

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FERNANDO TOLENTINO ET AL., DEFENDANTS. JOSE DE LA CRUZ
AND PASCUAL ORDOÑEZ, APPELLANTS.**

G.R. No. L-1667. February 10, 1949

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In the Court of First Instance of Pampanga, Jose de la Cruz, Pascual Ordoñez, Teofilo Bungue, Fernando Tolentino alias Magelan, alias Berting, Esteban Basilio alias Rusting, Felix Singian alias Oscar, John Doe alias Estrella, Peter Doe alias Ely and four others were charged with the crime of murder for the killing of German Angeles, said crime having been committed in the month of January or February, 1945 in the municipality of Porac, Pampanga. Only De la Cruz, Ordoñez, Basilio and Bungue were and could be arrested, but Basilio for some reason not explained, managed to escape from confinement. So, only De la Cruz, Ordoñez, and Bungue were tried, and at the end of the trial, upon motion of the fiscal based on lack of evidence, the case was dismissed as against Bungue. De la Cruz and Ordoñez were found guilty of murder and were sentenced each to life imprisonment with the accessories of the law, to indemnify the heirs of German Angeles in the sum of P2,000 and to pay the costs. The two are appealing from that decision.

There is no question about the death of German Angeles. On May 31, 1946, his brother Demetrio Angeles accompanied by military and municipal policemen located the grave of German Angeles upon indication of Simeon Bungue who had previously been informed thereof by Esteban Basilio. The bones shown on the picture Exhibit C recovered from the grave were duly identified as those of German Angeles, by his widow Angela Gomez and his brother Demetrio Angeles, thru his set of teeth (dentadura), and of a belt found with the bones, and known to be a personal belonging of the deceased.

While under arrest and in the course of their investigation the two appellants (Ordoñez and De la Cruz) made written statements under oath in their native dialect (Pampango), Exhibits A and B, duly translated into English as Exhibits A-1 and B-1 and introduced and admitted in evidence.

Because of the importance, of the affidavits Exhibits A-1 and B-1 forming as they do, in the main, the basis of our decision, as well as that of the trial court, instead of giving a resume or extract of the same, we are reproducing them here for purposes of reference.

"EXHIBIT A-1

"I, Pascual Ordoñez, married to Narcisa Cayanan, 23 years old, resident of barrio Sta. Cruz, Porac, Pampanga, after having been sworn according to law, of my own free will and without any force or intimidation whatsoever, depose and say:

"That in the month of January 1945, more or less when the Americans had newly arrived in Porac Pampanga, while I was walking on the road returning to my house in barrio Sta. Cruz, coming from the house of my brother-in-law, Teodoro Miclat in barrio Manibaug, Magelan or Berting (Fernando Tolentino) saw me and he

was in the house of Pitong Ayson in barrio Manibaug Paralaya. He called me, I went to the said house of Pitong Ayson and Magelan went down and met me in the yard, then Magelan told me that he wanted German Angeles taken and that I would have him taken by Esteban Basilio (alias Rusting). I assented. At that time and even at present I know that if one ordered the taking of a person by Hukbalahaps after being taken he would be killed. I asked Magelan why he wanted him taken and he said that there is a report. I did not ask what is the report about because Magelan is the head of our Hukbo organization in the whole municipality of Porac and even the Americans have already arrived he was still our highest and we obey him. We separated and I proceeded to my home, and after one week of my conversation with Magelan I met Rusting (Esteban Basilio) in barrio Sta. Cruz. I told this to get German Angeles as it was the order of Magelan. After this order, that I gave to Rusting who is with me in the organization of Hukbalahap also and an organizer like myself I did not know whether he followed already in my order to get German Angeles until the following afternoon of the following day at 3:00 p.m. more or less I was coming from Angeles and returning home on my way towards Porac I met Jose de la Cruz riding on a carromata and carried by two persons and they were Estrella whose name I do not recall until now but I know that he had carried to a woman of Caldera, Angeles and if I see this Estrella I will surely recognize him; the one with him carrying Jose de la Cruz in the carromata was Pacifico Pineda, alias Eddie, this carromata in which they were riding came from the direction of Porac and was going towards Angeles. As soon as I recognized them and I recognized the wounded whom they were carrying was Jose de la Cruz alias Joe, I stopped the carromata and rode with them in order to help the wounded Jose de la Cruz. I asked this, why he was wounded; he told me Rusting had shot him. As he was very pale and weak from what I could see I stopped asking him, but after the Americans have made him smell something while he was in the ambulance going to Dau, Jose de la Cruz became conscious and I asked him then why Rusting had shot him. He answered that he was shot on account of their killing of German Angeles. When we reached Dau we delivered him to the American Military Hospital. Afterwards I and Estrella left since Pacifico Pineda did not go with us any more to this hospital and as he was left in Angeles.

