

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. MOROS AMAJUL, ALBANI, ASAKIL, WADJA MADJID, AMDAD AND LAHUD, DEFENDANTS AND APPELLANTS.

G.R. Nos. L-14626-27. February 28, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In Criminal Case No. 1279 of the Municipal Court of the City of Basilan, Yakan Djalalang, Moros Salihuddin, Djalim, Hamiddin alias Sauril, Asakil, Sahadain, Amajul, Albani, Musa, Lahud, Wadja Madjid and Amdad were accused of the crime of robbery in band with murder and frustrated murder. In another information (Criminal Case No. 1280), the same accused were charged in the same court with robbery in band with murder.

When elevated to the Court of First Instance of Basilan City, the two cases were docketed as Criminal Cases Nos. 317 and 318, respectively. Of the accused, Moros Salahuddin, Sahadain and Musa remain at large, while Yakan Djalalang, although earlier apprehended, escaped from the Basilan City jail during the pendency of the cases in the Court of First Instance. When arraigned, Moros Djalim and Hamiddin pleaded guilty to both charges; the rest of the accused, however, pleaded innocence.

After a joint trial as to Wadja Madjid, Asakil, Albani, Lahud, Amajul and Amdad, the trial court rendered judgment of conviction, as follows:

"In View Thereof, this Court is of the opinion and so holds that the guilt of all the accused, Wadja Madjid, Asakil, Albani, Lahud, Amajul, and Amdad have been proved beyond reasonable doubt. They are all guilty as principals of the offenses charged in Criminal Cases Nos. 317 and 318.

The offenses for which they are charged are dennded and punished tinder Art. 294, paragraph 1 of the Revised Penal Code. Considering the aggravating circumstance of having committed the offenses in band and being offset by their lack of instruction, the penalty that should be imposed upon each of the accused is Reclusion Perpetua for each offense.

The Court, therefore, sentences each and everyone of the accused, Wadja Madjid, Asakil, Albani, Lahud, Amajul and Amdad, to suffer the penalty of reclusion perpetua for the crime of Murder and Frustrated Murder and Robbery committed in the ambush of the Western Mindanao Lumber Co. jeep on February 15, 1956, as charged in Criminal Case No. 317.

This Court likewise sentences each and everyone of the accused, Wadja Madjid, Asakil, Albani, Lahud, Amajul and Amdad, to suffer the penalty of reclusion perpetua for the death of Alejandro Oraoso and robbery committed in the ambush of the AC jeep No. 2416 on February 15, 1956, as charged in Criminal Case No. 318.

All of the accused in Criminal Case No. 317 shall solidarity indemnify the heirs of the deceased Gerundio Achas the amount of P6,000.00 and P50.00 for his wrist watch. All the accused are likewise solidarily sentenced to restore the total amount of P10,400.00 to the Western Mindanao Lumber Co.; P90.00 to Midonia Ortega; and P20.00 to Cayetana Macansantos, less the amount thus recovered and confiscated from the

accused, and the accused shall solidarily indemnify the amount of P1,000.00 to Pedro Morados for the injuries he sustained by the gunshot in the ambush; and with the proportionate costs of these proceedings.

All the accused in Criminal Case No. 318 shall solidarily indemnify the heirs of the deceased Alejandro Omoso the amount of P6,000.00, and to pay for the unrecovered wrist watch in the amount of P50.00, with costs.

The Garand rifle Exh. "M" is hereby declared confiscated in favor of the Government, and the Thompson Submachine gun and the Colt pistol Cal. 45 are hereby ordered returned to the Western Mindanao Lumber Co."

All the accused appealed. In time, however, appellant Wadja Madjid moved for the withdrawal of the appeal as to him, which this Court granted in its resolution of July 7, 1960.

The prosecution's evidence tends to show that in the evening of January 31, 1956, Yakan Djalalang, Salahuddin, Djalim, Hamiddin, Asakil, Sahadain, Amajul, Albani, Musa, Lahud and Wadja Madjid met at the house of Moro Amdad to discuss plans to waylay the payroll jeep of the Western Mindanao Lumber Company. A second meeting at the same place was held by the conspirators on the eve of the ambush to finalize the details of the plot.

