

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
EMETERIO ORZAME, ET AL., DEFENDANTS, EMETERIO ORZAME,
DEFENDANT AND APPELLANT.**

G.R. No. L-17773. May 19, 1966

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PER CURIAM:

Emeterio Orzame, Dominador Magno and Arturo Gallarde were charged with murder before the Court of First Instance of Nueva Ecija, for the death of Juan Dulay. On motion of the Provincial Fiscal, Dominador Magno was discharged from the information and used as state witness. Trial proceeded against Arturo Gallarde and Emeterio Orzame, but after the prosecution rested its case due to insufficiency of evidence, Arturo Gallarde was acquitted.

Emeterio Orzame, found guilty beyond reasonable doubt of the crime of murder qualified by evident premeditation together with the aggravating circumstances of treachery and unnecessary cruelty or outraging or scoffing the person of the deceased, was sentenced to death, to indemnify the family of Juan Dulay in the amount of P6,000.00, and to pay one-third of the costs. Hence, this appeal.

The facts as shown by the evidence are as follows: In the evening of February 17, 1958, Dominador Magno, a barriomate of the accused Emeterio Orzame, was called by Arturo Gallarde, his nephew, and son-in-law of Orzame, to the house of the latter, where together they hatched up the plan of killing the deceased Juan Dulay who was then insured for P3,000.00, with Orzame as the sole beneficiary, with the purpose of sharing the proceeds thereof among themselves. After setting all the wicked plan, they agreed to meet again on February 23, 1958, on the occasion of the town fiesta at a bowling place at Guimba, Nueva Ecija. On the agreed date, at about 9:00 o'clock in the evening, Magno and Gallarde went to the bowling place where they met Orzame who was already with the unsuspecting victim, the deceased Juan Dulay. From there, they proceeded to the outskirts of Guimba. On their way, Orzame picked up a bag (bay-ong) from the nearby field and when asked what the content was, he deliberately lied by saying that it contained bread. After walking for some time, they hit upon a railroad track at barrio Balingog, Guimba, Nueva Ecija, where they sat supposedly to get some rest. Thereupon, Orzame, taking advantage of the situation, pulled out a Thompson submachine gun from the bag and with its handle he immediately began hitting Juan Dulay several times on the right ear, face and back of the head while the said Juan Dulay "was still sitting down, causing his instant death. Upon instruction of Orzame, the body of the deceased was carried to barrio Calibungan, Victoria, Tarlac, where, although already dead, it was still subjected to further beatings with the Thompson sub-machine gun causing the brain to scatter, and was also stabbed on the face with a knife several times by Orzame. Then the deceased was lain across the railroad track to simulate a train accident, as the cause of death. The following day, February 24, 1958, the body of the deceased Juan Dulay was found lying near the railroad tracks and among those who saw it was Jeremias Damo who identified the deceased as Juan Dulay.

The important defense of the accused is alibi. According to him he fell sick and was kept in a bed a week before February 23, 1958. On the said date, his son Lorenzo went to the poblacion of Guimba to call for a physician, Dr. Felipe Batangan, the municipal health officer. But due to the town fiesta, Dr. Batangan was unable to go so

Lorenzo went to Dr. Benjamin Castañeda who consented to treat Orzame.

Dr. Castañeda, in corroborating the alibi of Orzame, alleged that he arrived in Orzame's house at 4:00 o'clock p.m. on February 23, 1958; that after examining Orzame he diagnosed the illness as lobar pneumonia with high fever, headache, and in a state of delirium; that he gave some antibiotics, plus supportive medicines as caffeine, sodium benzoate, to support the heart, and other drugs.

Orzame alleged further that Juan Dulay lived with his family during the Japanese occupation and was like a brother to him and, therefore, cannot kill him and that Dominador Magno testified against him because they quarreled and almost boloed each other.

The version of the appellant was doubted by the lower court on the following reasons:

(1) According to Dr. Castañeda when he was called to treat Orzame on February 23, 1958 the sickness of Orzame was lobar pneumonia with high fever, headache, shivering or trembling, and the patient was in a state of delirium and that in his opinion his said patient would be cured in two or three (weeks. However, the next time he visited Orzame on February 25, 1958, two days after the first visit of said Castañeda, his patient was already cured, although weak and that was the last time he visited his patient. The lower court, in doubting this defense, said that it is easy for anybody to pretend to be sick and that head ache cannot be seen or felt except by one who claims to have it.

(2) It was proven that Orzame was the one who paid the premiums of the life insurance of Juan Dulay up to May 15, 1958. And there is no doubt that the motive of the accused in killing Juan Dulay was to collect the P3,000.00 value of the victim's insurance policy.

