

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GAUDENCIO ALIBAY ET AL., DEFENDANTS-APPELLANTS.***G. R. No. L-623. May 26, 1948*

Ponente: PERFECTO, J.

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The substance of the testimonies of the witnesses for the prosecution is as follows:

1. Sotera Gayondato, 31, farmer, residing at Lomalantang, Zumarraga, Samar, testified that Lorenzo Odquin was her former husband. Her present husband is Forden Ala. Lorenzo Odquin was killed by Gaudencio Alibay, Loreto Tizon, Jesus Tizon and Santiago Carpiña, in Puro, Zumarraga, on June 13, 1944. On June 12, 1944, Odquin and Alibay were gambling with Jesus Tizon. The deceased was brought by the four accused to Puro on June 13, 1944, "from our house. We were taken by them to Burabud and tied up. We, husband and wife." The accused arrived at the witness' house at 7 o'clock in the evening of June 13, 1944. "They entered at the kitchen and immediately they took hold of my husband. We were taken by them together with the children. We were eating when they arrived. They have personal grudge with my husband in connection with the gambling they had. They killed our dogs and chickens." Burabud is the place of Engracia Ibañez, mother of Gaudencio Alibay. "When we arrived at that place, they dragged a small banca, and then they placed in that banca my husband. And they said, 'You just' wait here because we are going to conduct Lorenzo Odquin to Comawit because there are soldiers to arrive from Leyte in a banca.' He was tied up besides his body." The B.C. captured the accused and investigated them. "They declared that they were the authors of the killing of Lorenzo Odquin and that the dead body was at Mombon. The dead body was disinterred." He did not go to the place where the body was buried. Once exhumed, they examined the wounds caused in the body of Lorenzo Odquin. I was looking at them from the beach. According to Lotoc, there were 17 wounds. I was in the baroto. I was facing towards them but I was crying. There were three serious wounds. His hands (Odquin's) were tied." Lotoc was the one who informed the witness that there were three serious wounds. The witness did not marry Lorenzo Odquin, She was civilly married at Batogo with Forden, in July, 1945. The witness was not present when Lorenzo Odquin was killed. She was left in Burabud. When the accused returned, Lorenzo Odquin was not with them anymore. The witness knows that the accused killed Odquin, "because they were the ones who kidnapped us" and placed Lorenzo Odquin in the baroto, and furthermore, she was informed by the B.C. "We were taken up to the mountains by Gaudencio Alibay and companions after the killing of my husband. I and my stepchildren, Natividad and Cirilo." Lorenzo Odquin was buried on June 15, 1944. The witness was tied up by Gaudencio Alibay and Odquin by Jesus Tizon. Santiago Carpiña was looking. "My husband was asking for mercy." Santiago answered that we will make that arrangement because you will be investigated first." Santiago Carpiña is dead. He was killed by the B.C. Odquin's occupation was that of a farmer. The witness understands that the only cause of the kidnapping of the witness and her husband and children was the gambling with Gaudencio Alibay in which the latter was the loser.

2. Julianio Lotoc, 24, single, Philippine Army soldier, Pawing, Tacloban, testified that he came to know the accused "when I captured them during the Japanese occupation on June 14, 1944, in the mountain in a small

