a. m. It was Proceso Rocero who held the loose end of the rope and who, at the camp, tied Almendras to a post. Lucas Gempes was with the band in returning to the camp walking at the head thereof. Once Almendras was tied to a post, Sgt. Gempes told Marcelino Bostillo to get a pick and a shovel and dig a grave near the Viga river. Marcelino Bostillo obeyed and when he returned reported to Gempes that the grave was ready. Then Gempes ordered the witness to kill the prisoner, but he refused and was scolded. Thereupon Gempes assigned Crispulo Cantos and Melquiades Madula to carry out the order, and Almendras was dragged by Proceso Rocero to the place where he was to be killed followed by Gempes, Bostillo, Escorpizo and the witness. That place was about 200 yards from the camp. At the execution the witness mounted guard near the road. Beside the grave Almendras was made to kneel by Gempes.

When Almendras was in this position, Gempes gave the order to kill him, and Padilla struck him with the butt of a rifle in the head. Almendras fell into the grave, after which he was given a finishing blow by Crispulo Cantos with a fixed bayonet. This was about four o'clock in the morning. He had been under Gempes for two days when Almendras was executed, and four days after that Captain Adeva arrived and he rejoined that officer.

Romana Añil, Sabino Almendras' widow, 49 years old, testified that at about 10 o'clock p. m. on July 28, her "husband was taken by one of our enemies." Of the men who came she recognized only Lucas Gempes; the latter was at the foot of the stairs. She heard Gempes give the order to bring her husband downstairs. Her husband and Lucas Gempes were political leaders of opposing candidates before the war and were not on speaking terms. Her husband belonged to the faction of Jose Basa and Gempes to that of Cirilo Gaba. During the occupation both Gempes and her husband were guerrilleros but Almendras was only a food collector.

Contradicting the most damaging details of the foregoing testimony, Lucas Gempes said that he was a mess sergeant in the guerrilla unit quartered in Mapalo, Naujan. The highest officer of that outfit was Lt. Roel Beloncio. Next in rank to Beloncio was Sgt. Jimenez from whom he received orders. As mess sergeant, his sole duty was to procure foodstuff for the outfit. On July 28, 1943, he was invited by Sgt. Jimenez to point to him the house of Sabino Almendras." With him were Padilla, Porong, Melquiades, Bostillo, Sgt. Jimenez, Nuñez and two others whom he no longer remembered. After pointing to Jimenez Almendras' house he was ordered by Jimenez to find food and he separated from him, returning to the camp the following morning with rice and chickens. It was only upon his return to the camp that he was informed Sabino Almendras had been taken to Viga. Jose Nuñez, he said, lied, when he declared that he (Gempes) was responsible for the seizure and murder of Almendras. He said Jose Nuñez was "angry with him" because Nuñez had made love to his (Gempes') daughter and tried to kiss, embrace, and elope with her. When he heard, from his daughter, of what Nuñez had done to her, he sent Nuñez away and told him "it was useless to continue his advances with my daughter." When he left, Nuñez warned, him, "You will have your day." Outside of the camp he was not authorised to carry firearm. He was never assigned to go on patrol. He denied having threatened. Romana Añil with bodily harm when she refused to give his soldier sugar. He said he never asked sugar from her. He said that he and Sabino Almendras belonged to the same Basa faction ever since he became an elector. He denied that he and Almendras were political enemies.

Jose Nuñez's and Romana Añil's testimony is cogent, couched in simple and natural language, and free from any sign of falsehood or exaggeration. That Nuñez made an attempt to abuse Gempes' daughter, if true,—and it does not sound true—should have been a cause for atonement, and apology instead of revenge. It is to be noted moreover that Nuñez testified, not against Gempes alone but also against the other defendants with whom he is not alleged to have had any unpleasantness.

It can not have been a mere coincidence that the men on whom the accused pin the blame for Almendras' death are either dead or fugitives from justice. Quite apart from this, the imputation of the crime to Jimenez is completely devoid of any color of verisimilitude. It has not been shown that Jimenez had any resentment against Almendras. In fact nothing was said about his antecedents, his assignments in the guerrilla organization, or his relation and attitude towards Almendras. Granting that Almendras was a Japanese collaborator, Roel Beloncio, the commanding officer of the outfit would have been the man to decide on what should be done with him for his treason. One might well imagine that he would at least be consulted in such a matter of high policy and of vital concern to the underground resistance. The killing of Almendras was riot an emergency affair demanding prompt action.

