

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MOROS USAB MOHAMAD @ BIRA SAHID @ BIRA, ET AL., GONZALIN
ALIAS GONZALES AND UBAY, DEFENDANTS AND APPELLANTS.**

G.R. No. L-14583. December 28, 1963

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PER CURIAM:

Compulsory review of the decision of the Court of First Instance of Basilan City in Criminal Case No. 460 convicting Gonzalin, alias Gonzales — hereinafter referred to merely as Gonzalin — and Ubay of the crime of robbery in band with murder, and sentencing each of them to suffer the penalty of death, to return the articles robbed of pay their corresponding value in, the amount of P1,069. 25, to pay, jointly and severally, the heirs of the deceased Wilfredo de Leon, the amount of P6,000.00, and to pay the costs.

The information filed by the City Fiscal of Basilan charged Gonzalin and Ubay, together with Usab Mohamad, alias Bira Sahid, alias Bira, and seven others who were still at large at the time, with the crime of robbery in band with murder, committed as follows:

"That on or about the 26th day of January, 3957, and within the jurisdiction of this Honorable Court, viz., at Calabasa Landing Field, Latuan, Isabela, City of Basilan, Philippines the abovenamed accused, Moros Usab Mohamad alias Kira Sahid alias Bira, Gonzalin alias Gonzales and Ubay, conspiring and confederating together, aiding and assisting with their companions, Moros Sahibad. Ungang Apang, Halim alias Tuppi, alias Abduhalim, Lahco, Tinguilan Isa and Idong, who are still at large; armed with rifles and bladed weapons, did then and there willfully unlawfully and feloniously, with intent to gain and by means of force, violence and intimidation against persons, take, steal and carry away the following personal properties, to wit:

one

(1)

wrist watch 'Lord Elgin', 21

jewels, valued

P200.00

one

(1)

38 cal. revolver, 'Commando'

type

519.25

Money in cash mostly in P20.00 bills,

P10.00 bills amounting to

350.00

all worth the amount, of P1,069.25, Philippine currency, belonging to Wilfredo de Leon; that in the commission of the crime herein charged the said accused taking advantage of their superior strength, fully armed with rifles and barongs hid themselves in the bushes, did then and there willfully, unlawfully and feloniously, shoot with their rifles and hack with their bladed weapons said Wilfredo de Leon, thereby inflicting multiple gunshot and incised wounds on vital parts of his body which caused his instant death."

Upon arraignment, Usab Mohamad pleaded guilty and was sentenced to suffer the penalty of reclusion perpetua, whereas Gonzalin and Ubay entered a plea of not guilty upon which they were jointly tried.

The evidence for the prosecution shows that in a small island off the mainland of Mindanao, the ten accused met and planned to rob the payroll money of the American Rubber Plantation scheduled to arrive by plane from Zamboanga at the Calabasa airfield, Latuan, Isabela, Basilan City, on January 26, 1957. Armed with rifles and bladed weapons they set sail on two vintas and after landing on a beach near said airfield at about 3:00 a.m., of that date they proceeded thereto and deployed themselves near its gate.

At about 7:00 a.m. of the day aforesaid, Wilfredo de Leon, paymaster of the American Rubber Plantation in Latuan, Isabela, Basilan City, arrived at the airport in a pick-up truck driven by Florentine Morales, to meet the plane carrying the company payroll money, Parking the vehicle on one side of the runway Morales seated himself on top thereof, while De Leon was seated towards its rear end. A few minutes later, a plane belonging to Johnston & Co. flew in and landed on the airstrip to pick up a passenger bound for Zamboanga City. While waiting for the latter, the pilot, Inocencio Rivero, alighted from the plane loitered with De Leon and Morales by the truck, but after thirty minutes, the passenger having failed to arrive, his plane took off.

In the belief that the payroll money had been delivered to De Leon, the ambushers started moving in. Hearing some noise coming from the nearby bushes, De Leon reached for his revolver from his side trouser's pocket at the same time that Gonzalin aimed his gun at him. At that juncture, Morales stood up to jump from the pick-up and saw Gonzalin aiming his gun at De Leon, and Ubay, a short distance away among the bushes. While running away from the attackers, Morales was fired at several times but escaped unhurt. De Leon, however, was shot and fell to the ground near the rear end of the truck. The rest of the group then came out of their hiding places and hacked De Leon to death with their bladed weapons, relieving him of his wrist watch, his 38 Cal. revolver and cash, all totaling P1,069.25. Thereafter they left the airport and dispersed. About a kilometer away, Gonzalin, Ubay, Usab and another member of the band passed by the place where Iluminada Saburo and her son, Pedro, were fishing. Mother and son had earlier heard shots coming from, the direction of the airport, and when Gonzalin and his companions passed by, they (Iluminada and her son) noticed that they were armed and that one of them was wounded. They also recognized Gonzalin and Ubay. Later in the day, Usab was arrested by the police authorities of Basilan as he lay seated under a mango tree suffering from a gunshot wound. In an on-the-spot investigation, he implicated Gonzalin and Ubay, among others, in the commission of the offense. Upon his subsequent arrest in Basilan City, a package of "Bankers" cigarettes and a "Sefiorita" notebook were found in the possession of Gonzalin, both articles stained with human blood. De Leon's widow identified the notebook as the one she had given her late husband.

