

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME RAMOS Y DELUSONG ALIAS “BOYING ALIMANGO” ALIAS “BOY” ALIAS “BOYING” ALIAS “ALIMANGO,” DEFENDANT-APPELLANT.

G.R. No. L-30420. September 22, 1971

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

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

Appeal from a decision of the Circuit Criminal Court of Manila in its Criminal Case No. CCC-VI-41, finding the defendant guilty beyond reasonable doubt of the crime of murder. The dispositive portion of the decision follows:

"WHEREFORE, accused is hereby found guilty beyond reasonable doubt as principal of the crime of murder qualified by treachery, and there being no modifying circumstance to consider, sentences him to reclusion perpetua, to indemnify the heirs of the deceased Rogelio Dumasig the sum of P12,000.00 for the death of the latter, P300.00 actual damages representing the funeral expenses and P5,000.00 by way of moral damages, and to pay the costs.

The information which charges Jaime Ramos Y Delusong, alias "Boying Alimango" alias "'Boy" alias "Boying" alias "Alimango" of the crime of murder, recites:

"That on or about the 15th day of June, 1968, in the City of Manila, Philippines, the said accused, with evident premeditation and treachery, did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon one Rogelio Dumasig by then and there stabbing the latter with a sharp pointed instrument on the abdomen, inflicting upon him a mortal wound which was the direct and immediate cause of his death thereafter."

The prosecution presented Bibiana Baclit, 68 years old, as lone witness to the stabbing incident. She testified that she was looking for the victim, Rogelio Dumasig (nicknamed Elio) at about 9 in the evening of 15 June 1968 to talk to him about the delivery of stones to her. She found him in a restaurant near the corner of Campa and Moriones streets, Tondo, and called for him. While they were talking in front of the restaurant, one "Boying," whom the witness pointed to in court as the accused, approached from behind Elio and immediately stabbed the latter when he reached Elio's front with what looked like a kitchen knife. There were several persons during the stabbing, one of whom was Lydia Brinzon.

The victim was taken to Mary Johnston Hospital by a neighbor, Milagros Rios. He was later transferred to Jose Reyes Memorial Hospital where he was operated on immediately after arrival. The victim, however, expired the following day, 16 June 1968 at 9 in the morning.[1]

The Postmortem Certificate of Death signed by Camilo B. Casaclang, medical examiner of the Manila Police Department (MPD for short) who performed the autopsy, shows that the victim died of "profuse exanguinating (sic) hemorrhage shock due to a stab wound located in the anterior abdominal wall just above the umbilicus directed from front to back, slightly upwards laterally to the right; pierced through and through the right liver

lobe, including the gall bladder (fatal)."[2] The wound's point of entry is 4 centimeters by 2 centimeters and has a depth of 14 centimeters.[3] The victim was identified by his sister, Flora Dumasig, before he was autopsied by Dr. Casaclang.

Patrolman Mariano Custodia of the MPD who was assigned to investigate the case was presented to identify the reports submitted by him relative to the investigation thereof,[4] including that of Cpl. B. de Leos of precinct 3 who originally handled the case.[5]

The victim's sister, Flora Dumasig, was likewise presented mainly to prove that the deceased was in the business of delivering stones during his lifetime; that he was earning P8.00 or P9.00 daily; and that she spent more than P300.00 for his interment.

The defense, on the other hand, claims that the accused was not at the scene of the crime but was making aquaria at Ramos Pet Shop, Cartimar Market, Pasay City, from 8 a.m. to 12 midnight on 15 June 1968. The accused himself disclaimed knowledge of the stabbing incident, stating that he knew of the same only when he was arrested on 10 or 11 August 1968. Dario Imutan was presented to corroborate him, but the court a quo dispensed with his testimony as being merely corroborative.

The defense also presented Lydia Brinzon, who was earlier identified by prosecution witness Bibiana Baclit as one of those present at the scene of the stabbing. She denied having seen Bibiana Baclit at the said place. She said that she was at the corner of Campa and Moriones streets at 9 in the evening of 15 June 1968 because she was waiting for her nephew. She was standing there when she saw the victim come out of the Señorita Ice Cream Parlor eating ice cream. They talked and then Rogelio Dumasig proceeded home. She did not go with him.