Considering all the circumstances, there was little likelihood that Gempes went only as far as Almendras' house to .point the place to the murderers. Almendras appears to have been a prominent inhabitant of his barrio. Certainly no guide was needed to locate his home in such a small community. With respect to the other defendants, it takes

more than a strange tale of accused to overcome the positive testimony of eyewitnesses. It would have been strange if after walking 28 kilometers both ways to kidnap Almendras these defendants had abstained from going at least to the place of execution which was within a stone's throw from the camp.

Unlike Jimenez, Gempes had a personal motive to slay Almendras. We believe the testimony of Almendras' widow that the relation between the two men was bitter. There is nothing in that testimony which has any legitimate tendency to impeach her truthfulness and sincerity. Gempes' denial has not shaken the conviction that he and the deceased were political enemies. His statement that he and the deceased had supported the same candidate for mayor could have been easily corroborated, and his failure to present such corroboration may properly be considered as affecting his credibility. On the other hand, we do not believe Romana Añil would dare make a false assertion on a matter of public knowledge, such as defendant's political affiliation and activities, which she knew could easily be disproved.

Marcelino Bostillo invokes the benefits of Amnesty Proclamation No. 8. In this connection witnesses for the defendants, but not any of these, gave testimony to the effect that the deceased had a pro-Japanese leaning.

Feliciano Garing testified that he was mayor of Naujan in 1943; that during that year Almendras was a leader of the neighborhood association and was briefed by him on his duties as such; that "some reports came to me that Sabino Almendras violated the instruction of the guerrilleros;" that the guerrilleros asked him how he "could amend the idea of Almendras, because he was advising the people not to give foodstuff to bogus guerrillas, even an egg."

Dominador Buhat, 23 years of age, testified that Julian de Alva requested him to transport two cavaness of palay on a sledge to the guerrilla camp; that he was not able to obey this order because Almendras later stopped him saying that he was going to give the cereal to the Japanese; that Japanese came and carried the palay while he and Almendras were still conversing.

Esteban Beloncio testified that he was a guerrilla captain in 1943 with camp at Mapalo, Naujan, of which the highest officer in charge was Roel Beloncio; that "since 1942 he (Almendras) had a leaning towards the Japanese which had been subsequently supported by the reports of some of my soldiers". He said that in 1942, when he was in hiding on his land in Pinagsabañgan he "was repeatedly warned by his men to move his camp somewhere for the simple reason that there were persons there who had been once in a while reporting his presence in that place to the Japanese," Almendras being one of them; that when the enemy garrison was transferred to the crossing at Naujan, they had an encounter with the Japanese in Halauan; and that before the encounter he was already aware that Almendras had been frequenting and staying in the garrison and Japanese had been visiting him in his house.

This charge of collaboration is far from satisfactory, let alone convincing. Almendras' widow denied that her husband was ever a neighborhood association leader, and she ought to have known if he had been appointed or acted as such. As to Buhat he is biased. It happened that this witness was married to Gempes' daughter, the girl Jose Nuñez is alleged to have abused. Without any corroboration from a neutral source Buhat's testimony is not worthy of credence. In fact the testimony on its face is unbelievable. It is highly unbelievable that, living with his family in a barrio far from a Japanese garrison and without Japanese or police protection, a barrio to which the guerrillas had full access, Almendras could have told guerrillas in their face that they could not have his rice because it was intended for the enemy. No man in his right senses would have committed and said a thing so suicidal. As to Beloncio's testimony, the same is vague, general, or hearsay. It does not ring true. We are persuaded that, not only is Almendras' alleged collaboration with the Japanese a fabrication out of whole cloth but that he, too, was identified with the guerrilla activities.