house." There were seven who undertook the capture. "When I was in Zumarraga I was connected with the B.C. and in the evening of June 14, I received a communication from our companion detailed in Mualbual wherein I was registeed to go to Mualbual because there were persons who killed Lorenzo Odquin. I went to Mualbual and upon our arrival I met Mr. Be la Peña who was sent by Gaudencio Alibay and Lorenzo Tizon to buy tuba. I investigated de la Peña where the district of Gaudencio Alibay was. And he informed me that he was in the mountains. Then we went to the mountain accompanied by one civilian. After we arrived we shouted calling them to come because we will not do any harm to them. After twenty minutes Gaudencio Alibay and Lorenzo Tizon appeared, during which time I noticed that somebody jumped from the house with bolo in hand. Our companion, being afraid, loaded his gun and immediately fired at him. We asked Gaudencio Alibay and Loreto Tizon who were their companions and Loreto Tizon told us that one of their companions was his brother Jesus Tizon. I asked Loreto Tizon to call for his brother. When they all appeared, there we took those three to the barrio lieutenant Zacarias Lim. In the house of the barrio lieutenant we investigated these persons and we asked them who were the authors of the killing of Lorenzo Odquin. These three, persons declared in our presence that they took part in the killing. We borrowed a baroto from Zacarias Lim and used it to go to the place where the dead body of Lorenzo Odquin was buried. The place was pointed to by the three accused. The witness went in the baroto with his two companions, the three accused and the wife of Lorenzo Odquin. His companions were Zosimo Dacaymat and Dasal. They reached the place at about 10 o'clock in the morning of June 15. The place of burial was located by the three accused. "Upon our arrival he ordered them to exhume the dead body. After having been exhumed we took the body to the beach." The hole where the body was buried was about one-half meter deep. "What I did was to examine and find out how many wounds were there in the body. I remembered four serious wounds." One at the neck piercing the neck; the other in the abdominal region through which the intestine came out; the other one at the back and the other on the left side of the body. At the back there were other wounds but smaller ones. The wife was around five meters from the place of the exhumation. She was in the baroto. Quirino Alibay was one of the persons investigated by the witness in connection with the death of Lorenzo Odquin. The witness does not know anything about any injury inflicted on him. The witness did not inflict any corporal punishment to Quirino Alibay. The witness does not know anything about his broken ribs. He also investigated Perfecto Pigao. He does not know anything about his left eyebrow. The witness does not remember how many weeks: he detained the accused in Zumarraga until, he brought them to Catbalogan. Santiago Carpiña was the man who ran from the place of Gaudencio Alibay holding a bolo. The witness' companion who shot Alibay was Zosimo Dacaymat. Carpiña was killed and was buried by the companions of the witness.

3. Zacarias Lim, 45, married, merchant, residing at Mualbual, Zumarraga, testified that Odquin was killed by the three accused and Santiago Carpia. "I know that because it was investigated in my house. These three accused admitted in the presence of the B.C. What I understand was that the origin was due to the game of cara-cara." The three accused informed that Lorenzo Odquin was buried in Puro. The accused and the B.C. went to the place to exhume the body. The witness heard the three accused admit during the investigation their guilt in connection with the death of Lorenzo Odquin. I was hearing the investigation. It was a coincidence when I heard these three accused to have admitted the killing of Lorenzo Odquin. I heard them pointing the place where the deceased was buried.

4. Emilio Cuason, 60, married, farmer, residing at Lomalantang, Zumarraga, testified that "at about 7 o'clock in the evening of June 13, I was taking a walk in the barrio. When I arrived just near the house of the barrio lieutenant, I saw some people carrying with them spears." They were Jesus Tizon, Lorenzo Tizon, Gaudencio Alibay, and Santiago Carpina. As soon as they took cover in the house of Lorenzo Odquin they immediately got up. I was at the other side of the street near the grassy place. Immediately after they entered the house of Lorenzo Odquin, they tied up Lorenzo Odquin and his wife. After tying them up inside the house two of them (Jesus Tizon

and Gaudencio Alibay) went under the house and killed the ducks and chickens. After that two of them remained in the house of Lorenzo Odquin to guard and the rest went around the neighboring houses looking for something, I do not know what they were looking. They did not stay long; they left immediately the house. They, Lorenzo Odquin, wife and children and the three accused with one other were bound to the house of Engracia Ibañez. The children were Natividad and Cirilo. Lorenzo Odquin was my nephew by affinity. The witness had trouble before with Lorenzo Odquin. The accused remained in the house of Lorenzo Odquin more or less an hour. The witness did not move from his place until they left the house. I was following them while bound for Burabud because I was trying to detect. When they left the house I also slowly followed them. From the house of Odquin to the house of Engracia Ibañez there is a distance of 300 brazas or maybe one-half kilometer. The witness took the trouble of following the party up to Burabud. Lorenzo Odquin walked ahead followed by Gaudencio Alibay; then came the Tizon brothers, Santiago Carpina with the wife Sotera Gayondato and children. The witness stopped at about 50 brazas from the house of Engracia Ibañez. I was hiding behind a big tree. When they left for Puro I also left the place and went home. The witness saw the accused tying Lorenzo Odquin. The width of our street is around three meters. From the post right at the street to the beach, it is about five meters. But the distance from my place to the place they were is about seven or eight meters. All the accused helped in tying. The house of Odquin was lighted by a small lamp. The witness did not refer the matter to the B.C. "because I was also afraid." The B.C. were maltreating persons. "Whatever they would like to do to the poor civilians, they can do it. The B.C. would maltreat the civilians whenever the civilians would not give them whatever they said."

