

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. ASTERIO VALERA, DEFENDANT AND APPELLANT.

G.R. No. L-20286. October 29, 1965

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Asterio Valera, together with Domingo Bodaño and Zacarias Molina, was charged with attempted robbery with murder in an information filed before the Court of First Instance of Abra. After the prosecution had rested its case, on motion of special counsel of the government, the trial court quashed the charge against Domingo Bodaño and Zacarias Molina for insufficiency of evidence. Thereupon, the hearing of the case proceeded against Asterio Valera.

After trial, the lower court found Valera guilty as charged sentencing him to suffer the penalty of reclusion perpetua, as well as to indemnify the heirs of the deceased in the sum of P6,000.00, without subsidiary imprisonment in case of insolvency considering the nature of the principal penalty imposed. Valera interposed the present appeal.

In the morning of April 13, 1960, at about eleven o'clock, while Bernardino Sumalnap, with two companions, were standing in front of the public market of Bangued, Abra, near a ricemill, they were approached by teenagers Domingo Bodaño and Zacarias Molina who then and there introduced themselves to them. Shortly thereafter, the teenagers left, but returned immediately afterwards in the company of Asterio Valera who, without much ado, approached Sumalnap and suddenly stabbed the latter several times on the breast with a knife. As a result of this treacherous attack, Sumalnap dropped the two bags which he was holding in both hands and tried to go after his assailant, but hardly had he run some 10 meters when he stumbled and fell to the ground. A bystander, Delfin Bersamina, lost no time in succoring him and having him brought to a hospital. Afterwards, Bersamina went to the house of Sumalnap to inform his family of his fatal stabbing.

Sumalnap died soon after he arrived at the hospital. His body was later brought to the Abra Provincial Hospital where it was subjected to an autopsy by Resident Physician Dr. Leo L. Trinidad. He found the presence of abrasions on the nose, forehead and left face, and a serious wound on the left chest. In his opinion, he died of shock due to hemorrhage caused by internal and external wounds.

Explaining his whereabouts on the date in question, April 13, 1960, appellant testified: At about six o'clock in the morning he was in his house busy preparing for his trip to Balaoan, La Union, in the company of a person called Aning. He proceeded to the provincial capitol where his mother was employed to ask for money to buy gasoline for the jeep he was going to ride on for his trip. At about 10:30 of the same morning, he and Aning proceeded to Balaoan but while passing the town of Narvacan at noon he sideswiped a calesa. A policeman came and asked for his driver's license. Because of his failure to produce the same the policeman apprehended him and brought him to the municipal building, thus prompting him to ask his companion to go back to Bangued to get his driver's license. His companion went back to Bangued but he was only able to return at three o'clock in the afternoon. Showing

this to the policeman appellant was released, but instead of proceeding to Balaoan as originally planned, he decided to return to Bangued arriving there at about 6:00 o'clock in the afternoon.

Appellant's alibi was corroborated by his mother Isidra Valera and Sergeant Basiliso F. Anies who identified in court the police blotter showing an entry stating that appellant was apprehended by him at about noon of April 13, 1960. Appellant also intimated that he was implicated in this case because of certain machinations of Mayor Aznar of San Quintin, Abra, who tried to extort from him the sum of P1,000.00. He denied having threatened prosecution witness Julio Tumbaga not to testify against him.

As may be noted, the outcome of this case hinges solely on a matter of credibility. The court & quo was careful in evaluating the evidence presented both by the prosecution as well as by the defense, and after a careful analysis of such evidence it reached the conclusion that the guilt of appellant was established beyond reasonable doubt. Indeed, it found the defense of alibi put up by appellant so weak that it cannot impair and much less prevail over the positive testimony of the prosecution witnesses who identified him as the very person who killed the deceased at noon of April 13, 1960. The trial court not only quoted carefully and minutely the declarations of each and every prosecution witness but Weighed them painstakingly to determine their consistency and credibility. It found said declarations not only congruous and consistent but credible and straight forward.

Apparently, the alibi put up by appellant to the effect that on the very occasion the incident had allegedly taken place he was in Narvacan, Ilocos Sur, where he was apprehended by a policeman for his failure to produce his driver's license and as a result he was there confined for a while, seems to be credible, for the same appears bolstered by the police blotter which police Sergeant Anies brought to the court showing that he was indeed apprehended in said municipality at about noon of April 13, 1960. This circumstance, however, is easily dispelled, taking into account the many circumstances that were discovered by the trial court which made it reach the inevitable conclusion that said police blotter was falsified. We do not need to restate here the aforementioned circumstances for they appear extensively quoted on pages 138 of the brief of the government. A perusal of said circumstances would lead to no other conclusion than that the police blotter was concocted to suit the purpose of the defense.

The testimony of appellant's mother cannot also stand close scrutiny. She claims that she went to Narvacan, Ilocos Sur in the month of April after the arrest of her son to ascertain the contents of the police blotter of said town, but she simply contended herself with gazing at said police blotter. It never occurred to her to obtain a copy thereof until a few days before the trial of the instant case. She also admitted having offered P100.00 to Julio Tumbaga so that the latter may refrain from testifying against her son although she stoutly maintained that she was positive of his innocence. If her claim is true that her son is innocent the offer of P100.00 to Julio Tumbaga would indeed appear to be superfluous. This earnestness of Isidra to get the acquittal of the accused can only be explained by her relationship to him who is her own son. She would do anything to save him from the predicament he then found himself.

Another circumstance that is intriguing is the appearance at the scene of one named Aning who allegedly was the companion of appellant in his trip to Balaoan, La Union, and who also allegedly was the one who returned to Bangued, Abra to get appellant's driver's license to save him from confinement, for such person Aning appears to be mysterious in the sense that notwithstanding the time he and appellant had been acquainted the latter was not even able to reveal his true or correct name. The following observation of the Solicitor General is very revealing:

"Besides, it is incredible that the appellant who only enjoyed a slight acquaintanceship with said 'Aning and had never been out with him before, would particularly seek him out as his companion to the trip to Balaoan, La Union, on that fateful date of April 13, 1960 - the very same day when Bernardino Samalnap was brutally killed in Bangued, Abra (pp. 208-210, t.s.n., Mabutas). Furthermore, appellant's testimony on this point is

replete with inconsistencies. At one point he said that he first came to know Aning 'during the time when we were engaged in tobacco business in 1959' (p. 195, t. s. n., Mabutas), only to change it later by saying that he cannot remember the number of weeks or months that they had known each other (p. 209, t.s.n., Mabutas), and to ultimately change it later by stating that he only came to know 'Aning' on that same morning of April 13, 1960 (p. 210, t.s.n., Mabutas)."

We also do not find tenable appellant's claim that the lower court denied him due process simply because it recalled to the witness stand Julio Tumbaga after he had originally testified, and called to testify one Delfin Bersamina even if his name does not appear in the list submitted by the fiscal at the preliminary investigation. The power of the court to recall a witness to clarify certain matters covered by his original testimony or testify on other material points is discretionary, it being allowed to promote the ends of justice. As to the power of the court to call on a witness whose name does not appear in the list of the fiscal, the rule is well-settled that unless the omission of said witness is intentional and tainted with bad faith, the right of the court to call on him cannot be disputed. This is also allowed in the interest of justice.

It appearing that the conviction of appellant is supported by sufficient evidence and the penalty imposed on him is in accordance with law, the decision of the trial court should be affirmed, as we hereby do, with costs against appellant.

Bengzon, C. J., Concepcion, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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