None of the defendants or their witnesses testified that Almendras was liquidated on account of his alleged

pro-Japanese attachment and sympathy. Admitting for the purpose of this decision that Almendras was a collaborationist, it does not necessarily follow that this was the motive for his execution. Motives are a state of the mind. The accused better than any other know the emotion that prompted their action. Since this is a matter that lies peculiarly with their knowledge and since moreover this is an affirmative defense, the burden is on them to prove, or at least to state, which they could easily do personally or through witnesses, that they killed the deceased in furtherance of the resistance movement. That the killing was perpetrated with this aim in view can not be left to inference from the mere fact that the deceased was disloyal or was suspected of disloyalty to his country. This is specially true where there is convincing and positive proof that a long standing animosity existed between the principal accused and Almendras and that the deceased was not, as a matter of fact, a pro-Japanese. It is not enough to cast a hint or create a room for speculation that cooperation with the Japanese might have been behind the crime, when the defendants by their plea indirectly but clearly state the contrary. Neither does it suffice to show merely that the victim was a traitor unless treason was in and of itself sufficient justification or excuse for killing traitors.

Gempes' testimony that as a mess sergeant he had nothing to do with the military phase of the guerrilla movement, and was not even allowed to carry arm outside the camp, explodes the insinuation that Almendras' slayer was prompted by his fraternizing with and giving aid to the Japanese. Execution of a prominent citizen for treason is not decreed or carried out by a mere sergeant, much less a mess sergeant whose assignments were confined to looking for and preparing food for the men. Counsel for Gempes and Rocero must have realized the untenableness and futility of this theory when, in a well written brief, they reduced their plea for reversal to the proposition that their clients did not participate in the concluding part of the crime.

The judgment will be affirmed with costs, except that the indemnity will be increased to P6,000. It is so ordered.

Moran, C.J., Pablo, Bengzon, Briones, and Montemayor, JJ., concur.

DISSENTING

PERFECTO, J.:

A complete summary of the testimonies is necessary to give a clear idea as to the effect of the evidence and determine whether or not appellants are guilty of murder or are rather entitled to the benefits of the guerrilla amnesty.

The witnesses for the prosecution testified in substance as follows:

- Jose Nuñez, 24, married.—He was a member of the resistance movement, and on July 28, 1943, he was in their camp, in barrio Mapalo, Naujan, Mindoro, which was under the charge of Sergeant Lucas Gempes, who, at 6:30 in the afternoon of July 28, 1943, took him and others, including Proceso Rucero and Marcelino Bostillo, to a place they did not know. They went to the house of Sabino Almendras. With his hands tied with a piece of rope, Almendras was taken down from his house, led by Rucero. The witness was then posted as guard in front of the window of Almendras' house, while Gempes was by the foot of the stairs. It was about 10 o'clock at night when Almendras was taken. (2-5). Almendras was brought by them to the camp at Mapalo, and they arrived at 1 o'clock in the morning. Upon their arrival Almendras was tied tea post by Proceso Rucero. (6). Then the witness heard Gempes order Marcelino Bostillo to get a pick and a shovel and dig a grave near the Viga River. Thereafter, Bostillo reported to Gempes that the grave was already dug. (7). "Sgt. Gempes ordered me to kill Sabino Almendras," but the witness did not obey. "* * * I asked him (Gempes) if there was an order from our headquarters and he got mad with me." "He told me that he does not like disobedient soldiers." "He ordered

another one to kill Sabino Almendras." He ordered Crispulo Cantos and one Padilla to do so. Then Almendras was dragged by Proceso Rucero to the grave. The witness, Lucas Gempes, Marcelino Bostillo and Eleuterio Escorpiso accompanied the group while Almendras was being dragged. That grave was about 200 yards from the camp. "I was again ordered to mount guard near the road." (8). Gempes ordered Almendras to kneel near that grave and then ordered Almendras to be killed; so, Padilla (a soldier) hit him with the butt of a rifle on the head and Almendras "dropped to the grave." (9). Then Crispulo Cantos bayoneted. Almendras and Gempes ordered the grave to be covered. Almendras was finally killed at about 4 o'clock in the morning. Almendras was not investigated before he was killed. (10). While the grave was being covered Gempes admonished them that anybody who would reveal the incident would be killed. (11). It was Melquiades Madola who, with two others, went up the house of Almendras to get him. (13).

