

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MONGA GANI @ “COMDR. MONGA”; GUIABAR KINTUAN,
GENTEM KINTUAN, MAMA GANTO AND MAMA KASIM,
ACCUSED-APPELLANTS.**

G.R. Nos. 54181-82. October 15, 1985

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In the Court of First Instance of Cotabato, Branch VI, at Cotabato City, MONGA GANI, GENTEM KINTUAN, GUIABAR KINTUAN, MAMA GANTO and MAMA KASIM were accused of theft of large cattle said to have been committed on January 28, 1978. The case was docketed as Criminal Case No. 24. In the same court, the aforementioned persons were also accused of robbery in band with homicide and multiple attempted homicide said to have been committed also on January 28, 1978. The case was docketed as Criminal Case No. 25.

On November 21, 1978, the trial court issued the following order in Criminal Cases Nos. 24 and 25:

"When these cases were called for trial today, Fiscal Ismael G. Bagundang appeared for the state and manifested that he had submitted a motion for consolidation of criminal cases nos. 24 & 25, it appearing that these cases were committed on the same day, and attached to said motion is the amended information consolidating the two criminal cases. He also Manifested that in view of said motion he is moving for the dismissal of criminal case no. 24.

"On the other hand Atty. Mama P. Masukat appeared for the defense and interposed no objection to the motion for consolidation of criminal cases nos. 24 & 25 and the dismissal of criminal case no. 24, it being already included in criminal case no. 25.

"WHEREFORE, finding the said motion to be well taken and there being no objection on the part of the defense counsel, the motion for consolidation is hereby granted. Criminal case no. 24 is hereby ordered dismissed. x x x"

As a result of the above-quoted order the accused were tried pursuant to an amended information which reads as follows:

"Undersigned 1st Asst Provincial Fiscal accuses Monga Gani, Gentem Kintuan, Guiabar Kintuan, Mama Ganto and Mama Kasim of the crime of Robbery In Band with Homicide and Multiple Attempted Homicide committed as follows:

"That on or about January 28, 1978 in Barangay Lower Katidtuan, Municipality of Sultan Kudarat, Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in company with Kamidon Sawir, Kasim Sawir, Meto Tayoba, Namra Pasawiran and Panungiring Mama who are still at large, all armed with different assorted high-power guns conspiring, confederating and helping one another and without any justifiable cause, (did) then and there wilfully, unlawfully and feloniously and with intent of gain and with the use of force, violence and intimidation against person and force upon things, took,

and carried away the following personal properties: Cash amounting to P3,000.00; clothings valued at P240.00; 1 gold bracelet valued at P1,000.00; 1 piece of gold necklace valued at P500.00; 1 piece of gold button valued at P500.00; 2 sacks of clean rice valued at P190.00; 4 pieces of cooking pot valued at P120.00; 1 piece of eyeglass (Rayban) valued at P70.00; 1 belt valued at P60.00; 2 pairs of leather shoes valued at P260.00; 17 heads of live chickens valued at P170.00; 1 unit banca valued at P350.00 or a total amount of P17,460.00 Philippine Currency, to the damage and prejudice of the owners thereof in the aforesated amount of P17,460.00 Philippine Currency, 3 heads of female carabaos valued at P1,500.00 each or a total value of P4,500.00 Philippine Currency, belonging to Pablo Ugalingan to the damage and prejudice of the said Pablo Ugalingan in the aforesated amount of P4,500.00 Philippine Currency, and in pursuant to their conspiracy, did then and there wilfully, unlawfully and feloniously attack, assault and fire with their high-powered assorted guns the persons of Dindang Sultan, Pablo Ugalingan, Albano Ugalingan, Quezon Ugalingan and Shariff Ugalingan, hitting Dindang Sultan on the different parts of her body causing her instantaneous death but Pablo Ugalingan and Shariff Ugalingan were not hit because of the timely escape they did while the shooting took place thereby commencing the act of executing which will produce it by reasons or causes other than the spontaneous desistance of the perpetrators."

