

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
LOPE AMANSEC Y BUCAO, ET AL., DEFENDANTS, LOPE AMANSEC Y
BUCAO, APPELLANT.**

G.R. No. L-927. March 11, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellant was found by the lower court guilty of the crime of murder, as punished by Article 248 of the Revised Penal Code, and sentenced to reclusion perpetua, and to pay the heirs of the deceased Pedro Intal an indemnity of P2,000.00, without subsidiary imprisonment and costs.

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

1. Sabas Zapata, 32, married, merchant, 37 Mayhaligue, Manila, testified that on April 10, 1946, at 8 p.m., he was talking with Pedro Intal, Del Mundo and Salas, in front of a barber shop at the corner of Mayhaligue and Narra Streets. A weapon carrier arrived and stopped at the place. The passengers and chauffeur alighted carrying automatic pistols, sub-machine guns and carbine. Among the passengers was Lope Amansec, the only one identified by the witness, carrying a .45 caliber automatic pistol. Amansec ordered the four by-standers to board the weapon; carrier and, later, managed to slip away towards his house located at Mayhaligue near the barber shop. The witness heard some shots. Then the weapon carrier left away. Before the witness ran away, one of his companions received a blow in the head and fell down. The witness knows Amansec well because he has been his neighbor and he used to take a walk with him. Amansec was the one who was driving the weapon carrier. Silvestre Salas was the one who received a blow in the head, but the witness did not know who was the one who gave him the blow. Pedro Intal was a friend of the witness, whom he never saw again.

2. Jose Vicente, 36, married, chauffeur, 23 Domingo Santiago, Manila, testified that at about 7 p.m. on April 10, 1946, Amansec, with several companions, took from him a weapon carrier, with the corresponding ticket and key, which was under his custody as chauffeur of the motor pool of AFWESPAC. When the witness refused to deliver the ticket and the key, one of the men gave him a blow in the stomach with the butt of a pistol. The weapon carrier was returned to the witness at 6 a.m. the next day. After the carrier was returned by Amansec, the witness saw blood spots in it. The floor was wet. The five detectives who were in the house of the witness arrested Amansec immediately. Amansec is a time keeper with the AFWESPAC. He was in charge of issuing trip tickets. The weapon carrier was given by Amansec to the witness at 8 a.m. on April 10, 1946. The carrier was used for service calls for trucks broken on the road.

3. Dr. Mariano B. Lara, 40, married, physician, chief medical examiner, Police Department, 1954 Rizal Avenue, Manila, identified Exhibit A as the picture of Pedro Intal upon which he made an autopsy on April 12. Pedro Intal appears also in pictures Exhibits B and C. Intal died due to shock and hemorrhage as a result of the several wounds caused by firearms in his abdomen and head, perforating the stomach, intestines, liver, the collar vein and brain. Exhibit B is the preliminary report of the autopsy. Exhibit D-1 is his final report. The witness found in the

autopsy eleven wounds caused by five bullets. The aggressor must have been facing the deceased, probably at the right of the latter. The most serious wound was the one in the head which almost caused instantaneous death.

