

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. NEMESIO LLANETA AND PEDRO MAGDUGO, DEFENDANTS AND APPELLANTS.

G.R. No. L-2082. April 26, 1950

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of conviction finding Nemesio Llaneta and Pedro Magdugo, appellants herein, guilty of murder. Pedro Tagam was arrested by order of Pedro Magdugo, a leader of an irregular force, and, the prosecution charges, was killed by Llaneta by order of, and in accompany with, his fellow-accused. The appellants contend that Tagam was slain not by them or either of them but by Frisco Balacuit.

The issue hinges on the relative credibility of the witnesses. As a considerable part of the evidence for either party, as taken clown in the record, is self-contradictory and confused, it will be easier to set it out in detail than to digest or summarize it. Besides, the former method, it is believed, will be more conducive to a clearer understanding of the discussion and opinion that will follow.

Following are the names of the witnesses and detailed extracts from their respective testimony.

EVIDENCE FOR THE DEFENDANTS

Pedro Sabay, 40 years old. He has known Nemesio Llaneta for a long time but Pedro Magdugo only since the guerrilla days. On November 5, 1942, in the municipality of Alubijid, province of Mis amis Oriental, Llaneta shot Pedro Tagam because Magdugo ordered him to do so. He was quite far, about 15 brazas away, from Llaneta and Tagam, while the distance between the two accused was less than two meters. Llaneta shot Tagam with a rifle. He thinks Pedro Tagam was hit. He says he thinks because he was quite far. After the second shot, he saw Pedro Tagam "roll down." Immediately thereafter "I went home to the place where I boarded." Asked where he was boarding, if he was not a prisoner or detained, he answered, "I was imprisoned after Tagam was killed by them," Before killing Tagam, they took him from the house where he (witness) was imprisoned. He did not know the person who got Tagam from the house where he (witness) was imprisoned because as soon as that soldier arrived, he shouted, "Let the prisoners come down." Upon this order "we went down." When he was still upstairs, Lofredo Galarrita whispered to him that "they were going to shoot Tagam." After that he "went downstairs and followed them." When he arrived at the plaza, he stopped under Felix Roxas' house from which he saw Magdugo and Llaneta, the latter carrying a rifle. Then he heard a shot and Tagam exclaimed, "What are you going to do with me? Why are you going to shoot me?" One more shot was fired and he saw Tagam reel. Thereafter he went back to the house where he was staying. He did not know where Tagam was buried. He learned only afterward that Tagam was buried "at the curb along the provincial road in the poblacion of Alubijid."

CROSS-EXAMINATION BY ATTORNEY BORJA

Asked how it was that he saw Magdugo signal to Llaneta to shoot Tagam when, as he said, it was already 6:30 o'clock in the evening, Sabay replied that he saw Magdugo moving his left hand, pointing at somebody, as if telling Llaneta to shoot. Told to demonstrate how Magdugo signaled to his co-accused, he "swung his left hand forward and downward several times." He said that he testified at the preliminary investigation but did not state that Magdugo ordered Llaneta to shoot Tagam because he was not asked about it.

CROSS-EXAMINATION BY ATTY. C. VAMENTA

The witness said that he was arrested with Tagam on November 5, 1942. Tagam was shot after 6 o'clock in the evening. He and Tagam were arrested at the same time and both of them were taken to the house where they were investigated and after that Tagam was taken away and shot. Asked what he meant by saying that he and Tagam were arrested, after which Tagam was killed, he said, "When they arrived in that house (guardhouse). we were made to sit down on a chair and Magdugo investigated Tagam." Magdugo, he said, asked Tagam if he still had some "pistons" and Tagam said he had none. Magdugo asked Tagam if he was a soldier (USAFFE) and Tagam said yes. Then Magdugo asked Tagam why he did not report for duty if he was a soldier and Tagam answered that he was going to do so in Imbatug, Bukidnon, because his wife's parents lived there. Tagam further said that if he should report for duty in Alubijid, he would be far from his wife and nobody could inform her of his whereabouts. He was present when Tagam was investigated. The time of the investigation, he thinks, was a little half past 6 o'clock in the evening. Tagara's investigation by Magdugo did not last long. When Tagam was killed, he (witness) was already under arrest. Asked how it happened that he was in the plaza when, according to him, he had been ordered to go back to the guardhouse, being a prisoner, he replied that when he went back to the house where he was staying, he met Lofredo Galarrita who whispered to him "that they were going to kill Tagam." So, afraid, he went down and "saw them" going towards the plaza, and upon reaching the house of Felix Roxas, he stopped and saw Llaneta, Magdugo and Tagam. When asked if he meant to say that when he was lodged in the guardhouse as a prisoner he was not deprived of liberty to go out, he said no, because he "was not yet imprisoned." In the house where he and Tagam were lodged there were soldiers guarding the prisoners, one of whom was Lofredo Galarrita. He was surprised when he was arrested because he did not know what he was arrested for. Afterward he came to know the reason; it was "because they have already killed Tagam and because we were together." When asked if he was not arrested for being a spy and not because he had been with Tagam, he said, "At first, on November 5, 1942, Ireneo Sabellita went to Tubahon, together with Leon Roslim. Ireneo Sabellita went up the house of Ramon Pangca while Leon Roslim proceeded to the beach where Tagam was at that time. As soon as Leon Roslim arrived at the beach, he told Tagam, 'What about the piston which I spoke to you about?' and Tagam said, 'I have no more? because I have already sold them all.' Consequently, Leon got angry and said, 'You do not know that is not I who needs the piston, it is the order of Sergeant Magdugo and Loloy Roxas, to get the piston from you?' "

RE-DIRECT EXAMINATION BY FISCAL COLOSO

Magdugo was the king (hari) in Alubljid and Llaneta was the executioner (verdugo).