On November 21, 1978, Monga Gani, Gentem Kintuan, Mama Ganto and Mama Kasim were re-arraigned and each of them entered the plea of not guilty to the amended information. Guiabar Kintuan entered a similar plea on November 27, 1978.

On July 23, 1979, after the prosecution had presented its evidence, Guiabar Kintuan escaped from the Provincial Jail. Monga Gani, Gentem Kintuan and Mama Ganto also escaped together with other prisoners on January 30, 1980, after the presentation of the third witness for the defense. Only Mama Kasim was thus left during the rest of the trial which resulted in the following judgment:

"WHEREFORE, in view of the foregoing consideration, this Court finds the accused Monga Gani alias 'Comdr. Monga,' Guiabar Kintuan, Gentem Kintuan, Mama Ganto and Mama Kasim GUILTY beyond reasonable doubt of the Crime of Robbery in Band with Homicide as defined and penalized under Article 294 of the Revised Penal Code in relation to Article 296 of the same code. Considering that the crime was committed by an armed band (Article 14 (6) with a well synchronized plan to pursue a common objective (Article 14 (13) and the accused having been previously convicted by final judgment of the crime of Robbery in Band (Article 14 (9) without being offset by any mitigating circumstance, this Court sentences the accused MONGA GANI alias "COMDR. MONGA", GENTEM KINTUAN, GUIABAR KINTUAN, MAMA GANTO and MAMA KASIM to suffer the extreme penalty of DEATH and to indemnify jointly and severally the heirs of the deceased Dindang Sultan in the amount of P12,000.00 and another P17,460.00 representing the value of the property taken, with no subsidiary imprisonment in case of insolvency and to pay the cost."

Counsel for the appellants has not raised the legality of the judgment against the accused who escaped during the trial but to set this matter at rest We quote the last sentence of Art. IV, Sec. 19 of the Constitution as follows: "x x x after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

The People's version of the incident is as follows:

"The incident subject matter of this case happened at Barangay Lower Katiduan, Municipality of Sultan Kudarat, Province of Maguindanao.

"At about 7:00 a.m. on January 28, 1978, Dindang Sultan and her three (3) sons, Pablo, Quezon and Shariff, all surnamed Ugalingan, were walking on a dike at their rice farm. While thus occupied, they saw two (2) groups of men with long fire arms and numbering more than twenty (20) in all.

"One group was about fifty (50) meters away and included appellants Monga Gani alias 'Cmdr. Monga',

Guiabar Kintuan, Mama Ganto, Gentem Kintuan, and Mama Kasim. The other group was about sixty (60) meters away and included Kamidon Sawir, Meto Tayuba, Kasim Sawir, Namra Pasawiran and Panungiring Mama who were not apprehended even after the incident.

"Without speaking a word to Dindang Sultan and her three (3) sons, the two (2) groups of armed men fired at them, hitting Dindang Sultan, at which she fell to the ground. The three (3) brothers retreated, Quezon and Shariff ahead of Pablo who hid amid rice stalks on a dike about forty (40) meters from the spot where they had been fired upon. From there, he (Pablo) saw the armed men approach his fallen mother, firing at her from a distance of five (5) meters. On their part, Quezon and Shariff, upon reaching a place where there were tall grasses, stopped and observed the armed men as they continued firing at their mother.

"Fearing that the armed men might find them momentarily, the three (3) brothers continued their escape. Upon reaching their houses they saw their families already in flight and thus spent the day at the house of their uncle, who was the Barangay Captain of Lower Katidtuan.

"The following day, January 29, 1978, Pablo, Quezon and Shariff returned to the place where they had been attacked. There they found the body of their mother, Dindang Sultan, floating on the water. She had more than ten (10) gunshot wounds on her body and a hack wound on her right thigh. She was further found to have been divested of the P3,000.00 cash she was then carrying and a gold button valued at P500. 00.

"Pursuant to Muslim custom, her body was given the holy bath (i. e., it was cleaned), prayers were said for her inside a mosque, and she was buried on the same day, January 29, 1978.

"Upon returning to their homes, the Ugalingan family found the following as missing therefrom:

ARTICLE

VALUE

(a) one (1) Mobil gas stove.