4. Wenceslao Leaño, 32, married, detective, 1211 Azcarraga, Manila, testified that in the investigation he made, Amansec confessed that on the night of April 10, upon arriving at his house, his wife told him that several persons were menacingly looking for him, for which reason he went to see his compadre, Major Saturnino Domingo, who gathered several persons, among them Felix Arellano, Jesus Chua and Roman Ordoñez, and they went in a jeep to Domingo Santiago Street, where they left the jeep and boarded a weapon carrier, with which they went to Narra street. There Amansec point to several persons and ordered Felix Arellano to get Pedro Intal and one Big Boy; then he heard several shots; after Pedro Intal had boarded the carrier, they left the place and Amansec heard an explosion, possibly that of a hand grenade; Intal was brought to Calabas road, and there Amansec ordered Felix Arellano to shoot Pedro Intal; the cadaver was brought and thrown into the Santolan River, San Juan; Amansec cleaned the blood spots on the carrier; Amansec ordered Ordoñez, his son-in-law, not to tell anything under penalty of bodily harm; then all went home, and Amansec told his compadre that he was willing to render him all help he might need. Pedro Intal was killed in calabas Road, in front of the Catholic church in Quezon City. The confession was put in writing in Exhibits E and E-1. Amansec was delivered to the witness by the police officers who arrested him on the morning of April 11 between 7 and 8 a.m. At the beginning, Amansec denied any knowledge about the death of Intal, but at noon he admitted having been in the company of those who went to Narra street the night before. Amansec went with the witness to Calabas road and pointed the place of the crime where they saw blood scattered. At first, Amansec refused to indicate where the corpse was brought, but on April 12, after Felix Arellano was arrested and admitted being one of the members of the gang and pointed the place where the cadaver was thrown, Amansec made a complete confession and pointed the exact place where the body was thrown, and it was at Lambingan Bridge, Santa Mesa.

5. Urbano Walker, 39, married, detective, homicide squad, Manila Police Department, 119 P-2nd, Kamuning, Manila, testified that he investigated Felix Arellano, whose statement appears in Exhibits G and G-1.

6. Alfredo Navarro, 27, single, police officer, 34 Pasong Tamo, Santa Ana, Manila, testified that Exhibit E is the confession of Amansec. The witness signed the confession as a witness. Exhibit F is the statement of Roman Ordoñez. No statement was taken from Jesus Chua, because he was in bed in a very serious condition. At the hospital, Jesus Chua stated to the witness that he was one of those who went to Narra Street to kidnap Pedro Intal, that it was Felix Arellano who shot him. when they arrived at Galabas road, and that it was Major Saturnino Domingo who Invited him to go to Narra Street. On cross-examination, the witness denies that third degree and water cure have been used to extract the confession of Amansec.

Twelve witnesses testified for the defense. The substance of their testimonies is as follows:

1. Rafael Punzalan, 59, married, clerk in the Bilibid Prison in Muntinlupa, identified Exhibit 3 as the prison record of Pedro Intal.

2. Angelina Cabigting de Amansec, 34, married to Lope Amansec, 129 Domingo Santiago, Manila, testified that at six in the afternoon of April 10, 1946, three men came to her house to inform her husband that they had taken a weapon carrier with a pass under the name of Jose Vicente. The one who tool: the carrier was Felix Arellano. She gave the information to her husband upon the latter's arrival, about half an hour later. Her husband being the one in charge of weapon carriers went to the house of Jose Vicente to inquire about what happened, accompanied by Roman Ordoñez, his son-in-law. They went in a jeep given by the office for the use of her husband. Her husband returned between eight and nine in the evening. Her husband told her that he saw the weapon carrier at Narra Street, that Felix told him that a misfortune happened to a person, and that he saw inside the weapon carrier an

individual which appeared to be wounded. At about five in the morning, Felix Arellano arrived driving a weapon carrier. Her husband took the weapon carrier and brought it to Jose Vicente. Later on, the witness received information that her husband was arrested by the secret service. She married Amansec seventeen years ago and they have six children.

