

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. KIMMAYONG BALLUGAN, DEFENDANT-APPELLANT.

G.R. No. L-8267. July 30, 1955

Ponente: BENGZON, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } .style1 {color: #FF0000}

After the corresponding trial in the court of first instance of Ifugao, Mountain Province, Kimmayong Ballugan, age 48, was found guilty of having murdered Dumangeng Pulpog. Accordingly he was sentenced to imprisoned not less than 12 years and on day nor more than twenty years, with accessories, to indemnify the heirs of the deceased in the sum of P12,000.00 and to pay costs.

He took the matter to the Court of Appeals, But said court, believing from the testimonial and documentary evidence that he was guilty as charged of murder, and that he should be given life Imprisonment, forwarded the record to this Court for proper disposition under the law.

There is no question that Dumangeng Pulpog, male, resident of sitio Binalew, barrio Cababuyan, Municipal district of Banawe, died in the night of January 20, 1952 as a result of several incised wounds violently inflicted while he was on the way to his residence from a visit to his daughter living in sitio Pagayapi same barrio. Said daughter Guimaway Dumangeng was following him on that occasion, and she declared, in open court, substantially as follows:

When at dusk we reached sitio Kotowol I saw Balitog Dumangeng and the accused Kimmayong coming from Banawe in our direction,, Then they separated, Kimmayong going toward his home. My father (Pulpog) who walked ahead of me along the trail, met Balitog Dumangeng (to be called Balitog to avoid confusion) , and the latter suddenly hurled his spear, missing the mark, because my father stopped aside in time. Then in swift retaliation my father thrust his spear at Balitog, hitting him in the abdomen. Instantly the two grappled together. They rolled down to a lower elevation where the straggle continued. Balitog having got the worst, (his intestines were coming out) called for help, yelling "where are you Kimmayong, I am hit by the spear of Dumangeng" (Pulpog). My father left his antagonist, and climb back to the trail. Suddenly Kimmayong arrived and saying, "wait for me and we shall fight", chased my father bolo in hand, and having overtaken him, slashed him on the shoulder and on the head. I ran away, thoroughly scared, returned to my house and closed the door for fear that my neighbors who are relatives of Kimmayong might do me harm. Early the next day I reported my father's death to my uncle Dulnuan Dinamling, and to the Mayor of Banawe before whom I charged Kimmayong with my father's demise.

Ugnayon Dapdapol, 36, policeman of Banawe gave corroborative testimony to the effect that a telephone report

was received at the municipal building that Pulpog had killed' Balitog, so the policemen went to arrest Pulpog, but found him dead under his own house. His widow informed them her husband had been killed by Kimmayong. (33 s. n.)

Other evidence proved that the police and the constabulary then went to the house of Kimmayong to arrest him. He was not there, but his wife was. She gave them permission to search the house. Examining a palay stack in the house they discovered safely hidden therein a scabbard and the bolo Exh. B which was stained with blood, which must have been recent because it smelled like fish. The wife admitted that it was her husband's bolo. Dapdapol also positively identified it was Kimmayong's bolo, because he saw it once in the latter's possession.

The defendant denied having fought with or wounded Pulpog, whose death, according to him, was due to wounds inflicted by Balitog when Balitog was attacked by Pulpog with the assistance of Tolac Dakkawe, Dulnuan Dinamling, and Natocla Dinamling on that same occasion.

His version, in short, is that that night he heard Balitog shouting "Where are you Kimmayong, because I am speared by Dumangeng (Pulpog) and some companions"; that he called for their neighbors, Dapolon Lupai, Bantian Dinamling and Ballugan Kindipan; that they all went to render help to Balitog, and found him lying on the ground, mortally wounded; that explaining his wounds Balitog said:

"When I was following the path I was speared on the side of my abdomen and I saw it was Dumangeng. I was speared again on the other side of my abdomen and I turned my head and I saw it was Tolac Dakkawe who speared me. I was again speared on the back and when I turned around I saw Dulnuan Dinamling and Natocla Dinamling who speared me from behind, x x x Seeing that my enemies were many I saw Dumangeng whom I grabbed and we rolled down together until we came to a level spot. Upon reaching that level spot we both stood up, then I drew my bolo and gave him a blow on the neck. I gave him a second blow on his head and when he was trying to ran away I gave him again a blow at his back"

The trial judge, Hon. Jose R. de Venecia and the Court of Appeals rejected defendant's story because it was highly improbable that with the mortal wounds inflicted on Balitog by Pulpog (and companions, according to defense) said Balitog could still have sufficient strength and courage to inflict five serious wounds on Pulpog. According to a defense witness, Balitog said (p. 98) "when Dumangen Pulpog was trying to go away I continued to follow him and gave (him) another blow on the back". With intestines out, Balitog could not possibly do that. We agree that the story is inherently implausible[1]. Besides, it does not tally with the undeniable fact that when the police were notified the next day of the death of Balitog, Pulpog alone was mentioned as the killer. (See pages 134, 136 and 148 s.n.)

And so far as the record shows, no action has even been filed against Pulpog's companions for Balitog's death. Furthermore, if the events developed as defendant narrated, why did his party hide the bolo, supposing it was Balitog's? Anyone, even a non-Christian, knows that Balitog was not to blame under the circumstances.

Finally it appears from defendant's story that before going to help Balitog, Kimmayong and companions prepared a stretcher and brought it with them. This shows they knew, or Kimmayong knew, that Balitog was already dying or mortally wounded, could not walk and would have to be carried. Which suggests that what really happened was this: after retaliating for Balitog and downing Pulpog, (as told by the People's witness) Kimmayong looked for companions to help him carry Balitog home. They made the stretcher, and carried Balitog home. Such central fact, was subsequently embroidered and tailored to fit defendant's story, which would paint Balitog as a native superman, even as it frees Kimmayong from criminal responsibility.

We entertain no reasonable doubt that to avenge the defeat of Balitog, his companion, Kimmayong pursued Pulpog and hacked him to death. However, we do not believe there was treachery, the assault not being sudden,

because he warned Pulpog of his purpose, shouting, "wait for me and we will fight", and the latter having had a chance to prepare for the attack[2].

The crime was homicide punishable with reclusion temporal. (Art. 249 Revised Penal Code.) The medium period (applicable in the absence of modifying circumstances) is 14 years 8 months and 1 day to 17 years and 4 months.

Wherefore, in view of the Indeterminate Sentence Law, this appellant should be, and is hereby sentenced to be in prison not less than 8 years nor more than 17 years, plus accessories, and to pay P2,000 indemnity and the costs. The appealed judgment is modified accordingly. So ordered.

Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

Padilla, J., took no part.

[1] Supposing that testimony as to what Balitog said is admissible as part of res gestae. Surely it was not a dying declaration.

[2] People v. Cañete 44 Phil. 478; People v. Luna 76 Phil. 101; People v. Visagar L-3384, June 12, 1953.

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