

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE DOSAL ET AL., DEFENDANTS. DANIEL ABOGA, APPELLANT.***G.R. No. L-1449. January 07, 1949*

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b49b67ace559/>**FERIA, J.:**

There is no dispute that Marcelo Urbayan and Valentin Urbayan were on the evening of May 16, 1944, taken from their home in Santa Rita, Samar, to the mountains of Tagakay and killed there on the following morning by a group of about twenty guerilleros; that they did not take anything from the house of the victims, and that the appellant Daniel Aboga, one of the group, was a guerilla lieutenant.

Agapito Patrimonio is the only witness who testified that the appellant was the one who killed Marcelo Urbayan with a bolo and Valentin Urbayan was killed by Laureano Bolito (15). This witness said that he and Inocencio Bolito, the other witness for the prosecution, were present at the time of the killing because both of them were captured by the same group on May 12, 1944, and were accompanying their captors when the latter took the Urbayans from their house to the mountains and killed them there; and that the appellant was the leader because he was the right hand of Claudio Bolito, father of Laureano Bolito (17, 18).

But Inocencio Bolito who was mentioned by Agapito Patrimonio as his companion, and presented also as a witness for the prosecution, belied the testimony of Agapito Patrimonio and testified that he was present when Marcelo Urbayan was stabbed to death by one Laureano Bolito and not by the appellant, and that Valentin was killed by a soldier or guerillero from Leyte under the command of Jose Dosal, who was the leader of the group (58); that among those in the group were the defendants Daniel Aboga, Laureano Bolito, Tarclo Bucatcat, Cornelio Geres and Pablo Paldez; that Tarclo Bucatcat was the one who tied Marcelo Urbayan, and Cornelio Geres held Valentin when they were taken from their house; that Marcelo Urbayan was boxed by Raymundo (Bucatcat, Marcelo Bucatcat, Laureano Bolito and Cipriano Paldez, and that the appellant was only looking at them, and did not help them or maltreated the Urbayans. (33-35).

Tarclo Bucatoat and Cornelio Geres, corroborated the testimony of Inocencio Bolito relating to the persons responsible for the killing of Marcelo and Valentin Urbayan, and the fact that Jose Dosal was the leader of the group, and not the appellant.

Tarclo Bucatcat testified that Valentin Urbayan was killed by a guerillero from Leyte whose name he does not know and Jose Dosal was the patrol leader of the guerillas (74, 79), and Marcelo Urbayan was killed by Laureano Bolito "for the reason that they were pro-Japanese" (73), "Because I saw with my own two eyes that they were purchasing foodstuffs to be delivered to the Japanese in Tacloban. * * * The launch operated by the Japanese used to go to Libtong where the Urbayan family was and Marcelo and his brother Loloy Urbayan were the ones loading foodstuff for the Japanese" (75). And Cornelio Geres declared that the Urbayans were kidnapped by the guerilleros from Leyte, of whom he was a corporal under the command of Jose Dosal who was the leader of the group (37); and that Marcelo Urbayan was killed by Laureano Bolito and Valentin by a soldier of Jose Dosal, for

being pro-Japanese, "Because one time they were at Tagakay, I was also there. There they bought foodstuffs and all those foodstuffs that they purchased were brought to their house. Loloy Urbayan was the one who got them and delivered them to the Japanese" (85, 86).

The appellant Daniel Aboga admitted that he was one of the group of guerilleros who went to the house of Marcelo and Valentin Urbayan and took them to the mountains, but denied having taken any part in their killing; that he had no personal grudge against the Urbayans, but was mad at them because, after being members of the guerilla organization, they became pro-Japanese; that he did not kill Marcelo Urbayan; that Laureano Bolito was the one who killed Marcelo, and Valentin Urbayan was killed by a guerillero soldier from Leyte; that the appellant went once in February 1944, "to the fish corral of Valentin Urbayan to buy fish and he was ready to pay for them but the Urbayan refused to sell fish to them and accept the payment, because they were waiting for the launch which was to take the fish, and then the appellant told them that if they were inclined to favor the Japanese they should also do the same to the guerillas" (55, 56); that it is not true that he had a quarrel with the Urbayans at a cockpit in March 1944, because knowing them to be pro-Japanese, he avoided going to the cockpit for fear of being betrayed by them who were pro-Japanese (57); that the Japanese used to go once a month to the Urbayans' fish corral to get fish (67); and that he personally saw three times the Japanese in a launch accompanied by Loloy Urbayan take foodstuffs from Urbayans' place, and that once the Japanese, accompanied, by Marcelo and Valentin Urbayan, went to the camarin of Arteche which they burned (64); that from January to May 1944, he did not receive any order from their commander in chief, Pedro Arteche, to capture the Urbayans, but in May when the group of guerillas from Leyte arrived they were the ones who decided to take Marcelo and Valentin Urbayan as wanted for supplying foodstuffs to the Japanese in Tacloban (71).

