

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. MAGNO QUINTO ET AL., DEFENDANTS, JOSE ZITA (ALIAS GORDO), APPELLANT.***G.R. No. L-1963. December 22, 1948*

Ponente: TUASON, J.

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Gregorio Caling was picked up at his home in Floridablanca, Pampanga, and killed by a band of hukbalahaps on the night of December 9, 1945. Jose Zita, the appellant, was with the band, and of about ten men suspected, he was the only one prosecuted. Ruperto Miguel, an avowed member of the band, turned state's evidence and the rest were at large on the date of the trial.

Appellant's part in the crime is denied. Zita explained that he himself was a prisoner of the hukbalahaps under investigation for arms. He was a sergeant in the MPC stationed in Tarlac, and explained that he was visiting his family on furlough from December 7, when he was held for questioning about his service pistol which the hukbalahaps wanted.

On Zita's part in the crime Cornelio Macaspac testified that on the night in question the defendant, Julio Manalansan alias Ledesma, (who, according to Caling's wife, was the only one she recognized), and a third man led him toward the bank of the river; that Jose Zita and Ledesma asked him if Gregorio Galing and Nicolas Morales were in their houses; that thereafter Magno Quinto ordered him to follow and indicate Galing's and Morales' houses, Jose Zita and Ledesma remaining on the bank of the river; that after showing Caling's house to Magno he went home; that it was between eight and nine o'clock in the evening.

Ruperto Miguel testified that after Caling was seized he (Caling) was taken to the bank of the Gumain river in the vicinity of which he was killed; that Julio Manalansan, Araado Quinto and Jose Zita were present at the killing while he (witness) and about six others stood watch at the trail about ten meters away; that before he was killed, Caling was questioned by Amado Quinto while Julio Manalansan, Jose Quinto and Jose Zita alternated in beating him with a piece of madre cacao; that Zita was a huk and was armed with a carbine.

The general tenor of the defendant's statement, which he made before the municipal secretary and swore to before the municipal mayor after his arrest, bolsters Macaspac's and Miguel's testimony. What is more, it tends to corroborate the insinuation that one of the possible motives of Caling's killing was that he was suspected of being the author of the burning of Zita's house.

Following are excerpts from the defendant's sworn statement:

"That on the 8th day of December, 1945, between 10 and 11 o'clock in the morning, Yamane (Ainado Quinto) came to my house and asked if I know something about Gregorio Caling; he also asked me if it was true that he has a gun. I told him that in spite of the fact that Gregorio Caling was my neighbor before, I do not know anything about it. Then he told me that it was necessary that Gregorio Caling be taken and that the following

night I should be ready to go with him in getting Gregorio Caling. He also told me to invite Ledesma. The next day about three thirty in the afternoon, Ledesma (Julio Manalansan Jr.) and I saw each other. I told him of the words left by Yamane. Then at about six thirty in the same afternoon, Ledesma came and we left going to San Pedro. Reaching Cabangcalan, we found Gomez (Magno Quinto) and Leonardo Laxamana with Salvador Ican, the latter two bringing guitars, \* \* \* Gomez and Ledesma went to the house of Aurelio Macaspac and upon their return I learned that they were asking for the house of Nicolas Morales and Gregorio Caling. Later, we left, I passing the back of the houses near the river going to the bank of the river near Sta. Monica, \* \* \* After one hour waiting, Gomez and his companions arrived with Gregorio Caling with them. Gregorio Caling was tied with his hands behind. We went to the other side of the river \* \* \*. After passing the house of the Lingad's, we went to a field. In the middle of the field we stopped and there Yamane removed the clothes of Gregorio Caling and he and Ledesma investigated him in connection with his (Gregorio Caling) arms and also beat him. Hot long afterwards, we continued our walk crossing the river once more. \* \* \*. Shortly thereafter, Yamane told us to stop and he ordered the person bringing the spade to dig a grave. While this person was digging, Yamane and Ledesma were questioning Gregorio Caling over his arm and of the persons that they robbed, he and Nicolas Morales, and if he (Gregorio Caling) did not have any knowledge as to the burning of my house; that he alone was reported to be against the Hukbalahap. After the questioning, (I did not hear the answers of Caling because I was quite far, but I know he said he had no gun and has nothing to do with the burning of my house and he was not against the Hukbalahaps) he was led to the grave by Yamane and Ledesma and Yamane pushed him into the grave. He also step on Gregorio Caling while the latter was already in the pit and he then ordered for the covering of Caling with earth. When the grave was already filled, Yamana asked as to go. Ledesma and the three persons went home."

Nowhere in this statement did the accused say or give to understand that he was with Caling's kidnappers and killers as a captive or prisoner. A former sergeant in the Philippine Army and intelligent, and not being Under force or pressure to make a confession, he could not possibly have forgotten to mention, let alone emphasize, a point which, if true, was his only possible salvation from prosecution and a stiff sentence. Moreover, in this statement he revealed knowledge of the pseudonyms or nom de guerre of some of the leaders of the band, knowledge which betrayed intimate association between him and those people if not his affiliation to the hukbalahap organization.

It has also been shown that in Floridablanca defendant's family lived with a municipal policeman and that he did not tell that policeman or any other local official the murder he had witnessed. His silence could not have been due to fear of reprisals because he belonged to an armed force the prime function of which was to arrest and prosecute felons and outlaws. The trial court committed no error in not giving credence to defendant's evidence that the crime he reported/to his commanding officer in Tarlac. Had he done that it is certain that arrests would have been made and prosecution started sooner than late in 1946,

The defendant's conduct before, during and after the execution of the crime conclusively warrants the conclusion that he was in concert with Magno, Ledesma, et al. Regardless of who actually killed the now deceased, the appellant, as a party to the conspiracy, is criminally and civilly liable for the crime.

Finding no merits in the appeal, we affirm the judgment of the court below by which appellant was sentenced to reclusion perpetua. to pay the heirs of the deceased as indemnity P2,000.00, and to pay the costs, except that the indemnity shall be P6,000.00. The appellant will also pay the costs of appeal.

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

Judgment modified, indemnify increased.

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