

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
NORIL SAMPANG, JAMA-A CABANG AND JALILOLA CAWANG,
ACCUSED AND APPELLANTS.**

G.R. No. L-15843. March 31, 1966

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

This is an appeal from the decision of the Court of First Instance of Basilan City that found the above accused guilty of robbery with homicide and sentenced each of them to the penalty of death, and to indemnify jointly and severally the heirs of the victim, Percy Vicroy, in the sum of P6,000.00, and those of the victim, Helen Van Short, also in the amount of P6,000.00.

All the assigned errors relate to the usual question whether or not the culprits had been adequately identified by the witnesses.

The evidence shows that:

In the afternoon of November 13, 1957, Helen Van Short, Percy Vicroy, Jumadil Badul and Baby Short proceeded, in a jeep, to Isabela, Basilan City; and there they sold some copra for about two thousand six hundred pesos. That evening, upon returning home to the Balas Plantation where the Short family lived, the group was ambushed by three armed bandits. Percy Vicroy, driving the jeep, was shot dead. Helen Van Short who tried to run away with her son Baby (Richard) Short was pursued and slain with several bolo cuts. Baby Short was, likewise, attacked and severely wounded.

Robbery was the motive of the crime. The money paid for the copra disappeared. The jeep was ransacked, and belongings and things were scattered all over it. Percy Vicroy's wrist watch disappeared too. Baby Short lost his twenty three pesos.

Obviously, the robbery had been planned beforehand. Duly prepared, the bandits waited for their prey near the gate of the said plantation. Armed with firearms and bolos, they pounced on their victims. Nocturnity and the infliction of multiple and unnecessary wounds on the deceased Helen Van Short as well as disrespect of her sex, aggravated the offense, with no mitigating circumstance.

As stated, the only issue in this appeal is the identity of the robbers. Proof of the participation and identity of the above accused, Noril Sampang, Jama-a Cabang and Jalilola Cawang, depends principally upon the testimony of Baby Short and Jumadil Badul who travelled with the ambushed group.

Jumadil Badul testified that about 10:00 o'clock, that fatal night of November 13, 1957, when they arrived home from Isabela where they had sold copra earlier in the afternoon, Helen Van Short ordered him to open the gate to the plantation; that even as he complied with the order, he heard some shots; that Baby Short shouted to him to run and escape because Percy Vicroy had been hit; that as he (Jumadil) hurried away, he turned to look at the jeep and saw Noril Sampang walking towards the vehicle with a gun in one hand and a bolo in the other; that he also

recognized Jalilola Cawang who pursued him, and who, having failed to overtake him, hurled a piece of wood which hit him (Jumadil) on the back; that he saw Jama-a Cabang and Jalilola Cawang stab Mrs. Short and Baby Short; that as the ambushers frisked the dead man, he (Jumadil) departed posthaste and swam across the river to report the crime to the police authorities.

Baby Short, eleven years old, stated that upon reaching the gate of the plantation that night, he heard shots fired in succession; that Percy Vicroy, sitting beside him, was hit and immediately slumped in the jeep; that Mrs. Short (his mother) pulled him by the arm out of the jeep; that at this very instant, he saw Noril Sampang approaching the jeep with a bolo and a firearm; that as he and his mother tried to run, they fell; that he saw Jama-a Cabang and Jalilola Cawang cross the front of the jeep which at that time had its headlights on; that the two latter moros, upon overtaking them, cut Mrs. Short several times with a bolo; that he (Baby Short) suffered a slash on his back and head; that after falling on the ground, he did not move, even as he felt his pockets being searched; that he was left for dead; that he was relieved of his P23.00; and that when the robbers had already departed, he cried out for help.

Two helpers in the Balas Plantation corroborated the foregoing testimonies. One of them, David Cuadra, declared that on the night of November 13, 1957, at about past 1:00 o'clock, he was awakened by Andres Short, who informed him that there were shouts for help coming from the outside; that armed with a .22-caliber rifle and a flashlight, he immediately went to the gate of the plantation; that he saw the dead man and the wounded bodies of Mrs. Helen Van Short and Baby Short; that he approached Baby Short, and asked who had ambushed them; that Baby Short, mentioned Noril Sampang, Jama-a Cabang and Cawang; that before he picked up Baby Short to be brought to the house, he fired one shot in the air and shouted for assistance.

