

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MANUEL DIMATULAC ALIAS COMMANDER LIGAYA, FERNANDO
BORJA ALIAS FER ALIAS BANSOT, REYNALDO GALANG ALIAS
IRENG, AND GAUDENCIO...**

G.R. No. L-35099. May 03, 1983

Ponente: RELOVA, J.

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RELOVA, J.:

Appeal taken by Manuel Dimatulac alias Commander Ligaya and Fernando Borja alias Fer from the decision of the Court of First Instance of Tarlac in Criminal Case No. 167 finding them guilty, beyond reasonable doubt, of the crime of murder with frustrated murder and sentencing both, as follows:

"WHEREFORE, the Court finds the accused MANUEL DIMATULAC alias 'Commander Ligaya' guilty beyond reasonable doubt, as charged, in the character of principal and accordingly imposes on him the DEATH penalty, to indemnify the heirs of Carlos Balanditan in the sum of P12,000.00, to indemnify Alfredo Balanditan in the sum of P4,000.00 by way of moral and exemplary damages, and to pay half the costs.

"The Court likewise finds the accused FERNANDO BORJA alias 'Fer' and REYNALDO GALANG alias 'Ireng' guilty beyond reasonable doubt, as charged, but only in the character of accomplices, and accordingly sentences each of them to an indeterminate penalty of EIGHT (8) YEARS and ONE (1) DAY of prison mayor, as minimum to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of reclusion temporal, as maximum, with all the accessory penalties provided by law, to indemnify jointly and severally the heirs of Carlos Balanditan in the sum of P6,000.00, to indemnify jointly and severally ALFREDO BALANDITAN in the sum of P4,000.00 by way of moral and exemplary damages, and to pay half the costs.

"It is understood the above-specified civil liability adjudged against all the herein accused shall be enforced in accordance with Article 110 of the Revised Penal Code."

The amended information of February 2, 1971 filed by the Provincial Fiscal of Tarlac against Manuel Dimatulac alias Commander Ligaya, Fernando Borja alias Fer, Reynaldo Galang alias Ireng, and Gaudencio Maliwat alias Guding reads:

"That on or about June 28, 1968, at night time, in the Municipality of Tarlac, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, together with Apolinario Gatmaitan alias Boy Gat, Cipriano Bondoc alias Supre, Leonardo Castro alias Nardo, Renato Lopez alias Boy Lopez, Avelino Baun alias Lino and five other John Does, armed with deadly weapons, to wit: one pistol caliber .45, one scythe, one iron water pipe and wooden clubs, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously and with intent to take the lives of Alfredo Balanditan and Carlos Balanditan, attack, assault the former with said pistol, scythe, water pipe and wooden clubs, wounding Alfredo Balanditan on different parts of his body while Carlos Balanditan suffered multiple wounds also on different parts of his body which directly caused the latter's death, thus having performed, insofar as the said Alfredo Balanditan is concerned, all the acts of execution which could have produced the crime of murder as a

consequence, but nevertheless, did not produce it by reason of causes independent of the accused's will, that is, the timely medical assistance rendered to the said Alfredo Balanditan which prevented his death.

"All contrary to law with the aggravating circumstance of night time, the crime being committed in an uninhabited place, committed by a band, with the aid of armed men who insured impunity, use of superior strength and employed means to weaken the defense of the victims."

The four named accused pleaded not guilty to the charge. In the course of the trial, Gaudencio Maliwat died and the case against him was dismissed by the court in its order of January 17, 1972. Upon the other hand, no appeal was taken by Reynaldo Galang. On November 10, 1977, the motion to withdraw appeal filed by Fernando Borja was granted by the Court. Thus, this appeal concerns Manuel Dimatulac only.

The People's evidence shows the following facts:

Between the hours of eight and nine in the evening of June 28, 1968, brothers Alfredo Balanditan and Carlos Balanditan were sleeping in their hut in barrio Buenavista, San Miguel, Tarlac. They were awakened when a group of persons arrived, surrounded the place and someone shouted: "Don't move or you will die." As there was a kerosene lamp inside the hut and two electric bulbs at two electric posts nearby, Alfredo Balanditan recognized the faces of Manuel Dimatulac, Fernando Borja, Gaudencio Maliwat, Reynaldo Galang, Leonardo Castro, Boy Gatmaitan, Renato Lopez, and Avelino Baun.

The men surrounded the Balanditan brothers with appellant Dimatulac warning the two: "Huwag kayong kikilos, kayo'y mamatay" and ordering the group to tie them up. The two brothers' arms were tied up to their forearms following which they were brought outside the hut, beaten up and told that their refusal to give palay to the HMB is the reason for the maltreatment. The men were holding a GI water pipe, scythe and clubs. Galang hit Alfredo Balanditan with an iron pipe at the top of the right ear where he now sustains a one-inch scar. He fell to the ground and, turning around, Dimatulac fired his gun at him hitting the back of his right ear where he now has a scar with a diameter of more than one centimeter. Alfredo was brought for treatment at the Tarlac Provincial Hospital where he received the sad news from his father that Carlos is already dead.