In two separate extrajudicial statements (Exhibits U and V), Usab pointed to Gonzalin and Ubay as members of the group that ambushed and killed De Leon.

A post-mortem examination of the body of the victim showed that death was caused by "acute anemia, secondary hemorrhage, due to multiple gunshots and incised wounds". (Exhibit J).

In their brief, defendants" assail the credibility and the sufficiency of the testimonies of principal witnesses Florentino Morales, Iluminada Salburo and her son, identifying them as members of the group that killed and

robbed De Leon, and further claim that the trial court erred in giving more weight to the extra-judicial statements of co-accused Usab (Exhibits U and V) than to his testimony in open court favorable to them.

With respect to Morales, defendants claim that he could not have really seen them well, because his line of vision was covered by the deceased De Leon moments before the latter was shot. True, the witness admitted that his line of vision was covered by De Leon, but this was when the ambushers, closing in upon them from the bushes, made some noise which attracted De Leon's attention. Thereafter and after De Leon had shouted "hop", he (Morales) stood up from the top of the truck where he had been seated and peeped through the sides of De Leon, thereby seeing defendants and their companions coming, with Gonzalin aiming a carbine at De Leon, and Ubay standing among the bushes. Morales also testified that he personally knew both Gonzalin and Ubay because they often went to Latuan where the American Rubber Plantation was located and of which he had been for sometime an employee; that he knew Ubay since he (Morales) was a little boy (pp. 47 to 50, transcript of September 1, 1958). Bearing in mind that the crime was committed in the morning - after eight o'clock - Morales could not have possibly been mistaken.

Defendants further claim that Iuminada Salburo and her son could not have identified them because said witnesses had been fishing and did not sleep the previous night. The assumption that said witnesses spent a sleepless night is wrong, because the truth of the matter is - according to their testimony - that they slept part of that night in the mangrove at Calabasa and fished during the rest.

Moreover, according to Iuminada, she was only about six meters away when defendants and their companions walked by that morning; that walking slowly behind Gonzalin, Ubay and another unidentified member of their group, was a wounded man armed with a bolo; that he knew Gonzalin as a former P.C. agent; and that although she did not know the name of the other defendants (Ubay), she also recognized him, adding that said accused also know her.

Iuminada's seventeen year old son, Pedro, testified to the same effect, adding that he was familiar with the Jaces of Gonzalin and Ubay because they worked together in the American Rubber Plantation.

Another circumstance pointing strongly to defendants' guilt is the recovery from the possession of Gonzalin of a package of "Bankers" cigarettes (Exhibit A) stained with human blood, and a "Señorita" notebook, similarly stained. The widow of the deceased De Leon took the witness stand and identified this notebook as the one she had given to her husband. When Gonzalin was asked where he had gotten the cigarettes and the notebook, he grew pale and could give no explanation.

Upon the other hand, the fact of conspiracy among Gonzalin, Ubay, Usab and their companions was satisfactorily proven by the latter himself when he took the stand as a witness for the defense. In the course of his testimony, he admitted that the raiding party was composed of nine members who had previously met in an island near a place called Tumahubong where they planned the commission of the crime; that the nine members, armed with carbines, garands and other deadly weapons rode on two vintas and landed near the Calabasa airfield at about three o'clock in the morning of January 26, 1957; that upon landing, they concealed themselves among the bushes near the gate of the airport and waited for the arrival of the plane that usually carried the payroll money of the American Rubber Company.

It is true that Usab attempted to exculpate Gonzalin and Ubay saying that they did not form part of the group of raiders and that he did not even know them until they found themselves together in jail, but that particular portion of his testimony can not be believed. It runs counter to the contents of his two affidavits (Exhibits U and V) which were admitted as rebuttal evidence without objection on the part of the defense. Besides, even a cursory examination of that portion of his testimony will readily show that it is evasive.

Moreover, the record shows that Major Santiago of the constabulary conducted a re-enactment of the crime in the very place of its commission, Usab having been featured prominently in said re-enactment. Voluntarily he showed to the investigators the manner in which the crime was committed, and several pictures of the re-enactment were taken, one of them showing Usab portraying the position of Gonzalin as the latter was aiming his gun at the deceased De Leon (Exhibit E), and another the position of Ubay likewise aiming a gun (Exhibit F), his own position when he was bringing a basket of ammunition on orders of Gonzalin (Exhibit G) and his position when overtaken by the police under a mango tree suffering from a gunshot wound (Exhibit I).

Upon all the foregoing, we are constrained to hold - as did the lower court - that the guilt of defendants Gonzalin and Ubay has been established beyond reasonable doubt. In the view we take of the case, we find it unnecessary to consider the other points raised by defendants in relation to the admissibility of Usab's affidavits (Exhibits U and V).

Wherefore, the decision of the trial court being in accordance with law and the evidence, the same is hereby affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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