The testimony of Daniel Aboga, the appellant, Tarcelo Bucatcat and Cornelio Geres, about the Urbayans furnishing fish to the Japanese, is corroborated by the witness for the defense Fortunato Japson, who was one of the stockholders of the corporation that owned the cockpit wherein the alleged fight on January 15, 1944, between Marcelo Urbayan and the appellant, testified to by Eugenio Urbayan, took place. This witness testified that "Once he happened to pass by the Urbayans' place, and he saw three small barrels loaded with foodstuffs. I asked Valentin Urbayan if he could allow me to buy some. He answered that he could not because those were to be delivered to the launch," and the launch belonged to the Japanese "because it was orewed with Japanese together with Loloy Urbayan" (100). And by the witness Faustino Nacernope who testified that he was a partner of Valentin Urbayan in the fish corral above referred to, and that since the first catch of fish in said corral, Valentin Urbayan told him not to sell the big fishes, for Loloy's son would come to get them and sell them to the Japanese, and on January 3, they got the big fishes and loaded them in a Japanese launch (104, 106).

In view of the testimony, not only of several witnesses for the defense but also of one of the prosecution, contradicting the testimony of Agapito Patrimonio, the Solicitor General in his brief does not pretend that the appellant had any active intervention in the killing of the Urbayans. He only contends that the appellant is guilty of the crime committed by his companions because there was a conspiracy between them, and although he was "less than three meters away at the time of the killing did not attempt to prevent the same."

Without necessity of dismissing and deciding whether or not conspiracy not only to kidnap but also to kill the victims may be inferred from the fact that the appellant was one of the group of guerillas who went to kidnap the Urbayans, we are of the opinion that the crime imputed to the appellant comes within the terms of the Amnesty Proclamation, because the killing of the victims was motivated by the belief on the part of the authors of the crime that they had been aiding the Japanese by procuring food supplies for them. This fact is testified to not only by the appellant (67-70) but also by Tarcelo Bucatcat (73-75), Cornelio Geres (85, 86), Fortunato Japson (100) and Faustino Nacernope (104, 106), whose testimonies were quoted above.

The conclusion of the lower court and contention of the Solicitor General that the motive why the Urbayans were killed was because there existed a resentment between the victims and the appellant is not borne out by the evidence. Eugenio Urbayan, brother and son, respectively, of the deceased Marcelo and Valentin, testifies that on January 15, 1944, that the appellant Daniel Aboga and his two coaccused Bucatcat and Geres had a fist fight with the deceased Marcelo Urbayan in the fish corral of the Urbayans "because the three accused got fish from my brother and the payment they made was not reasonable" (26, 27), and that in March, 1944, "in the fight between their cock and ours both roosters were badly wounded, however our rooster was still in the attitude of fighting pursuing theirs. Their rooster was about to run away but they did not wait for the decision of the referee and they took their rooster." * * * "On account of that my brother tried to make his own stand but these accused especially Daniel Aboga did not agree. What he did, he took his rooster and smashed it at my brother. Then I intervened. * * * After smashing the rooster at my brother he also tried to smash it at me but I was able to escape" (28, 29).

The above quoted testimony of Eugenio Urbayan, who was naturally interested in the conviction of the appellant who he believed was responsible for the death of his brother and father, because he was with the group of guerillas who kidnapped and took them to the mountains never to return, is contradicted by Fortunato Japson (97, 98) and Faustino Naceno (107). But even assuming that it is true, the offended party or parties in the two incidents related by the witness would have been the Urbayans and not the appellant, and therefore the former were the ones who ought to have had resentment against the appellant, and not vice versa.

As to the alleged fight because the payment made by the appellant and his two companions for the fish they got from Marcelo was not reasonable, why should the appellant kill not only Marcelo, but also Valentin Urbayan, the owner of the fish corral, who did not participate in the fight, the natural presumption being that Marcelo must have come out the loser in the fight for he was alone against three?

With respect to the supposed fight in the cockpit, is it conceivable that the appellant be the one to take revenge against Marcelo Urbayan after he had succeeded in having his losing rooster declared the winner or at least tied with that of the Urbayans, and had smashed his rooster at Marcelo? If the defendant had a grudge against the Urbayans because of those incidents, is it reasonable that he did not take active part, by word or by deed, in the act of taking them from their house and killing them in the mountains? As the appellant was not the leader of the group, as it is clearly established by the evidence for the prosecution and defense, does it not stand to reason that the leader of the group, Jose Dosal, had ordered the killing of the Urbayans, without any other plausible reason, but just to please the appellant on account of the above related incidents the latter had with the former?

In view of all the foregoing, the only reasonable conclusion warranted by the evidence is that the motive of the killing of the Urbayans was the belief entertained by the persons responsible therefor that the Urbayans were giving aid and comfort to the enemy.

We hold that the appellant comes within the terms of the Amnesty Proclamation, and therefore the appealed judgment should be reversed, and the appellant released, without costs. So ordered.

Moran, C.J., Paras, Pablo, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.:

Appellant Daniel Aboga is prosecuted with several others for the crime of double murder, committed on May 17, 1944, in Santa Rita, Saaar which caused the death of Marcelo Urbayan and Valentin Urbayan. The lower court

found him guilty with Tarcelo Bucatcat and Cornelio Geres and sentenced the three of them to reclusion perpetua, and to indemnify the heirs of each of the deceased in the sum of P2,000.