At about 8:00 o'clock in the morning of February 15, 1956, Moro Asakil, a laborer of the Western Mindanao Lumber Company, sought leave of absence from Felipe Sanson, the field manager, allegedly because he was sick and wanted to go home to Jolo. Sanson denied the request on the ground that Asakil had not yet rendered the required one-year service. At the time, Sanson had already given instruction for the use of the company jeep to get the payroll money from the Basilan City branch of the Philippine National Bank. About two hours later, Pedro Morados, the driver; Gerundio Achas, a security guard; and Francisco Jamero, the accountant, rode out of the company compound on their way to the bank. The trio offered a ride to Moro Asakil, but the latter refused the offer.

On the return trip from the bank, Pedro Morados placed the cash withdrawn which came in denominations of one-peso, two-peso, ten-peso and twenty-peso paper bills, inside a buri bag. To his right side at the front seat of the jeep was seated the accountant, and, next to the latter, the security guard. Four other passengers were picked up on the way to Kapatagan, and occupied the rear seats of the jeep.

Preparing since morning for the arrival of the payroll jeep at an isolated spot along Kilometer 12 of the Isabela-Kapatagan road, the outlaws took their assigned places. Djalalang, the leader of the gang, was armed with a Garand rifle, and all, except the two look-outs, Wadja Madjid and Moro Asakil, were armed with "barongs". At about 1:30 p.m., Wadja Madjid signalled to the armed group the approach of the long-awaited quarry. Travelling a distance of about 20 meters more from the spot where Madjid had hidden himself, the ill-fated jeep was fired upon several times by Djalalang, instantly killing the guard Gerundio Achas and wounding the driver Pedro Morados. When the vehicle finally stopped, the wounded Morados and the rest of the passengers scampered for safety, leaving whatever things they had inside the jeep. They in time reached a PU car which brought them back to Kapatagan.

On its way, the PU car met the oncoming "Blue Line" passenger jeep with plate No. 2416, owned by Mrs. Dolores Alano Laconico. The PU driver by hand signals, frantically tried to stop it, but the jeep unsuspectingly went on. Nearing the scene of the ambush, Hasim Kalay, the boy conductor of the "Blue Line" jeep, saw the armed men pointing their guns at them. Alejandro Omoso, the driver, pleaded "No tera tong" to no avail. Djalalang and Musa fired at Omoso, causing the latter to lose control of the vehicle, which turned turtle by the side of the road. Omoso died instantly, however, the boy, Hasim Kalay, escaped injury. Paralyzed with fear, he merely covered his face as he heard one of the men say "Kawa-a-ing Relos", meaning "Get the watch".

Leaving the damaged jeeps on the road, the bandits made away with P10,400.00 in payroll money, the firearms carried by the security guard valued at P700.00, the wrist watches of Achas and Omoso valued at P50.00 each, the foodstuffs bought at the market by Cayetana Macansantos worth P20.00, and other articles and cash in the sum of P90.00 belonging to Migdonia Ortega, or a total of P11,290.00. The robbers took their exit through the forest and divided the loot among themselves; however, Asakil's share was only P35.00; Amdad's in whose house the planning of the ambush was made, the amount of P100.00; and Hadji Madjid's, P20.00.

Hasim Kalay was later picked up by a logging truck which took him to Basilan City where he related his frightful experience to the police.

While there is no dispute as to the commission of the offenses charged, the investigations conducted by the authorities failed to bring to light the identity of the culprits, for none of the survivors was able to recognize or identify the malefactors; but the police were able to recover five empty shells fired from a .30 caliber firearm, one projectile of .30 caliber, one lead core, one metal jacket, and one empty shell of .45 caliber.

