

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ASTERIO MARCINA ALIAS AGO, DEFENDANT-APPELLANT.***G.R. No. L-29912. May 31, 1977*

Ponente: FERNANDO, J.

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It was the death of a certain Eliseo Ganay that led to the prosecution and thereafter conviction for the crime of murder of the accused Asterio Marcina, now the appellant. The trial judge gave credence to the evidence for the prosecution that the victim having taken refuge in the house of the accused in San Fabian on October 17, 1967 as the typhoon Welming prevented his return to Sison, both municipalities being in Pangasinan, was thereafter killed by the latter. The motive presumably was jealousy induced by improper advances to the wife of the host. The testimony on behalf of the accused that the deceased met his death by drowning was thus found lacking in persuasiveness. Essentially then, this is another one of those cases where the oft-reiterated doctrine of the findings of fact by a lower court being entitled to respect in the absence of circumstances of weight and impact either ignored or improperly appraised possesses relevance. After a careful study of the record, this Court is unable to discern any justification for not applying such principle. We cannot reverse.

As narrated by the prosecution witness Modesto Alipio, Eliseo Ganay and he while on their way home to barrio Cabuanan, Sison, Pangasinan, after smudging mango trees in San Fabian, same province, met the accused Asterio Marcina, personally known to the former. He cautioned them against crossing the river Bued, then rather turbulent with a swift current due to the typhoon Welming. He likewise invited them to spend the night in his house. The offer was accepted. After taking their supper, they retired for the night. At about 11 o'clock, Alipio was awakened by a slap on his face. When he opened his eyes, he saw a man, subsequently identified as one Ading Suan[1] pointing a bolo at his breast. That did not prevent him from looking sidewise and noticing the accused astride Eliseo Ganay and squeezing his neck. The force was such that the victim's tongue was out, with blood oozing from his left eyebrow. Then after a while, all resistance ceased. When death was apparent, the accused called to someone and ordered that the sled and the cow be made ready, after which the corpse was taken downstairs, with the witness still being guarded by Suan. Some time later, the accused returned and warned Alipio not to tell the authorities anything and not to show his face again in Sison, Pangasinan. It was his fear that prevented him from revealing sooner this gory occurrence. The lower court likewise took into consideration the testimony of a Sergeant Alejandro Acosta of the Philippine Constabulary Unit at Bataquil, Pozorrubio, Pangasinan. Upon being ordered to investigate the circumstances attending the death of Eliseo Ganay, he proceeded to San Fabian and interviewed the accused as he had been informed that the deceased sought shelter in the latter's house. This witness testified to the admission elicited from him that due to jealousy, he killed the victim and thereafter disposed of the corpse by throwing it into the river.[2] Thus the lower court came to the conclusion that the crime of murder imputed to the accused was in fact committed. In the brief submitted by him as appellant, he confined himself to the allegations in seven specific errors that the lower court ought not to have given credence to the evidence for the prosecution and ought to have accepted the version of the defense.

That is all, and it is not enough. The doctrine of an appellate tribunal according due weight and respect to the findings of a lower court stands in the way. A careful perusal of the record does not warrant a reversal.

1. An excerpt from *People v. Berame*,^[3] decided less than a year ago, is apropos: "This is a case, therefore, where the trial court, after hearing and observing the witnesses testify, and weighing what was said by them, did choose to believe the prosecution rather than the defense. For such a finding to be overturned, there must be a showing that it did overlook a material fact or circumstance or did misinterpret its significance."^[4] Not that there is novelty to such a doctrine. One of its earliest formulations came from *United States v. Ambrosio*,^[5] handed down in 1910. In the language of Justice Moreland, the ponente: "We do not feel like interfering with the intelligent conclusion of a court concerning the credibility of witnesses unless the record discloses that some fact or circumstance of weight and influence was overlooked by the court or has been misapprehended or misinterpreted. A careful examination of the record discloses to us no fact, no circumstance, upon which we may base ourselves in saying that the trial court had no right to arrive at the conclusion which he reached. His mind upon all the evidence was free from a reasonable doubt. So is ours."^[6] A succinct statement of the reason that calls for such a principle may be found in Justice Malcolm's opinion in *United States v. Remigio*.^[7] Thus: "Relative to these findings of the trial court, we should of course begin with the application of the oft-repeated rule as to the conclusion of the trial court on the credibility of witnesses. The reason for this rule is that the trial court who sees and hears the witnesses testify is in a far better position than the appellate court to determine their credibility."^[8] There has been no retreat from such an approach.^[9] The task before appellant then was far from easy, and it was not rendered any easier by the fact that the tone in which the decision was assailed, while vigorous, suffered from some discordant notes. That could not be helped as the testimony of the prosecution witnesses held fast notwithstanding all attempts to detect flaws or inconsistencies. The lower court, therefore, could not be blamed for lending it credence. Nor was there any showing of any fact that was overlooked or the significance of which was misinterpreted.