Rodolfo Carretas, 24 years old. He knew the two accused and Pedro Tagam. Tagam was shot by Nemesio Llaneta. He did not know the reason. When he arrived at the place where Nemesio Llaneta and Pedro Tagam were, from a patrol assignment, he saw Tagara already wounded in the left shoulder, after he had been hit with a "backstroke." Afterward TagaM, supported by Llaneta, was taken to the house of Sixto Roxas which was at that time used as officers' quarters. A few minutes later, Pedro Magdugo conducted an investigation, after which Llaneta together with other soldiers and Tagam proceeded to a place near the house of Fortunate Jamis where they dug a hole in the ground. As soon as the hole was dug, Llaneta again hit Tagam with a "backstroke" which caused Tagam to

fall into the hole. Then Magdugo ordered them to cover Tagam with earth. Tagam was still alive, agonizing and moaning. Pedro Magdugo did not help cover Tagam with earth; he merely ordered the soldiers to do so. But Nemesio Llaneta did help the soldiers bury Tagam after he had given Tagam a "backstroke." The "backstroke" was delivered with great force. The hole was about hipdeep. His distance from Tagam, Llaneta and Magdugo when the killing occurred was about 5 meters. Llaneta had a reputation of offering himself to kill persons condemned to be executed, and it was Magdugo who ordered Llaneta to kill. After the last statement was ordered stricken out for being based on rumors, the witness said he knew personally that Llaneta used to present himself to kill people whom Magdugo ordered executed. He knew that no one else cared to be appointed executioner. In fact he himself, although a guerrilla, was afraid of Llaneta. The guerrillas had not yet been regularly organized at that time. He did not know? why Tagam was killed by the accused.

CROSS-EXAMINATION BY ATTORNEY BORJA

His commanding officer was Pedro Magdugo although the latter was only a sergeant. Among his companions in his detachment were Frisco Galarrita, Ramon Pangca, Frisco Balacuit and others whom he did not come to know because they were, from other places and because the guerrillas at that time were not yet fully organized. Up to that time the Japs had not used to come to Alubijid, and that was why there were many civilians living in that town. Some stayed in, the town only in the daytime and stayed out during the night. Tagam had a bullet wound in the left shoulder. The missile entered, in front and came out at the back. The point of exit was very big and blood was gushing out of the wound.

CROSS-EXAMINATION BY ATTORNEY VAMENTA

He had not reported this killing up to the time he was testifying because he was afraid that he might be implicated. Soldiers were allowed to witness Tagam's execution but civilians were not. There were more than ten soldiers, but because it was getting dark he did not count them. The one who caused the wound in Tagam's shoulder was Nemesio Llaneta; he says so because at that time the guerrilla members were not yet furnished with proper arms. There were only a few home-made guns and the only Enfield rifle was given to Llaneta. He did not actually see Llaneta inflict that wound because Tagam was already wounded when he saw the latter but there was no soldier who had a rifle except Llaneta, rifle which Magdugo had entrusted to Llaneta for his use. It was half past six o'clock in the evening when he saw Tagam being supported by Llaneta. Llaneta was aided by Frisco Balacuit when Tagam, supported by Llaneta, was taken to the house of Sixto Roxas. Frisco Balacuit was already a soldier but he had no arm with which he could shoot Tagam. He does not think Balacuit shot Tagam because there was no firearm other than that of Llaneta.

Frisco Balacuit, 27 years old. He had known the two accused since before the war. He also knew Pedro Tagam, who is now dead, shot by order of Pedro Magdugo. Nemesio Llaneta killed Tagam with an Enfield rifle. He heard two shots. Llaneta was about one meter from Magdugo when he heard the shots, while Pedro Tagam was about three meters from the two accused. Tagam was ahead followed by Llaneta and Magdugo. He did not see anything more after he heard the shots because he was not near the place; he was in the headquarters being a member of the military police. Llaneta was a private and Magdugo first sergeant of the organization which was not yet fully organized, at the time this incident took place; he had been guarding Pedro Tagam and Patricio Sabay. While he was guarding these two men, Magdugo and Llaneta arrived and ordered the prisoner to be brought out, so he led them out, "When Tagam was already outside, Magdugo ordered the prisoner to follow them to the plaza. In going to the plaza Pedro Tagam was ahead and Magdugo and Llaneta were behind him. He did not see anybody else follow. Nemesio Llaneta was carrying an Enfield rifle; Magdugo was not carrying anything. As they were on their way towards the plaza all of a sudden he heard a shot. He did not know who fired the shot. After hearing the

shot, he just remained in the place where he was a guard. After hearing the shot, he verified what it was and saw Pedro Magdugo. He went to the scene of the crime and there he found Magdugo, Llaneta, Rodolfo Carretas and Frisco Balacuit (Galarrita?). Tagam was sprawled on the road in agony. He was buried at a curb on one side of the road; he saw it. The soldier covered the grave by command of Pedro Magdugo. Llaneta did not help cover the hole. Llaneta was carrying a rifle. He (fitness) was about five meters from the grave. There were many persons around but he did not know them. He only recognized Pedro Magdugo, Nemesio Llaneta, Rodolfo Carretas and Frisco Galarrita. Tagam was still agonizing when he was buried. Asked who killed Tagam, the witness said he did not know. Asked again if despite what he had already said he did not know who killed Tagam? the witness said, "I am going to tell the truth, it was Nemesio Llaneta." He did not know why Nemesio Llaneta killed Tagam. Magdugo was there, about two meters from Llaneta. He was only ordering his soldiers. Llaneta was one of the soldiers. He did not know if Magdugo was able to order Llaneta to kill Tagam.