On suspicion of having taken part in the ambushes, Yakan Djalalang, Djalim, Hamiddin alias Sauril, Asakil, Amajul, Albani, Lahud, Wadja, Madj id and Amdad were apprehended by the police authorities, and later charged in Criminal Cases Nos. 317 and 318 of the Court of First Instance of Basilan.

Relying on the extra-judicial confessions of Yakan Djalalang, who escaped from detention during the pendency of the cases below; of Hamiddin alias Sauril, who pleaded guilty to both criminal cases; and of Wadja Madjid, the trial court convicted the accused-appellants as conspirators. Wadja Madjid having earlier withdrawn his appeal, this, review will be confined only to the cases of Asakil, Amdad, Amajul, Albani, and Lahud.

In the absence of other identification, the lower court relied exclusively on the extra-judicial confessions of Djalalang; Sauril and Wadja Madjid, implicating the appellants herein. Admission of the confessions was duly objected to, and the rule is settled that—

"A confession made by a defendant is admissible against him but not against his co-defendant as to whom said confession is hearsay evidence for he had no opportunity to cross-examine the former." (Comments on the Rules of Court, Moran, '57 Ed., Vol. III, p. 109, citing numerous authorities)

Neither Djalalang nor Sauril was called to the witness stand. Wadja Madjid, upon the other hand, denied having voluntarily implicated his co-accused in his extra-judicial confession, and indeed denied having any knowledge that his co-accused had taken part in the commission of the crimes in question. While it is true, as stated by the Solicitor General, that voluntary extra-judicial confessions may be admitted to confirm direct testimonial evidence, without the latter, the confessions do not warrant consideration (see Comments on the Rules of Court, Moran *supra*, pp. 111-112). Here, aside from the extra-judicial confessions of the persons referred to, no direct evidence of conspiracy or of involvement in the crimes in question was introduced.

On the other hand, the circumstantial evidence is insufficient to warrant the conviction of any of the appellants, except Moros Lahud and Amdad.

Acting on information elicited from Wadja Madjid, Constabulary operatives arrested appellant Lahud, a resident of Basilan City, on April 11, 1956, in Olutanga Island, Zamboanga del Sur, whither he had transferred after the occurrence of the regrettable incidents. When Lahud was brought before the City Fiscal and confronted by Yakan Djalalang, the latter readily identified this appellant as one of those who took direct part in the ambushes that took a toll of two lives (t.s.n., 109-Cobato, 73-Asis). Djalalang's statements, pointing to Lahud as a co-perpetrator of the crimes, was taken down in writing in the latter's presence and sworn to by the declarant (Exh. "Y-I"). In the , course thereof, it does not appear that Lahud ever remonstrated or protested against the implication, thus making

said extra-judicial statements admissible as against him (People vs. Atienza, et al., 86 Phil., 576, 47 Off. Gaz., Supp. No. 12, 200). Mistake in the identification of Lahud is quite remote, considering that he is physically infirm and walked with a limp. Djalalang, it may be remembered, was one of those accused in Criminal Cases Nos. 317 and 318, who later bolted from jail; while Wadja Madjid was among those convicted by the court below, and later withdrew his appeal to this Court.

As to appellant Asakil, the evidence show only that when being apprehended at the market place by a PC officer, he tried to flee, together with Wadja Madjid, a housemate (pp. 44, 65, t.s.n., Cobato); and when finally arrested and searched, the amount of P16.00 was found in his right shoe and P3.00 in the left shoe (pp. 45-46, t.s.n. Cobato). These circumstances, standing alone, do not conclude Asakil's guilt beyond a reasonable doubt. The Solicitor General tries to add as another item of circumstantial evidence the fact that in the morning of the crime, Asakil turned in his tools and left his work allegedly because of sickness; and yet when, on his way home, he was offered a ride by the party in the ill-fated jeep, he refused upon the pretense that he preferred to hike. The prosecution, however, failed to elicit this matter from the witnesses during the trial below. Reliance is placed on the sworn declarations of Pedro Morados and Francisco Jamero, which statements, although forming part of the records of the municipal court, were not properly introduced in evidence and, therefore, cannot be considered in the evaluation of appellant Asakil's guilt.