3. Melanio de la Cruz, 17, single, laborer, 206 Bambang, Manila, testified that at eight in the morning of April 11, he saw Amansec in the CID office with his hands manacled. They were hitting him with rubber strips, with butts of firearms and with fists, imputing to him the crime of having killed somebody. They were hitting him at the back, at his sides and at his face. Six persons were hitting him, among whom was detective Alfredo Navarro. The torture lasted for three hours. His left hand was handcuffed with an iron bar longer than himself, and in such position they hit him at the breast. Amansec insisted that he had no knowledge of the crime imputed to him. Amansec remained hanging from the iron bar for about an hour. The police officers were asking him to point the place where the corpse was concealed, and Amansec answered that he knew nothing. Then they made him lie backwards on a table, the police man with a mustache and his companion who testified held his hands and another held his feet, and then they took a hose and placed one end in the mouth of Amansec and opened the faucet. The hose was about two or three feet long. It poured water approximately for half an hour. Then they let him rest for a while, afterwards they gave him a piece of paper and pencil and told him to write that he killed the deceased. Amansec resisted but he could not do anything because they were hitting his sides with a piece of stick, two by two inches thick, and were aiming a pistol at him, and were frightening him in such a way that he had to write word for word what the agent with the mustache was dictating to him. The witness was in the same office when Felix Arellano was arrested. They gave him blows at the back, at his sides, at the chest and at the abdomen. The witness was also in the place where Roman Ordoñez was arrested. The witness was in the office because he was arrested and was under investigation for a fight he had. Amansec wrote in Exhibit B was dictated to him by the be-mustached agent. Then Ordoñez wrote his confession Exhibit F, it was also upon dictation of mestizo agent. The witness was arrested at 10 o'clock p.m. and was detained up to the twelfth of April. In the office there was a closed place for hitting arrested persons. When Amansec arrived with the detectives at 8 o'clock a.m. of April 11, the witness was alone in said place. The police officers also gave blows to the sides and stomach of the witness but they did not give him the water cure. His confession was written by the mestizo agent, who wrote there many things without asking the witness, who signed, it. The witness was still in detention, his case not having been tried yet. (The witness was testifying on July 8, 1946). After Amansec wrote his confession in pencil, they gave him a fountain pen to put it in ink. The witness was taken from the room where he was investigated and given blows at 5 o'clock in the afternoon of April 12.

4. Milagros Amansec, 16, married, 129 Domingo Santiago, Manila, testified that in the morning of April 11, 1946, she saw her father Lope Amansec in front of the store with four detectives of the CIC. She saw him there because she was about to go to the house of her mother-in-law. Her father was handcuffed and lay in the ground. Her father wanted to talk with her but the police officers laughed and they were unable to talk with each other. She embraced her father and the detectives laughed and told them to get a kodak so they could have their picture taken. A policeman gave his father a fist blow and hit him with a revolver, insisting that he should point his companions, but his father answered that he did not know them. They continued hitting him for about five minutes. There were three policemen. The policemen who testified in this case were among the group who gave her father blows.

5. Donato de los Santos, 28, widower, clerk, Court of First Instance of Manila, testified that the case of People vs. Sabas Zapata, alias Fred Mendoza, was provisionally dismissed because the accused is still at large. The case is for estafa.

6. Gregorio Paacual, 32, married, deputy clerk of the Court of First Instance, Manila, identified the pictures, "4", "4-1", "5", "5-1", "6", and "6-1".

7. Manuel Valencia, 24, single, laborer, detained, 34 Tecson, Manila, testified that he saw Lope Amansec, Roman Ordoñez and Felix Arellano being tortured. One face of Arellano was swollen and the chest of Ordoñez was red. Amansec had ecchymosis at the back, at the left shoulder and at the breast. Amansec told him that he did not know the charge against him. The witness was detained there for illegal possession of firearm. He remained detained while his case is still pending trial. The witness did not see actually the blows given but by what he saw in the body of Amansec, Ordoñez and Arellano he concluded that they were tortured.