The witnesses for the prosecution testified substantially as follows:

Carmelita Jazmines Urbayan, 26, widow, school teacher, testified that Marcelo Lim Urbayan and Valentin Urbayan were respectively, her husband and father-in-law. Marcelo was a guerrilla third lieutenant under Pedro R. Arteche who, on May 17, 1944, Wednesday, was kidnapped in Libtong. (3-4.) "In the evening, while I was tending my child, I heard barking of dogs. My husband was awakened and he went to the door. He found persons at the foot of our stairs and asked them what is the purpose in coming to our house. Nobody answered but after a while somebody responded and may be addressing to his companions said 'Come down' and 'tie this man.' My husband did not go down immediately. We shouted for help. We both cried and shouted for the help of our father-in-law. Then we could hear voices of those men that cried, 'Fire! Fire!' and then our house was stoned. I could hear the voice of my father-in-law. Those men said, 'Try to catch him,' and that was when my husband found out that my father-in-law was downstairs in our house, he descended with our second child Marcelo Urbayan, Jr. When they were down the yard of our house I could hear my husband said, 'Please do not punish me, we are just brothers.' I could hear them ordered to tie the hands of my husband. Then they tied him and left Libtong. After a while my child came up alone and it was already very silent. My husband did not return anymore. (5-6). My father-in-law was living near our house. He was a paralytic. He could walk slowly." (7). Although the witness knows by face Daniel Aboga, Tarcelo Bucatcat and Cornelio Geres. "I do not know their names. (8). This Daniel Aboga always come to our fish corral and buy fish." (9).

Agapito Patrimonio, 57, married, farmer, testified that on May 12, 1944, he was kidnapped and brought from place to place in the mountains. On May 15, he was brought to San Andres, In the evening of May 16, three persons were kidnapped at barrio San Andres, they were Jovencio Bolito, Zacarias Hipos and Panfilo Luway. (11). The three accused took part in the kidnapping. "Upon reaching Tagakay the persons who were kidnapped were investigated. Jovencio Bolito was saved, the two others Zacarias Hipos and Panfilo Luway were killed. fhe following day, May 17. I heard conversation at noon that they were going to the Urbayan's place. I could only recognize these three accused. Their conversation that time was that they were going to the place of the Urbayan family because they are well-to-do. They have fish corral and they have animals." (12). Jovencio Bolito and the witness, who were prisoners, went with the group of the accused to the place of the Urbayan family on May 17 in the evening. There were 22 persons, in the group. The two Urbayans, father and son, were kidnapped and brought to the mountains to Tagakay. Marcelo and Valentin Urbayan had their hands tied. The group took a rest beyond the house of Cipriano Paldez. The following morning, May 18, the two Urbayans, father and son, were killed. The witness was present at the killing. Before being killed, Marcelo Urbayan has been maltreated at a rocky place in Tagakay. (13-14). Marcelo was killed by Daniel Aboga, and Valentin by Laureano Bolito. Marcelo was killed by Daniel Aboga with a bolo. Valentin was killed by Laureano Bolito also with a bolo. "From the time that they were still alive until they fell down and killed I was there looking at them," (15).

After the killing the accused went down to a house and prepared their food. They slept on the mountains using leaves of pacol as mat. (16). None of them possessed any firearm. They were only provided with bolos. Cipriano Paldez and Laureano Bolito used to bring bananas, fish and other foodstuffs. The witness remained with them one week. Daniel Aboga was the leader during the Japanese Occupation. The witness did not tell to any authority or anybody the facts he testified. (18). He made a report only after the widows of the Urbayans found him in Talalora. (19). The witness does not know if the accused had stolen anything from the Urbayans before or after the killing. The night was very dark and the witness did not know what happened in the house of the Urbayans. The witness did not report his being kidnapped to any authority until after the war was over. (20-21).

Eugenio Urbayan, 37, married, businessman, testified that Marcelo was his brother and Valentin his father living the Japanese Occupation they were living in Libtong, Hinangutdan, Santa Rita. The witness was a lieutenant in the resistance movement. (22). Exhibit "A" is a special order regarding the appointment of Marcelo as third lieutenant. (23). Exhibit "D" is an affidavit filed by Ramon Peñada, guerrilla first sergeant, who was the commanding officer of Marcelo. (24). During the occupation the witness used to meet the three accused who were gamblers. (25). The accused had differences with "my brother Marcelo because the habit of these three accused whenever they reached up to the fish corral they would get fish and pay the price they wanted to and naturally my brother Marcelo had to call their attention." On January 15, 1944. they had a quarrel. (26). They came to exchange blows but "did not last because we intervened in the fight." At last "this Daniel Aboga told my brother Marcelo Urbayan 'We will see.' " The reason for the fight was that the accused would not pay a reasonable price for the fish they had taken. Afterwards there occurred another fight between Marcelo and the accused at the cockpit. (27). Daniel Aboga was the soltador of the rooster of the other side and Marcelo Urbayan that of the Urbayan side. "In the fight between their cock and ours, both roosters were badly wounded, however, our rooster was still in the attitude of fighting pursuing theirs, which was about to run away, but they did not wait for the decision of the referee and they took their rooster." The incident took place in March, 1944. Marcelo tried to make his rooster stand. Daniel took instead his rooster "and smashed it at my brother. Then I intervened. After smashing the rooster of my brother, he also tried to smash it at me but I was able to escape. Some persons intervened in that flight and the fight aid not come to a worst end." Valentin Urbayan was paralytic although he could still walk. (28-29).

