

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
RAYMUNDO YAP, DEFENDANT-APPELLANT.***G.R. No. L-3712. September 30, 1952*

Ponente: PARAS, C.J.

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From a dispute over the ownership of a chicken late in the afternoon of March 9, 1948, two crimes arose. A complaint for grave threats was formally filed on March 19, 1948, by Raymundo Yap against Teofilo de Emoy, Primo Bornales and Carlos Desipa. Ten days thereafter a complaint for arson was filed against Raymundo Yap. Both cases were elevated to the Court of First Instance of Capiz, wherein the provincial fiscal filed, first, the information for arson and, subsequently, the information for grave threats.

We are now concerned with the appeal of Raymundo Yap from the judgment of the Court of First Instance of Capiz, finding him guilty of arson and sentencing him to the indeterminate penalty of from 4 years, 2 months and 1 day of prision correccional to 10 years and 1 day of prision mayor, with legal accessories, to indemnify Teofilo de Emoy and Teodorica Martinez in the sum of P200.00, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The following passages of the appealed decision contain substantially the tenor of the evidence presented both by the prosecution and by the defense:

"Las pruebas de la acusacion demuestran que en la tarde del 9 de marzo de 1943, Teodorica Martinez, una campesina residente en el barrio de Jolongajog del municipio de Pontevedra, provincia de Capiz, envio a su hija Florentina de Emoy con una gallina a la casa de una tal Magdalena de la Cruz, apodada Daling, para ver de permutar dicha gallina con una ganta y media de arroz. Cumpliendo con el encargo de su madre, la niña se fue a casa de Magdalena con la gallina, y alli se encontro con el acusado. Florentina regreso a su casa sin haber podido realizar a permuta diciendo a su madre que Magdalena rehusó comprar la gallina por considerar excesivo su precio de una ganta y media de arroz e informando, al mismo tiempo, de que Raymundo Yap, el acusado, pretendió reconocer la gallina como de su propiedad. Al oír esta última información de su hija, Teodorica cogió la gallina y con ella se dirigió a la casa vecina del acusado en donde se encontro con la esposa de este. Teodorica demostró la gallina a la esposa del acusado preguntandola como es que su marido reconocía dicha gallina como suya. La mujer del acusado replicó que la reclamación de su marido era una reclamación necia, porque si bien tenían una gallina de igual color, la que les pertenecía acababa de empollar. Con tal explicación Teodorica se dio por satisfecha regreso a su casa y amarró la gallina en un mortero. A eso de anochechar, Teodorica oyó al acusado prefiriendo en alta voz desde su casa frases injuriosas contra ellos y diciendo que si no le devolvían la gallina, él, el acusado, les metería; y no contento con expresar injurias y amenazas, el acusado se fue a casa de Teodorica portando un bolo desenvainado preguntandola a esta por la gallina y requiriendo que se le hiciera entrega de ella. El mismo acusado subió a la casa, y cortando la cuerda con que estaba atada, se posesionó de la gallina. Teodorica trató de arrebatársela pero causalmente llegó a la casa Carlos Desipal quien, enterado del motivo de la reyerta, la apaciguó al acusado convenciendole para que devolviera la gallina. El acusado se retiró a su casa no sin antes proferir más frases injuriosas y amenazas de muerte y de quemar la casa de Teodorica para que esta y su familia se marcharan de aquel sitio. En aquella

misma noche Teodorica Martinez observo que el acusado habia trasladado a su familia a casa de su primo, y temiendo que algo , ocurriera estando ausente su marido, ella tambien se traslado con sus dos hijos de corta edad a la casa de su yerno Primo Bornaes situada a cierta distancia de la suya, dejando solamente en la casa a una hija ciega de 7 años de edad. A eso de las diez de la noche, al acusado, acompañado de tres policias, se presento en la casa de Primo Bornaes. Uno de los policas pregunto a Teodorica por su marido y su yerno, y ella les informo que ambos se encontraban trabajado en el manglar. Con tal informacion los policias y el acusado se marcharon. Teodorica paso aquella noche en vela esperando el regreso de su marido. Hacia las dos de la madrugada el acusado se fue a la casa de Teodorica, y con una vela encendida prendio fuego a una de las paredes de dicha casa. Teodorica que le vio desde la puerta de la casa de su yerno, dio voces de alarma llamando al vecino Santos Dugillo y rogandole para que acudiera a la casa y sacara de ella a su hija ciega. Santos Dugillo se fue corriendo a la casa y alcanzandole al acusado en el acto de estar aun prendiendo fuego, le pregunto por que habia incendiado la casa. El acusado volvio la cara hacia Santos, y sin contestar a la pregunta que este le dirigiera, regreso corriendo a su casa. Santos Dugillo cogio a la hija ciega de Teodorica y se la llevo a la casa de Primo Bornaes. Construida como era de caña y nipa y siendo de pequeñas dimensiones, la casa de Teodorica bien pronto fue reducida a pavesas por el fuego. La casa, de acuerdo con la afirmacion de Teodorica, valia P100, y los efectos perdidos por el fuego, consistentes en prendas de vestir, valian otros P100.