2. It is undoubted that the well-settled doctrine as to matters of credibility being for the lower court to decide cannot, in the language of *People v. Macaraeg*^[10] "rise above the constitutional presumption of innocence which can only be overcome if the proof of guilt is beyond reasonable doubt. A doctrine of this Tribunal, however well-grounded in our past decisions, cannot prevail as against a mandate of the Constitution."^[11] It is quite understandable then why appellant did try to show that the deceased met his death by drowning. Such an attempt, however, was marked by futility. Considering the undeniable fact that the typhoon Welming was at its height in the vicinity, the waters of the river Bued thus rendered treacherous, it would be the height of folly to attempt to cross it by swimming. Common experience cautions against the acceptance of a tale so contrary to what a man in his right senses would do or refrain from doing. The lower court therefore cannot be blamed for refusing to yield assent.

3. Also, as quite persuasive in demonstrating the guilt of appellant, there was the categorical and straightforward declaration of the eyewitness, Modesto Alipio. As was pointed out in the decision, it would be highly unusual, likewise contrary to human nature, for a man to impute such a serious crime to another person if there were no truth to his testimony. No motive was shown for his fabricating a tale that could lead to so grievous a consequence for a fellow human being. Moreover, the cross-examination to which he was subjected far from weakening what was testified to by him strengthened it. There was also the admission by appellant made to Sergeant Acosta. It is contended that it should be ignored and disregarded, having been the result of maltreatment. The brief for the appellee submitted by the then Solicitor General, now Justice Felix V. Makasiar^[12] denied such accusation. Thus: "But if this claim of appellant is true, why was no written confession obtained from him by said P. C. soldiers? If these soldiers had to resort to physical violence to make appellant confess, surely they would have seen to it that his confession was taken down in writing so that he could not later easily repudiate or deny the

same. The fact, therefore, that no written confession was taken from appellant belies the alleged involuntariness of the confession made by him to these P. C. soldiers. Upon the other hand, Sgt. Acosta sent telegraphic messages to his superiors after appellant's escape from the P. C. detachment in Bataquil, giving the information that the latter had confessed to the killing of Ganay before his escape, and the spontaneity with which these messages were sent guarantees their truthfulness." [13] Such brief likewise stressed that such admission was confirmed on material points by such facts as "the finding of Ganay's lifeless body under the Cayanga Bridge in San Fabian, with signs that death came not only from drowning but also from cerebral concussion that could have been produced by the knocking or stunning of the brain; by the fact that among the injuries found on Ganay's body was a punctured wound near the left eyebrow; by the direct testimony of prosecution witness Modesto Alipio, who actually saw appellant kill the deceased; and by appellant's admission that he had in his possession the clothes, watch, and ring worn by the deceased the day the latter died. * * * Upon the other hand, the explanation given by appellant on pages 30 to 32 of his brief for the injuries sustained by the deceased, to the effect that they could have been caused by boulders, bushes, pieces of wood, nails, or trees as the latter swam the violent and swift waters of the Bued River on the night in question, is, at best, conjectural and pure speculation, and hence can not prevail over the clear and overwhelming evidence presented by the prosecution that Ganay met his death at appellant's hands." [14]