Jovencio Bolito, 22, student, testified that in May, 1944, Tuesday evening at eight o'clock "I was in the house of my uncle Hermenegildo Dagsa. At about 10 o'clock there was a person who went up by the name of Laureano Bolito. Then at that moment three other persons followed by the names of Exequiel Bolito, Cipriano Paldez and Cornelio Geres. (32). They took us by force to the back of the school house of barrio San Andres. This group of men took us to the mountain of Tagakay which was called Pangpang. We stayed there until morning. On Wednesday, at about 6 o'clock we proceeded to the barrio of Tagakay just to take our supper. After taking our supper we went to the Maharas River. We rode in aboat to the point near Hinangutdan. Near that point we left the boat and we proceeded to the house of Marcelo Urbayan. There were twenty persons in the group. (33). Among those present in the group were Tarcelo Bucatcat, Cornelio Geres and Daniel Aboga. "Laureano Bolito and Cipriano Paldez went up the house of Marcelo Urbayan and they told Marcelo Urbayan to go down. Marcelo did not go down. Instead he called his father. His father Valentin Urbayan went to the house of Marcelo. When he was there this group of men began to tie Marcelo Urbayan." Raymundo Bucatcat tied Valentin. Daniel Aboga was near but he did not maltreat Valentin. He did not help to tie him. Cornelio Geres was holding Valentin. (33-35). Marcelo, upon hearing the voice of his father, went down carrying one of his children. The moment he reached the ground, he gave the child to the wife and he was also tied and boxed by Raymundo Bucatcat, Tarcelo Bucatcat, Laureano Bolito and Cipriano Paldez. Daniel Aboga was only looking at them. He did not help. He did not maltreat. We went to the point where our boat was left. Then all of us rode on the boat at the point of Maharas where we anchored. When we were in that place, we went again to the mountain of Tagakay. There we stayed until morning. The following morning at 6 o'clock Claudio Bolito ordered us to go to the high point in the mountain and there these two persons were killed." That was on May 18, 1944. The place was Pangpang. When Marcelo and Valentin Urbayan "were already in the mountain, they were told to stand up side by side." (36-37). The order was given by Laureano Bolito who later stabbed twice Marcelo Urbayan. The latter fell down. He was stabbed with a sharp bolo at his stomach. There were present Tarcelo Bucatcat, Cornelio Geres, Raymundo Bucatcat, Cipriano Paldez, Daniel Aboga and others. Marcelo died after about three minutes. Valentin Urbayan was also killed. (37-38). "I do not know the name of that fellow who killed Valentin Urbayan, but if I will see his appearance I will know him." He is not among the three accused. "He stabbed Valentin Urbayan on the breast twice." He used a sharp bolo. Valentin was already old. When the unknown person stabbed Valentin, the three

accused were there looking around. They were less than a meter from the aggressor and the victim. (39). The witness was at three meters from them.

Carmelita Jazmines Urbayan, recalled to the witness stand, identified Exhibit E as the death certificate of her husband, issued by the municipal treasurer of Santa Eita, and Exhibit F as the oath of enlistment of Marcelo L. Urbayan with the guerrilla. (41 & 42).

Calixto Deñoso, 43 married, businessman, testified that during the Japanese occupation he was a guerrillero in the barrio of Bagajope, Babatngon, Leyte, having been appointed Captain of the Philippine Militia by Col. Gregorio Mariano. (44). At that time, while the witness was at the cockpit, he noticed a commotion, because the Urbayan brothers were fighting with Aboga and Geres. The people scattered because of the fight. (45).

Eduardo Villafuerte, 42, married, investigator of AFWESPAC MPs, testified that during the Japanese occupation he was first lieutenant, plans and training officer, in the sector of Tacloban-Babatngon. (46). That in the middle of January, 1944. when the witness was commanded to have a survey in his sector, he went to the fish corral of Marcelo Urbayan, where he saw a fighting between Marcelo and Daniel Aboga. The trouble was about buying fish. (47).