8. Felix Arellano, 17, single, conductor, 334 Miguelin, Sampaloc, testified that on April 10, 1946, at night, he went to the house of Amansec to borrow the weapon carrier. With him went Raymundo Jaciel, Guillermo Talastas, Ernest Agurin, and Bading. They went at 6 o'clock, but Amansec was out. Then he went to the house of Jose Vicente to borrow the weapon carrier, saying that he had asked it already from Amansec, although such was not the truth. Jose Vicente refused, but the witness grabbed and took the key he had in his waist and with it he pinched him. Frightened, Vicente gave the weapon carrier. Witness and companions went to the corner of Narra and Mayhaligue streets to take a woman. Several persons armed with revolvers boarded the carrier. They were about nine. Pedro Intal was one of them. They wanted to get the weapon carrier. As we refused, we struggled with them, but they started running away because they saw that Guillermo Talastas and myself were holding Pedro Intal. Pedro Intal aimed his revolver at me and fired, I was not hit, but the weapon carrier. I wrested from him the revolver, and he kicked me in the stomach, and what I did was to fire the revolver. All the bullets were used. Lope Amansec, Roman Ordoñez and Jesus Chua were not in the place at the time. Then Amansec arrived and asked who the person inside the weapon carrier was, and "I answered that it was the person with whom we fought. Amansec arrived to take the weapon", carrier. "We told him to so home as he may as well return for the weapon carrier." Amansec told the witness to bring the wounded person to the nearest hospital. The witness and companions threw the said person to the bank of a river in San Juan, "because we were confused". Although he thought that he acted in his defense, the witness did not notify any authority about what happened because I was afraid for having killed a person. When Amansec arrived, Intal was still alive. They intended to bring him to a hospital but he died before they could do so. Raymundo Jaciel, Ernest Agurin and Guillermo Talastas are dead. When the witness made his statements Exhibits G and 2, he received blows from Navarro and other police officers, because they insisted that Amansec, Chua and Ordoñez were companions of the witness.

9. Lope Amansec, 37, married, chief foreman, Motor Pool, AFWESPAC, Luneta, residing at Domingo Santiago corner Padre Pelaez street, testified that he left his work on April 10, at 5:30 in the afternoon. Upon arrival at his house, "my wife told me that three men came to my house and took away that weapon carrier whose trip ticket was in the name of Jose Vicente. She knew one of them, Felix Arellano. I and my son-in-law, Roman Ordoñez, went together to verify if the weapon carrier had actually been taken from Jose Vicente." Vicente told me that he had given the weapon carrier to Arellano because Arellano had told him that I had given the weapon carrier to him. Jose Vicente told me that Felix Arellano put out the key of the weapon carrier and stuck it into the stomach of Jose Vicente. Jose Vicente was harboring resentment against me, because he said I used to report to Captain Mason the things that he used to get and take away from the motor pool. Vicente told him that he heard from Arellano and companions that the weapon carrier would be taken to calle Narra to fetch, a good friend. "My son-in-law and I went together to calle Narra to get the weapon carrier, when we reached the place where the weapon carrier was parked, I saw Felix Arellano's companions leaving, so I signalled them to stop. When I approached the weapons carrier at the back, I found that a man was sprawled on the floor of the weapon carrier. I could not recognize him because it was dark at that time. I told Arellano to bring that man to the nearest hospital and to return the weapon carrier to me. We went home; we left for our house." The carrier was returned the

following morning, April 11. When I saw the weapon carrier there were blood stains inside it so I drove it with the intention of taking it to the police and I went to the house of Jose Vicente, but when I reached there, there were already policemen who arrested me. The arrest took place at past six in the morning. The witness had not yet taken his breakfast. From his arrest until he made the confession on April 12, he was not given food. On the 12th I was maltreated. At noon my wife brought me food. The accused wrote Exhibit E in his handwriting. "While I was writing it I was being threatened with a .45 caliber pistol and when I refused I was beaten." He was beaten by six persons, and he remembered Navarro, Leaño and Walker as among them. "When I was arrested for the first time, I was handcuffed and then I was tied up to an iron grill and then given blows on the stomach. They insisted that I was the man who killed the deceased." He was maltreated "because they were insisting on my telling them the names of the companions of Felix Arellano, but I did not know who they were." He cannot raise his left arm, "because most of the blows fell on my left side." He was examined by a physician. "They applied the water cure to me when I was being held on the table by Walker and Leaño." He was struck on the neck by a piece of wood. His left eye appears in picture Exhibit C half closed "because of the punch I received in that eye." He wrote Exhibit E, "because I have been suffering already too much. As Felix Arellano had been arrested, he told me where the body had been dumped." At first he wrote a statement with pencil to the effect that he did not know anything about the truth of the matter, "but when Felix Arellano was arrested then they maltreated me and forced me to write Exhibit E." Detective Navarro took the first statement away and tore it to pieces, while the witness was writing his statement, there was a police officer ordering him to add something to what he was writing, and when he refused he beat him on the back.