The witness admitted having signed Exhibit 1, which was read first to him by Judge Baldes before he affixed his signature. (13). From the time he was dragged from the post where he was tied to the time he was taken to the grave, Almendras did not utter any word; neither Gempes nor anyone said anything to Almendras. (15). Almendras made no protestations. He did not utter any word from the time he was taken from his house to the time he was taken to the place where he was buried; if he did, the witness would have heard him because he was then near. (15-16). The distance between the house of Almendras and the post in the Camp where he was tied is about fourteen kilometers. The trip from Almendras' house to the camp was made from 10 o'clock to 1 o'clock on the same night. "I was one of the accused in this case and I am now revealing everything that is true." The witness was not, however, included in the information filed with the Justice of the peace of Naujan because the chief of police, on the authority of the fiscal, excluded him from the information. (16-18). The chief of police of Naujan told the witness, in September, 1946, that, he was going to be accused. The chief of police did not tell the witness that he would not be accused; he "did not promise me anything." (18). The witness was taken from his house in Naujan by the son of Almendras and by the chief of police who read to him the complaint "and told me that I am one of the accused." (19). "After arriving in the municipal building he (chief of police) took my affidavit and after taking my affidavit I was told to report to him every other day for investigation." (20). The witness was already arrested when he executed Exhibit 1. (22).

- Romana Añil, 49.—She is the widow of Sabino Almendras. At about 10 o'clock in the evening of July 28, 1943, she was at her home with her husband and their children, in Pinagsabañgan, Naujan, Mindoro. "My husband was taken by one of our enemies." "Lucas Gempes ordered the taking away of my husband from our house." She knew only Lucas Gempes among those who had taken her husband. Gempes "was at the foot of the stairs." "I heard his order to take away my husband, to take him downstairs." Her husband never returned since the time he was taken. (1). Lucas Gempes and her husband were both political leaders "and they had a misunderstanding." They were not on speaking terms even before the fatal night of July 28, 1943. They had not been in speaking terms even since the election before the Japanese occupation. Almendras was a guerrillero, during the Japanese occupation, but his task was that of a mere "food collector." One day Gempes sent a soldier to Almendras' house to get some sugar; but the witness told the soldier that they had no sugar at all because they had given it to Captain Beloncio. "So Gempes arrived at our house and scolded us and told us that someday something would happen to us, and as a matter of fact three days afterwards my husband was taken away." Almendras belonged to the political faction of Jose Basa, while Gempes belonged to that of Cirilo Gaba, who was the mayor of Naujan when the Japanese arrived. Cirilo Gaba won during the election before the war. Gempes and Almendras were already enemies even before the election because both were political leaders of different factions. (2). But they were not yet enemies before that election in which Gaba and Basa were candidates. In the elections "my husband worked for Gaba." That threat of Lucas Gempes was not reported to any guerrilla because "we evacuated to Bauan, Batangas, for fear." "Immediately after they had taken away my husband we evacuated to Bauan." (3).

The witnesses for the defense testified in substance as follows:

- Felicisimo Garing, 40.—In 1943, he was the mayor of Naujan. Sabino Almendras was a leader of a neighborhood association during the Japanese occupation. The witness gave instructions to Almendras that they were not holding their positions to help the Japanese but to accommodate the guerrilleros and that they should strive to help the latter; but, thereafter, the witness received reports to the effect that Almendras had violated the instructions of the guerrilleros and was advising the people not to give foodstuffs to the guerrillas. (4). The witness, after conferring with Lt. Jimenez, had a talk in a secluded place with Almendras, the former telling him that Lt. Jimenez and his men were all angry at him. The witness advised Almendras to be careful, and to talk with Lt. Jimenez so as to settle the matter once and for all. Two or three weeks after said conference with Almendras, the witness received another report regarding Almendras, and so he advised those reporting to act accordingly. Almendras "told me that if all the guerrilleros considered him bad he was ready to face them." But Almendras denied the charges of the guerrilleros. Almendras and Gempes belonged to the same political faction of Basa. In the last election in which Jose Basa was opposed by Cirilo Gaba for mayorship, Gempes worked for Basa. The witness was then a candidate for vice-mayor in the Basa faction. (5).