The witnesses for the defense testified in substance as follows:

Daniel Aboga, 26, married, testified that Marcelo and Valentin Urbayan are dead. They were pro-Japanese. (49). They were killed, because they bought foodstuffs such, as palay, corn, camote, pigs and chickens, and others and which they delivered to the Japanese. (50). The witness was a guerrilla lieutenant. Exhibit 1 is his appointment, issued by Leocadio S. Espiña. Exhibit 3 is his oath of Enlistment, sworn to before Iñigo Zeta. Exhibit 3 is his oath of office as non-commissioned officer. (52). It was sworn to before Pedro R. Arteche, Commander in Chief of the Philippine Guerrilla Forces. Exhibit 4 is his oath as third lieutenant, sworn to before Major Conrado Adolfo of Santa Rita. (53). Exhibit 5 is his oath of office as second lieutenant sworn to before Leocadio S. Espiña, who was then the Infantry Adjutant General of the organization. Exhibit 6 is a letter of recommendation issued by Lieutenant Tavera addressed to Lieutenant Lareza for the witness to be admitted in the organization, the recommendation having been endorsed to Lieutenant Cabrera. Exhibit 7 is a letter of recommendation issued by Lieutenant Cinco, properly endorsed by Major Luciano Abia. (55). Marcelo Urbayan was also a guerrilla officer. When they heard that the guerrilla organization was disbanded, to avoid the mopping up operation of the Japanese, they started to gather foodstuffs for the Japanese. It is true that the witness went to the fish corral of Valentin Urbayan with the purpose of buying fish and he was ready to pay the price, but the Urbayans refused to accept the payment because they were waiting for the launch which was to take the fish. (56). Then the witness told them if they were inclined to protect the Japanese they should do the same to the guerrilla soldiers. It is not true that the witness had a quarrel with the Urbayans at a cockpit in March, 1944, because the witness, knowing him as pro-Japanese, avoided going to the cockpit for fear of being taken by the Urbayans, who were pro Japanese. (57). The witness has no personal grudge against the Urbayans, but was mad at them because, after being members of the guerrilla organization, they turned to become pro-Japanese. It is not true it is the witness, according to Agapito Patrimonio, who killed Marcelo Urbayan. It was Laureano Bolito who killed Marcelo and the one who killed Valentin Urbayan was a soldier from Leyte. On that occasion there were 20 persons including Patrimonio. Among them were 13 soldiers from Leyte, one of them was Jose Dosal. (58). The guerrillas were carrying firearms. (59). In the traveling detachment there were 2 rifles and also revolver and shotgun. (62). The detachment was in Tagakay, and it had no encounter with the Japanese. Whenever the Japanese passed through, the guerrilla avoided them so as to spare the civilians from being molested. (63). Once the Japanese, accompanied by Marcelo and Valentin Urbayan, went to the camarín of Arteche which they burned. Valentin Urbayan was able and had good physique built. (64). Arteche was captured in 1944. He was captured in January, 1944. (65).

From January to May, 1944, the witness did not receive any order from Arteche to capture the Urbayans. The witness was then accompanying the Japanese, (65). The witness communicated the fact to Arteche. The witness went once in February to the fish corral of the Urbayans. He never returned to avoid being caught by the Japanese. (66). The witness was afraid of the urbayans should the Japanese apprehend him and brought to Tacloban. The Japanese went once a month to the Urbayans' fish corral to get fish. (67). The witness had not decided to take the Urbayans from January to April because he had not received any answer from his chief. In May when the group of guerrillas from Leyte arrived they are the ones who decided to take Marcelo and Valentin Urbayan as wanted once for supplying foodstuffs to the Japanese in Tacloban. (68). He saw three times the Japanese in a launch accompanied by Loloy Urbayan taking foodstuffs from the Urbayans' place. (70).

Tarcelo Bucatcat, 22, married, testified that Marcelo and Talentin Urbayan are dead. He saw them killed, because he was with the guerrillas. With the guerrilla group, composed of thirteen members from leyte and six from Samar including the witness. (72). Exhibit 8 is the copy of the oath of enlistment of the witness. Valentin Urbayan was killed by a guerrilla from Leyte, whose name he ignores and Marcelo Urbayan was killed by Laureano Bolito, "because they were pro-Japanese." (73). Jose Dosal was the patrol leader of the guerrillas. In the killing "I did not take any participation." The purpose of the guerrillas in going to the place of the Urbayans "was not precisely to rob but they went there because they wanted Marcelo and Valentin Urbayan, they being pro-Japanese." (74). The testimony of Eugenio Urbayan as to a quarrel in the cockpit in Barrio Libtong between Daniel Aboga and Marcelo Urbayan is not true. The Urbayans were pro Japanese, "because I saw with my two eyes that they were purchasing foodstuffs to be delivered to the Japanese in Tacloban." The launch operated by the Japanese used to go to Libtong where the Urbayan family was and Marcelo Urbayan and his brother Loloy Urbayan were the ones loading the foodstuffs for the Japanese." (75). "I saw them, Valentin Urbayan and Marcelo Urbayan going around at Libtong fofi the purpose of buying foodstuffs for the Japanese. That was what they told me." (77). The witness cannot remember when the Urbayans had brought foodstuffs to the Japanese, "because this incident took place a long time ago." (78). The witness went along with the group which kidnapped the Urbayans because I was told by Jose Dosal to go along with them. (79). Although the witness knew the Urbayans beforehand, he testified before Provincial Fiscal Apostol that he came to know them on the night of May 17, when they were taken, which is not true, "it is because I was afraid of the Kempei Tai. I was between two Japanese Kempei Tai when I was investigated." (80). He also knew Daniel Aboga since the beginning, but on page 2 of his affidavit, Exhibit G, he testified that he did not know him "because I was made to look for him and should he be found, he would be killed." In the same affidavit the witness testified falsely that he did not know what was done to the Urbayans "because should I say that I am a member of the guerrillas they would cut my neck." (81). The witness was apprehended by the Japanese at Barrio Tagakay. He was reported by Marcelo Urbayan and Eugenio Urbayan. "I was brought here in Gatbalogan and investigated. In the Investigation I stated that I was kidnapped by the guerrilleros. I did not say that I was a member of the guerrilla organization because I was afraid, I was put in prison by the BCs for about five months." After the investigation he was released and continued reporting to Major Patrimonio. (82). When the Urbayans were kidnapped the guerrilleros from Leyte were carrying with them guns, "I was carrying with me a gun given to me by Major Patrimonio." Although they had firearms the Urbayans were stabbed, because that was the order of Jose Dosal. (83).