The substance of the testimonies of the witnesses for the defense is as follows:

1. Gaudencio Alibay, 23, married, resident of Mualbual, Zumarraga, testified that on a Thursday morning in the month of July, 1944. I went to get Perfecto Pigao because my child was sick. I was unable to get him because he was then planting upland rice so I just waited for him. After planting rice, he invited me to take breakfast. In the midst of our breakfast Santiago Carpina arrived. As soon as he arrived thereat he said: 'Nobody must move.' Inasmuch as we were then eating, so we did not move. Santiago Carpina said: After breakfast, I want to say something to all of you. I was then sitting near the door and then he immediately took hold of my arm and asked me if I wanted to go up with him to the mountains because he was then working in the mountains or I would side with the B.C. and so I told him that I would side with him, even rendering service in the mountains. Then, I asked him: 'Where will you take us.' And he answered: "I want you to go with me to Calbiga because here I am wanted by the B.C." The witness used the word 'us' meaning to include Lore to Tizon. Jesus Tizon and Lorenzo Alibay. "At about 3 o'clock in the afternoon we were already bound for Burabud but inasmuch as it was yet daylight, he told us not to proceed first because he might be caught by the B.C." Their companions were Loreto and Jesus Tizon. Santiago Carpina was a member of the guerrilla. "He was armed with a revolver and a dagger. At first we did not leave Burabud because it was windy and so he told us to fetch Lorenzo Odquin." Santiago Carpina "was the only one who went up the house and so, later, he and Lorenzo came down from the house." Lorenzo was all right, he was swinging his hands. It was about 7 o'clock in the evening. We went to Burabud. We rode on a baroto. The one managing the baroto was Lorenzo Odquin, the next in front was Santiago, and in front of Santiago was myself, in front of me was Loreto Tizon and in front of Loreto Tizon was Jesus Tizon. We only reached Puro. The first to come down was Santiago Carpina and Lorenzo Odquin. Once in the beach, he ordered us to leave the place. We went to Burabud and there we got a baroto. On the following evening he came to my house and said: Gaudencio Alibay, it is up to you if you would come along with me as something had happened to me. I answered him: 'It is up to you.' He said that he had killed his companion and then I asked him where he had killed his companion and he said: 'At the same place where we landed when you were already quite far from the beach.' I did not suspect that he had bad intentions as I took him (Odquin) in a good way. Odquin "was my brother-in-law, because he got married with my sister." Carpina "was a member of the guerrilla organization

under Lino Nacario. We were volunteer guards during the guerrilla but when the B.Cs were there we no longer were members of the volunteer guards." It is time that when Lorenzo came down the house with Santiago "Lorenzo had his hands tied already at the back. Santiago Carpina threatened Lorenzo not to go away." Santiago did not confide the reason why he killed Lorenzo Odquin. "He just told us that he killed him." Lorenzo Odquin did not object to following Santiago. Santiago Carpina was shot by Zosimo Dacaymat and Juliano Lotoc. Santiago Carpina "was then wanted by the B.C." for being a guerrillero. Santiago Carpina came back to my house and brought us to Lolo Gayon and when we were then captured together with them by the B.C. we were not shot because we had no fault. When he returned to my house on Friday evening, he took me with him to the mountains and that was the time he took me along with him and in the following evening, for instance, that was the time we were separated because I was already caught. When the witness was arrested, Lorenzo Odquin was already killed, "because he (Santiago Carpina) had told me on Friday evening yet that he had already killed Lorenzo Odquin and that If I would not go with him I might have been the next to be killed. It was on Thursday evening when he (Lorenzo Odquin) was killed and it was the day when we left the Puro." Santiago was killed "because when he went down from the house, he had his hands up and that he had revolver on his hip." Juliano Lotoc was among those who arrested the witness and he was one of the persons present when the body of Lorenzo Odquin was exhumed. The place of the exhumation was indicated by "the aggrieved party." Zacarias Lim is the one who gave information about the place where the body of Odquin was buried. Odquin's hands were tied behind the body. "The wound (of Lorenzo Odquin) was caused by a dagger, because he had his face downward and he saw two wounds on the right side of his body but I did not examine them." In connection with this case the witness was imprisoned at the B.C. barracks in Catbalogan, but "I was released after I was investigated by Col. Hernandez who said I had no fault."