P 200.00

(b) One (1) Petromax lamp.

200.00

(c) one (1) suitcase of clothing.

4,000.00

(d) Three (3) heads, carabao.

4,000.00

(e) Sacks of rice

100.00

(f) Two (2) pairs, shoes.

260.00

(g) One (1) Rayban sunglasses.

60.00

(h) One (1) belt.

60.00

(i) seventeen (17) heads, chicken.. . . .

170.00

(j) Fifty (50) sacks, palay.

2,000.00

(k) One (1) banca.

350.00

(l) Four (4) pieces, pots.

40.00

(m) One (1) gold bracelet.

1,000.00

(n) One (1) necklace

500.00

TOTAL.....

P13,440.00

0

the value of all of which when added to the value of the gold button and the P3,000.00 cash taken from the body of Dindang Sultan, would give a total of P16,940.00.

"On February 3, 1978, Pablo Ugalingan rendered a sworn statement (Exhibit 1; Rec., pp. 4-6), and Quezon and Shariff a joint affidavit (Rec., pp. 7-8) in which they identified appellants herein as among those who fired on them and their mother on January 28, 1978, and took away the abovestated articles (tsn., pp. 3-27, November 27, 1978; 2-20, January 19, 1979; 2-8 April 19, 1979)." (Brief, pp. 5-8.)

Counsel for the appellants has made the following assignment of errors:

"I

THE LOWER COURT ERRED IN CONVICTING THE ACCUSED BASED ON THE BIASED, UNRELIABLE AND INCONSISTENT TESTIMONIES OF PABLO UGALINGAN AND SHARIFF UGALINGAN.

"II

THE LOWER COURT ERRED IN TOTALLY DISREGARDING THE TESTIMONIES OF THE DEFENSE WITNESSES.

"III

THE LOWER COURT ERRED IN CONSIDERING THE ESCAPE OF THE OTHER ACCUSED AS INDICATIVE OF THEIR GUILT ESPECIALLY AGAINST MAMA KASIM WHO REMAINS IN CUSTODY."

Pablo Ugalingan, a 30-year old farmer, testified that at about 7:00 o'clock in the morning of January 28, 1978, he was with his mother Dindang and his brothers Shariff and Quezon in their farm at Sultan Kudarat, Maguindanao. While they were working, they saw a group of more than twenty (20) armed men at a distance of about fifty (50) meters. He recognized among the group the following: Monga Gani alias "Comdr. Monga", Guiabar. Kintuan, Mama Ganto, Gentem Kintuan, Mama Kasim, Kamidon Sawir, Meto Tayoba, Kasim Sawir, Namra Pasawiran and Panungiring Mama. He said that Monga Gani alias "Comdr. Mona", Guiabar Kintuan, Mama Kasim, Gentem Kintuan and Mama Ganto, had long firearms. The group suddenly fired upon his family so that he sought cover in a dike. However, his mother screamed and said: "I am hit Pablo." He fled with Shariff and Quezon. The next day they returned to the place where their mother had been shot. She was dead with several gunshot and a stab wound. They brought their mother to the house of a relative and when they returned home they discovered that their belonging consisting of a Mobil gas stove worth P200.00, a Petromax lamp worth P200.00, one (1) maleta of clothing worth P4,000.00, three (3) heads of female carabaos registered in the name of his brother Albano Ugalingan worth P1,500.00 each, a sack of rice worth P100.00, two (2) pairs of shoes worth P130.00, Rayban sunglasses worth P60.00, seventeen (17) live chickens at P10.00 each worth P170.00, fifty (50) sacks of palay, one (1) banca worth P350.00 and many others had been taken. His family had no misunderstanding with the members of the group. Prior to January 28, 1978, he had see Monga Gani and his companions riding in a truck

fully armed near the municipal building in Sultan Kudarat.