CROSS-EXAMINATION BY ATTORNEY VAMENTA

Tagam was tied when he was taken to the plaza. They were heading toward the plaza when he saw Tagam's hands tied and while he remained in the guardhouse. About ten minutes elapsed from the time he saw Tagam, Magdugo and Llaneta march in the direction of the plaza until he saw Tagam lying on the road. Tagam was already wounded and agonizing when he saw him on the road. Queried how he could tell it was Llaneta who killed Tagam when, as he had stated, Tagam was already lying on the road wounded and agonizing when he arrived, the witness answered that he learned from Magdugo himself that it was he who had ordered Llaneta to shoot Tagam.

"Q But have you actually seen Llaneta shoot Tagam, or not?—

A I was there.

"Q In what particular place or spot were you then?—

A I was following them when they killed Tagam.

"Q In what place did you see the actual shooting of Tagam?—

A I was behind them.

"Q Is it not true that you testified in your direct examination that first you heard two shots and that you did not actually see the shooting of Tagam?—

A I am confused."

CROSS-EXAMINATION BY ATTORNEY BORJA

Between the witness and the graves when the grave was being filled up, were Pedro Magdugo, Nemesio Llaneta, Rodolfo Carretas and Frisco Galarrita. There were other persons standing around. It was about 6 o'clock in, the evening, already dark. Pedro Tagam's feet were still moving as if kicking, when he was being covered with earth. Witness was from Alubijid. He was formerly one of the accused in this case. When he heard Pedro Magdugo say, as Tagam was being buried, that he had ordered Llaneta to shoot the deceased, Magdugo was not speaking to him (witness) but to sergeant Nicasio Lusterio. Those who heard the remark were only the men in the headquarters where it was made. Besides him and Llaneta nobody else heard Magdugo's remark. Nicasio Lusterio was a sergeant and lived in Alubijid at the time of the trial. "Ours was the guardhouse while theirs was the headquarters." At the time Magdugo and Llaneta came to the guardhouse to take the prisoner, Patricia Sabay was there. Sabay was not brought to the guardhouse.

Palermo Jaramillos 29 years old. On November 5, 1942, he arrested Pedro Tagam and Patricio Sabay by order of

Pedro Magdugo. The order was given at the headquarters. He brought Tagam and Sabay to Pedro Magdugo after they were arrested. Magdugo was acting first sergeant and he (witness) was a corporal, although he acted sometimes as sergeant. Magdugo told him that Tagam had blasting caps, and that was the reason why he was arrested. It was about three o'clock in the afternoon when Tagam was arrested, and he was turned over to Magdugo at about six o'clock.

CROSS-EXAMINATION BY ATTORNEY BORJA

Melecio Roxas was the mayor of Alubijid at that time. It was already dark when he delivered the prisoners to Magdugo. He was not there anymore when Magdugo investigated Sabay and Tagam, having gone home immediately after the prisoners were delivered to Magdugo.

CROSS-EXAMINATION BY ATTORNEY VAMENTA

It was a written order which he received but it had been lost. He received it at two o'clock in the afternoon. Tagam lived about five kilometers from the headquarters. He had two companions when he arrested Tagam and Sabay, Jose Labis and another whose name he could not remember.

EVIDENCE FOR THE ACCUSED NEMESIO LLANETA

Marciano Elarmo, 36 years old. He was a soldier in Alubijid during the guerrilla days. On November 5, 1942, he saw Tagam at the municipal police headquarters brought by soldiers. From there he was taken to the guardhouse of the army about 100 brazas from the police headquarters. Pedro Magdugo ordered him to accompany Nemesio Llaneta take Tagam from the municipal police headquarters to the army guardhouse, but before reaching the army guardhouse, Pedro Tagam ran away. It was about half past six o'clock in the evening. When Pedro Tagam ran away, Llaneta fired his gun in the air twice. Then Llaneta chased Tagam while he (witness) went home. Llaneta knew that he went home; he told Llaneta he wanted to go home because the Japs were expected. He did not know whether Llaneta overtook Tagam. He learned that Tagam had been killed only the following day.

CROSS-EXAMINATION BY THE FISCAL

Llaneta, Tagam and he did not reach the guardhouse because Llaneta ran away. He saw no other person at that time. He is sure of it. Patricio Sabay was not there. He saw Tagam on the second floor of the municipal police building. There were many people there, some of them soldiers. The headquarters of the municipal police were about 100 meters away from the guardhouse of the army. The place between the two places was clear of bushes. There were no obstructions except acacia trees which were high. But there was a corner to be turned before the guardhouse of the army was reached. He did not see Sabay in the police headquarters, neither did he see Frisco Balacuit or Rodolfo Carretas. He did not belong to the group of Pedro Magdugo because the bolo battalion of which he was a member was under the command of the army.