Among those who were with appellant Manuel Dimatulac that night of June 28, 1968 was Adriano Gomez. He explained that he was fetched from his house between the hours of eight and nine in the evening by a group of men so that he could point to them the hut of the Balanditans. Scared to death, he obliged and begged leave to go home after he had indicated to them the desired place but Dimatulac refused. When they reached the hut, the group tied the hands of the two brothers, dragged them out from the hut and brought them to the field where they beat Alfredo until his body was covered with blood. Dimatulac even fired at Alfredo after which, thinking that he was dead, they left him at the place where he fell. They then brought Carlos Balanditan away out in the farm where the men, upon order of Dimatulac beat him until he fell on the ground. Bondoc then cut his neck with a scythe. As a consequence, Carlos Balanditan bled to death. Thereafter, the men left but, before so doing, warned Gomez not to report to anyone otherwise something would happen to him.

Alfredo Balanditan was examined by Dr. Segundino Fausto who found four lacerated wounds, to wit: one below the right eye, one behind the ear, one on the right forehead, and one on the right elbow - each of which was not fatal although he was bleeding at the time.

Dr. Alipio Salanga performed the post mortem examination on the body of Carlos Balanditan and found the gaping wounds across the neck, among several others, the most fatal because the principal blood vessels were severed.

The defense is alibi.

Denying participation in the crime, Dimatulac claimed that from June 17, 1968 up to July 5, 1968, he was sick in his house at San Francisco, San Miguel, Tarlac.

His testimony was corroborated by Dr. Elisa Rosales-Cura who allegedly attended to him during his illness; by Rosita Fernandez, the doctor's attendant, who supposedly ministered to Dimatulac during his ailment; by Ines Arceo, Dimatulac's wife; by Barangay Captain Jose Borja; and by a brother of Fernando Borja.

The lower court, after weighing the evidence of the prosecution and the defense, accorded credence to the former and convicted defendants Manuel Dimatulac and Fernando Borja, together with their co-accused Reynaldo Galang, who, by not appealing, served to show the lack of merit of appellant Dimatulac's contention that he has nothing to do with the commission of the crime.

Well-settled is the rule in criminal cases that because the defense of alibi can easily be fabricated, the same must be established by clear evidence, free from doubt and bias, and that purely oral evidence presented to prove it cannot prevail over positive evidence showing the presence of the defendants at the scene of the crime and their participation in the commission thereof. (People vs. Reyes, 17 SCRA 309)

In the case at bar, We do not find appellant's evidence sufficient to overcome the testimonies of the prosecution witnesses, particularly of complainant Alfredo Balanditan and Adriano Gomez who witnessed the commission of the offense and positively identified the appellant and his companions. With respect to his credibility the trial court said:

"Dimatulac's alibi easily lends itself to grave suspicions of fabrication for the following reasons: (1) Dr. Cura said she found Dimatulac in his mother-in-law's house on June 17, 1968; Dr. Cura's attendant testified however she found Dimatulac on the same date in his own house; (2) while the first visit on Dimatulac on June 17, 1968 was recorded in Dr. Cura's book, no record was ever presented of the alleged second visit on Dimatulac on June 27, 1968; the June 27 house call could not have been a continuation of the first visit on June 17 because after daily administration of injections for seven days by Dr. Cura's attendant from June 17, Dimatulac admittedly had a period of well-being from June 24 to June 26 during which period neither Dr. Cura nor her attendant visited him; (3) while Dr. Cura and her attendant testified they saw Dimatulac for the last time on June 27, Ines Arceo Dimatulac insisted Dr. Cura's attendant continued her visits on Dimatulac on June 28, 29, and 30, 1968." (pp. 44-45, Decision)

Considering that appellant has been fully identified by witnesses, who have shown no evil motive or compelling reason to be biased against appellant, the lower court was right in not sustaining the alibi relied upon by the latter. Manuel Dimatulac ascribed his implication in the case because of his alleged refusal in 1967 to lend his jeep to Alfredo Balanditan, who at the time was a Huk, to transport guns to Pangasinan; that Alfredo Balanditan fell from the graces of the HMB and soon became envious of Dimatulac when he became a figure in the rank of the NPA's and was known as "Commander Ligaya"; and that Gomez was a PC informer.

It is hard to believe that the foregoing alleged motives or flimsy reasons would be sufficient for Alfredo Balanditan and Adriano Gomez to implicate others to such a serious crime as murder and frustrated murder. Besides, appellant's imputation of ill-will was vigorously denied by Balanditan and Gomez who must have testified solely to tell the truth so that the culprits could be brought to the bar of justice. As leader of the band of armed men We sustain the findings of the court a quo that Manuel Dimatulac should be convicted as principal by direct participation and by induction. It was he who shot Alfredo Balanditan and ordered Cipriano Bondoc to slash Carlos' throat. There is no doubt that the trial court correctly found him guilty as charged. However, for lack of the necessary votes, We cannot impose upon him the supreme penalty of death.

WHEREFORE, as modified in the sense that the penalty imposed on Manuel Dimatulac is reduced to reclusion

perpetua, the appealed judgment is AFFIRMED in all other respects.

SO ORDERED.

Teehankee (Acting C.J.), Makasiar, Concepcion Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, Jr., JJ., concur.

Fernando, C.J., on official leave.

Aquino, J., no part.

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