El acusado, por su parte, tiene otra version del suceso, y es como sigue: Que encontrandose el en la tarde de la fecha de autos en la tienda de Magdalena de la Cruz, la hija de Teodorica Martinez se presento en dicha tienda con el objeto de permutar una gallina con una ganta y media de arroz. Habiendo el reconocido la gallina como una de las suyas, dijo a Magdalena que la comprara porque la gallinaera suya. La ñiña, sin embargo, al oir al acusado decir que era suya la gallina, se marchó, precipitadamente de la tienda. Al regresar a su casa, el acusado examino sus gallinas y descubrio que ocho de ellas se habian desaparecido, entre ellas una de plumaje con notas blancas y negras. Hecho tal descubrimiento de la desaparicion de sus aves, el acusado se constituyo en la casa de Teodorica Martinez y a esta expreso sus deseos de comprar la misma gallina que su hija trataba de vender a Magdalena. Teodorica entrego la gallina al acusado, pero que Carlos Decipal se la arrebató de su poder. Carlos Decipal, Teofilo de Emoy y Primo Bornaes, estos dos ultimos esposo y yerno de Teodorica, respectivamente, teniendo sus bolos desenvainados, trataron de acorralarlo con animo de agredirlo, por lo que el, el acusado, se echo a correr. El acusado tuvo que salvar corriendo la distancia de un kilometro perseguido por Carlos, Teofilo y Primo, hasta quese metio en una huerta donde se escondio. Despues que los tres perseguidores se marcharon, el acusado se fue a la casa de Regalado Dumul, e informandole a este del incidente de haber sido perseguido por tres hombres, le rogo que la acompañara a buscar un vehiculo para ir a la poblacion. Dumul le acompaña, y ambos se fueron a alquilar el camion de Henry Dumagpi conel cual se fueron al Municipio de Pontevedra para verse con el jefe de policia. A este le encontraron en su propira casa, y el acusado le informo del hecho de haber sido persguido por tres hobres. El jefe de policia le entrego una nota instruyendolo que fuera a verse con el sargento de policia y le entregara dicha nota. El acusado se entrevisto con el sargento entregandole la nota del Jefe, y enterado de su contenido, el sargento se hizo acompañar por los policias Basilio Benlero, Angel Contreras e Isidro de Asis, y con el acusado y Regalado Damul, todos se fueron al barrio de Jolongajog. En dicho barrio se constituyeron en la casa de Teofilo de Emoy, y como no encotraron a nadie en ella, se fueron a la de Primo Bornaes. Habiendose salido al encuanthro en dicha casa Teodorica y su hija Jovita, el sargento averiguo de Teodorica por su esposo Teofilo y su yerno Primo, y Teodorica les informo que estaban en la casa de Federico Bereber. El sargento averiguo, asi mismo, de Teodorica donde tenia la gallina que el acusado reconocia como suya y fue el origen de los disgustos, y habiendo Teodorica contestado que lo tenia en su casa, el sargento le advirtio que se abstuviera de sacrificarla ni de disponer de ella por que el asunot se investigaria al dia siguiente. De la casa de Primo Bornaes, el sargento, los tres policias, al acusado y Dumul se dirigieron a la casa del acusado, en ella sacaron una gallina, y se fueron a la casa de Manuel Billones en donde prepararon una cena para todos ellos. A punto de terminar la cena, y a eso de las dos de la madrugada, aparecio en casa de Billones una tal Felicisima Baulit llevando una carta que la entrego a Billones para que este se lo entregara al esposo de aquella en Balasan. Entergada la carta, Felicisima se marchó, pero despues de un rato la misma Felicisima regreso informando al acusado que su casa se estaba quemando. Todos

los presentes se fueron a la loma vecina, y dese ella el acusado vio que no se trataba de su casa y así lo dijo a sus compañeros. El sargento dispuso entonces que el acusado se quedara en casa de Felicísima Baulite mientras que el y los policías, utilizando a Regalado Dumul como guía, se fueron al sitio del incendio para investigar, habiendo encontrado que la casa encendida era la de Teofilo de Emoy. Los policías, con le sargento y Dumul, volvieron a la casa de Felicísima ya a las tres de la madrugada para recoger al acusado, y de dicha casa todos regresaron a la población de Pontevedra."

This case was originally elevated to the Court of Appeals which, however, certified the same to this Court on the ground that the crime committed by the appellant, Raymundo, Yap, should be penalized with reclusion perpetua. The question before us hinges solely on the credibility of witnesses. After mature reflection, we have come to the conclusion that the appellant is entitled, at least, to a reasonable doubt.

