

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MORO AMBAHANG, ET AL., DEFENDANTS. HANDAN AMID, INAMA
MORSAN, NICOLAS CARPIO ALIAS COLAS AMBAHANG MORO,
DEFENDANTS AND...**

G.R. No. L-12907. May 30, 1960

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PER CURIAM:

Moro Ambahang, Handan Amid (alias Rodolfo Enriquez), Inama Morsan, Nicolas Carpio (alias Colas), and Sabturani Caponol, were charged in the Court of First Instance of Zamboanga del Sur (in Crim. Case No. 723) with the crime of robbery in band with multiple murder and serious physical injuries. On arraignment, they pleaded not guilty. After trial, the court acquitted Sabturani Caponol, but convicted Moro Ambahang, Handan Amid, Inama Morsan, and Nicolas Carpio, of the crime charged, and sentenced each of them to suffer the penalty of death, to pay indemnity in the amount of P3,000.00 to the heirs of Tulawa Subano, Dandolit Subano, Dodong Subana (a woman), and Nanibong Subana (a girl 9 years old), and P1,000.00 to Subanos Alobad and Inontong, and Subanas Tuwawa, Tokling, and Felisa Juliana, and 1/5 of the costs.

The case is now before us for review, pursuant to the provisions of Section 9, Rule 118, of the Rules of Court.

The evidence clearly establish that at around 9 o'clock on the night of May 18, 1956, a group of Subanos, more than 20 in number including women and children, were gathered at the house of Inontong Subana, at Gogawanbugas, Ipil, Zamboanga del Sur, to discuss work (pintacasi) on the following day. While they were discussing, the accused Handan Amid, Inama Morsan, and Nicolas Carpio, suddenly appeared at the scene and asked for Tulawa Subano. The accused Moro Ambahang remained under the house. In answer to the query, Tulawa said: "Here I am". Thereupon, Handan Amid, who was armed with a Japanese rifle (Similar to Exh. A), fired at the former, hitting him at the breast and felling him. Handan Amid then fired at the group, hitting Dandolit Subano, Dodong Subana, Nanibong Subana, and others. The sudden and unexpected attack produced consternation and confusion among the group, who started to scamper and jump outside the house. The accused Inama Morsan and Nicolas Carpio, both armed with sharp bolos, called "barong" similar to (Exhs. B and C), slashed indiscriminately at the fleeing Subanos, wounding them severely. Moro Ambahang, who was under the house armed with a rifle (similar to Exh. D) fired at the fleeing Alobad Subano twice, hitting the latter on his lap. The accused Sabturani Caponol was some 50 meters away from the house. When Impos Subano, one of those who fled, passed by him (Sabturani) while running to the bushes to hide, the latter stood up and was about to chase the former.

As a consequence of the assault, 4 Subanos were killed, namely, Tulawa Subano, Dandolit Subano, Dodong Subana, and Nanibong Subana—all victims of the indiscriminate shooting by Handan Amid. The wounded victims, Tokling Subana, Felisa Subana, Tuwawa Subana, Inontong Subano, and Alobad Subano, suffered injuries as follows:

(1) Tokling Subana:

"Incised wound, back 7" long, 3 ½" wide and 1 ½" deep." (Exh. G.)

Treatment of the wound lasted more than 2 months.

(2) Felisa Subana:

"1. Incised wound, left shoulder, 4" long, 2 ½" wide, and 1 ½" deep.

"2. Incised wound, neck back, 6" long, 3 ½" wide, and 3" deep." (Exh. H.)

Treatment of the wounds lasted more than 1 ½ months.

(3) Tuwawa Subana:

"1. Gun Shot, right leg, thru and thru." (Exh. I.)

Treatment of the wound lasted nearly 1 month. But she sustained broken bones on the injured part, for which reason, the duration of the treatment was longer. Handaon Amid inflicted the wound.

(4) Inontong Subano:

"1. Incised wound, back, left, 6" long, 3 ½" wide, and 4 ½" deep.

"2. Punctured wound, back, ½" long, ¼" wide, and 1" deep." (Exh. J.)

Treatment of the wounds lasted from 25 to 30 days. Nicolas Carpio inflicted the wounds.

(5) Alobad Subano:

"1. Incised wound, left elbow, 4" long, 1 ½" wide, 2" deep.

"2. Incised wound, right arm, 6" long, 3" wide, and 2" deep.

"3. Incised wound, left back, 1" long, ½" wide, and 1" deep.

"4. Gun shot, left lap, thru and thru." (Exh. K.)

Treatment of the wounds lasted more than 2 months. He sustained broken bones in the elbows. Wounds were inflicted by Inama Morsan, Nicolas Carpio, and Moro Ambahang.