QUESTION BY THE COURT

When Tagam ran away Nemesio Llaneta fired two shots in the air, after which he chased Tagam. That was the time he separated from Llaneta, notifying Llaneta that he was going home.

Severino Galarrita, 41 years old. He was a municipal policeman on November 5, 1942, and was at the headquarters of the municipal police of ilubijid. He saw Pedro Tagam while Tagam was wrestling with Frisco Balacuit. Balacuit thrust his bayonet on Pedro Tagam and hit the latter in the left side of the stomach. Tagam fell to the ground after which Balacuit just stared at him. He asked Balacuit why he stabbed Tagam and Balacuit

answered that it was because Tagam ran away. Florencio Madredano was present when he asked Balacuit why he stabbed Tagam. Madredaño was just looking at the witness and Balacuit. After that he saw Llaneta about five brazas away from him. He told Llaneta to take charge of the matter and to report it to the headquarters because he (witness) was going home and had something to do. When he told Llaneta this, Tagam was already lying on the ground.

CROSS-EXAMINATION BY THE FISCAL

He was a municipal policeman under the guerrilla government. There was already a guerrilla organization, Tagam died in January, 1942. He is sure of it.

When he saw two persons grappling at seven o'clock in the evenings he was on his way home. Balacuit and Tagam were the only persons he saw. Tagam was being held by Balacuit by the arm. Tagam tried to push Frisco away with his hand and succeeded. Then Frisco drew his bayonet and sank it on Tagam. According to his estimate the struggle lasted about three minutes. He watched the struggle for a while. He asked Frisco Balacuit why he struck Tagam with his bayonet. After asking that question he saw Llaneta and told Llaneta to take charge of reporting the matter to the headquarters. It was his duty to report the matter himself but he was in a hurry to go home because he had something to do. He had to gather foodstuffs because he was in charge of those things for the police force. The thrust was sudden so that Tagam did not see it coming. When he left, Tagam was still bleeding.

QUESTIONS BY THE FISCAL

He related this incident to Pedro Magdugo; aside from that he did not tell it to anybody.

Hemesio Llaneta, 28 years old corporal Philippine Constabulary. After Pedro Magdugo had finished investigating Pedro Tagam, Magdugo ordered him to escort Tagam to the guardhouse. On the way to the guardhouse, when they were about 50 meters from it, Tagam ran away. He shouted for him to stop and fired two shots in the air but Tagam did not stop. After a few minutes, he heard someone near the edge of the provincial road shout, "He is here," so he approached, the place from which the voice came. There he found Frisco Balacuit, Florencio Madredano, and Tagam who was lying on the ground. He had a conversation with Severino Galarrita. Galarrita told him to report the matter to the authorities, so he did. He reported it to Sgt. Magdugo because his officer was not there at that time. When he took Tagam to the guardhouse, Marciano Elarmo was with him. He fired two shots in the air to make Tagam stop running but he did not stop. He chased Tagam but his companions did not do the same. His companions went home instead. Shortly after he arrived at the place, he saw them (Balacuit and Florencio Madredaño) and Florencio Madredaño lifted Tagam and he noticed that Tagam had already a wound in the left side of the stomach. While Tagam was in that position, Balacuit struck him again with a bayonet which pierced his stomach. After that thrust, in the stomach, Tagam died. He reported the matter to Pedro Magdugo upon seeing Tagam dead. He saw Florencio Madredaño unbutton the white shirt of Tagam and remove it. Madredaño also removed Tagam's pants and wore them. Frisco Balacuit took the shirt, and wore it himself. He is sure that Tagam was already dead. Pedro Magdugo told him that he was going to take care of the matter himself. Asked if the dead body of Pedro Tagam was ever buried, he said he learned of it two days after the incident took place because the Japs had come to Gitagum at that time. He did not participate in the burial of Tagam. He denies that he ordered a grave to be dug or that he "backstroked" Tagam. He denies that while Tagam was still alive he covered him with earth by order of Pedro Magdugo.

CROSS-EXAMINATION

He did not report the killing to anybody except Magdugo because Magdugo told Mm that he would take care of reporting it himself. He knew, at the time, that Fiscal Fernandez was investigating this case but he did not tell Fernandez that Frisco Balacuit had killed the deceased; neither did he tell Fiscal Lagrosas, Coloso and Tengco who had killed Pedro Tagam. After Florencio Madredaño removed Tagam's pants and put them on, Frisco Balacuit also removed the shirt and put it on. Afterward, they left Tagam with nothing but drawers and undershirt on. He actually saw Balacuit stab Tagam. He was only one meter away. When he arrived at the scene of the killing, Tagam was already lying face down. Then Balacuit turned, hira up on his back. When Tagam was in this position. Frisco Balacuit again stabbed him with his bayonet in the stomach. After stabbing Tagam in the stomach, Frisco Balacuit kicked him and gave hint another thrust in the back for the third time. Tagam was already dead when Balacuit stabbed him in the back. He found out that Tagara was buried only after the Japanese left Alubijid. The Japs were in. Alubijid on the 8th of September, 1942. In answer to a question by the court, this accused says that ha did not take part in the burial of Tagam; that when Tagam was killed by Frisco Balacuit, Tagam was not under anybody's care; that it is true Tagam was under his care after his chief ordered him to escort Tagam to the guardhouse, but when Tagara was killed he reported the killing to Magdugo. After Tagam was killed, he just left the dead body to Balacuit and Madredaño; he left Tagam at the hands of his killers because he was afraid, since Tagam died while he was escorting him. He does not know what Magdugo did after he reported to Magdugo the killing because Magdugo simply told him that he was going to see the cadaver. He did not accompany Magdugo to see the cadaver, remaining at the headquarters. In answer to further questions by, the fiscal, Llaneta says; Tagam received only two wounds, both in front of his body, not three wounds in the side, in the back and in the stomach. When he arrived, Balacuit and Madredaño were already beside Tagam and he clearly saw that Tagam had a wound in the left side of his stomach, and after his body was turned, up it was again stabbed in the middle of the stomach. Tagam ran, fast when he escaped from his custody; that was the reason why he did not overtake him.