Three witnesses for the prosecution were presented: Teodorica Martinez, Santos Dogelio, and Carlos Desipal. Teodorica stated that the appellant, with a bolo in hand, went to her house and tried to get the chicken which her daughter attempted to sell to a neighbor but which was claimed by the appellant to be his own; that she tried to stop him from taking away the chicken until Desipal arrived; that after the latter had spoken in a mild manner, the appellant handed said chicken to him; that Raymundo Yap then left for his house nearby, shouting that he would return to get the bird by force and to burn the house of Teodorica Martinez. Witness Carlos Desipal testified that the appellant had handed to him the chicken willingly and, in his opinion, the appellant was not, at all in an angry mood. Teodorica Martinez further testified that on account of the threats made by the appellant and because of fear, she decided to abandon her home with her children of tender years, aged 5 and 2, leaving behind another daughter, 7 years old and blind; that she left her place at 7:00 o'clock; that she went to sleep immediately in the house where she had gone with her children and which belonged to another daughter of hers married to Primo Bornaes; that at about 10:00 o'clock that evening, three policemen called at her place and asked for her husband Teofilo de Emoy and son-in-law Primo Bornaes; that since these two were away, the policemen left after telling her to keep the chicken because they would investigate the matter the next morning; that she could no longer sleep; that at about 2:00 o'clock a.m. she noticed that the appellant was burning her house which was some 80 meters or 95 brazas away; that she decided to go to the house of her landlord, Federico Bereber, but that, remembering her blind daughter who was left in the burning house, she cried for help. The last witness Santos Dogelio testified that, upon being awakened he got his bolo, jumped out of his house, and ran to the burning hut where he saw the appellant who, upon being asked why he was setting fire to the hut, did not answer at all; that he did not go up the house but was able to snatch the blind child thru a hole in the wall.

The theory of the defense is that the appellant, being pursued by the defendants in the other case for grave threats, Teofilo de Emoy, Primo Bornaes and Carlos Desipal, sped away until he reached the población and was able to report the incident immediately to the chief of police; that upon instruction in writing from the chief of police, a sergeant and two policemen accompanied the appellant to the barrio; that finding nobody in the house of Teodorica Martinez, they went to the house of her son-in-law the inmates of which had gone; and that after telling Teodorica Martinez that they would return the next morning to investigate, and already feeling hungry, they went to the house of Manuel Billones about half kilometer distant, where they cooked rice and chicken; that after having eaten at 2:00 o'clock a.m., they noticed a fire near the house of the appellant; that the sergeant with a policeman and Regalado Dumul who acted as a guide, went to the place of the fire, instructing the appellant to remain behind; that they found nobody at the place of the fire but that, upon meeting Teodorica Martinez and her neighbor Santos Rogelio, the latter, upon inquiry, answered that they did not know who had caused the fire.

If the appellant had handed the chicken to Carlos Desipal in a nice way, as testified to by the latter, it is hard to believe that the appellant would have threatened in a loud voice to use his bolo to get back the chicken and to burn the house of his neighbor Teodorica Martinez. It is also hard to believe that the appellant alone would go up the

house to get the chicken by force if, as testified to by Teodorica Martinez, there were other people therein, namely, Federico Bereber, Andronico Villaruel, the latter's wife, Aladino Bereber, and Taning Bereber. There is, therefore, more reason to believe that, when the appellant attempted to get back the chicken, he was immediately threatened by Teofilo de Emoy, Primo Bornaes and Carlos Desipal who had pursued him immediately, compelling the appellant to rush to the poblacion to get aid of agents of authority.

The story of the rescue of the girl is, we believe, a fabrication. If there was no girl in the house, there is no truth in the testimony of Santos Rogelio that he had gone to the burning house to rescue the girl and that, upon reaching the place, he recognized the appellant as the author of the fire. It is highly incredible that Teodorica Martinez, who for fear that her house would be burned by the appellant, had to abandon it and go to another place, would leave behind her blind child of tender years. She left her house at 7:00 o'clock in the evening and the burning took place at 2:00 o'clock the next morning. There was ample time for her to go back to the house and get the blind daughter or for her to ask her daughter Julita de Emoy, wife of Primo Bornaes, her neighbors, or even the policemen who admittedly went to see her at 10:00 o'clock, to do it for her, if there was any real reason that had prevented her to go. It is significant that, notwithstanding the emphasis placed on this point by the defense counsel during the trial, the trial court failed to make reference to the detail in its decision.

Even the exhibits offered by the defense were rejected for insufficient reason. Exhibit 1 is an affidavit, and yet the ground of objection is lack of identification. Exhibits 2 and 3 are, respectively, the complaint filed in the justice of the peace court for grave threats and the corresponding information filed in the Court of First Instance of Capiz, and yet the trial court refused to admit them on the ground that they are immaterial. An Affidavit need not be identified. The complaint and information were very material, because the first shows that the appellant was the first complainant, and the second shows that the fiscal must have been so convinced of the evidence presented to him that he had decided to file the information for grave threats against Teofilo de Emoy, Primo Bornaes and Carlos Desipal.

There is even testimony to the effect that Teofilo de Emoy, induced by his landlord, was the one who actually burned his own house. Proceso Benjamin testified that he heard Regalado Bereber say to Teofilo de Emoy: "Set fire to your house, tomorrow Raymundo Yap will have you apprehended and you will not have any revenge against him." (Transcript, p. 146.) Notwithstanding the lengthy cross-examination made by the trial judge even before the fiscal had started his, the testimony of the witness Proceso Benjamin incriminating Teofilo de Emoy and Regalado Bereber remained uncontradicted although the latter two could have been easily called by the prosecution to testify.

It had been shown that the appellant is law-abiding, because, after having escaped from his pursuers, he reported the matter immediately to the agents of authority and sought their protection. At the time of the fire in the barrio, he was in company with said agents of authority. While possible, it is highly improbable that he would commit the serious crime charged against him, for which the prescribed penalty is life imprisonment. Much was said about the testimony of the police sergeant, a defense witness, for being the brother-in-law of the appellant; but even discarding his testimony, there is that of policeman Isidro de Asis who at the time of the trial was no longer a member of the police force.