"EXHIBIT B-1

"I, Jose de la Cruz, single, 18 years old, resident of Hacienda Ramona, Porac, Pampanga, after being sworn according to law, of my free will and without force or intimidation whatsoever, depose and say:

"That in the month of January 1945, more or less when Americans were newly arrived in Porac, one morning, about 9:00 a. m., came to me Felix Singian, Esteban Basilio and Ely, this Ely I did not know by name but I knew him by face and if I see him I can surely recognize him and I know that he is a resident until now in barrio Sta. Cruz, Porac, Pampanga. These three persons came to me in my house in barrio Manibaug because at that time I was residing there and this house is owned by Bernabe Ayson. Esteban Basilio then told me in the hearing of his companions, Felix Singian (alias Oscar) want Ely that Magelan or Berting (Fernando Tolentino) wanted me. I asked Esteban Basilio why they wanted me and he answered me that we were going some place, but Esteban Basilio alias Husting did not say what we were going to. After telling me this Esteban, Felix Singian and Ely left walking towards the house of Magelan or Berting (Fernando Tolentino) which was in barrio Manibaug, and followed at a distance from them towards also the house of Magellan or Berting, and I think they were ahead about one half kilometer on the road. When we reached the house of Magelan or Berting I found there Felix Singian, Esteban Basilio and Ely. I also found there Magelan or Berting (Fernando Tolentino). I went up the house of Magelan once in the house we conversed and I asked Magelan what they wanted with me. Magelan told me that we all Felix Singian, Esteban Basilio, Ely and myself were necessary to go with him, saying that we were going to barrio Calsadang Bayu, Porac, because we were going to get a person there who was German Angeles, a foreman of the family Santos. After saying this we went down from the house of Magelan, Magelan went with us and companions of Esteban Basilio who were Felix Singian, Jose de la Cruz, and Ely. When we went down the house of Magelan with all my companions we were Magelan, Felix Singian, Esteban Basilio and Ely, they were all armed with revolvers, automatic Cal. .45 with the exception of the revolver carried by Magelan which was Cal. .38, and inasmuch as I had no revolver, when we reached barrio Calsadang Bayu, we went first to the house of Esteban Basilio as this one told me that he had