(3) The alleged quarrel between Orzame and Magno was not sufficient or strong enough for Magno to impute falsely a very grave crime against Orzame. Besides, no thing happened in the alleged quarrel between them.

(4) The lower court considered the fact that the Thompson sub-machine gun, Exhibit A, used by Emeterio Orzame in killing Juan Dulay on the night of February 23, 1958 was confiscated from him, for which reason he was charged and convicted with illegal possession of firearm.

As a rule, this Court desists from disturbing the conclusion of the trial court concerning the credibility of witnesses, for the latter is in a better position to appreciate the same; having seen and heard the witnesses themselves and observed their behavior and manner of testifying (*People vs. Lumayag*, 121 Phil. 474; *People vs. Dayday, et al.*, 122 Phil. 263). In this particular case, the lower court doubted seriously the testimony of accused Orzame because when the said accused was on the witness stand he was restless and somewhat trembling, to which the said court called his attention twice.

Alibi, moreover, is generally a weak defense since it is easy to concoct. For this reason, the courts view it with caution and accept it only when proved by positive, clear and satisfactory evidence (*People vs. Pasiona*, L-18295, February 28, 1966; *People vs. Bautista*, 116 Phil. 830; *People vs. Dayday, et al.*, *supra*). Indeed, the positive identification of Orzame as perpetrator of the crime dwindles the defense of alibi (*People vs. Argana*, 119 Phil. 573).

Appellant contends that the testimony of Dominador Magno is uncorroborated and comes from a polluted source, the witness being a former co-accused who was discharged from the complaint to become a state witness. But as the Solicitor General observe in his brief "that although Magno was discharged from the information and used as a state witness, said circumstances should not be considered against his credibility." This is so because his testimony at the trial incriminating the herein appellant was but a reiteration of his affidavit and his testimony

during the preliminary investigation both of which were subscribed by him long prior to his discharge (People vs. Riparip, 8G Phil., 526). Besides, "an uncorroborated testimony of a witness is sufficient to convict a co-accused, if and when the court gives it full faith. In the determination of the values and credibility of evidence, witnesses are to be weighed and not numbered (People vs. Marasigan, 85 Phil., 427). The testimony of only one witness, if credible and positive; * * * if it satisfies the court beyond reasonable doubt, is sufficient to convict" (People vs. Argana, supra). The post mortem examinations on the body of the victim made on February 24, 1958, at 12:30 p.m., to wit:

"* * *

"4. Plenty of clotted blood in front, neck and back of his polo shirt and few spotted blood in front of his trousers corresponding to the thighs.

"5. The skull of his head at the vertex was badly battered and opened crosswise and most of the brain substance was missing and the remaining brain substance appeared like mash potatoes with small amount of blood mixed with it.

"6. Punctured wound of the middle of his chin in front, punctured wound just below the left nostril, punctured wound 1 cm. lateral to the left bridge of his nose, punctured wound between the eyebrows and clotted blood at the surface of each wound.

"7. The face was greatly deformed and swollen with clotted blood all around, with depression of the lower forehead, the bridge of his nose and the upper jaw at the front including the skull sockets of the eyes.

"8. No findings of external violence at the other parts of his body.

"9. The cadaver was already at the state of rigor mortis so that he might have been killed 10 hours before autopsy and probably the assailants only dumped him in one of the rails of the railroad to disguise that he had been run over by the train.

"AUTOPSY FINDINGS:

"1. Head and Neck:

(a) The skull of his head at the vertex was badly battered and opened crosswise as a result of the bumper of the train striking it, part of the skull missing so that most of the brain substance appeared like mash potatoes with small amount of blood mixed with it.

(b) The skull of the lower portion of the forehead was fractured crosswise including the skull sockets of both eyes injuring both optic nerves including the upper jaw in front was fractured causing the removal of the first two incisors teeth.

* * * * *

"Impression of the case is that the cause of death was due to severe traumatic shock as a result of the blows inflicted upon him causing the fracture of the skull of the lower portion of the forehead at the middle including the skull sockets of both eyes injuring both optic nerves, fracture of the bridge of his nose, crosswise, fracture of the upper jaw in front resulting in the removal of the first two incisors teeth,"

confirm Magno's testimony that the victim was struck with the handle of the sub-machine gun and stabbed with a knife by the accused several times.

Premises considered, the decision appealed from being in conformity with the law and the evidence, the same is hereby affirmed in all respects.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P. and Sanchez, JJ., concur.

Judgment affirmed.

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