WHEREFORE, the appealed judgment is hereby reversed and the defendant-appellant acquitted, with costs de oficio. So ordered.

Pablo, Bengzon, Jugo, and Labrador, JJ., concur.

Feria, J., voted for the acquittal.

Bautista Angelo, J., took no part.

DISSENTING

MONTEMAYOR, J.:

Fully convinced as I am, after a careful and detailed study of the record, of the guilt of appellant of the crime charged against him, I feel constrained though with regret and with due respect to the opinion of the majority penned by the Chief Justice, to dissent and give my reasons for doing so. I flatter myself with the thought that mine is not a lone opinion, wild and irrational, for it is shared not only by the trial court presided by Judge Eduardo P. Enriquez who prepared, what to me is a well-reasoned and comprehensive decision which analyzes the evidence, but also by a special division of the Court of Appeals, composed of three Justices, According to law and practice, in certifying cases to this Court the Court of Appeals has to make findings of fact so as to justify the certification. Said Court in its resolution of certification equally analyzed the evidence and is of the opinion that appellant Raymundo Yap is not only guilty, but that the penalty imposed by the trial court should be raised to reclusion perpetua.

The facts in this case are? to me, those contained in the version of the witnesses for the prosecution as clearly stated in the decision appealed from, the pertinent portion of which is reproduced in the majority opinion and which the majority itself considers a substantial narration or statement. It is true as stated in the beginning of the majority opinion that the while trouble arose from a seeming trifle, namely, a dispute over the ownership of a chicken. From the standpoint of Teodorica Martinez, however, it was far from trifling. She was in effect, being accused by Yap of stealing his chicken which charge the prosecution I believe has now proven to be groundless. According to Teodorica she represented the charge imputed to her and so forthwith took the chicken in question the neighboring house of Yap. In order to ask for an explanation. He was not at home but she found his wife Auring to whom she explained the situation. After examining the chicken Auring told her that her husband was silly and foolish in saying that the fowl was theirs for although it resembled their hen, it was not the same one for it was much younger while their hen was much older and at the time had chicks. Raymundo Yap never denied this assertion of Teodorica; neither did he present his wife Auring to refute the same. Besides, if the chicken really belonged to Yap and had been taken and appropriated by Teodorica, the latter would not have foolishly exposed it to public knowledge or view by sending it to a public store for sale or barter because it might be seen, and recognized by the owner, as in fact it was seen by Yap. There is therefore every reason to believe that the chicken did not belong to Yap, much less, stolen from him by Teodorica. I am willing to believe, however, that Yap believed in good faith that it belonged to him for which reason he made an attempt to get it back but by force, I am also willing to believe that he may have been threatened, perhaps even with a bolo and perhaps, sent out of the house of Teodorica by her husband Teofilo de Emoy; but it must have been not because he went to the house, according to him, on a peaceful mission to buy the chicken which he thought was his, but to accuse Teodorica of having stolen it and to let it by force which he did by grabbing it from the hands of Teodorica, although he later reluctantly allowed it to be taken from him by Carlos Dasipal who pacified him.

I fully agree with the trial court and the Court of Appeals that the witnesses for the prosecution, especially the appellant's brother-in-law, Sergeant of Police Romeo Baldonado and policeman Isidro de Asis, and of course, Proceso Benjamin, widely departed from the truth while on the witness stand. Besides, in his untruthful narration of the manner by which he tried to get the chicken from the house of Teodorica and his being chased by Teofilo de Emoy, Primo Bornales and Carlos Dasipal with drawn bolos, lap told the court that he had informed the Chief of Police that he had been chased by these three men. Said Chief of Police, however, on the witness stand stated that Yap had told him that only Teofilo de Emoy had chased him and for this reason the Chief of Police in his note to Sergeant Baldonado instructed him to investigate only Teofilo de Emoy and no one else.

According to Yap, he went to Teodorica's house and offered to buy the chicken, and she agreed and handed the fowl to him peacefully and voluntarily. If this were true, then why did the three men unsheath their bolos and chase him for a distance of one kilometer? It does not make sense.

The manner in which Yap described his being chased by three armed persons is far from convincing. According to him, he was practically surrounded by Dasipal, De Emoy and Bornales, Dasipal only half a meter or less away from him, all trying to bolo him. Despite all this, he could run away from them; he found time to pass by his house to tell his family to leave and then continued running for dear life for about one kilometer with his pursuers right at his heels, all bent on boling, even killing him, and yet thru a sort of miracle he could elude them all. I am reproducing his testimony on how he was cornered by and practically at the mercy of his supposed three armed assailants, and yet he could save himself. (Yap testifying on direct examination):

Q

After that, what happened?

A

Then Carlos grabbed the chicken from me and immediately unsheathed his bolo.

Q

What did Primo Bornales do, if he did anything?

A

Primo then went down from the house already holding a bolo which was unsheathed with the intention of boling me.

Q

What did Teofilo de Emoy do?

A

He also went down holding a bolo with the intention of boling me also.

Q

Then what did you do?

A

Since they were in the act of surrounding me and trying to bolo me, I ran away.

Q

When you ran away, what did they do?