Impos Subano, an inmate of the house and one of those who fled that night by reason of the attack which took place, returned to the scene the following morning. He saw the dead and wounded victims. He discovered empty cartridge shells (Exhs. E, E-1, E-2, and E-3) and a live bullet (Exh. F) inside the house. He also found out that their clothes and things in the house were gone. Of his personal belongings, the following were missing: 1 piece of drill cloth for trousers, valued at P20.00; 1 white cloth (long piece) valued at P30.00; 1 turban worth P60.00; and 1 gong which was shot at, valued at P80.00—all totalling P190.00. He lost no time in informing the local authorities at Ipil about the incident. Starting early in the morning of the following day and running all the way along, he reached the municipal building of Ipil at noon of the same day. He met the Chief of Police of Ipil and related to him the incident. He was taken to the Justice of the Peace, who interrogated him about the robbery. Thereafter, he went back to Gogawanbugas to guide the police force that accompanied him to investigate the crime and to seize the culprits. The latter had, however, fled. The wounded were taken to the Zamboanga General Hospital for treatment.

Several weeks later, some of the accused including Sabturani Caponel were arrested. Moro Ambahang and Nicolas Carpio hid in a cave at Kamanga, Ipil. Guided by Sabturani Caponel, a combined Philippine Constabulary and police force headed by the Chief of Police, raided the hideout of said 2 accused in the afternoon. After a brief exchange of fire, Nicolas Carpio was captured with his rifle (Exh. A). Moro Ambahang was able to escape, but because of the police authorities' relentless pursuit, he finally surrendered to the PC, which confiscated from him a rifle (similar to Exh. D).

The appellants interposed alibi as their only defense as follows:

Handan Amid testified that he was in his house at Dalangin on the night of the incident, with his wife and father-in-law; that he had never gone to Gogawanbugas; and that he does not know the victims.

Inama Morsan declared that on the night in question, he was in his house at Lawagan and, therefore, could not have participated in the commission of the crime.

Nicolas Carpio stated that he was in his house at Labason on the night of the killing; that he knows the prosecution witnesses; and that they are his friends.

Moro Ambahang averred that he did not participate in the execution of the offense; that he was at Bacalan on the night of the incident; and that he does not know the victims.

The above testimonies of the appellants were not corroborated by any witness.

As a rule, alibi is a weak defense and cannot prevail over the positive testimony of truthful witnesses. The reason is that it is easy of fabrication. (People vs. Badilla, 48 Phil., 718; People vs. De Asis, 61 Phil., 384; People vs. Japitana, 77 Phil., 175.) Indeed, even in cases where proof of alibi is well-supported by the testimony of witnesses, it would not be credited, when the identity of the accused as the persons who committed the crime is fully established by clear, explicit, and positive testimony, as in the instant case. (U.S. vs. Pascua, 1 Phil., 631; U.S. vs. Hudieres, 27 Phil., 45.)

We find appellants' alibi in this case to be weak and uncorroborated. We agree with the lower court that "living as they did within the municipality of Ipil, it is not hard to conceive that they (accused) could be present in their respective houses on the same day, or even on the same night and within two hours appear at Gogawanbugas and

commit the dastardly act." Said alibi, therefore, deserves no serious consideration and must be disregarded.

The identities of the accused as the perpetrators of the crime were fully established by the clear, explicit and positive testimony of the prosecution witnesses. Nicolas Carpio was previously known to Alobad Subano because said accused used to go to Alobad's house and ate there. As for Handan Amid and Inama Morsari although they presented new faces to the group, yet because of the light furnished by 3 kerosene lamps inside the house, they were distinctly and positively recognized and identified by their victims. Thus, Alobad Subano, Tokling Subano, Tuwawa Subano, Inontong Subano and Impos Subano identified the appellants, Inama Morsan, Handan Amid, and Nicolas Carpio, as the trio who went up the house and attacked them treacherously and mercilessly. Moro Ambahang was fully identified by prosecution witnesses Impos Subano and Mariano Tulawe. The first testified that, although he did not know the name of Moro Ambahang before, he had met him prior to the incident in a place called Bantayan. So, during the commission of the crime, he recognized him by the light of the moon, as it was then moonlight night. Mariano Tulawe also declared that when he went down from his house which is near Inontong's house, to find out the cause of the commotion there, he saw Moro Ambahang at the stairs of said house, holding a rifle, and moments later, he again saw him (Moro Ambahang) in the act of shooting at Alobad. This testimony is also corroborated by Impos Subano's statement.