Shariff Ugalingan, a 28-year old farmer testified that on January 28, 1972, at 7:00 o'clock in the morning he was working in their farm in Sultan Kudarat together with his mother Dindang Sultan and two brothers, Pablo and Quezon. While working in the farm they saw a group of more than twenty (20) men armed with long firearms at a distance of about 50 meters. He recognized the following: Monga Gani alias "Comdr. Monga", Mama Kasim, Gentem Kintuan, Guiabar Kintuan, Mama Ganto, Kamidon Sawir alias "Kido", Guialal Sawir, Meto Tayoba, Kasim Sawir, Namra Pasawiran, Panungiring Mama and many others. The group of armed men fired at them almost simultaneously. When he dropped to the ground, he heard his mother shout that she was hit. He left the place with Pablo and Quezon because they were afraid. The next day they returned to the place where their mother had been shot. She was dead with several gunshot and a hack wound on her thigh. They brought their mother to the house of their relative and then returned to their respective residence, where he discovered that their personal belongings consisting of one (1) Gasul stove worth P200.00, a pair of shoes worth P60.00, two (2) sacks of rice worth P200.00, one (1) big maleta full of clothes worth P4,000.00, fifty (50) sacks of palay worth P2,000.00, three (3) heads of male carabaoes owned by him, Quezon and Pablo worth P1,500 each, cash money amounting to P3,000.00 belonging to his mother, a gold bracelet worth P1,000.00, a gold button worth P500.00, a gold necklace worth P500.00 and others had been taken. He knew Monga Gani alias "Comdr. Monga" since childhood being a resident of Ibotegen, Sultan Kudarat, Maguindanao and he has no personal grudge with the group of Monga Gani.

Counsel for the appellants claim that Pablo and Shariff Ugalingan were biased witnesses because they were children of Dindang Sultan who was killed. It is sufficient to state that such fact does not preclude objective testimony especially when there is no evidence, as in the case at bar, which would indicate previous animosity between the witnesses and the accused. In fact, Monga Gani testified that neither he nor his companions had any misunderstanding with the Ugalingan family. Gentem Kintuan, who was Dindang Sultan's blood relative, testified to the same effect.

Counsel for the appellants wonders why only the two brothers testified on the incident despite the fact that it "was within hearing distance of the neighborhood." That only two witnesses testified directly on the incident is not unusual for sometimes no witnesses are at all available to give direct evidence which is why circumstantial evidence has to be resorted to. At any rate, it is not for the appellants to say how many witnesses the prosecution should have presented. If the appellants believed that there were witnesses who could contradict the two brothers they should have presented them. But they never did — which only goes to show that the two brothers were telling the truth.

Counsel for the appellants also asserts that the evidence given by Pablo and Shariff is inconsistent and confused. He points to several discrepancies between what they said in their affidavits and their testimony in court. There are indeed discrepancies but the Solicitor General correctly states:

"In refutation, it should be stressed that Pablo and Shariff Ugalingan are simple farmers. They merely affixed their thumbmarks to their statements, showing that they had a very limited educational attainment, if they had studied at all. Pablo testified that he was despondent at the time his statement was made. For a fuller understanding of his mental and emotional condition at that time, his testimony on the point is reproduced thus:

'Q Which is the truth now, the one you said in your affidavit before the Office of the Police Force of Sultan Kudarat, Maguindanao, or the one you have testified to in the direct examination?

A The truth is the one I testified today, sir.

Q In other words Mr. Ugalingan what you have testified to and sworn in your affidavit before the Office of the Station Commander of Sultan Kudarat, Maguindanao on February 3, 1978 were all false?

A Some are true and some are not. At the time when I gave my statement before the Office of the Station Commander, I was afraid because these people were not yet apprehended, they were armed and were at large.

Q Now, which of your answers made in Exhibits "1", "1-A" and "1-B" are not true?

FISCAL BAGUNDANG:

If your Honor, please the witness has testified that he cannot read and write and as such he has no way to determine which of the questions referred to by counsel for the defense.

COURT:

When you were investigated before the Office of the Chief of Police of Sultan Kudarat, Maguindanao on February 5, 1978, was that statement reduced in writing, interpreted to you in Maguindanao dialect understood by you?

A Yes, sir, it was interpreted to me.