A

They pursued me.

Q

Who pursued you?

A

Primo Bornales, Teofilo de Emoy and Carlos Dasipal.

Q

What were they saying while they were pursuing you, if they said anything?

A

They were saying, "Womb of your mother, intercept him and if we can overtake you we will bolo you."

Q

Where did you pass?

A

I passed by the threshold of our house.

Q

While you were running what did you say?

A

I was shouting to the members of my family to escape for I was being pursued.

Q

And then, where did you go?

A

I went to the road at Jolongahog.

Q

Were they still pursuing you?

A

Yes, sir.

Q

Up to where?

A

They were able to reach the road in pursuing me.

Q

How far was the road from the place where they started pursuing you?

A

About one kilometer.

Q

Upon reaching the road, what did you do?

A

I went inside the orchard.

Q

Were they able to see you?

A

They were not able to see me because I hid among the orchard trees, (t.s.n. pp. 50-52)

(Yap testifying on cross-examination):

Q

And here comes Carlos Dasipal and took the chicken from you with a bolo and Teofilo de Emoy arrived with a bolo and Primo Bornales with a bolo, too and surrounded you, wanted to kill you for wanting to buy that chicken, is that right?

A

Teofilo de Emoy and Primo Bornales were upstairs of the house.

Q

But they went down to surround you all armed and wanted to bolo you?

A

Yes, sir.

Q

You ran away passing your house, notified your family to evacuate because you were being pursued?

A

Yes, sir.

Q

Do you have small children?

A

Yes, sir.

Q

Passing by your house did you go up your house or no more?

A

I did not go up the house anymore but continued running.

Q

Why did you not go up your house and closed the door to prevent them from coming up?

A

They were near me while they were pursuing me.

Q

You ran towards the road for one kilometer and on that that time the three were after you all armed with bolos?

A

We were about 10 meters from each other.

Q

Arriving at the road where you said there were many houses did you ask anybody to help you because you were being pursued?

A

I did not ask; I just went inside the orchard.

Q

They did not go inside the orchard to look for you?

A

They did not see me because I hid. (t.s.n., pp,65-66)

Q

While he (Dasipal) unsheathed his bolo, you were still upstairs of the house?

A

I was downstairs.

Q

How far from Carlos Desipal?

A

I was right here and he was there (indicating a distance of about ½ meter). (t.s.n., 78)

Again, I find it hard to believe the defense that after Sergeant Baldonado and his three policemen had left the house of Primo Bornaes after conferring with Teodorica late that night, they had to go to the house of Manuel Billones, a kilometer and a half away, to cook and eat supper and spend the night there. Was it necessary to go to a house so far and late at night when the house of Yap himself on whose account the policemen made the trip to the barrio, was only a few meters away? They did not have to go to that distant house of Manuel Billones, wake him up and put him to the trouble of entertaining the five of them and preparing their bedding, when Yap's house was so near and he could easily entertain and accommodate them. He could not well claim that he might be in danger from any attack by Teofilo or his son-in-law Primo Bornaes because he (Yap) had four policemen with him all armed with revolver and rifles. All these circumstances lead me to doubt that Yap and the policemen went to the house of Billones that night and were there when Teodorica's house burned down. The only reason that I can see for the defense claiming to have gone and stayed in a place so far from the burned house (1-1/2 kilometers away) is to establish an alibi so that Yap could not be suspected, much less, accused of having set fire and burned the house of Teofilo about fifty meters away from his; and this idea of alibi was, it would seem, also planned and elaborated upon by his brother-in-law; Sergeant Baldonado who told the trial court that from the vicinity of the house of Billones which was one and a half kilometers away, but only one kilometer as the crow flies, they saw the house of Teofilo burning and that when they started toward the fire to investigate, he left or rather ordered Yap to remain and stay in the house of Felicisima Baulite so that the burning of the house and his being in that house of Felicisima would coincide, that is to say, he could not have been at the place of the burning because he was in the house of Felicisima about one and a half kilometers away. On this precise point, the trial court made this observation:

"El sargento de policia, el policia Isidro de Asis, Regalado Dumul y el acusado aseveran unanimente que cuando dicho sargento se decidio a constituirse en el lugar del incendio para practicar una investigacion, el acusado fue expresamente ordenado por el sargento para que se quedara en casa de Felicisima Baulite. Teniendo en cuenta que el incendio habia ocurrido cerca de la casa del acusado, es sumamente extraño que al acusado le hayan tenido que dejar en casa de Felicisima cuando lo mas natural hubiera sido que se le hiciera acompañar para cerciorarse y asegurarse de una manera indubitable de que la casa incendiada no era la suya. La unica explicacion de tan extraña disposicion es la suministrada por el mismo sargento cuando dijo, en contestacion a las preguntas del Juzgado, que se le hizo quedar al acusado en casa de Felicisima para alejar toda sospecha de que el acusado fuera el autor del incendio."