- Zenaida Gempes, 20.—Jose Nuñez "stayed in our house" in the year 1943, one for more than two weeks and again for a week. "He was courting me," but she did not accept his love. (6). "One day during his stay in our house he ordered a small child to wake me up and we conversed." "He held my left arm and pointed a gun at me forcing me to elope with him." She refused and requested him to let her loose, but he kissed her three times, embraced her and touched her breast. At that time her companions were only two small children,—one being six years old. Nuñez tried to lay her down, but he did not succeed. Nuñez touched her private organ. She boxed him several times. It all happened at noontime. (7). She reported the matter to her father and "he drove away Jose Nuñez from our house; he was scolded." "He went away." He did not return after the incident. (8).

- Proceso Rucero, 25.—He was a guerrilla under Lt. Roel Beloncio. Lucas Gempes was a mess sergeant. (8). On July 23, 1943, Sgt. Jimenez gave orders to get ready. "We were ordered to go to the road" about 10 o'clock in the evening. "When we reached the school building of Pinagsabañgan, Sgt. Jimenez ordered us to get ready because we are going to get somebody." Madola, Porong and the witness went up the house to get the man. (9). "We tied him." "We brought him downstairs." They took him to the camp of Mapalo. When the man was taken to the camp, Sgt. Lucas Gempes "was not with us, * * * because Sgt. Jimenez had ordered him to look for food." They arrived at the camp at about 3 o'clock in the morning. It would take two and a half hours walk to cover the distance from the road where Jimenez sent Gempes to look for food, up to the camp. Later on, Sgt. Jimenez and Porong took the man, who was brought to the camp, but the witness did not know where he was taken. Afterwards, Jimenez, Padilla, Madola, and Porong returned and said that "they have finished their mission." They returned about half an hour after they had taken away the man. At the time the man was taken away by Sgt. Jimenez and his companions, Marcelino Bostillo was engaged in cooking food because he was the kitchen police, while Nuñez also remained in the camp. (10). The witness admitted having signed the affidavit, Exhibit A. (12).

- Dominador Buhat, 23.—Julian Alva, a guerrilla, went to his house to entrust to him two cavans of palay, but he refused because he (witness) was not living in that house. After his refusal Alva ordered him to secure a sled to transport the palay to the camp. (23). The witness was not able to transport the palay to the camp because "Sabino Almendras arrived and told me not to transport the palay because he would give them to the Japanese." The palay "was taken by the Japanese." "While we were conversing the Japanese arrived and we left upon their arrival." The palay was given to the Japanese by Sabino Almendras. (24). Julian D. Alva and the witness left the place as soon as they heard the sound of the motor of the truck of the Japanese. (26). They took cover in a banana plantation nearby. (27). They were not overtaken by the Japanese. (28).

- Esteban Beloncio, 52.—He was a guerrilla captain in a camp in Mapalo, Naujan. About July, 1943, the camp the was under the charge of Roel Beloncio. Jimenez was a sergeant. (32). Jimenez was the platoon leader of Company C. Lucas Gempes was a mess sergeant in the battalion headquarters; and, under military rules, as mess sergeant he had no authority to order an arrest. (33). The witness did not receive any sugar or foodstuff from Sabino Almendras, who had no connection with the resistance movement. Almendras had never been authorized by the guerrilla to act as food collector. (33-34). Since 1942, Sabino Almendras had shown a leaning towards the Japanese, and this fact was supported by reports received from soldiers. (35). The witness had been warned, while he was hiding in his land in Pinagsabañgan, to move his camp somewhere because there were persons who had been reporting his presence to the Japanese, and among those persons, according to report received thru the S-2, was Almendras, whose house was frequented by the Japanese. (35-36).