two guns and one was left at his place which he had lent to me. When we reached the house of Esteban Basilio I with Esteban Basilio went up his house; he took his gun from an aparador inside the house, and delivered it to me, later we went down together and proceeded to walk towards the house of Teofilo Bungue in the barrio of Calsadang Bayu and Esteban Basilio, Felix Singian, Ely and Magelan were still with me. Before getting German Angeles we went first to a house second to the house of German Angeles, and the owner of this house is Eligio Singian, cousin of Felix Singian. Eligio Singian was in his house and we ate for lunch rice and pansit and those who ate with me were Felix Singian, Esteban Basilio, Ely, Magelan and myself, but Eligio Singian and his family did not eat with us although Eligio Singian was in the house when we arrived and while we were eating. After eating lunch in the house of Eligio Singian we saw German Angeles go down from his house in the direction of the house of Teofilo Bungue. He did not stay in the house of Teofilo Bungue and after having been there he went back to his house. A moment after he went up his house we saw German Angeles go down again and in the direction of "Mauli". As soon as we saw him go down the second time my companions who were Felix Singian, Esteban Basilio, Ely and Magelan and myself followed German Angeles. He was ahead probably about (15) fifteen meters (sucad sogá) on the road. He passed by the store, and while German Angeles was drinking there Esteban Basilio approached him and told him that he wanted to talk to him. Upon hearing this German Angeles followed and all of us and German Angeles walk towards the rice field and when we reached the rice field and we were at a distance of about one half kilometer from the road, we tied the hands of German Angeles behind him. The thing that we used in tying German Angeles was a small abaca rope and was brought by Esteban Basilio, and those who tied him were Esteban Basilio himself and Felix Singian. After tying said German Angeles we proceeded walking towards Lara or towards Sapa. When we reached the dike of the stream German Angeles was released unaware by those who were accompanying him who were Esteban Basilio and Felix Singian. German Angeles then ran away and he went down into the stream at which he was shot by my companions, and what I did was to run to intercept German Angeles in his flight and inasmuch as I was very near already to German Angeles in trying to intercept him my companions hit me on the right side of the chest in shooting German. The moment I felt that I was hit I shot German twice, German was hit first on the left calf at the first shot of my revolver and on the second shot of my revolver German was hit on the left thigh and inasmuch as I was already dizzy and my vision was weakening on account of my being shot I fell on the ground and while this was happening my companions continued to shoot German Angeles until he was dead. The moment Magelan or Berting (Fernando Tolentino) saw me fall down this carried me with his two hands and when I reached Calsadang Bayu they took me in a carromata to the Angeles Hospital, but inasmuch as this Hospital was closed they took me in an ambulance to Dau at the American Hospital and there Magelan left me. Those who cured me were American doctors staying perhaps two weeks in the hospital before being wholly cured because the bullet that hit me on the chest went thru my back.

"When we got to shooting German Angeles until he was killed there were other persons who went with us and when Magelan carried me to take me to the road in Calsadang Bayu to take me to the hospital in walking from the place where we killed German we met other persons, but I cannot remember at all these persons who went with us and whom we met. All of us together who killed German Angeles are all members of the PKM of the municipality of Porac, Pampanga. But I am only a private or soldier of the organization, but Magelan or Berting (Fernando Tolentino) I know that he is one of our leaders or heads, this Magelan has a Panaderia behind the municipal building of Angeles. Feliz Singian and Ely are like myself privates in the organization, but I know that Esteban Basilio has a position and I do not know what it is."

After a careful review of the evidence in this case, we are satisfied that the findings of the trial court as regard the commission of the crime of murder resulting in the killing of the deceased German Angeles and the responsibility therefor of the herein appellants is adequately supported by the evidence. The facts in the case may be briefly stated as follows: In the month of January, 1945. Fernando Tolentino alias Magelan alias Berting was a leader of a Hukbalahap organization in Pampanga, particularly in the town of Porac, of which organization, appellant Pascual Ordoñez was one of the organizers, and his codefendant Jose de la Cruz was a member. Esteban Basilio held an important position in said Hukbalahap organisation and Felix Singian and Ely were active members. In said