2. Pastor Conde, 57, married, farmer, resident of Compondoy, Zumarraga, testified that in the evening of July 13, 1944, he was in Burabud. He went to Puro. He saw a group of persons in a baroto. They were Lorenzo Odquin, Santiago, Gaudencio Alibay, Loreto Tizon and Jesus Tizon. When I passed by them they were anchored on the opposite side of the island where there were houses. Santiago Carpina ordered them to anchor at the place and thereafter to return the "baroto to the place from where they got it. I went there to buy fish." Lorenzo Odquin was at the astern part of the baroto. Santiago took hold of Lorenzo Odquin and got out of the baroto."

3. Perfecto Pigao, 33, resident of Lomalantang, Zumarraga, married, testified that sometime in the month of July, 1944, he was planting rice with Loreto, Jesus Tizon, and Gaudencio Alibay helping him. While they were eating, Santiago Carpina arrived. "The only thing he did was that immediately after he arrived there, he immediately looked for persons to conduct him to Calbiga. According to him, he was a member of the guerrilla organization, he was armed with a revolver."

4. Loreto Tizon, 25, married, farmer, resident of Burabud, Zumarraga, testified that sometime in July, 1944, he went to the place of Perfecto Pigao where he met the planters. He met Gaudencio Alibay and Jesus Tizon. Santiago Carpina "was the one who took us to the house. He brought us to conduct him to Calbiga. We only reached Puro. He employed us, Gaudencio Alibay, Jesus Tizon and myself." Lorenzo Odquin "was with us together with Santiago." "His (Carpina's) purpose in getting Lorenzo Odquin was to complete the number of persons employed with us to make us five in all." "We only reached up to Puro. Because Santiago told us just to leave them there at Puro because he said with regards to conducting him to Calbiga, he had his brothers there to conduct him and so he ordered us to go home." And the witness went home that evening. He could not kill Lorenzo Odquin, "because he was not there. We did not quarrel either." The witness was imprisoned in the B.C. barracks in Catbalogan in connection with this case but he was released afterwards, "because I had no fault."

5. Jesus Tizon, 22, single, farmer, testified that in July, 1944, he went to the farm of Perfecto Pigao to plant rice.

We were taken by Perfecto to his house to eat. While eating at the house of Perfecto, we were three sitting near the door when Santiago arrived and immediately thereafter he told us not to move because then he did not have any bad intention towards us. After eating, Santiago told us to conduct him to Calbiga because he was wanted by the B.C., he being a member of the guerrilla in Calbiga Sector. At about 3 o'clock in the afternoon he told us to go to Burabud with him. At about 5 o'clock when we reached Burabud he told us not to proceed because there might be B.C. there. When it was already dark at about 6 o'clock we proceeded to Burabud and on reaching there, he ordered the three of us to look for a baroto and so the three of us went to look for a baroto and having found a baroto, we informed him that the baroto was there already. "When he knew it he told us to fetch Lorenzo Odquin so that we would be four in all." Lorenzo Odquin was taken by Santiago Carpina. "We went back to Burabud and the baroto was there." When the party was in front of Puro, he said to Lorenzo, calling him Mano and saying—"Mano, let us stop here because I have a brother here." They landed at Puro and immediately thereafter Santiago told the three of us to leave him because if we were going to Calbiga, he had his brothers there plus Lorenzo Odquin." And the witness went home on that same evening. "On the following Friday, while I was still sleeping, he (Santiago Carpina) came to my house, approached me and converged with me or you would prefer to be by the side of the B.C.?' I answered him saying: 'Why should I not go with you?' From there he did not allow us to separate or get out from him. That evening, Santiago Gaudencio and myself went to an uninhabited house. At midnight on that same evening the B.C. arrived at the place where we were and they called Santiago saying: 'Santiago, come down, we want you and nothing would happen to you.' So Santiago Carpina went down and on reaching the ground he was immediately shot by Zosimo Dacaymat, although he had his hands up. Gaudencio and myself went down. When Santiago Carpina met my brother Loreto Tizon, Santiago told me saying: 'You, Loreto Tizon, because you a wife and a mother to attend to, you must not go them.' My brother then did not go with us. When was shot, he died. Julianio Lotoc tried to fire the first shot but his revolver did not explode. "The next was Zosimo Dacaymat; he was the only one who shot at Santiago Carpina." After the witness' arrest, "we proceeded to Catbalogan" where "we were kept under the house of Akad; it was their jail. We stayed under the house of Akad for more than one week, because when we arrived there, we were not investigated immediately and after the investigation which was conducted by Col. and found out that we were not guilty, we were released." The witness denies taking part in gng the hands of Lorenzo Odquin.