According to the story of the defense, when apprised of the fire by Felicisima Baulite, Yap and the policemen went out of the house and from there they saw or viewed the fire, and because Yap assured his companions that the house that was burning was not his, he did not go to the place and was even ordered by his brother-in-law Sergeant of Police Baldonado, to stay in the house of Felicisima, lest he (Yap) will be suspected of being the

author of the burning. So, there was already that thought in the mind of Yap and the Sergeant of Police that Yap not only might be suspected but would probably be accused of arson, and to forestall and anticipate this charge, they took measures to counteract and frustrate it. All this sounds like not entirely innocent and clear conscience. In the first place, from a distance of one kilometer on a dark night, it is impossible to tell with any degree of accuracy the identity of a house in a group that was on fire. It might be the house of Yap himself because it was only fifty meters away from the house burned. And yet Yap was supposed to have told his companions with definite assurance that it was not his house. In the second place, when in a small community like the barrio of Jolongajog, a fire starts and a house begins to burn, the instinct and custom of every able-bodied resident is to hurry to the fire to help the stricken family to whom the house belongs, evacuate and help its members, try to save the burning house from complete destruction if possible and endeavor to save other houses nearby and otherwise help the people specially women and children in evacuating from their threatened homes. But not so with Yap according to the story of the defense. Inasmuch as his house was not affected and although it was only fifty meters away from the burning house, contrary to all community tradition, instinct and custom, he did not go to the fire, and was even ordered by his brother-in-law Sergeant of Police to stay away.

The majority opinion says that the story about the daughter being left in the house of Teodorica when the latter and her two infant children evacuated to the house of her married daughter, should not be believed because it is highly incredible that Teodorica would leave said blind daughter in that house, and ends by dubbing her story a fabrication. On the contrary, I find this story though rather unusual to be entirely credible, and it serves to reinforce one's belief in Teodorica's sincerity and truthfulness. She could have easily suppressed this story about her leaving the blind daughter in the house alone, and said that she evacuated together with her other children to the house of her married daughter. Then there would have been no question. She had nothing to gain or advantage to take in telling this story of leaving her blind daughter behind. On the contrary, she would have to do some explaining about her unusual conduct which was not in keeping with a mother's instinct; and yet because it actually happened, with all candor she recounted it to the trial court, braving the suspicion and disbelief of the majority of this Tribunal.

To me, Teodorica's explanation is satisfactory. It was about eight o'clock in the evening when she decided to leave her house. In all probability the blind daughter, only seven years old, must have been already asleep. We all know that barrio residents go to bed quite early, not long after sunset. According to Teodorica she had her hands full in evacuating her two younger children aged five and two years. All this was done in a hurry and in mortal fear of Yap coming back to harm her. After reaching the house of her married daughter, she realized the danger of her going back to her own house to get her blind daughter because Yap who had previously threatened her with bodily harm might be around the place to carry out his threats. Asked why she did not send her married daughter to get the blind child, she answered with a logical question - why should she send her daughter on a mission which was highly dangerous which she herself (Teodorica) did not dare undertake. Her reason is not without merit. I do not believe that, Teodorica suspected or feared that her house will be burned. Her main fear was bodily harm from Yap and she had no reason to fear that he would think that said blind daughter was still in that deserted house, and that even if he found her he would harm her. So, she left things stand as they were although all the time she kept on worrying. When asked why she did not ask the policemen when these peace officers sent to her house that night to help her evacuate her blind daughter, she said that knowing the policemen were there, she felt sure that Yap would no longer do anything bad.

In connection with this story about the blind daughter the majority opinion has this to say:

"The story of the rescue of the girl is, we believe, a fabrication. If there was no girl in the house, there is no truth in the testimony of Santos Dogelic that he had gone to the burning house to rescue the girl and that, upon reaching the place, he recognized the appellant as the author of the fire."

I confess that I cannot appreciate, not even follow the logic and reasoning involved in the quotation. The alleged fabrication of the story of the rescue of the girl is not an accepted fact. It is only the belief of the majority; but on the basis of that mere belief, it lays down a conclusion of fact and on said conclusion completely discards the testimony of Santos Dogelic about going to the house to rescue the same blind girl. As I have stated, the reasoning in the quotation is net wholly clear to me.

According to Sergeant of Police Baldonado, when he and his policemen went to the scene of the fire he met and asked Teodorica, Julita (Teodorica's married daughter) and Santos Dogelio as to the author of the fire and they told him that they did not know who caused it. In other words, he would have this Court believe that nobody not even Teodorica knew or even suspected who the author of the arson was. But the Chief of Police testifying in court said that when sergeant Baldonado reported to him that same morning about the fire, he told the Chief that the owners of the house burned did not blame anybody for the burning except Raymundo Yap. As between the Sergeant of Police, brother-in-law of Yap, and the Chief of Police who was not related to any of the parties, I prefer to repose my faith in the Chief. In this connection, while on the witness stand the Sergeant of Police was asked if and why he did not ask to be relieved from the investigation of the case in view of his intimate relationship with Yap and he answered that he did not think of doing so. Had he asked to be relieved, as he should have clone, he would have been spared the embarrassment of investigating his own brother-in-law and later at the trial giving testimony designed to exonerate said brother-in-law, which testimony the trial court which observed him on the witness stand in my opinion correctly and wisely rejected.