Melecio Roxas, 29 years old. On November 5, 1942, he was connected with the guerrilla organization stationed in Alubijid and so was Pedro Magdugo. Between 6:30 and 7 o'clock p.inu he was near the church. He remembers that Pedro Magdugo came to his house on that date for the main purpose of notifying him of the results of his errand to procure dynamite. He had no rank in the guerrilla organization, but he was given the assignment of procurement agent. Pedro Magdugo was a sergeant. While Magdugo was in his house, he heard the report of a gun and he asked Magdugo what it xtfas. Magdugo said he did not know but went out right away. Subsequently, Magdugo came back and told him that somebody had been killed and buried. On cross-examination, he says Pedro Tagara was the man that had been killed, according to Magdugo. Not more than half an hour elapsed from the time Magdugo left till he came back. He himself did not go out to see what the matter was. In answer to the question who buried Tagam, he says Magdugo told, him he had seen Frisco Balacuit and Nemesio Llaneta also. Magdugo mentioned no other persons; neither did he ask him. According to Magdugo's reports the cause of Tagam's death was bullet wounds; two wounds, according to Magdugo, in the front part of the body. Frisco Balacuits Nemeslo Llaneta and Florencio Madredaño were the ones who buried Tagam, according to Magdugo. He did not bother to ask who shot Tagam because Tagam was already buried. His house tras about 300 meters, more or less, from the place where Tagam was killed. According to Magdugo, the two wounds Tagam received were caused by gunshots. He asked Magdugo who killed Tagam but Magdugo could not tell him. According to Magdugo, Llaneta was holding a gun; no other person had a gun.

Pedro Magdugo, 37 years of age, first lieutenant, Philippine Constabulary. What Rodolfo Carretas declared is not true, that in the evening of November 5, 1942, he, Magdugo, was near the grave intended for Pedro Tagam and that he ordered the men there to bury Tagam notwithstanding the fact that Tagam was still alive. At that time,

Rodolfo Carretas was not a member of the organized guerrilla because he was a mere civilian. He denies what Frisco Balacuit stated, that he, Magdugo, told Nicasio Lusterio that he had ordered Llaneta to shoot Pedro Tagam. He says it was not true, as Patricio Sabay stated, that he and Nemesio Llaneta took Tagam to the plaza or that he motioned to Llaneta with his left hand, to shoot Tagam. He says he ordered the arrest of Pedro Tagam because there were reports to the effect that Tagam had dynamite in his possession. Sergeant Palermo Jaramillo of the guerrilla was the man whom he sent out to arrest Tagam. He needed dynamite to prevent the Japs from penetrating into their area. Pedro Tagam and Patricio Sabay were arrested in compliance with his order at about six o'clock in the afternoon. His investigation of these men did not last more than half an hour. After the investigation, he told Llaneta to take Tagam to the guardhouse for further investigation and he immediately went out to see and inform. Lt. Roxas that Tagam, according to Tagam's affidavit, had already disposed of his dynamite. While in the house of Roxas, he heard a gunshot and Roxas told him to go out and ascertain what it was. On his way he met Nemesio Llaneta who told him that Tagam had been killed. Pie proceeded to the place of the shooting and there he found several persons around the dead body of Tagam. Tagam's wounds were bayonet wounds. He questioned Llaneta and Llaneta told him that it was Frisco Balacuit who had inflicted the wounds. He ordered the burial of Tagam after he had reported the killing to Lt. Roxas. Besides reporting the killing to Roxas, he submitted a report to his Sector commander and another to the Regiraental commander, Limena. The Sector Commander was Othelo Caballero. Contrary to Rodolfo Carretas' testimony, he was not the one who ordered the killing of people in Alubijid. There was no such order from him. On November 6, the Japanese invaded Alubijid. When he reported Tagam's death to Roxas, he did not tell the latter who killed Tagam because he had only been told that Frisco Balacuit stabbed Tagam; he did not actually see it. What he told Roxas was that Tagam had been killed but not by gunshots. Tagam's wounds were in the left side and in the center of the body« According to Llaneta, it was Frisco Balacuit who killed Tagam and that was what he told Roxas. Asked by the court if he informed Roxas that Ealacuit had killed Tagam, he answers Roxas did not ask him. Queried again whether he reported to Roxas that it was Balacuit who killed Tagam, he says he reported to him that. In answer to further questions by the fiscals, he says he, could not explain why Roxas testified that he, Magdugo, told Roxas who killed Tagam. When he sent Llaneta to escort Tagam to the guardhouse, Llaneta was carrying a gun. He had not seen any bayonet on that occasion. Among the persons who buried Tagam he did not see any holding a bayonet. Asked who, buried Tagam, he says he remembers Florencio Madredaño, Frisco Balacuit, Sgt. Cristobal, Sgt. Meliton Cruz and others. Llaneta was also there helping to bury Tagam. He, Magdugo, was about 50 meters from the crowd. There were many soldiers. It was about ten minutes after he heard the two shots that he went out of the house to find out what the shots were about. The grave in which Tagam was buried had a depth about the height of a man, dug already, when he arrived, by the soldiers he has mentioned. He saw Tagam in that grave. They used bamboos and sticks to dig the grave. Llaneta was accompanied by Marciano Elarmo when Tagam was conducted to the guardhouse. Elarmo was a soldier but had no arm. When Tagam was conducted to the guardhouse Patricio Sabay was at the municipal building from which the guardhouse was about 150 meters distant. He did not know who the guard was in the guardhouse, whether it. was Frisco Balacuit. In answer to the next question, he says Balacuit was not the guard that time; that the guard was Godofredo Galarrita. He was not the highest in command of the guerrilla organization at that time. It was one Lt. Othelo Caballero who is now in Camp Keithley, Lanao. On November 5, 1942, Melecio Roxas was still a civilian and had no rank except that of procurement officer. He did not see Tagam buried. The witness' attention being called to his previous statement that he had seen Tagam buried, he says he had not actually seen him buried because the grave was far from where he was, 15 meter; but from the place where Tagam was killed the distance of the grave was about three meters. He saw them carry Tagam's body to the grave. Tagam had only drawers and undershirt on. He had neither shirt nor trousers. In answer to questions by the court, he says he was at the headquarters, which was different from the municipal police headquarters, when he gave the order for Tagam's arrest. When Tagam was brought to the police