Accused Albani and Amajul were arrested on February 17, 1956, on the report of a bus conductor whose suspicion was aroused when the duo tried to pay their fare with a P20.00 bill. When arrested in the market place, Albani was sporting new denim trousers, new rubber shoes, a printed polo shirt, and a khaki cap. The sum of P30.00 was found hidden in his shoes. In his affidavit, Exh. "FF", he admitted he was bound for Jolo when apprehended. Amajul, Albani's companion, had P1.40 in his person. In his sworn-statement, Exhibit "J", Amajul volunteered the information that in the late afternoon of the incidents in question, while getting some firewood, he saw Sauril, Musa and Sahadain, carrying a Garand rifle and a revolver. Coming nearer to him, he was asked to swear, on threats of death to him and his family, not to report to the authorities what he just saw. The following morning, Sauril arrived with a Koran and Amajul was asked to reaffirm on it what he swore the previous day. During the said meeting, Sauril supposedly admitted to him the trio's participation in the ambushes. These circumstances, nonetheless, do not convince us beyond a reasonable doubt that the two appellants had taken part in the commission of the crimes charged.

With respect to appellant Amdad, while proof is wanting to establish his participation as a principal in the crime charged, the evidence is, however, sufficient to convict him as an accessory after the fact. In his own sworn statement of February 22, 1956, Exh. "GG", Amdad admitted having acquired knowledge of the commission of the ambuscades, and in fact accepted P100.00 of the looted money which, he claims, was forced upon him. Of said amount, the police were able to recover P72.00 in a glass bottle buried in Amdad's yard (pp. 60-62, t.s.n., Asis; 156-157, 159, Cobato). Found inside his house were the Garand rifle used in the killing and the .45 Caliber pistol, which was taken away from the slain security guard (pp. 13, 16, t.s.n., Cobato). Since it is unbelievable that the robbers should compel Amdad to accept part of the loot, and he failed to report the fact to the police, he must be held guilty as "encubridor" under Article 19 of the Revised Penal Code that punishes, as accessories, those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission by profiting themselves or by concealing the effects or instruments of the crime.

Article 294, paragraph 1 of the Revised Penal Code, imposes the penalty of reclusion perpetua to death upon any person guilty of robbery when by reason or on occasion thereof, the crime of homicide shall have been committed. As correctly pointed out by the Solicitor General, the commission of the crimes in band is taken into

account only in connection with subdivisions 3, 4 and 5 of Article 294, but not, as in this case, where the robbery falls under paragraph 1 of the same article (see Art. 295, R.P.C.; *People vs. Casunuran*, G. R. No. L-7654, August 16, 1956); and neither should the ordinary mitigating circumstance of lack of instruction be considered in crimes against property (*People vs. Melendrez*, 59 Phil., 154; *U.S. vs. Pascual*, 9 Phil., 491). There being no aggravating or mitigating circumstance to speak of, the proper penalty imposable on appellant Lahud in each case is reclusion perpetua, as ultimately found by lower court. Appellant Amdad, being an accessory to the consummated felonies, must suffer the penalty lower by two degrees (Art. 53, R.P.C.), or, in this case, that of prision mayor (Art. 61, par. 2, R.P.C.) in its medium period. Applying the Indeterminate Sentence Law as to this appellant, the minimum of the penalty that should be imposed upon him shall be within the range of prision correccional, the penalty next lower to that prescribed by the Code for the offense.

Wherefore, the judgment appealed from is modified by acquitting appellants, Asakil, Albani and Amajul of the crimes charged, and absolving them from the civil indemnity; and by sentencing appellant Lahud to life imprisonment, and appellant Amdad, to an indeterminate sentence of not less than 5 years and 1 month of prision correccional, as minimum, to not more than 10 years of prision mayor, as maximum, in each of the two cases. In all other respects, the judgment is affirmed. Costs in this instance against appellants, Lahud and Amdad.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, and Dizon, JJ., concur.

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