- Marcelino Bostillo, 48.—In July, 1943, he was a guerrilla under the command of Lt. Roel Beloncio; he was a private assigned as a kitchen police. Lucas Gempes was a mess sergeant. At about 9 o'clock on July 28, 1943, the witness received orders from Sgt. Jimenez to cook, food earlier because they had a mission to undertake at that time. (41). Nine men, commanded by Sgt. Jimenez, went to the road. Gempes pointed to witness the house of Sabino Almendras. Then Sgt. Jimenez ordered that Almendras be taken, and it was Telesforo Cantos, one Madula and Rucero who went up the house. Almendras was taken to the camp; but Lucas Gempes did not go with the troop because he was ordered by Sgt. Jimenez to procure food. (42). Proceso Rucero was the one who led Almendras. Almendras was taken by Sgt. Jimenez, accompanied by Padilla, Telesforo Cantos and Madola, and brought to another place unknown to the witness. (43). When Sgt. Jimenez and his companions returned at the break of dawn, Almendras was no longer with them. Since the time they left till the time they arrived, Rucero was in the camp. Gempes returned to the camp at about 10 o'clock the next morning, bringing with him five gantas of rice and ten chickens. In the camp there was no pick or shovel. (43-44).

- Lucas Gempes, 52.—On July 28, 1943, he was mess sergeant in a guerrilla outfit in Mapalo, Naujan, under Lt. Roel Beloncio. (46). Sergeant Jimenez followed Roel Beloncio in rank. As mess sergeant, the witness was the procurer of foodstuffs for their outfit. On July 28, 1943, the witness was invited by Sgt. Jimenez to point to him the house of Sabino Almendras; later, the witness received information that Almendras "was taken." (47). After pointing to them where the house of Almendras was Gempes was ordered by Sgt. Jimenez to procure food. The next morning he brought rice and chickens. (48). Jose Nuñez, the witness for the prosecution, was angry at the witness. (49). He was angry because Nuñez offered his love "to my daughter," he tried to elope (kidnap) with her and also to kiss and embrace her. "My daughter told me those things." So, "I drove Jose Nuñez away because I told him it was useless to continue his advances with my daughter." When Nuñez left, he said to Gempes; "You will have your day." (50). It is not true, as testified by Romana Añil, that the witness ever asked sugar from her or threatened her and her husband with bodily harm. (51). Almendras and the witness belonged to the same Basa political faction. There was no trouble between witness and Komana Añil's husband. (52). The witness was in speaking terms with Almendras on the day he received order from Sgt. Jimenez to secure foodstuffs. The witness approached barrio lieutenant Miguel Abocal and Vicente Garibay and obtained from them rice and five chickens. (15). He secured ten gantas. Later he returned to the camp at about 10 o'clock in the morning. He did not inquire about what had happened, to Almendras because he was afraid; Sgt. Jimenez used to slap soldiers. Once "I was kicked by him." (16).

Romana Añil, recalled as a rebuttal witness, denied that Almendras was ever appointed leader of a neighborhood association during the Japanese time. (16).

Jose Nuñez, also on rebuttal, denied having made love to Zenaida Gempes. At the time Almendras was killed, Sgt. Jimenez was not in the camp. Sgt. Jimenez is now dead. (17).

After a careful and thorough consideration of all the evidence on record, we have come to the following conclusions: (a) That none of the three appellants ever took part in the killing of Sabino Almendras; (b) That their participation in the taking of Almendras from his house could not make them accountable for the killing, there having absolutely no evidence to show that they took part in any conspiracy with the actual killers to kill Almendras; and (c) That, at any rate, it has been conclusively proven that Almendras had been a food-supplier of the Japanese and all those who took part in his arrest and in his execution were active members of a guerrilla organization and, consequently, all of them, including the appellants (assuming that the appellants took part, in the killing) are entitled to the benefits of the guerrilla amnesty proclamation.

The alleged participation of the three appellants in the killing of Almendras is made to stand exclusively on the uncorroborated testimony of Jose Nuñez, the lone witness called by the prosecution to testify on the point. But the testimony of Nuñez is highly unconvincing.

According to Nuñez, from the time Almendras was taken from the latter's house at about 10 o'clock at night until he was finally killed at about 4 o'clock the next morning, the victim did not make any protestation at all; he did not even utter a single word. Nuñez would want to make us believe such an unusual thing as the supposed behavior of Almendras actually acting like the meekest beast of burden.