COURT:

Q And you understood all the contents of the statement you gave before the Chief of Police or Station Commander of Sultan Kudarat, Maguindanao?

A I understood some and not some because I was discouraged because of the death of my mother.

COURT:

Q Why were you discouraged?

A Because of the death of my mother.

COURT:

You want to impress upon this Court that you did not understand the contents of your affidavit before the Chief of Police of Sultan Kudarat, Maguindanao?

A I understand some and not some.

COURT:

Q Yet spite of that limited understanding of the contents of your affidavit, you still affixed your thumbmark before the Station Commander of Sultan Kudarat, Maguindanao?

A I signed, sir, because I cannot understand.' (tsn., pp. 21-22, November 27, 1978).

"In this light, it is not surprising that inconsistencies in the statements of the Ugalingan brothers and their testimonies occurred. Besides the incompleteness and lack of accuracy of affidavits are well-known (*People vs. Cabeltes*, L-38145-48, June 29, 1979). As long as the affidavits and the testimonies agree or are consistent on the principal details of the crime, although divergent on minor details, the affidavits cannot be used to impugn the credibility of the testimonies of the witnesses (*People vs. Mori*, L-23511, January 21, 1974)." (Brief, pp. 9-12)

The convergent details in the affidavits and testimonial evidence of Pablo and Shariff are: that groups of armed men which included the appellants fired some members of the Ugalingan family; that their mother was wounded in different parts of the body and died as a result; and that the armed men took different kinds of personal properties with a total value of P16,940.00.

The defense of the appellants is alibi which explains their second assignment of error, namely: that "the lower court erred in totally disregarding the testimonies of the defense witnesses."

Monga Gani, one of the accused and a "balikbayan" (former rebel) testified that at about 7:00 a.m. on January 28, 1978, he left his house in barrio Ibotegen for his farm in sitio Basak. Before leaving his house he saw Gentem Kintuan (his co-accused) and Guiabar Kintuan (another co-accused) in their respective houses. When he returned to his house at about 11:00 a.m., he again saw Gentem but not Guiabar. With respect to Mama Ganto and Mama Kasim (both also co-accused), they lived in barrio Basak which is about a kilometer away from his house. He did not see Kasim and Ganto in the morning of January 28, 1978. He did not know Kamidon Sawir although he had heard of his name. Neither did he know Kasim Sawir, Meto Toyoba and Panungiring Mama. He knew Namra Pasawiran but did not see him on January 28, 1978, or prior thereto. The last time he was in barrio Lower Katidtuan was in 1977 when one of his companions was killed in Pigkalagan. Lower Katidtuan is about 3 or 4 kilometers from Ibotegen and can be reached in 1 hour by hiking. He also said that Mama Kasim and Mama Ganto are both "balikbayans" with firearms given by the military; that he had a carbine while Guiabar Kintuan and Gentem Kintuan had Garand rifles.

Gentem Kintuan testified that on January 28, 1978, at about 7:00 a.m. he went to his farm in barrio Ibotegen. Before leaving for his farm he saw Monga Gani and Guiabar Kintuan. When he returned from his farm he again saw Monga Gani and in the afternoon of the same day he again saw Monga Gani and Guiabar Kintuan tying their carabaos. He did not know Kamidon Sawir and Kasim Sawir but he knew Namra Pasawiran who was a fellow "balikbayan."

Abdila Anta a resident of barrio Ibotegen testified seeing in that barrio in the morning of January 28, 1978, Monga Gani, Gentem Kintuan, Guiabar Kintuan, and Mama Ganto.

Mama Kasim testified that he resided in Basak, Sultan Kudarat. After becoming a "balikbayan" he never went to Lower Katiduan and in the early morning of January 28, 1978, he went to his farm and saw Abdila Anta going to the market. Later he and Abdila talked about the gunshots which they heard coming from the direction of the Pulangi river which was about 4 kilometers away. That morning he did not see Monga Gani, Gentem Kintuan, Guiabar Kintuan and Mama Ganto.