Cornelio Geres, 22, married, testified that Marcelo and Valentin Urbayan are dead, "They were kidnapped by Jose Dosal and I was with them." Marcelo Urbayan was killed by Laureano Bolito and Valentin Urbayan was killed by one of the soldiers of Jose Dosal. They were killed because they were pro-Japanese. (85). They bought foodstuffs and brought them to their house. Loloy Urbayan was the one who got them and delivered them to the Japanese. (86). The witness altho was present in the killing of the Urbayans, he took no personal participation in it. (88).

Fortunato Japzon, 59, married, testified that a cockpit in Hinangutdan.owned by a corporation of which he was a

big stockholder On March 14, 1944, cockfighting was held. (97). Nothing happened on that day between Daniel Aboga and Marcelo Urbayan. The witness was the casador. Valentin Urbayan and Marcelo Urbayan were living in Hinangutdan and their occupations were agriculture and fish corral. (98). "I do not know where they sold their products in Tacloban." (99). One time the witness happened to pass by the Urbayans' place and he saw three small barotos loaded with foodstuffs. "I asked Valentin Urbayan if he could allow me to buy some. He answered that he could not because those were to be delivered to the launch." The launch belonged to the Japanese "because it was crewed with Japanese together with Loloy Urbayan" and that was the only time the witness saw the Urbayans loading foodstuffs for the Japanese. (100).

Faustino Nacenopa, 58, married, testified that he was a partner of Valentin Urbayan in a fish corral and on January 3, 1944, he saw that the big fishes were loaded in a launch of the Japanese. (104-106). On January 15, there was discussion between Daniel Aboga and Marcelo Urbayan of the fish corral because Marcelo Urbayan would not sell to him big fishes, but only the small ones. (107).

Carmelita Jazmines Urbayan, recalled in rebuttal, testified that her husband, Marcelo Urbayan, was not a pro-Japanese. (113). It is not true that Loloy Urbayan used to go to the barrio in a launch. "From the time we evacuated on December 16, 1941, we did not know the whereabouts of Loloy until the liberation that was on May 3, 1945." He did not go to Libtong even once. (114). The river in the barrio is shallow it is navigable by barotos but not by launches. Her husband never went with the Japanese. It is not true that Valentin Urbayan went with the Japanese "he could hardly walk in the house how much more to go out. He is deaf." (115).

Eugenio Urbayan, also in rebuttal, testified that it is not true that Marcelo had any connection with the Japanese. His father Valentin "could not go with the patrol because he was sickly unless he be dragged." (117). Fortunato Japson has a grudge against the Urbayans regarding a land transaction. (118).

Matea Lim Urbayan, testified that her husband Valentin Urbayan was suffering from paralysis and was shaking whenever he stands, and he was thus afflicted ever since 1941. He could go down the house with a cane. It is not true that Valentin accompanied once Japanese soldiers in a patrol. (120 & 121).

Exhibit 6 is a communication dated December 31, 1941, addressed by Lt. B. Quejado to Lt. L. Laresa, advising the latter that the bearer, Daniel Aboga, desires to be enlisted. Below the communication there is an indorsement made by Lt. Laresa to Lt. Tabberasah, requesting that Daniel Aboga be assigned if needed.

Exhibit 1 is a special warning issued by Col. Leocadio S. Espiña, dated May 4, 1943, warning the PC officers to avoid all Japanese and their agents because first lieutenant Florentino Nerviol was caught by the Japanese on May 1, 1943, because special orders No. 20 of 1943, identifying him the guerrillas, was found in his pocket book, and the Japanese must have already been furnished with a list of guerrilla officers from Tacloban. Among the officers warned is second lieutenant Daniel Aboga.

Exhibit 2 is the oath taken by Daniel Aboga on October 15, 1942, for his enlistment in the guerrilla forces in Samar.

Exhibit 3 is the oath of office of Daniel Aboga as master sergeant of the guerrilla forces, dated December 8, 1942.

Exhibit 4 is the oath of office of Daniel Aboga as third lieutenant of infantry of the guerrilla forces dated January 11, 1943.

Exhibit 8 is a certified copy of the oath of enlistment in the guerrilla forces of Tarcelo Bucatcat, dated December 11, 1942, certified by Jesus F. Arteché on December 6, 1946.