10. Victoriano Villacorta, 46, married, Guison Building, doctor of medicine, 4 Mercier, San Juan, testified that he was connected with the army, but he got his release on January 1, 1946. He is connected with the University of Santo Tomas. He finished medicine in 1924. He examined Amansec on May 3. He issued Exhibit 8. The inflammations mentioned therein are the effect of blows given by a hard instrument. His shoulder joints are hardened due to blows.

11. Roman Ordoñez, 17, married, tireman, residing at Padre Pelaez, testified that the statement signed by him, Exhibit F, was made by a detective. "They told me to admit the facts stated therein, and they were maltreating me that is why I signed it." The detective who compelled him to sign it was Leaño. What appears in Exhibit F is not the truth. In the afternoon of April 10, 1946, he went with his father-in-law, Amansec, to the house of Jose Vicente. Then he was brought to calle Narra. "My father-in-law told me that three men had gone up his house. We went home." At calle Narra, "I saw nothing. My father-in-law left me in calle Narra, he told me he was going to look for the weapon carrier. We were riding in a jeep which the captain assigned to him for use." He was left in the jeep by his father-in-law. When the latter returned they went home. Amansec told him that he saw a person lying inside the weapon carrier. The spot at his left face appearing in picture Exhibit 5 was caused by a blow given to him by detective Leaño, who had a ring on a finger. The spot appearing at his left body in picture Exhibit 5-1 is also the result of the fist blows given to him by the detectives.

Wenceslao Leaño, testifying as a rebuttal witness denied that Amansec had been maltreated when he was detained. Alfredo Navarro testified that the statements made by the witnesses for the defense about maltreatment are not true. Urbano Walker said the same.

After carefully weighing the evidence in this case, especially the testimonies, the substance of which we have recorded above, we have arrived at the following conclusions:

1. That on the night of April 10, 1946, a weapon carrier stopped in front of a barber shop at the corner of Narra and Mayhaligue Streets, Manila, from which the chauffeur, and passengers armed with automatic pistols, sub-machine guns and carbines alighted;

2. That appellant, one of the passengers, ordered four bystanders, including Sabas Zapata, Silvestre Salas, and Pedro Intal, to board the vehicle, but Pedro Intal was the only one who boarded it, Silvestre Salas, having been left at the spot unconscious due to a blow he received in the head, and witness Zapata having been able to escape;
3. That the carrier used was taken by appellant, with several companions, from the chauffeur in charge of it, Jose Vicente, to whom it was returned the next morning by appellant who, at the same time, was nabbed by five detectives who were already waiting in the house of witness Jose Vicente.
4. That later on the dead body of Pedro Intal was found with several wounds caused by firearms, and according to Dr. Mariano B. Lara, the wounds must have been inflicted with the aggressor facing the deceased at the right of the latter;
5. That there is no reliable direct evidence as to who and how Pedro Intal was killed, because the written and oral confessions or admissions allegedly made by appellant, like those of his co-accused, were illegally extorted by brutal tortures inflicted upon appellant by officers who took charge of and investigated him;
6. That upon the reliable evidence on record, appellant appears to be guilty as co-author of the death of Pedro Intal, but there being no competent evidence as to how the deceased was actually killed, we can find him guilty only of homicide aggravated by the fact that it had been committed by a band.