We have no reason to sustain the second assignment of error which raises the issue of credibility. Trial courts are in a better position than appellate courts in determining the credibility of witnesses for reasons too well-known to re-state here. In the case at bar there is nothing in the record which would justify disturbing the findings of the trial court. It has not been shown that the lower court overlooked some significant fact or circumstance which would justify our intervention. Hence the defense of alibi must fail not only because the appellants had been positively identified as among the perpetrators of the crime but also because it was not physically impossible for them to commit it. For as Judge Gamba D. Rasul states in his comprehensive and well-written decision:

"x x x The rule on alibi is that it must be satisfactorily proven that the accused must be somewhere else when the crime was committed and that it is physically impossible for them to have been in the scene of the crime at the time of its commission. In this particular case the residences of Monga Gani alias 'Comdr. Monga', Guiabar Kintuan and Gentem Kintuan are situated in the barrio of Ibotegen, more or less three (3) to four (4) kilometers away from barrio Lower Katiduan, the place of the commission of the offense charged. According to the accused, from barrio Ibotegen to Lower Katiduan where the incident took place can be negotiated by more or less one and a half (1 ½) hours by walking and also by the use of small banca passing through a small creek (TSN: Monga Gani alias 'Comdr. Monga', p. 11). Considering the distance, the proximity of the places of residences of the accused to the scene of the crime does not preclude the possibility that they were at the place of the crime at the time when it was committed. In the case of (People versus Manangan, 59 SCRA 31) the Supreme Court held:

'Defense of alibi cannot be believed where distance of two (2) barrios is only eight (8) kilometers and can be traversed by walking in one and a half hour.'

The defense therefore of the accused Monga Gani alias 'Comdr. Monga', Gentem Kintuan, Guiabar Kintuan, Mama Ganto and Mama Kasim that in the morning of January 28, 1978, they went to their respective farms situated at barrio Ibotegen and Basak both in the Municipality of Sultan Kudarat, Maguindanao is too weak to prevail over their positive identification by the prosecution witnesses as the author of the crime (People versus Ismael, 37 SCRA 601, People versus Amit 37 SCRA 793 and other similar cases) charged against them when they together with the group of Kamidon Sawir alias 'Kido' almost simultaneously fired at the same time toward their victims which resulted in the killing of their mother Dindang Sultan."

The last assignment of error is to the effect that "the lower court erred in considering the escape of the other accused as indicative of their guilt especially against Mama Kasim who remains in custody."

The statement of the trial court is as follows:

"It is important to emphasize here that the accused Guiabar Kintuan escaped from the custody of the Provincial

Jail on July 23, 1979 after the prosecution rested the case of the state, and accused Monga Gani alias 'Comdr. Monga', Gentem Kintuan and Mama Ganto were among those who staged a mass escape on January 30, 1980 just after the presentation of the third witness of the defense, Abdila Anta. The only accused in custody is Mama Kasim. The act of the accused in escaping from the custody of the law during the progress of the trial of the case against them is indicative of their guilt. (People vs. Pajenado, GR No. L-26458, January 30, 1976; People vs. Charles Mondejar, No. 03414-CR, November 27, 1965; U.S. vs. Sarikala, 37 Phil. 486; U.S. vs. Virrey, 37 Phil. 618; People vs. Manalo and Atienza, 46 Phil. 572; People vs. Wilson, et al., 52 Phil. 907; People vs. Gucor, 47 O.G. 1621; People vs. Basco L-11485, July 4, 1958; People vs. Montejo, et al. No. L-14595, May 31, 1960)." (Last sentence underscored)

It is clear that the rule which considers flight as an indication of guilt was applied by the trial court only to the four accused who had escaped. As to Mama Kasim his guilt had been proved by the testimony of Pablo and Shariff Ugalingan which also proved the guilt of the four who escaped.

WHEREFORE, the appealed judgment is affirmed with the modification that for lack of necessary votes, each of the accused shall suffer the penalty of reclusion perpetua and the indemnity increased to P30,000.00

SO ORDERED.

Makasiar, C.J., Teehankee, Aquino, Concepcion, Jr., Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., De la Fuente, Cuevas, Alampay, and Patajo, JJ., concur.

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