About eleven (11) meters from where she was standing, she saw the victim and a man grab each other. This man was about 15 meters away, walking on Campa street when she first noticed him.

After the men grabbed each other, a young girl who was near them shouted, "Ay, sinaksak ang mama!" (Ay, the man was stabbed!) The assailant then pulled out the weapon and walked past her towards the traffic island of Moriones street and the grandstand (glorieta), while Rogelio Dumasig put his hand in his stomach and ran. Witness further stated that she saw a shiny, bladed weapon when the assailant passed by. The man tucked this at his waistline upon reaching the island. She had a good look at his face and she could recognize him if she saw him again. The assailant was not in the courtroom and he was not the accused, Jaime Ramos.

Aside from the young girl who shouted, there were Mike Lopez, Cesar Romero and an unidentified man at the scene of the stabbing, none of whom were presented to testify. Witness Brinzon admitted that she is a friend of the accused, although they are not related. Mike Lopez' testimony was dispensed with by the court a quo when it was manifested that he would corroborate Lydia Brinzon.

There was no dispute as regards the death of Rogelio Dumasig as a result of the stabbing. The sole issue, therefore, was who stabbed him.

The court a quo was of the firm belief that the accused was the one who stabbed Rogelio Dumasig suddenly and without any warning. It found prosecution witness Bibiana's testimony as "natural, logical, straightforward and probable." [6] It was on the basis of her testimony that the court convicted the accused. The court a quo, on the other hand, was unimpressed by defense witness Lydia Brinzon's testimony which it described as lacking in that "naturalness and spontaneity which inspires belief." [7]

Our own review of the evidence, however, is convincing that the state failed to establish the guilt of the accused beyond reasonable doubt. The lone witness for the prosecution, Bibiana Baclit, is not only contradicted by defense

witness Lydia Brinzon, but the former's testimony in court as to the manner in which the murder was committed is seriously infirmed by the varying descriptions given by her at the fiscal's investigation. According to the transcripts, Baclit gave no less than three versions of how Dumasig was killed. Early in the investigation she asserted that the deceased was stabbed twice in opposite directions (Exhibit "Ia", C.F.I. Record, page 67) from right to left and vice versa. Later this witness claimed before the investigator that the accused first took hold of his victim with the left hand and stabbed him with a knife held in his right hand (Exhibit "H", C.F.I., Record, page 89). Finally in court she declared that the appellant stabbed Dumasig once, after coming from behind the victim, but made no mention of holding the latter at all.[8] These variations can not but adversely affect Baclit's credibility.

The trial court rejected the testimony of defense witness Brinzon, on the ground that it lacked naturalness and spontaneity and was negative in character. We fail to discern any unnatural features in Brinzon's version that after witnessing the stabbing of Dumasig the killer passed her by and she had a good look at his face, and he was not the accused. Contrary to the trial court's view, We hold that Brinzon's testimony was positive and not negative in character. As pointed out by Francisco (Comment on Rule 133, page 1125), quoting 32 C.J.S., 1079-1081:

"A distinction must be made between testimony which is negative in form and that which is negative in character so testimony may be positive in character even though it amounts to a negative statement or tends to show a negative situation, and if a witness who was in a position to observe testifies not merely that he did not see or hear, but that the event did not occur, this is clearly positive testimony."

Considering that Brinzon's presence at the locus criminis was admitted by prosecution's sole witness Baclit; that the latter is without corroborative support and that there is nothing to contradict appellant's own sworn assertion that he was at Cartimar Market in Pasay City, from morning to midnight on 15 June 1968, while Dumasig was killed in Tondo early in that evening, We are of the opinion that on the meager evidence on record herein accused-appellant is entitled to acquittal.

WHEREFORE, the guilt of the appellant Jaime Ramos y Delusong not having been proved beyond reasonable doubt, he is acquitted and ordered discharged from custody, and his bond cancelled. Costs de oficio.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Makasiar, J., did not take part.

[1] See Exhibit "A".

[2] Exhibit "H", dated 16 June 1968.

[3] Exhibit "G-1".

[4] Exhibits "B" and "C".

[5] Exhibit "A".

[6] See Decision, Appendix to Brief for Defendant-Appellant, page VI.

[7] See Appendix, *supra*, page VII.

[8] T.s.n., page 6, Session of 14 January 1969.

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