Exhibit 9 is the copy of the oath of enlistment in the guerrilla of Cornelio Geres dated October 1, 1942 and

certified by Jesus F. Arteché on December 6, 1946.

Exhibit A is a certified copy of an official announcement issued on March 12, 1943 by Colonel Leocadio S. Espiña about the promotion of Marcelo Urbayan to the rank of third lieutenant of the guerrilla forces.

Exhibit 3 is the oath of enlistment with the guerrilla forces of Eugenio L. Urbayan dated December 15, 1942.

Exhibit C is a certification issued by Hermenegildo Y. Lemos, ex-major of the Philippine guerrilla forces, on January 20, 1945, to the effect that Eugenio Urbayan served in the guerrilla forces at Samar.

Exhibit E is a certification issued by the civil registrar of Santa Rita, Samar, to the effect that in the registry book it appears that Marcelo L. Urbayan died on May 17, 1944, kidnaped and killed by unidentified bandits, his occupation being that of an officer of the guerrilla forces.

Exhibit F is the oath of enlistment with the guerrilla forces of Marcelo L. Urbayan dated December 16, 1942, the copy being certified to by third lieutenant Juan B. Cananua.

From the evidence it appears that, although appellant took part in the taking of Valentin and Marcelo Urbayan, he took no part in their killing. Probably, responsibility could be exacted from him for having taken part in the taking of the two victims, if accused for kidnaping or illegal detention, but he is charged in this case with the offense of double murder. Not having participated in the killing and no evidence having been presented to show that the killing had been planned or the subject of a conspiracy in which appellant took part, he cannot be held responsible for the killing.

If the dispute that appellant had with Marcelo Urbayan regarding the fish he wanted to buy from the latter's corral and his quarrel with him in a cockpit had been the motives which induced appellant to take part in the taking of the two Urbayans, it has not been shown why Valentin Urbayan, Marcelo's father, had to be included, when he had nothing to do with said dispute and quarrel, and no explanation was given why all the companions of appellant had to take part in the taking and killing of the two Urbayans. If appellant's desire for revenge was the motive for the killing, he could have achieved his purpose without the need of the company of many persons, of the ceremony of conducting the victims from their place to another for execution, while it would be incomprehensible why appellant himself did not take part in the killing.

The evidence rather shows that the taking and killing of the two Urbayans were effected in furtherance of the resistance movement, it appearing that the victims were pro-Japanese, whom they had been furnishing fish, and the group which had taken and executed them were members of the guerrilla. Consequently, even if appellant could be held responsible for the killing of the two Urbayans, he is entitled to be acquitted, as the killing is covered by the Guerrilla Amnesty Proclamation. That appellant's claim to the benefits of the amnesty has been rejected twice by two amnesty commissions on December 6, 1944, and on January 10, 1948, respectively, is of no consequence in view of the evidence on record and of the power granted to this Court by the proclamation.

We concur in the reversal of the appealed judgment and in the order that appellant be released upon promulgation of the decision.

DISSENTING

TUASON, J.:

I think the Judgment of the lower court should be affirmed. By the preponderance of evidence, if not beyond reasonable doubt, it has been shown that the motive behind the murders was purely personal. The trial judge points out the inherent improbability of the defense, in his carefully written and well considered decisions:

"We shall now examine the facts of the case at bar to find out whether the offenders herein fall under the purview of the amnesty proclamation.

"It is a fact that the deceased Valentin Urbayan and Marcelo Urbayan evacuated to Libtong on 16 December, 1941, immediately after the outbreak of the war and before Leyte and Samar were occupied by the enemy (on 24 May, 1942). They brought with them their families, built their houses and continuously lived in said place until they were taken from their homes and later killed on 17 May 1944, by the herein accused and their companions. Both deceased never went to any area occupied by the Japanese; and the Japanese never actually occupied Libtong which was, together with its vicinities, under the control and influence of the guerrilleros. Valentin Urbayan was paralytic and could not walk, and hardly with the aid of a cane. He was deaf. Marcelo Urbayan was a member of the guerrilla organization (of which the late Pedro Arteche was the head) with the rank of third lieutenant from 12 March, 1943 (Exh. "A"), before which, or on 16 December, 1942, he was enlisted and had properly subscribed to the oath of enlistment (Exhibits "B" and "F"). That he was a lieutenant of the guerrilla organization was admitted by the defense. The Urbayans had a fishcorral during all that time to which fishcorral the herein defendants went some times to buy fish. Marcelo Urbayan was taking charge of the fishcorral in view of the physical incapacity of his father Valentin. Marcelo used to go to the cockpit at Hinagotdan during Sundays and play the game thereat.

"The accused Daniel Aboga, Tarcelo Bucatcat and Cornelio Geres were also enlisted in the same guerrilla organization on 1 October, 1942, 11 December, 1942, and 1 October, 1942, respectively (Exhs. "3", "8" and "9"). Daniel Aboga was promoted to third lieutenant (Exh. "4") and then to second lieutenant (Exh. "5").

"In cross-examination the defendant Daniel Aboga declared that sometimes in March, 1944, he heard that the head of their guerrilla organization, Pedro Arteche, was captured by the Japanese and brought to Catbalogan. Since then their organization was disbanded and the accused returned to live in their homes at barrio Tagakay. The disbandment of their organization made each one of the members go his own way.