headquarters, he was not there. When Tagam and Sabay arrived at Alubijid, they were brought immediately to the municipal police headquarters while he "was still at our headquarters." He was informed by someone that Tagam and Sabay had already arrived and he immediately went to the police headquarters. When he reached the latter place, he began the investigation as to whether they still had dynamite; and they said no. He sent Tagam to the guardhouse for further investigation because he was told by Lt. Caballero that Tagam had still a box of dynamite.

REBUTTAL EVIDENCE

Frisco Balacuit says it was not true that he stabbed Tagam with a bayonet and wrestled with him. He says Severino Galarrita was not present at the time. He denies that he removed and used Tagam's shirt. He declares he was present when Tagam died.

Florencio Madredaño, 36 years of age. He did not remove the pants of Pedro Tagam? that is a lie. He denies that Frisco Balacuit stabbed Tagam. What he saw, he says, on that occasion was that Nemesio Llaneta shot Tagam. That is all. It was not possible for Tagam to run because he was already hit. He was hit once in the back near the shoulder and the bullet went through his shoulder. The second shot also hit Tagam and that was almost a close call for him (witness). On cross-examination by Attorney Borja, the witness says Frisco Balacuit did not stab Tagam with a bayonet; it was Nemesio Llaneta who did with his bayonet. He did not know why Llaneta stabbed Tagam; perhaps Llaneta thought it was necessary to finish Tagam. At that time, he could not ask Llaneta why he stabbed Tagam because he was a mere civilian. He knew Llaneta had a bayonet because the accused drew it from its scabbard.

It is vigorously asserted by the counsel for Magdugo and the counsel for Llaneta that the testimony of Patricio Sabay and Frisco Balacuit is sharply conflicting. In their exhaustive and able briefs they show from a conscientious analysis of the evidence that Sabay was inconsistent as to the time and place of his imprisonment, as to the time of his arrest, and as to the slaying.

Frisco Balacuit's testimony also has deserved severe scrutiny. This witness started by saying that Llaneta shot Tagam by Magdugo's order. Later, he stated he did not know whether Magdugo actually ordered Llaneta to shoot the deceased. On cross-examination, he said he knew Tagam had been shot by Magdugo's order because Magdugo said so at the scene of the crime. But in answer to a new question he shifted to another position, stating that it was not at the scene of the crime where Magdugo revealed having given the order but at the guerrilla headquarters; he said Magdugo made the remark, not to him, as he implied in his previous testimony, but to Nicasio Lusterio, within his hearing or in his presence. Regarding his whereabouts at the time Tagam was murdered, Balacuit declared that he remained on guard duty at the guerrilla headquarters and that it was there where he heard reports of a gun; yet afterward, he said he was at the place of the crime, insinuating, without saying so, that he saw Nemesio Llaneta fire at Pedro Tagam. Still later, he said he was following Magdugo, Llaneta and Tagam when the shot that killed Tagam was discharged.

It can hardly be denied that Frisco Balacuit was not a forthright witness, to say the least. He clearly gave the impression that he was withholding material, information, not only by his varying answers but by his own implied admission. Once, when he was reminded that his statement was at war with a previous one, he said, "I am going to tell the truth," thus giving to understand that he had not been telling all he knew. It is possible, however, that Balacuit's reticence and secretiveness was meant to protect the accused, one of whom was his former chief and the other his fellow-soldier in the guerrilla. He was admittedly not a fake witness but one who actually saw the crime, if indeed he was not an active participant therein. Consciousness of his own guilt as well as consideration for the defendant's interest may have been responsible for his vacillating and changing attitude.

