

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FLORENCIO BAUTISTA ALIAS COMMANDER BARRERA ET AL.,
DEFENDANTS. FLORENCIO BAUTISTA, ALIAS COMMANDER
BARRERA, DEFENDANT ...**

G.R. No. 10029. August 21, 1959

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PADILLA, J.;

In the Court of First Instance of Nueva Ecija Florencio Bautista alias Commander Barrera, together with Pablo Ocampo alias Commander de la Paz, Mariano Gabay alias Commander Berting alias Nano, Commander Tanggol, Commander Nardo, one Salcedo and four other individuals whose names are unknown, was charged with the crime of kidnapping (crim. case No. 3249). Only the first two defendants had been apprehended and after preliminary investigation were bound over to the Court having jurisdiction of the crime and there upon arraignment entered a plea of not guilty. On 5 November 1954 upon motion of the Fiscal and over the objection of the defendant Florencio Bautista, the Court discharged the defendant Pablo Ocampo to be a witness for the government under section 9, Rule 115. In this Court Florencio Bautista filed a petition for prohibition with preliminary injunction assailing the propriety and legality of the discharge. This Court dismissed the petition for the reason that appeal at the proper time was the remedy.[1] Found guilty of the crime of kidnapping and serious illegal detention, as provided for and penalized in article 267, paragraphs 1 and 3, of the Revised Penal Code, as amended, and sentenced—

* * * to Life Imprisonment, with the accessories of the law, and to pay moral damages to the following:
P1,000.00 to Meliton Lopez P1,000.00 to Romulo de Pano, P6,000.00 to the heirs of Cirilo Acosta, and
P6,000.00 to the heirs of David Domingo, and to pay the proportionate shares of. the costs,

Florencio Bautista has appealed.

The victims Meliton Lopez, Jr. and Romulo A. de Pano substantially testified as follows: At about 5:30 o'clock in the afternoon of 3 November 1950, while Cirilo B. Acosta, the district chief of the NARIC in Cabanatuan, Romulo A. de Pano, secretary to the former, David Domingo, dispatcher in the same office, Meliton Lopez, Jr., driver, and two unidentified women were riding in a jeep owned by the NARIC, on their way home to Zaragoza, Nueva Ecija, they were stopped by eight men wearing blue denim, khaki and fatigue uniforms with caps similar to those worn by officers and men of the Philippine Constabulary and carrying carbine and garand rifles, tommy guns with round disk and thompson sub-machine guns, at barrio Juan Luna, Zaragoza, Nueva Ecija, a few meters from the boundary line of Zaragoza and Cabanatuan. They were told to alight from the jeep and searched for firearms. A super colt revolver and a .45 caliber pistol were taken from Cirilo B. Acosta and David Domingo, respectively. Meliton Lopez, Jr., the driver of the jeep, recognized and pointed in Court to Pablo Ocampo alicCs Commander de la Paz as a member of the band. After taking from Cirilo B. Acosta and David Domingo their respective firearms, the leader of the band ordered the four male passengers of the jeep to go with them to an undisclosed place in the open field and left the two female passengers and the jeep at the place where they were

held up. Between 10:00 and 11:00 o'clock in the evening they stopped at a certain place (Marawa) and there the band left Meliton Lopez, Jr. and Romulo A. de Pano and continued their way taking along with them (Commander Tanggol, Berting and Pablo Ocampo) Cirilo B. Acosta and David Domingo. Since then the two last named have not been seen and heard of. Meliton Lopez, Jr. and Romulo A. de Pano were guarded in the last place by more than ten companions of the band. After five days a man who answered for the name of Salcedo and a companion came to fetch Meliton Lopez, Jr. and the latter, escorted by five armed men and the first two, was brought to barrio Sangalang for "trial" by Commander Barrera. Meliton Lopez, Jr. went along with his captors while Romulo A. de Pano stayed behind. They arrived at Sangalang at about 2:00 o'clock in the afternoon and Meliton Lopez, Jr. was brought to a hut in an uninhabited place where Commander Barrera, who is the defendant Florencio Bautista (Meliton Lopez, Jr. pointing to him in Court), was waiting for them. The defendant, assisted by others interrogated Meliton Lopez, Jr. on the activities of Cirilo B. Acosta and David Domingo and their purpose in going to Malacañang and Camp Crame. He answered that Acosta and Domingo really went to Malacañang but did not know for what purpose as he only drove the car on which they rode. After the investigation, he was transferred to another hut where he was confined under guard. After five days, he was returned to the place (Marawa) from where he was taken by Salcedo and rejoined Romulo A. de Pano. They stayed there for another five days under guard and were released thereafter. They were deprived of liberty for fifteen days all in all. When they arrived home the mayor of Zaragoza and officers and men of the Philippine Constabulary stationed in the town of Zaragoza investigated them.

Pablo Ocampo, who was discharged to be a witness for the Government, substantially testified as follows: In November 1950 he was a private in the 23rd Squadron of the HMB (Hukbo ng Bayan Laban sa Hapon) under Commander Tanggol in Zaragoza, Nueva Ecija. At about 2:00 o'clock in the afternoon of 3 November 1950 Commander Tanggol came to barrio Bagting to fetch him and took him to a place between San Francisco and Aliaga to carry out the order of Commander Barrera to ambush a jeep coming from Cabanatuan in which Cirilo B. Acosta rode. He (the witness), Commander Tanggol and eight other armed men arrived at the place at about 4:00 o'clock in the afternoon and deployed themselves along the road.