"The prosecution thru its witnesses proved that there existed resentment between the accused and the victims. The resentment was due to the purchase and sale of fish and to gambling. The Urbayans had a fishcorral in that place where they evacuated. Fishcorral was their principal means of livelihood. The accused were frequenters to that fishcorral to buy fish. At times the deceased Marcelo Urbayan stopped the accused from taking fish without paying for it and at others without the exact payment on it.

"Many indulged in this bad practice of taking the neighbor's property and pay-at-will during the enemy occupation that the stench of it reached the four corners of the country. Usually the victims were those strangers in the place, evacuees who ran with their families believing that away from the Japanese they would suffer less privations and insults.

"Sometimes about the 15th of January, 1944, the deceased and the accused had a very hot altercation which, if not for the timely intervention of those present, would have ended in fistic blows. That happened in the fishcorral. The cause was that the accused wanted to take the fish at the price not acceptable to the deceased Marcelo Urbayan.

"That there existed bad feelings between the accused and the deceased re the fish business that warmed their blood, was admitted by the defense who twisted the story that the crime committed may have the necessary circumstances to make it fall under the purview of the amnesty proclamation.

"The defense alleged that the root of the trouble was the manifest desire of the deceased to aid the enemy by refusing to sell the big fish to the guerrilla soldiers because it was intended for the Japanese soldiers.

"This allegation is absurd. The deceased was a member of the same guerrilla organization as that to which the accused were adhered to. He and his family were living in an area under the absolute control of the guerrilla and where protection from the Japanese was nil. He himself had no protection in that place except the belief that he was loyal because he was an officer of the guerrilla and had no contact with the enemy, which belief strengthen his heart. They were but three houses there. Three families without soldiers or aea armed to protect them. He was intelligent; and he had not lose his sense to know that any collaboration, even the most apparent, with the enemy would endanger his life, those of his wife and infant children, and his paralytic father and aged mother. Hence he avoided the enemy. He avoided contact with him. Reason for his living in that secluded place long before the enemy was expected to land and occupy Leyte and Samar until the day of the incident.

"The defense attributed to the deceased collaboration with the enemy; and to heighten the color of that attributed collaboration, it exerted efforts to imprint in the imagination of the court that both deceased, including the aged, paralytic and deaf Valentin Urbayan, guided Japanese patrols. The defense wanted the court to believe that the deceased heavily collaborated with the enemy by guiding patrols; but admitted that they continued to live, alone and unprotected, in an area under the control and influence of the guerrilleros.

"There was an implied admittance of the defense, because the prosecution proved without being refuted, that Valentin Urbayan was a paralytic old man of 65 years old who could hardly walk even with the aid of a cane, and deaf. This was testified to by Carmelita Jazmines Urbayan, Eugenio Urbayan and Matea Lim Urbayan. To attribute to him accompanying Japanese soldiers in their patrol is not only incredible but absurd. Such a patrol desired speed; and speed could not be attained by bringing along a man who, if not carried, was to be dragged. Marcelo Urbayan did not buy foodstuff at Tagakay for the Japanese. Loloy Urbayan never went to Libtong. There was no motor-boat that ever reached Libtong. The water along the shore of Libtong is not navigable for any motor-boat because it is very shallow. Neither Marcelo Urbayan nor Valentin Urbayan ever guided a patrol of Japanese soldiers. Neither of them had any connection with the enemy.

"If the deceased did not aid the enemy, what motivated the defense to attribute to them such nefarious behavior? Their knowledge that there exists the amnesty proclamation that shall forthwith release or discharge them 'if the act committed was against persons aiding in the war efforts of the enemy'.

"If it were true that the deceased aided the enemy and guided Japanese patrols in January, 1944, why were not the deceased disturbed but on 17 May, 1944 or after the elapsed of four months? They met often. After the time alleged that the deceased guided the patrol, the accused had had various personal transactions with the deceased. The deceased were without any protection during all that period. But the accused, fanned by the presence of thirteen armed malefactors who they alleged came from Leyte, took reins to satisfy their ire towards the deceased; and together or with their help put into execution their evil intention.

The three accused told incredible stories about the deceased collaborating with the enemy, and more incredible still were those of their witnesses, believing that they could make the court the instrument in declaring that they 'should not be regarded as criminals but rather as patriots and heroes who have rendered invaluable services to the nation' by making their criminal acts fall under the purview of the amnesty proclamation.

The court is convinced that they existed a bad blood between the accused at bar and the deceased due to personal resentment which arose from purely personal transactions. This motivated the commission of the crime."

The burden is on the accused to prove that his acts were dictated by political considerations. Some courts have held that the accused is required to establish all affirmative defenses to the extent of establishing a reasonable doubt as to his guilt of the crime charged; and that where the accused enters a plea of confession and avoidance| or independent defense, the degree of proof required of him is to establish the matters relied on as a defense to the

satisfaction of the court or jury. (20 C. J. S., 197.) In the present case the appellant has not to much as demonstrated his defense by probable evidence.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.