It is a matter of common experience that victims of violence strive to know the identity of their assailants. As aptly observed by the trial court, said victims were the subject of extraordinary pressure or stress, and the occurrence is consequently impressed on their minds like red-hot iron. Indeed, such a harrowing experience as that which the prosecution witnesses went through during that fateful night of May 18, 1956, must have seared into their memories as to enable said witnesses to point without hesitation, to the appellants as the perpetrators of the crime with which they have been charged.

There is absolutely no showing as to any possible motive on the part of the prosecution witnesses that could have impelled them to testify falsely against the appellants. We agree with the Solicitor General that being aware of the gravity of the crime charged and the severe penalty which may be meted out to the appellants, should they be convicted of the offense charged, said prosecution witnesses would have recoiled from pointing to the former as the malefactors, unless they were certain of the truth.

Appellants, however, contend that there was no proof of robbery in this case and, therefore, the application of Article 296 of the Revised Penal Code, by the trial court, is erroneous.

There is merit in the contention. In arriving at the conclusion that the appellants committed the robbery imputed to them, the trial court considered the lone uncorroborated testimony of Impos Subano that when he returned to the scene of the killing the following morning, he found their clothes and things in the house, including his personal belongings already gone. On the basis of his testimony, the court stated that "although he (Impos Subano) did not see who stole said things, it is presumed that the accused carried them away at night when everybody scampered for safety."

It will be observed that the conclusion of the trial court is predicated, not on substantial evidence, but purely on mere presumptions. This, in our opinion, is not sufficient to sustain a conviction of the crime charged. It has been held that when a person is charged with robbery, the intent to rob (which is intent of gain) must be proven. (U.S. vs. Villoriente, et al., 30 Phil., 59; People vs. Barruga, 61 Phil., 318). This necessarily includes evidence to the effect that the accused carried away the effects or personalty of the offended party. In the instant case, there is absence of proof that the appellants, on the night in question, did intend to rob the house of Inontong Subano. There is, likewise, total want of evidence that the appellants were the ones who carried away the things in said house.[1] In the absence of such evidence, we can not in conscience hold that the appellants had committed

robbery on the night in question.

Appellants, also, argue that there was no evidence of conspiracy to justify the imposition of the penalty on all of them, irrespective of the extent or nature of their individual participation in the commission of the crime.

There is no merit in the contention. It has been repeatedly held by this Court that direct proof is not essential to show conspiracy.[2] If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy may be inferred though no actual meeting among them to concert is proved. (*People vs. Carbonel*, 48 Phil., 868.) We agree with the trial court that "the mere fact that the appellants were together all armed, and almost simultaneously attacked the victims upon the firing of a shot by one of them aimed directly at Tulawa Subano, clearly indicates that unity of purpose which is an unmistakable sign of conspiracy." Conspiracy having been established, appellants are equally guilty of, and liable for, the crimes committed.

Accordingly, we find appellants guilty of the crime of murder (for the killing of the 4 Subanos), qualified by treachery, as the attack was sudden and unexpected.[3] In the victims who were unarmed, thereby insuring the execution of the crime without risk to appellants from the defense which said victims might have made; and serious physical injuries (for the wounding of the 5 Subanos). The aggravating circumstances of band and dwelling, attended the commission of both crimes.

Although the mitigating circumstance of lack of instruction may be considered in favor of the appellants who are unschooled, the same would not alter the result considering that 2 aggravating circumstances attended the commission of said crimes.

Pursuant to law[4] and the applicable jurisprudence,[5] we hereby impose upon each of the appellants four (4) penalties of death (for the murder of 4 victims) and five (5) penalties of prision correccional (for the serious physical injuries caused to 5 victims).

Modified as above indicated, the decision of the trial court is in all respects affirmed, with costs against the appellants. It is so ordered.

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

Reyes, J.B.L., J., on leave, took no part.

[1] Testimony of Impos Subane, pl. 55, t.s.n.:

"Q. So you did not see the accused when he left the house?

A. I did not see.

"Q. And you did not therefore see whether the accused carried with them the things you mentioned to this Court—the drill cloth, white cloth, turban, etc.?

"A. I did not see."

[2] *People vs. Calucer*, L-6460, May 7, 1954; *People vs. Alfiler*, 104 Phil., 410; 56 Off. Gaz. 936; *People vs. Gutierrez*, L-7101, June 30, 1956; *People vs. Moises*, L-10876, September 23, 1958.

[3] *People vs. Noble*, 77 Phil., 93; *People vs. Bandojo*, 70 Phil 486; *People vs. Dosal*, 92 Phil., 877; *People vs. Martinez*, L-12268, November 28, 1959.

[4] See Arts. 248 & 263(3), Rev. Penal Code.

[5] U.S. vs. Balaba, 37 Phil., 260; U.S. vs. Lahoylahoy, et al., 38 Phil., 330; People vs. Cho, et al., 45 Phil., 137.

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