Now, we come to the strangest and most interesting part of the story of the defense. The defense not only claims that Yap did not set fire to the house of Teofilo but asserts that Teofilo de Emoy burned his own house but imputed the blame to the accused. This story unusual as it is incredible, is based conclusively on the testimony of Proceso Berjamin. According to this witness, a little after midnight and before the house of Teofilo was burned, he woke up and went down his house to see if his carabao was in the place where it was tied. Discovering that it was gone he went to the house of his friend Gomer Diestro seeking his help and the two proceeded to the Hacienda Bayona looking for the missing animal. After about an hour of futile search, the two crossed the road going to barrio San Pedro. From a distance they saw a lighted torch. They walked toward it to ask the person or persons carrying the torch about his carabao. When they reached a point about ten meters away from the torch, they heard the voice of Teofilo de Emoy saying: "Doy, I bemoan if I burn my house because I will have no more house where to stay." For our edification I quote the pertinent testimony of Berjamin on this point:

Q

While you were on your way, what happened?

A

When we reached at a distance of about 10 meters from the burning torch, we heard the voice of Teofilo de Emoy saying, "Doy, I bemoan if I burn my house because I will have no more house where to stay.

Q

Who were the person present?

A

I saw there Teofilo de Emoy, Teodorica Martinez and Regalado Bereber.

Q

What was Teofilo de Emoy doing?

A

Regalado Bereber, said, "Lightning, set fire to your house, tomorrow Raymundo Yap will have you apprehended and you will not have any revenue against him."

Q

After that what did Teofilo de Emoy do?

A

Then Teofilo set fire to the wall facing the East.

Q

Whose house was that?

A

The house of Teofilo de Emoy.

Q

What was Teodorica Martinez doing?

A

She was carrying her baby on her arms.

Q

After that, what did you do?

A

Gomer and I came closer to him and asked him, "Pare, why did you burn your house?" Then Regalado Bereber

approached me and told me, "Pare, just keep quiet."

Q

What else?

A

He told me further, "Pare, do not tell that to anybody, it is up to you if you will turn traitor to me."

Q

What did you do?

A

Then we left and proceeded to Caninag.

Q

Upon reaching Caninag, what happened?

A

It was there that we found our carabao which was grazing by the side of the swamp.

Q

What did you do after that?

A

Then we returned homeward when we reached home, we were not able to sleep as it was already morning. That is all.

COURT:

You have stated that Regalado Bereber told you, "Say, keep quiet and do not tell anybody unless you want to turn traitor to me," is that correct?

A

Yes, sir.

Q

And of course you followed his advise by not telling to anybody what you have seen and heard?

A

I did not tell anybody except my wife.

Q

And you have not whispered a word except to your wife up to this moment when you have informed that to the Court?

A

Yes, sir.

Q

And you told that to your wife because you warned her not to tell anybody you know and that your wife also did not say anything to anybody else about what you have revealed to her?

A

Yes, sir. (t.s.n., pp. 145-147)

One has to admire the vivid imagination of Berjamin. His description of the scene possesses all the elements of a drama. The mental picture is clear. Time - about 2:30 in the morning. Place - the yard of Teofilo's house, facing East. Teofilo de Emoy was holding a torch, brightly burning, showing the presence of his wife with a baby in her arms with Regalado Bereber in a loud voice ordering Teofilo, his employee and laborer, to set fire to his own house; Teofilo hesitating and in a sort of soliloquy pondering the advantages and disadvantages of destroying his own home and only dwelling and rendering his family homeless; but finally convinced by Bereber he set fire to his own home in the presence of two strangers, Proceso Berjamin and his companion Gomer Diestro, who might later tell the world about it all. It is now for this Court to believe or disbelieve this dramatic narration of a fabulous tale. The majority readily and ingenuously accepted the whole story. On my part I cannot bring myself to believe it, part or whole. One's credulity instinctively recoils from such an extravagant and fantastic story as this which runs counter to all common experience, human nature and instinct and one's love and attachment to his home. The majority says that this testimony of Berjamin remained uncontradicted because Teofilo de Emoy and Regalado Bereber were not called by the prosecution to testify. There are times when a version given or story told is so fantastic, improbable and crude that there is no need for denying or refuting it because by its own

incredibility, fantasy, and extravagance it falls to the ground. This may have been the reason why the prosecution saw neither need nor occasion to call Teofilo and Bereber to deny and refute Benjamin's tale.

It is rather unusual for a carabao owner to wake up at midnight to check up on his animal, unless there were cattle rustlers in the region or reasons for fearing that an animal securely tied may get loose and go astray. Neither of these was claimed by Benjamin. Then, assuming that Benjamin really found his carabao missing a little after midnight, he would not go around in the dark at that ungodly hour looking for his lost animal. From experience and observation, people similarly situated usually wait until daybreak when they can see their way around and be in a position to find the astray animal. Again, it is not common for persons engaged in a secret and evil mission to burn a house to carry around a bright torch whose light may attract the attention of other people, leading to discovery; and neither is it usual for conspirators to discuss their evil plan in a loud voice so as to be heard by persons even as far as ten meters away. They usually talk in whispers, not out in the open but in their homes or in some secret place, safe from eavesdroppers. Finally, if discovered by third parties as Benjamin claims to have discovered and overheard the plot, the conspirators would try to dissimulate and abandon their evil design. But according to the story of Benjamin, Teofilo was carrying a torch bright enough to attract him and his companion from a distance; Teofilo and Bereber instead of whispering, fearlessly and imprudently spoke in a loud voice for Benjamin and his companion to hear and then to cap it all, although Teofilo and Bereber found that their plot was discovered, they nevertheless carried it out and burned the house, though frustrated in their supposed evil scheme of falsely accusing Yap of Arson. According to Benjamin, he did not tell anybody of what he saw except his wife and yet, strange to say, the defense knew all about it and called him to the witness stand to tell his tragical story.