Upon the evidence above summarized, the lower court Gaudencio Alibay, Jesus Tizon and Loreto Tizon guilty, beyond reasonable doubt, of the crime of murder committed on the person of Lorenzo Odquin, with the aggravating circumstance of having taken advantage of strength in the commission of the crime, compensated with the mitigating circumstance of lack of instruction, and sentenced them to reclusion perpetua, to indemnify the heirs of the deceased in the sum of P2,000, and to pay the costs.

Considering the appeal against said judgment, after mature deliberation upon the evidence on record, our conclusion is that the lower court acted correctly in finding appellants guilty. Upon the testimonies of Sotera Gayondato, Julianio Lotoc, Zacarias Lira and Emilio Cuazon, we are fully convinced that on June 13, 1944, appellants, accompanied by the now deceased Santiago Carpina, went to the house of Lorenzo Odquin, tied his hands behind his back, brought him to an uninhabited place, stabbed him to death and buried his body on the spot. Regarding the fact of taking Lorenzo Odquin from his house, of tying his hands and of bringing him to the place where he was killed and from which appellants returned without the company of Lorenzo Odquin, there is conclusive evidence in the testimonies of Sotera Gayondato and Emilio Cuazon. Immediately after their capture, which took place on June 14, 1944, the day after the crime was committed, appellants admitted their guilt and they were the ones who had shown the place where Lorenzo Odquin was killed and buried, and from which place the cadaver was actually disinterred. Appellants' admissions are proved by the testimonies of Julianio Lotoc and Zacarias Lim.

Defendants' version to the effect that Santiago Carpina alone is responsible for the killing of Lorenzo Odquin cannot be believed upon the positive, straightforward and convincing testimonies of the witnesses for the prosecution, besides the contradictions and improbabilities in defendants' testimonies. Gaidencio Alibay said in his direct testimony that when Lorenzo Odquin came down from his house, accompanied by Santiago Carpina, he "was all right, he was swinging his hands," as if to belie the witnesses for the prosecution who testified that Lorenzo had his hands tied at his back. On cross-examination, Alibay testified that "Lorenzo had his hands tied already at the back." Appellants testified that Carpina asked them to carry him in a baroto up to Calbiga, but midway Carpina begged them to leave him and Odquin in Puro, alleging that his own brothers will take him up to Calbiga, and so appellants went home. On the following evening, Carpina confided to Alibay that he killed Odquin "at the same place where we landed when you were already quite far from the beach." Alibay said that the deceased Odquin "was my brother-in-law, because he got married with my sister." Notwithstanding this fact, Alibay did not take any action against Carpina, and instead he followed nonchalantly the killer of his brother-in-law to the mountains. Such conduct is too unnatural to be believed. Furthermore, appellants did not deny the admissions they made as testified by Julianio Lotoc and Zacarias Lim.

The appealed decision, is affirmed, with costs.

Paras, Actg. C.J., Feria, and Tuason, JJ., concur.

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