month of January, Tolentino alias Magelan happened to see Pascual Ordoñez and he told him that he wanted Esteban Basilio alias Rusting to get or kidnap German Angeles, a foreman of the Santos family, because of a report, presumably unfavorable, about him received by Tolentino, and to transmit said order to Basilio. After a few days Ordoñez saw Basilio and he transmitted to him the order. As a member and organizer of the Hukbalahap organization Ordoñez knew and realized that when a man was kidnaped by the Huks, it meant death to said man, and Ordoñez in transmitting the order of Tolentino to Basilio realized its consequences to German. The afternoon following the transmittal of the order to Basilio the latter accompanied by Felix Singian and Ely came to the house of appellant Jose de la Cruz and told the latter that Fernando Tolentino wanted him. to accompany them to some place, so he followed them to the house of Tolentino. From said house, Tolentino, Basilio, Felix Singian, Ely and De la Cruz, the first four all armed with revolvers went to Calsadang Bayu and because he, De la Cruz, was unarmed Basilio went up his own house and gave him a gun of his which he took from his aparador; that they all proceeded to the house of Teofilo Bungue and from there they went to the house of Eligio Singian, a cousin of Felix Singian, where they had their lunch; that from said, house they saw German Angeles go down from his house which, was just next door, and walk to a nearby store where he had a drink; that the party followed him, Basilio approaching German Angeles and talking to him, after which, German Angeles followed all of them to a rice field about half kilometer off the road where the hands of German were tied by them particularly by Basilio and Felix Singian with an abaca rope that was carried by Basilio. With his hands tied behind him German was taken by the group toward Lara or Sapa, a stream but upon reaching the bank of said stream German who had somehow managed to untie his hands ran toward the stream in an effort to escape from his captors but the latter opened fire on him. with their guns. De la Cruz ran after German to intercept and head him off but in getting too near German, he entered the line of fire and received a bullet wound in his chest, presumably from the gun of Basilio; that realizing that he was wounded, he, De la Cruz, fired two shots at German with his own gun, wounding him on the left calf and on the left thigh; that De la Cruz' companions continued shooting at German until he was dead; that because of his wound on the chest De la Cruz felt dizzy and fell to the ground and he was picked up by Tolentino and he was taken to the road; that from the scene of the shooting of German to the road De la Cruz and his companions met some persons who were ordered by Basilio to repair to the scene of the killing to inter the body of German; that once on the road, De la Cruz was carried in a calesa to Angeles and later to the American Hospital at Dau for treatment, where he stayed until he was fully recovered from his wound; that while riding in the calesa on their way to Angeles they were met and joined by Ordoñez who, seeing that De la Cruz was wounded, asked him what had happened and he was told that he had been accidentally hit by Esteban Basilio in connection with the killing of German Angeles.

The foregoing facts are, in great measure, based on the affidavits (Exhibits A-1 and B-1) made by Ordoñez and De la Cruz respectively and in their effort to destroy or neutralize the adverse and damaging effect of these two documents, the two affiants and appellants during the trial repudiated the same claiming that while under confinement they had been tortured and intimidated by the bodyguards of Fiscal Filemon Cajator into signing and thumbmarking said affidavits. The trial court who had an opportunity to gauge the veracity of the witness by observing their demeanor on the witness stand, after considering the appellants' claim and after hearing the denial thereof by the persons who were in a position to know whether or not said affidavits were voluntary, such as Fiscal Cajator who conducted the investigation, questioned the appellants and had their statements reduced to writing, Mayor Serafin Buyson before whom the affidavits were read to the appellants and were sworn to and signed and thumbmarked by them, and Municipal Secretary Mateo Samaniego and policeman Francisco Mercado who acted as witnesses, rejected said claim and found that the two affidavits had been made freely, voluntarily and without the use of force or intimidation. We are reproducing with favor that portion of the decision of Judge Basilio Bautista on this point:

"Estas confesiones contienen el relate de los hechoso que tuvieron lugar en el suceso de autos y confirman las circunstancias concurrentes y los testimonios prestados por Carlos Genuino y Francisco Marimla, y que las mismas, segun la acusacion, fueron hechas por dichos acusados libre y voluntariamente, por mas que la defensa arguye que dichas confesiones fueron obtenidas mediante fuerza, intimidacion y maltratos, y que por tanto no son admisibles como pruebas. Esta imputacion ha sido negada rotundamente por el fiscal especial Sr. Filemon Cajator que hizo la investigacion y por el Alcalde Municipal de Bacolor, Sr. Serafin Bayson, ante quien suscribieron y juraron dichas declaraciones de los acusados, y como tambien por los testigos instrumentales Mateo Samañego y Francisco Mercado, secret ario y policia municipal, respectivamente, de Bacolor. El fiscal especial, Sr. Cajator, substancialmente dijo lo siguiente: despues del arresto de los acusados Pascual Ordoñez y Jose de la Cruz en junio de 1946 fueron detenidos en la careel municipal de Bacolor y que mas tarde fueron llevados a su oficina en Bacolor para ser investigados. En la investigacion practicada por el a los acusados for mulaba verbalmente sus preguntas y las contestaciones que daban los acusados las escribia a maquinilla su escribiente Lucio David Bognot, y una vej terminadas sus declaraciones los acusados fueron llevados al Alcalde Municipal para suscribirlas y jurarlas ante dicho Alcalde, y prestaron libre y voluntariamente sus declaraciones sin que haya mediado ninguna fuerza, amenaza, intimidacion o maltrato de cualquiera clase antes y durante el tiempo en que se hacia la investigacion, y en prueba de ello id's acusados suscribieron y juraron sin protesta alguna sus declaraciones exhibitos "A" y "B". * * *

"En los affidavits "A" y "B", Pascual Ordoñez y Jose de la Cruz, respectivamente, no admiten participacion en la muerte actual de German Angeles. Si es verdad, como asi reclaroan los acusados, que no hem participado en la preparacion de dichos exhibitos y que sus firmas fueron obtenidas mediante violencia e intimidacion, el fiscal especial, Sr. Cajator, hubiera hecho mejor haciendo aparecer en dichos documentos cue los acusados Pasce. Ordoñez y Jose de la Cruz han matado o muerto al occiso German Angeles. Ciertamente, cualquiera que leyera estos documentos tendria la impresion y conviccion despues de que Pascual Ordoñez y Jose de la Cruz hayan dicho la verdad, y a juicio del Juzgado, los exhibitos "A" y "B" fueron ejecutados libre y voluntariamente por los acusados Pascual Ordoñez y Jose de la Cruz respectivamente. Aun dado el caso de que fueron obtenidos mediante fuerza e intimidacion, como afirman los acusados, con todo dichos documentos son admisibles como pruebas porque los hechos relatados son confirmados por otras pruebas independientes. Por ejemplo, Pascual Ordoñez ordeno a Esteban Basilio a secuestrar a German Angeles, y la muerte de e ste despues del secuestro. Por otra parte, Jose de la Cruz dijo que el, con Esteban Basilio y otros, secuestrar on a German Angeles y mataron despues. Ambos acusados dijeron que Jose de la Cruz ha sido disparado y herido en la ocasion cuando mataron a German Angeles y que ha sido llevado al hospital militar en el Campamento Dau. Estas adimisiones son confirmadas por hechos independientes y extranos. German Angeles, de hecho, ha juuerto por heridas causadas por armas de fuego cacao aseguran Carlos Genuine y Francisco Marimla que ayudaron en el entierro de su cadaver, y Jose de la Cruz recibio un disparo en el pecho por cuyo motivo ha ingresado en el hospital military del Campamento Dau. Su explicacion en el banco testifical cuando declaro a su favor de que ha sido disparado por Esteban Basilio por haberse negado a participar en el secuestro de German Angeles no merece credito alguno, por que aunque ha sido nombrado despues policia municipal de Porac, Pampanga, puesto que desempenaba hasta el tiempo de su arresto, nunca ha tornado la accion e interes para llevar ante los tribunales de justicia a su ofensor. (pp. 9-13, decision of trial court)"