It is difficult for the mind to understand or to believe that a man would burn his own and only home in order to impute the blame to another. As far as I am aware, the annals of this Court registers no similar instance of a man burning his own house to spite his enemy. We should bear in mind that Teofilo de Emoy is a very poor man, lowly and without resources. He was only a tuba gatherer and a laborer of the Bereber family. He had no other house except that one. Unlike some people possessed of several houses who if so disposed could afford to burn one of them, Teofilo could not afford such a luxury. All that he had was that humble dwelling worth P100.00. It would be the height of folly to burn his only home together with all his belongings in it, including four suits worth P80.00 belonging to his master left there to be laundered by his wife.

Teofilo de Emoy could not afford to make enemies in that neighborhood. Far from being an old resident who had connections and friends who would help him in case of trouble, he was a newcomer, having come to live there according to Yap himself only about four months before. Instead of making enemies, it behooved him rather to ingratiate himself with his new neighbors. It was therefore very unlikely that he would falsely accuse his neighbor Raymundo Yap who had connections in town, being a brother-in-law to the Sergeant of Police, and burn his own home including his worldly possessions in the bargain. On the other hand, it is not improbable that for one reason or another Yap may have disliked Teofilo and resented his coming to live in the community, and he wanted to run him out of the neighborhood. Burning Teofilo's house was one effective way of doing it. Of course, all this may be mere conjecture, yet it is not beyond the realm of possibilities if not probabilities.

Besides Teodorica, Santos Dogelio told the court that he actually saw the appellant setting fire to the house of Teofilo. There is no reason given or motive proven by the defense why Dogelio should falsely accuse Yap of this serious offense, and help in sending an innocent neighbor to jail for many years and brand him an arsonist the rest of his life. For this reason, I find no justification for not accepting Dogelio's testimony. Furthermore, if Teodorica's family really wanted to conclusively establish the guilt of Yap, it would not have been difficult for her to induce and have her married daughter Julita to come to court and declare that she also saw Yap setting fire to Teofilo's house. Or, Teofilo himself could have taken the witness stand and said that he also saw Yap either

setting fire to the house or running away from the burning building. That this was not done speaks not unfavorably for the prosecution.

The majority opinion says that Exhibit "1", an affidavit was rejected by the trial court for insufficient reasons and it lays down the doctrine that an affidavit need not be identified. That to me is rather a novel rule of evidence for I have the idea that an affidavit like any other document introduced in evidence must be identified, at least for the information of the court. Unless identified, it is but a piece of paper. Exhibit "1" is supposed to be an affidavit of Teodorica Martinez. Counsel for the defendant asked her if Exhibit "1" was her affidavit. She answered she could not tell because she did not know how to read. Naturally, it was not identified. What counsel should have done was to call the Justice of the Peace because Exhibit "1" was sworn to and thumbmarked. This was not done. Consequently, we do not know and the trial court did not know what Exhibit "1" is, altho it purports to be a sworn statement of Teodorica. But who can say that it is such a sworn statement by her?

The majority opinion also says that the trial court erred, in refusing to admit Exhibits 2 and 3 which are the complaint and information filed in the Justice of the Peace Court and in the Court of First Instance for grave threats. I fail to see the alleged error of the trial court. The only materiality and burden of said exhibits 2 and 3 are that Yap filed or had filed in his behalf a complaint against Teofilo de Emoy, Primo Bornales and Carlos Dasipal for grave threats. But nobody denies said fact. I surmise that the point sought to be established by these two exhibits to which the majority desires to attach importance is that the complaint filed by Yap for grave threats was ahead of the complaint filed against him for arson by several days. Neither is that denied by the prosecution. But the delay was explained by the Chief of Police himself when he said, that he did not file the complaint for arson earlier because he was told that a private prosecutor was taking charge of the accusation, an explanation which is perfectly valid and satisfactory.

Fully, I agree with the majority when they say in their opinion that "the question before us hinges solely on the credibility of witnesses." However, the majority seems to have overlooked; the universally accepted rule that as regards the credibility of witnesses, the Supreme Court will not interfere with the judgment of the trial court in passing upon the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted. (People v. Cabrera, 43 Phil. 64, 74-75, and cases cited, therein). Here I do not see any fact or circumstance of weight or influence which has been overlooked or the significance of which has been misinterpreted by the learned court below.

If this dissent has seemingly been unduly extended and incidents been dwelt upon at length, it is because of the importance I attach to the case, not only because by the majority opinion a serious crime is allowed to go unpunished when the perpetrator has been fully identified and the motive duly established, but because the poor owner of the house destroyed is not only left without any redress, but on the contrary is held to have burned his own and only home with all his worldly goods in it, contrary to all human instinct, common experience and behavior.

For the foregoing reasons, I believe and hold that the guilty of Raymundo Yap has been fully established and so the decision appealed, from should be affirmed.

Padilla, and Tuason, JJ., concur.

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