4. The brief for appellee also made clear why the lower court did not err in rejecting the testimony of defense witness Francisco Batrina, Pedro Soriano, and Federico Torres. Thus: "In the first place, the testimonies of both Batrina and Soriano that they saw the deceased drown while attempting to swim across the Bued River during typhoon Welming on the afternoon in question, as they were allegedly fishing at the time * * *, is hard to believe, because it is incredible that both witnesses would be fishing during such inclement, stormy weather. Besides, it is unnatural and contrary to ordinary human conduct that these witnesses, after seeing Ganay drown before their very eyes, did not report the tragic mishap to any member of the police force of their barrio or municipality, nor did they promptly tell the authorities what they knew when Ganay's lifeless body was found under the Cayanga Bridge two days later. And neither did they reveal to the P.C. soldiers who investigated Ganay's death a month later that they actually saw him drown at the Bued River on the afternoon in question. As for defense witness Federico Torres, then a municipal councilor of San Fabian, who testified that he was in the house of appellant Marcina on the night of October 17, 1967 (the night Ganay was killed) as he was allegedly campaigning together with the vice-mayor of San Fabian that night but did not see the deceased nor prosecution witness Modesto Alipio there, such testimony is likewise open to doubt because of material contradiction therein, to wit: (1) Federico allegedly was in the house of appellant Marcina on the evening in question because he was campaigning in that barrio * * *, but he testified on cross-examination that his campaign itinerary for that day had been cancelled the day before because of the typhoon, and for that reason, they did not campaign for two days * * *; and (2) he claimed that the weather had cleared in the afternoon of October 17, 1967 * * *, whereas the other defense witnesses said that the weather was then bad and stormy, precisely because of typhoon Welming." [15] The constitutional presumption of innocence was thus overcome. That guilt was shown beyond reasonable doubt is quite obvious. Even if the evidence for the prosecution were less conclusive and that for the defense less implausible, this Court in *People v. Tila-on*, [16] with Justice J. B. L. Reyes as ponente, stated: "Finally, the rule is now firmly established to the point of becoming elementary in this jurisdiction and elsewhere that where there is an irreconcilable conflict in the testimony of witnesses, the appellate court will not disturb the findings of the trial court when the evidence of the successful party, considered by itself, is adequate to sustain the judgment appealed from." [17]

5. The accused was found guilty of murder, the qualifying circumstance of alevosia being appreciated. Why the offense should be thus qualified was explained in the appealed decision. Thus: "The manner in which the accused

disposed of and killed Eliseo Ganay shows a mind disposed to commit a crime of murder, and was done so under a circumstance in which the deceased was not able to offer any resistance, or could not, in any way, defend himself. Of course, it cannot be said with certainty that the deceased, Eliseo L. Ganay, was shot while still sleeping, but it can be said that he was shot while lying down. The motive for the killing is very clear, the accused himself provided it in his admission to Staff Sergeant Alejandro Acosta, jealousy."^[18] In reaching such a conclusion, the lower court appeared to have ignored the equally well-settled doctrine that the same degree of proof to dispel any reasonable doubt is required to justify a finding of a qualifying circumstance. More specifically as to alevosia, Justice Mapa in *United States v. Rana*,^[19] a 1905 decision, categorically affirmed: "As the [qualifying] circumstance of treachery (alevosia) is an important one, in considering it, it should by all means be based on some positive conclusive proof and not merely upon hypothetical facts drawn more or less logically, because it is necessary that the existence of this circumstance in the commission of the crime should be proven as fully as the crime itself, in order to aggravate the penalty incurred by the guilty party."^[20] There was a reiteration of such a principle in the recent case of *People v. Ardisa*^[21] in these words: "The qualifying circumstance of treachery may not be simply deduced from presumption as it is necessary that the existence of this qualifying or aggravating circumstance should be proven as fully as the crime itself in order to aggravate the liability or penalty incurred by the culprit."^[22] There are a number of decisions to the same effect.^[23] The lower court thus clearly failed to meet the exacting norm required by the law to justify the verdict that murder was committed. At the most, only homicide in the state of the competent and credible evidence of record could be imputed to appellant.