Urok Patani, another helper in the plantation, swore that when he heard David Cuadra's cry for help, he proceeded to the scene of the crime; that upon seeing Baby Short in bloody condition, he inquired who had ambushed them; that Baby Short said it was Noril with other men.

The accused set up alibi as their defense. Noril Sampang claimed that at the time of the attack, he was in his mother-in-law's house, about seven kilometers from the scene, gathering oranges. The other two accused, Jama-a Cabang and Jalilola Cawang, interposed the same defense. They insisted that they were then in the house of an uncle, and had been there for almost a week, preparing copra.

Relying on the alleged weakness of the evidence of the prosecution, the defendants pointed out that contrary to Jumadil Badul's testimony that he saw Noril Sampang, there is Exhibit "5", the report to the police authorities, wherein he stated "unknown persons" were the ambushers. It is also urged that considering that the headlights of the said jeep were on and that Jumadil was in front of the jeep, it was physically impossible for said witness to see Noril as well as his other alleged companions. Attention is called to the fact that despite investigation of the crime at the plantation in the presence of said Jumadil and the other helpers, such as David Cuadra and Urok Patani, none of them said that Baby Short had revealed the identity of the ambushers.

As regards Baby Short, appellants argue that his affidavit, Exhibit "1" belies his claim of having recognized the companions of Noril because in the said affidavit, he (Baby Short) mentioned only Noril, and he clearly stated therein that he did not recognize the other ambushers. To further discredit the statements of Baby Short, the fact is emphasized that said witness had pointed to different persons as the robbers; he even pointed at Moros Jamma, Pata and Oton.

After a careful perusal of the records, we are convinced that these deficiencies have been sufficiently explained. The failure of Jumadil Badul, David Cuadra and Urok Patani to report the malefactors to Capt. Salvador is understandable. The shock of the ambush still fresh in their minds, perhaps they considered the protection of Capt. Salvador and his five policemen inadequate. Jumadil feared for his life. The killers were at large and armed.

Prudence seemed the better part of valor, silence the better protection.

At any rate, when the Philippine Constabulary replaced the police, Jumadil offered to break his silence. He denounced the defendants to Capt. Caoile, the officer-in-command. The latter, however, wanted Jumadil to implicate other suspects; and he complied, allegedly cowed by information that the PC maltreated those who refused to obey their wishes. However, when on the same day, Atty. Belen of the PC Investigation team arrived, Jumadil repeated his accusation against the defendants.

The statement that Capt. Caoile had influenced Jumadil to include other suspects is rather plausible, especially because the assertion was not subsequently denied.

As for Baby Short, we find nothing strange in his failure to mention their assailants to Capt. Salvador. In the first place, he was not asked. More, he was "moaning in pain" when Capt. Salvador brought him to the clinic. It is not unnatural to assume that the boy eleven years old, thought of no other thing except the agony he was undergoing. It is true that Baby Short pointed at persons other than the defendants to be responsible for the crime. But the trial court believed his explanation that his act had been due to fear of Noril. It appears that at the time he pointed to others, Noril stood at his bedside and urged him to conceal his part in the ambush.

Considering all the above, and on the basis of Baby Short's testimony as corroborated by other evidence, this Court entertains no doubt in respect of Noril Sampang's participation in the offense. The affidavit of Baby Short, Exhibit "1" wherein he identified Noril as among the ambushers is weighty evidence. Baby Short's revelation to the helpers in the plantation, David Cuadra and Urok Patani that it was Noril and the other two accused who ambushed them is part of the *res gestae* and affords strong evidence of said Noril's participation. The latter's defense of alibi is overcome by the positive identification by Baby Short. Furthermore, the scene of the crime is not too distant from the house of his mother-in-law: a mere matter of seven kilometers. Finally, there is proof that his house stood nearby.

In considering some gaps and inaccuracies in this boy's testimony, we must remember that "judges know how to make allowances in the declaration of a witness * * * and their conclusions are not usually disturbed". (People vs. Gamlot, L-6909, May 26, 1955.)

For all these reasons, we have to agree with the trial court that Jumadil and Baby Short identified beyond reasonable doubt the herein defendants as the assassins who treacherously waylaid Vicroy and companions. There were aggravating circumstances, but for lack of sufficient votes, the penalty should be *reclusion perpetua*. So, with this modification, the appealed judgment of conviction is affirmed. So ordered.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

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