We are satisfied that Exhibits "A" and "B" were made freely and voluntarily by the defendants herein without the use of force or intimidation. If there had been any duress or maltreatment to induce the appellants to wake the affidavits (Exhibits "A" and "B"), it is not explained why they failed to denounce said alleged torture and intimidation when they appeared before Mayor Serafin Bayson to ratify and subscribe the same. And, as well observed by the trial court, if the police authorities, including Fiscal Cajator really had a free hand in the preparation of these two affidavits and that they could include therein any damaging statement or admission regardless of the truth, and the wishes and conformity of the affiants, said affidavits would and should have been made much stronger and more conclusive against said affiants, establishing their conspiracy and participation in the killing of German Angeles in a more positive and direct manner. But, as it is in Exhibit A-1, all that Ordoñez

admits was his transmittal of the order to kidnap, from Tolentino to Basilio and nothing more. Of course, in said affidavit he admitted that he was a Hukbalahap organizer, but this fact he also admitted in his testimony during the trial, saying that he was really a member and organizer in the Hukbalahap and PKM organizations and even sported an alias "Aladin". (t.s.n. pp. 109, 112, 117) And as to Exhibit B-1, in it De la Cruz tried to minimize his participation in the killing by saying that he was unaware of the plan to kidnap and kill German; that when they started in their mission, he was not even provided with a gun until Basilio gave him one; that he merely accompanied the kidnaping group and that although he fired two shots at German Angeles, he hit him only in the leg, where a wound, ordinarily, cannot cause death.

In explaining the wound he received in his chest, contrary to the version in his affidavit (Exhibit B-1), De la Cruz stated during the trial that his wound was not accidental but that it was intentionally and criminally inflicted by Esteban Basilio behind the schoolhouse at Calzadang Bayu because De la Cruz refused to follow Basilio and his companions on their mission which he suspected was criminal. If this were true it is strange that when he had fully recovered from his wound and after peace and order had been restored in his town of Porac after liberation, and when he himself according to his own testimony during the trial, became a municipal policeman, he never took any step toward bringing Esteban Basilio to account and into court for shooting him and inflicting the serious wound in his chest that seriously jeopardized his life. And as a further argument against this theory of accidental wounding of De la Cruz, we have the testimony of Carlos Genuino, one of the two persons who had been ordered to dig the grave for the body of German Angeles to the effect that he was not far from the scene of the shooting and as a matter of fact, he heard the firing; that soon thereafter he saw Jose de la Cruz wounded and coming from the direction of the place from which he heard the shooting. This place he later verified when by order of Esteban Basilio, he went to that place and found the dead body of German Angeles with several fatal wounds on the chest and just below the jaw and also on the leg. This confirms the finding of the trial court that the wounding of De la Cruz took place at the scene of the killing of German Angeles and not behind some schoolhouse prior to the kidnaping of German.

In conclusion we are convinced of the guilt of the appellants. Now, as to the degree of their criminal responsibilities, we agree with the trial court that Jose de la Cruz is guilty as a principal. As to Pascual Ordoñez, we equally agree with the Solicitor General that he may well be regarded as a mere accomplice. In the language of Article 18 of the Revised Penal Code he cooperated in the execution of the crime by a previous act, but one not necessary for its commission. In transmitting the order to kidnap by Tolentino to Basilio, although he may not have conspired and agreed with Tolentino on the plan to kidnap and liquidate German Angeles so as to make him a principal thru conspiracy, he knew and realized the meaning and invariable end of kidnaping a person by his Huk organization, and nevertheless, he transmitted the fatal message to kidnap German. As such accessory, he should be as he is hereby sentenced to not less than six (6) years and one (1) day of prision mayor and not more than twelve (12) years and one (1) day of reclusion temporal, with the accessories of the law. The indemnity shall be paid by both appellants in the following manner and proportion. De la Cruz will pay P1,200 and Ordoñez will pay P800, the two to be subsidiarily liable for each other's share (Art. 110, Revised Penal Code; *People vs. Barrera*, 52 Phil. 113-114). As thus modified, the decision appealed from, is hereby affirmed with costs against the appellants. So ordered.

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

CONCURRING**PERFECTO, J.:**

We concur, believe that the indemnity should be increased to P6,000 in accordance with the doctrine laid down in *People vs. Amansec*, L-927.[1]

[1] 80 Phil, 424.

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