But Sabay had no axe to grind, no reason to temporize for or against the accused and nothing to conceal. We

rather incline to attribute his apparent contradictions to causes other than wilfull prevarication. The confusion, regarding the time and place of his imprisonment may have in large measure arisen from the existence of three houses in which he was questioned or detained—the municipal police headquarters, the guerrilla officers' headquarters, and the guardhouse. It would seem that this witness was loosely guarded or restrained, and it was possible that he was able to slip out of his place of detention when Tagam was taken out to be executed, but was rearrested afterward. Hence the appearance of more than one place of his confinement and of his having been arrested more than, once-. Contributing to the confusion may have been faulty interpretation, the length of time that had elapsed, the low intelligence of the witness, and the omission to transcribe portions of his testimony. The last anomaly appears in relation to the testimony of other witnesses. There are to be found in the record several questions making reference to statements previously made but which are not in the transcript. On top of all this, the case for the prosecution was not competently presented. No effort seems to have been made to seek clarification from the witnesses of ambiguous terms and statements and seemingly conflicting answers.

However the case may be, the contradictions noted in the prosecution's proofs do not destroy the broad outline of the picture painted by the witnesses. Over and above the muddled evidence regarding the time of Sabay's arrest, the time of Sabay's imprisonment, the manner in which Tagam was slain and buried, the precise moment and how Balacuit saw or learned of the killing, etc., the following facts stand out in bold relief, undeniable or undenied: Magdugo was the leader of a guerrilla organization which was being formed in Alubijid, and Llaneta was his right-hand man; Tagam and Sabay were apprehended at the same time or one soon after the other, to force them to hand in dynamite which they were supposed to have; they were brought to town at dusk, about six o'clock p.m., and asked by Magdugo in the police or guerrilla headquarters where they kept the explosives; as Tagam answered that he had disposed of all the blasting caps he had, Magdugo ordered Llaneta, who was armed with a rifle, to take the prisoners to the guardhouse for further questioning, according to the defendants and their witnesses; and not more than one hour thereafter, between six and seven, Tagam was killed and buried at a curb near or beside the town plaza.

If we forget for a moment the inconsistencies stressed by the appellants and confine our attention to the salient facts which are not in serious controversy, the question of who killed Tagam and of whether or not Magdugo had a direct hand in the murder is greatly simplified.

From the above circumstances, even if no other evidence were available, the natural inference would be that the two defendants were the authors of the crime, Llaneta by direct participation and Magdugo by induction - just as the sum total of the prosecution's direct evidence would have it. With these circumstances fixed in mind, the accounts of the killing by the accused rather than Sabay's and Balacuit's contradictory evidence largely on collateral details become all-important. These circumstances place a large degree of burden on the defendants to show that matters turned out differently from what was to be expected, in the usual course of events, from their undisputed conduct.

Now then, the defendants' and their witnesses' testimony is not much more satisfactory than that of Sabay and Balacuit. Their testimonies are also highly self-contradictory and contradict each other. Quite apart from the contradictions, we do not think the appellants' version of the slaying is plausible. We do not believe that Tagam ran away, or if he did, that he could have gotten far. There is assurance by Rodolfo Carretas as well as by Balacuit that Tagam's hands were bound, on account of which it was futile if not impossible for him to escape with success, and there is testimony supplied by Madredano and Rodolfo Carretas, besides Sabay, that Tagam was already wounded in the shoulder at the time Llaneta says Tagam made a dash for freedom. Both Madredano and Carretas are, we think, truthful witnesses, and no serious flaws are discernible in their testimony.

Llaneta's story on the alleged escape is highly incredible on other grounds. It is incredible that he chased Tagam

but did not overtake him. It is incredible that it was not until after "a few minutes" that he heard someone shout, "He is here," and found Tagam, thanks to that shout, stretched on the ground already wounded and being stabbed by Balacuit. Llaneta perjured himself when he affirmed that his companions when he conducted Tagam did not help him in the chase and went home instead. That in the last statement Llaneta was seconded by Marciano Elarino only makes it evident that the falsehood was deliberate and planned. It has been seen that Elarmo, who claims to have accompanied Llaneta to take Tagam to the guardhouse, swore that after the prisoner ran off, Llaneta fired his gun twice in the air and Llaneta pursued him; that while Llaneta was running after Tagam he, Elarmo, went home not without telling Llaneta that he was not going with him in the chase; that he decided, to go home because the Japanese were coming; that he did not "know whether Llaneta caught up with Tagam, having learned that Tagam had been killed only the following day. No comment is needed to show the falsity of each and every one of these assertions. They are contrary to human reactions and behavior.

Granting that Tagam fled or attempted to flee, Llaneta could not have lost sight of him; certainly not for as long as a few minutes, unable to locate him save for someone's cry. From the point where Tagam is alleged to have started in his flight to the place where Llaneta said he came upon the escapee being beaten by Balacuit, there was only a short distance. And the latter place was part of or very close to the plaza, and there was no brush or other obstruction to hide Tagam from Llaneta's view, as far as can be gathered from the record. There is no allegation that Tagam deviated from the short stretch between the two points, nor is there any explanation how Balacuit happened to be where he allegedly caught Tagam and how he could catch Tagam without Llaneta at least seeing him take hold of the prisoner.