For all the foregoing, we hereby modify the appealed decision and, according to Article 249 of the Revised Penal Code, sentence the appellant to 10 years and 1 day of prision mayor to 17 years, 4 months and one day of reclusion temporal and to pay, besides the costs, to the heirs of the deceased Pedro Intal, an indemnity of P6,000.00, taking into consideration the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity of P2,000.00 was enacted.

Moran, C.J., Feria, Hilado, Bengzon, and Briones, JJ., concur.

CONCURRING AND DISSENTING

TUASON, J., with whom concur PARAS, AND PADILLA, JJ.:

I concur in the findings of fact in the decision, I disagree with the conclusion that the appellant is guilty of homicide instead of murder.

Upon the facts set out in the decision as duly established, the conclusion is inescapable that the deceased was killed with treachery within the definition of this word. He sustained eleven gunshot wounds. Instead of being killed where the appellant and his co-defendants found him, he was seized and carried to an isolated spot where his body was afterward discovered. His injuries reveal that he was brutally slain. His captors or kidnappers numbered five and all of them were armed with automatic pistols, carbines and sub-machine guns.

Under these circumstances, it is certain that the victim had no opportunity to defend himself. The kidnapping, the number of the kidnappers, the fact they were heavily armed, whereas the now deceased was not, at least tended directly and specially to insure the killing, without risk to the appellant or any of his confederates arising from the defense which the offended party might make. Note that Art. 14, subsection 16, uses the word "tend". The law does not require that the means and methods employed actually insured the execution of the crime.

DISIDENTE

PABLO, M.:

Las pruebas demuestran que Pedro Intal fue secuestrado en la encrucijada de las calles Mayhaligue y Narra, Sta. Cruz, Manila, entre 8 y 9 de la noche del 10 de Abril de 1946 por el acusado y cuatro companeros, todos armados con revolvers automaticos, sub-machine gun y carabinas. Ellos llegaron al lugar por medio de un weapon carrier que lo habian arrebatado del chofer del motor pool de AFWESPAC, Jose Vicente, a quien le habian pegado con la culata de un revolver. El cadaver de Pedro Intal que fui hallado en el puente Lambingan, Sta. Mesa, por indicacion del mismo acusado, tenia once heridas causadas por proyectues. Diez de estas heridas fueron causadas por cinco que atravesaron el cuerpo y la undecima habra sido causada por uno que no lleo a salir. La herida en la cabeza, que fue la mas grave, puede causar instantanea muerte. Otros proyectiles atravesaron el estomago, intestinos, higado, la vena cava y el cerebro. Todas son heridas fatales de necesidad. Privar a uno de su vida bajo tales circunstancias es cometer, no solamente homicidio, sino asesinato. El articulo 248 delCodigo Penal Revisado dispone que se comete asesinato mediante alguna de las circunstancias siguientes: "1. Con alevosia, abuso de superioridad fisica, o auxilio de gente armada, o empleo de medios que debiliten la defensa, o de medios o personas que ofrezcan o proporcionen la impunidad."

Que hubo abuso de superioridad fisica no cabe la menor duda: eran cinco personas provistas de las armas de fuego mas modernas contra uno, que fue cogido o secuestrado desprevenido cuando estaba hablando con Sabas Zapata, Del Mundo y Salas. Sabas Zapata eonsiguid escaparse y por fortuna no le hicieron blanco los tiros. Uno que recibio un golpe en la cabeza cayo del weapon carrier.

No es necesario que existan pruebas sobre quien o quines fueron los que dispararon los proyectiles que acribillaron el cuerpo de Pedro Intal y sobre la forma y manera como recibio el los balazos. Las heridas son pruebas elocuentes de como el acusado y sus companeros, bien armados y obrando coordinadamente, le privaron de su vida a un pobre secuestrado que estaba a su completa merced, acribillandole con seis balas. Eso es abuso de verdadera superioridad fisica.

Es asesinato y no homicidio el delito cometido por el acusado y debe ser condenado con la pena correspondiente al primero.

Judgment modified.

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