When their quarry was sighted, Commander Tanggol and Berting stopped the jeep where Cirilo B. Acosta and his three male and two female companions were riding, by standing in the middle of the road while the witness and his companion remained in the ditch in deployed position. The passengers of the jeep were ordered to alight. Commander Tanggol and Berting searched them for firearms.

The firearm of Cirilo B. Acosta and David Domingo were taken from them. They took along with them the four male passengers of the jeep to the field and left the two female passengers and the jeep at the place where they were stopped. When they reached barrio Marawa, Meliton, Jr. and Romulo A. de Pano were left to the care of some of the men, while the rest of them proceeded to barrio Sangalang taking along with them Cirilo B. Acosta and David Domingo. Upon arrival there, Commander Tanggol and Berting turned them over to Commander Barrera, who is the defendant Florencio Bautista. The mission having been accomplished, the witness and his companions left for barrio Lawang Buli.

Jose Tiangco substantially testified as follows: In 1950 he was the secretary of the SECOM 1 of the HMB in Cabiao, Nueva Ecija, under Commander Barrera, who is the defendant Florencio Bautista, the head of the RECO (Regional Command) in Nueva Ecija and Pangasinan. On 5 January 1951 he met the defendant in the forest of Cabiao when he (the defendant) came down from the mountains to supervise the execution of policies of the organization and to check on what his subordinates had accomplished. At about 8:00 o'clock in the evening of that day while they were lying down to go to sleep, the defendant told him that he was the one who had ordered the arrest and execution of Cirilo B. Acosta and David Domingo; that while David Domingo was being put to death

by one of his men by incising his abdomen with a hunting knife, Cirilo B. Acosta wept as he witnessed the gruesome act; and that after the execution of David Domingo, he ordered the execution of Cirilo B. Acosta.

The appellant was the head of the RECO of the HMB in Nueva Ecija and Pangasinan. As head of the RECO he could order the liquidation after "trial" of persons who refused to cooperate with them to achieve the aims of the organization. Pablo Ocampo testified that he was with the group of armed men under Commander that held up the jeep where Cirilo B. Acosta and his companions rode on the fateful afternoon of 3 November 1950 and brought him and David Domingo to Commander Barrera for "trial". The reason why the defendant ordered the kidnapping of Cirilo B. Acosta was because he refused to give food and supplies to the organization.

Counsel for the appellant contends that the trial court erred in ordering the discharge of Pablo Ocampo to be a witness for the Government because he was the most guilty and his testimony was neither absolutely necessary nor the only direct evidence available for the proper prosecution of the case, and in admitting and giving credence to his testimony. The discharge of a co-defendant under section 9, Rule 115, is a matter that lies within the sound discretion of the trial court. [(1)] Once discharged even if one or all of the conditions required for his discharge did not really exist, that fact does not affect the legal consequences of the discharge [(2)] and the admissibility and credibility of his testimony if otherwise admissible and credible. [(3)]

The testimony of Meliton Lopez, Jr. and Romulo A. de Pano, two of the victims of the kidnapping, is not hearsay. They testified of their own knowledge that they were deprived of liberty for fifteen days in the manner related by them on the witness stand. The fact that the appellant was the head of the RECO of the HMB in Nueva Ecija and Pangasinan; that after Cirilo B. Acosta and David Domingo had been apprehended they were brought to him; and that Meliton Lopez, Jr. was brought to and personally investigated by him, shows that they were kidnapped upon his order. Granting that Jose Tiangco had reason to perjure to get even with the appellant whom he suspected of telling on him which led to his capture by the armed forces, and hence his testimony should not be relied upon, still the direct and positive testimony of Meliton Lopez, Jr., against whom no motive to testify falsely had been ascribed, that he was investigated by the appellant when he was brought to him in barrio Sangalang, has not been rebutted. The appellant's alibi that during the commission of the crime he was in Pangasinan, and could not have ordered their kidnapping, has not been satisfactorily established. Moreover, even if he were in Pangasinan he as head of the RE CO could have ordered the kidnapping and could have easily gone to Nueva Ecija to investigate the victims, considering the proximity of the two provinces.

The crime committed as charged in the information is kidnapping, as provided for in paragraph 1, article 267, of the Revised Penal Code, as amended, punishable by reclusion temporal in its maximum period to death. There being neither mitigating nor aggravating circumstances that attended the commission of the crime, the penalty should be imposed in its medium degree. The appellant has not been charged in the information with murder for the death of Cirilo B. Acosta and David Domingo and for that reason that part of the judgment appealed from sentencing him to pay damages in the sum of P6,000 to the heirs of the late Cirilo B. Acosta and an equal sum to the heirs of the late David Domingo should be understood as damages for their kidnapping and serious illegal detention and not for their death.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

[1] G.R. No. L--8581, minute resolution of 16 December 1954.

[(1)] U. S. vs. Abanzado, 37 Phil., 658; People vs. Bautista, 49 Phil., 389; People vs. Ibanez, 92 Phil., 933.

[(2)] People vs. Mendiola, 46 Off. Gaz., 3629; People vs. Ibanez 88 Phil., 724.

[(3)] U. S. vs. Abanzado, *supra*; U. S. vs. Abalot, 38 Phil., 698.

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