The two defendants made other statements that are self-contradictory, unbelievable, and contradicted by their own witnesses, statements which have no mark of being due to errors of transcription or translation, or misunderstanding. The logical effect of these falsehoods is not merely negative. Deliberate and studied perjury on the part of accused, even on nonvital particulars, can mean, as it does mean in this case, troubled and uneasy conscience and an endeavor to cover up incriminating facts. Subterfuge is not a resort of defendants who have nothing to hide.

At any rate, there is direct and positive evidence from unimpeachable sources which, we think, clinches the case for the prosecution. Madredano stated that Llaneta shot Tagam and gave the now deceased a thrust with his bayonet. Madredano was not made to elaborate on his testimony, the reason being perhaps that he was only a witness in rebuttal. Carretas corroborated Madredano saying that although he did not see Llaneta shoot Tagam, no one else could have done so as this accused alone had a gun. Madredano at least had no motive to commit perjury against the defendants. Indeed it appears that Madredano was not introduced before the prosecution rested because the provincial fiscal discovered him as a material witness only through the defendants' and their witnesses' reference to him in the course of their examination in chief.

The above direct testimony is corroborated by circumstantial evidence which has already been mentioned. It is a fact admitted by the accused and affirmed by the witnesses for the prosecution that there were two gunshots. It is also admitted on all sides that Llaneta was the only man who had a firearm. We have said that we do not believe Tagam ran away or that the shots were intended merely to make him stop. The possibility of the shots having been fired in the air eliminated, the conclusion is inevitable that they were aimed at Tagam. It can not be successfully denied that Tagam had bullet wounds, at least one in the shoulder. He probably had bayonet wounds, too, which may have been inflicted by Balacuit or Llaneta, or both. Any of these theories is tenable. But it is undoubted that Llaneta alone could have caused the victim's bullet wound or wounds.

If we discard, as we should, the theory that Tagam ran away from the custody of Llaneta; if the killing was not unforeseen, contrary to what the defendants would have the court believe; and if, as admitted, Magdugo was at the

scene of the crime when Tagam was buried, we have to accept as correct Patricio Sabay's testimony, confirmed by Madredaño and Carretas, that Magdugo was with Llaneta when Tagam was slain, and we have to conclude from this that the two accused were in conspiracy. It is immaterial whether or not we believe Sabay regarding the form in which Magdugo ordered Llaneta to kill Tagam. As a matter of fact, it is quite possible that no express order was given at the place of or immediately before the killing. Sabay's testimony in this connection may have been the product of auto-suggestion. But from the circumstances of the case, we think we are justified in finding that there was a specific order by Magdugo for Llaneta. to slay Tagam before the latter was brought out from the guardhouse. It is significant that Tagam was put in the hands of Llaneta, the only guerrilla who had a rifle and who was reputed to be the executioners instead of the men who had arrested the victim. There could have been no other purpose of Tagam being marched to the plaza than to liquidate him, and the execution could not have been other than Magdugo's idea and the result of his decision. It was Magdugo alone who had Tagam apprehended, who had investigated him, who was bent on getting from him the dynamite which he was believed to possess, and it was Magdugo alone who could have disposed of the prisoner's life and fate. A mere private acting under Magdugo's orders, Llaneta would not have dared finish Tagam except upon Magdugo's direction.

We are of the opinion, that the trial court committed no error in finding the appellants guilty of murder qualified by treachery.

This case was referred to the amnesty commission but that body refused to take cognizance of it on the ground that the accused denied having any participation in the crime. Moreover, the defendants disclaimed, rightly, any intention to invoke the amnesty proclamation. Counsel for Magdugo, however, now insist that the benefit of the amnesty should be applied to the defendants.

The writer of this decision maintained in previous decisions, contrary to the view of the majority of the Court, that it is rank inconsistency for one to justify an act, or seek forgiveness for an act, which, according to him, he has not committed; that amnesty presupposes the commission of a crime and that when an accused says he has not committed a crime he cannot have any use for amnesty; that where an amnesty proclamation imposes certain conditions, as in this case, it is incumbent upon the accused to prove the existence of such conditions; that a petition for amnesty is in the nature of a plea of confession and avoidance, under which principle the pleader has to confess the allegations against him before he can be allowed to set out matters which, if true, would defeat the action.

At any rate, the facts established do not bring this case within the terms of the proclamation pleaded. The proclamation extends its provisions to "all persons who committed any act penalized under the Revised Penal Code in furtherance of the resistance to the enemy, or against persons aiding in the war efforts of the enemy." There is no claim that Tagam was in any way aiding in the war efforts of the Japanese. And the killing was not in furtherance of the resistance to the enemy. It was not reasonably calculated to produce the needed explosives to blast bridges. As far as Tagam's dynamite was concerned, whether or not he had the stuff, his death put an end to the search for this war material.

The defendants have been sentenced to reclusion perpetua, jointly and severally to indemnify the heirs of the deceased in the sum of P2,000, and to pay proportionate shares of the costs. The Solicitor General agrees with the court's sentence except as to the Indemnity which, he says, should be raised to P6,000.

With the modification, that the appellants shall pay P6,000 as indemnity instead, of P2,000, the judgment of the lower court is affirmed. They shall also pay one-half of the costs of appeal each.

Moran, C.J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

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