According to the evidence, Almendras was not a deaf-mute or affected with infantilism or idiocy, to the extent of, having made him lose all urges to resist or avoid the advent of his impending death. This fact miserably shakes the credibility of Nuñez. Again, Nuñez would want us to believe that he was the first one ordered by Gempes to till Almendras, but that he refused to obey and even asked him if there was an order from the headquarters to kill him and, according to Nuñez, although Gempes got mad, the Latter merely limited himself to stating that he did not like disobedient soldiers, and then ordered another to kill Almendras. If this story is to be accepted, it is necessary that the details should be satisfactorily explained. Now, why is it that, after getting mad at Nuñez for his alleged disobedience, Gempes merely contented himself with the casual remark that he did not like disobedient soldiers? A military superior would certainly have not failed to take a disciplinary measure against a defiant disobedience by a subordinate. Nuñez has completely failed to offer any explanation why no such disciplinary action was taken against him. The absence of such explanation makes his story incredible.

Nuñez testified that he demanded that Gempes produce an order to kill Almendras, from the headquarters. He failed, however, to say whether such an order was actually produced or not; and if no such order was produced, it is incomprehensible how other soldiers in the group could have obeyed the supposed order to kill Almendras. The most natural thing that could have happened would have been for all the other soldiers to likewise refuse to execute Gempes' order, because all of them must have been aware of the grave responsibility involved in an unauthorized killing. If, however, such an order was produced, then again Nuñez would have explained why Gempes had not insisted that Nuñez should carry out his order. But Nuñez had not given any explanation as to this.

The testimony of Nuñez which, as already indicated, is tainted with unexplained improbabilities, is contradicted by those of Proceso Rucero, Marcelino Bostillo and Lucas Gempes,—all of them belying the declaration of Nuñez as to the appellants' alleged participation in the killing of Almendras. Besides, it has been proven by the testimony of Zenaida Gempes and Lucas Gempes that Nuñez, because of his having been rejected by Zenaida in his courtship and his having been driven by Lucas Gempes from their house after Zenaida had denounced the improper advances he made to her, had a grudge against the Gempeses, and so it is not improbable that Nuñez testified against the appellants because of this grudge. This improper motive is bolstered up by his desire to free himself from any blame for the killing by throwing the responsibility upon the appellants. As a matter of fact, Nuñez was not included in the information, and at the time he was testifying he could not have failed to feel

conscious of the danger of being prosecuted later if he should fail to shift all the blame on the appellants.

It is a highly dangerous precedent to punish three human beings with life imprisonment simply on the uncorroborated testimony of such a kind of a witness.

Through the testimony of Romana Añil, widow of Almendras, the prosecution tried to show and claim political enmity between Romana's husband and Gempes based on the supposition that both belonged to opposing political factions. But Romana's testimony, besides being hearsay, is weakened by her own contradictory statements as to which of the opposing political factions Gempes really belonged. On the other hand, by the testimony of Felicísimo Garing (mayor of Naujan) and that of Gempes himself, it has been established that Gempes belonged to the political faction of Jose Basa, the same political faction to which Almendras, according to his widow, also belonged. Felicísimo Garing could not have been mistaken on this fact because he himself happened to be the candidate for vice-mayor in the same ticket where Jose Basa was then the candidate for mayor.

Through the testimony of Dominador Buhat, corroborated by that of Esteban Beloncio (a guerrilla captain in the Camp at Mapalo, Naujan) it has also been established that on one occasion two cavans of palay, which Julian Alva (a guerrilla) wanted to transport to the guerrilla camp, were instead taken by the Japanese because Almendras prevented the taking of that palay to the guerrilla camp for the reason that he wanted it to be delivered to the Japanese who soon after arrived in a truck. Now, considering this fact as well as the well-known leanings of Almendras towards the Japanese since 1942 (as reported to Capt. Esteban Beloncio by his soldiers) and also the fact that those who had taken and killed Almendras were all members of the guerrilla organization in the camp at Mapalo, Naujan, the conclusion is unavoidable that the killing was effected in the furtherance of the resistance movement and, therefore, cannot be punished under the terms of the guerrilla amnesty proclamation.

For all the foregoing, the appealed decision must be set aside, and the appellants acquitted and immediately released from confinement.

Paras, and Feria, JJ., concur.

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