WHEREFORE, the appealed decision of November 15, 1968 is modified in the sense that appellant Asterio Marcina is found guilty of the crime of homicide and adjudged to suffer the indeterminate sentence of 8 years and one day of prision mayor as minimum and 14 years, 8 months and 1 day of reclusion temporal as maximum. In all other respects, the appealed decision is affirmed.

Aquino and Martin, JJ., concur.

Barredo and Antonio, JJ., in the result.

Concepcion, Jr., J., on leave.

[1] Apparently, he was never apprehended for his participation, the information filed in this case being only against Marcina.

[2] Decision, Annex to Brief, 40.

[3] L-27606, July 30, 1976, 72 SCRA 184.

[4] *Ibid*, 188-189.

[5] 17 Phil. 295.

[6] *Ibid*, 302-303.

[7] 37 Phil. 599 (1918).

[8] *Ibid*, 610.

[9] Cf. *People v. Gumahin*, L-22357, Oct. 31, 1967, 21 SCRA 729; *People v. Panganiban*, L-22476, Feb. 27, 1978, 22 SCRA 817; *People v. Pelago*, L-24884, Aug. 31, 1968, 24 SCRA 1027; *People v. Manos*, L-27791, Dec. 24, 1970, 36 SCRA 457; *People v. Beraces*, L-25016, March 27, 1971, 38 SCRA 127; *People v. Sabandal*, L-31129, Sept. 30, 1971, 41 SCRA 179; *People v. Dramayo*, L-21325, Oct. 29, 1971, 42 SCRA 59; *People v. Angcap*, L-28748, Feb. 29, 1972, 43 SCRA 437; *People v. Carandang*, L-31012, Aug. 15, 1973, 52 SCRA 259;

People v. Macaraeg, L-32806, Oct. 23, 1973, 53 SCRA 285; People v. Cudalina, L-34969, April 29, 1975, 63 SCRA 499; People v. De la Victoria, L-30037, June 27, 1975, 64 SCRA 400; People v. Ordonio, L-33829, Dec. 19, 1975, 68 SCRA 397; People v. Sarile, L-37148, June 30, 1976, 71 SCRA 593; People v. Berame, L-27606, July 30, 1976, 72 SCRA 184.

[10] L-32806, October 23, 1973, 53 SCRA 285.

[11] Ibid, 291. The opinion cited People v. Alto, L-18660, November 29, 1968, 26 SCRA 342 and People v. Pagkaliwagan, L-29948, November 26, 1970, 36 SCRA 113.

[12] He was assisted by the then Assistant Solicitor General Antonio A. Torres and the then Solicitor, now JDRC Judge, Alicia V. Sempio-Dy.

[13] Brief for Appellee, 10-11.

[14] Ibid, 11-12.

[15] Ibid, 12-13.

[16] 112 Phil. 546 (1961).

[17] Ibid, 550.

[18] Decision, Annex to Brief, 51-52.

[19] 4 Phil. 231.

[20] Ibid, 233-234.

[21] L-29351, January 23, 1974, 55 SCRA 245.

[22] Ibid, 258-259.

[23] Cf. People v. Pelago, L-24884, Aug. 21, 1968, 24 SCRA 1027; People v. Torejas, L-29935, Jan. 31, 1972, 43 SCRA 158; People v. Palacpac, L-27822, Feb. 28, 1973, 49 SCRA 440; People v. Ardisa, L-29351, Jan. 23, 1974, 55 SCRA 245; People v. Manlapaz, L-27259, Feb. 27, 1974, 55 SCRA 598; People v. Ybañes, L-30421, March 28, 1974, 56 SCRA 210; People v. Manzano, L-33643, July 31, 1974, 58 SCRA 250; People v. Besana, L-26191, May 19, 1975, 64 SCRA 84; People v. Samonte, L-31225, June 11, 1975, 64 SCRA 319; People v. Macaso, L-30489, June 30, 1975, 64 SCRA 659; People v. Anin, L-39046, June 30, 1975, 64 SCRA 729; People v. Payao, L-29364, Nov. 21, 1975, 68 SCRA 70.

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