

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICENTE MAHINAY AND ISIDRO MAHINAY,
DEFENDANTS-APPELLANTS.**

G.R. No. L-31654. November 22, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

The sad fate that befell Ptolomeo Talisic, for whose death Vicente Mahinay and Isidro Mahinay,[1] father and son, were prosecuted and thereafter convicted of murder, apparently was motivated by the firm determination of the father that the prospective marriage between his daughter, Fortunata, and the deceased should not take place as the parents of the deceased "were engaged in the practice of witchcraft and sorcery." [2] From the judgment of reclusion perpetua with all the accessory penalties as well as the indemnification to the heirs of the deceased in the amount of P12,000.00, they appealed to this Court. The plea for reversal is anchored on the constitutional presumption of innocence,[3] which, according to them, had not been overcome, the first two errors assigned being that their guilt had not been shown beyond reasonable doubt and that the element of moral certainty as to their participation in the crime charged was lacking, with the third impugning the actuation of the lower court for lending credence to the testimony of the prosecution and disregarding that of the defense. The task before this Court then is to examine with care the evidence of record and to ascertain whether the lower court arrived at its decision contrary to the above mandate of the fundamental law. It must be admitted that the counsel for appellants, Attorney Luis V. Dioces, submitted an exhaustive brief to sustain such a contention. In his valiant attempt to demonstrate that culpability beyond reasonable doubt had not been shown, he tried to discredit the testimony of the two principal witnesses, one of whom directly saw the gory event and the other saw the appellants at the scene of the tragedy, by assailing their credibility. The difficulty confronting counsel is thus apparent. This Court has consistently adhered to the doctrine of according respect to findings of fact of the trial judge, unless it could be shown that a fact or circumstance has been overlooked or has been misinterpreted. More specifically, as far as this case is concerned, with such positive identification of the appellants as the perpetrators of the act, along with the third accused, Gaudioso Jayme, still at large at the time of the trial, the task of overturning their conviction is far from easy. Under such circumstances, the defense of alibi, as repeatedly held by this Tribunal, is futile and unavailing. A thorough scrutiny of the records of the case, in the light of controlling principles, does not call for a reversal.

From the evidence of the prosecution, it was shown that the deceased Ptolomeo Talisic, sometime in November 24, 1968, accompanied by Sulpicio Antolihao and Quintin Ubay, went to the house of appellant Vicente Mahinay, the father of Fortunata Mahinay, his sweetheart the past four years, the purpose being to ask for her hand in marriage.[4] They were informed by him that he would give them his answer the next day, and accordingly they came back the next morning.[5] Vicente Mahinay, who was contacted in his farm, gave a negative answer; he was opposed to his daughter Fortunata marrying Ptolomeo, the reason given being his belief that the Talisic family was engaged in the practice of witchcraft and sorcery.[6] That did not deter the family of the deceased from

renewing on November 28, 1968, again with the help of Ubay and Antolihao, the proposal of marriage, but the father was adamant in his refusal.[7] The daughter, Fortunata, was of a different mind; she confided to Antolihao that regardless of the wishes of her father, she would marry Ptolomeo in the month of January, 1969.[8] On December 29, 1968, at about four in the afternoon, Ptolomeo saw Fortunata at the Carbon market at Cebu City; they agreed to meet at Barrio Cotcot which was then celebrating its barrio fiesta.[9] Fortunata went home and, together with her aunt, Ildefonsa Mahinay, proceeded to Cotcot, where they were together until about seven-thirty in the evening, when they parted company, it turned out for the last time.[10] That same evening of December 29, 1968, the spouses Jacinto Longakit and Esperanza Tundag, coming from Cotcot and proceeding towards their house at Sitio Balingasao, Cotcot, Liloan, Cebu, were traversing a trail via Mahayahay when they heard a man's shout for help, apparently from a distance of about twelve arms-length.[11] Leaving his wife, Esperanza, and proceeding to the place where the voice came from, he saw from a distance of about five-arms length, Ptolomeo Talisic with his right hand being held by appellant Vicente Mahinay and his left hand by appellant Isidro Mahinay while Gaudioso Jayme was striking Ptolomeo with a piece of wood.[12] He fell down, and the two appellants, father and son, with Jayme, continued attacking him.[13] Apprehensive for his own safety, Longakit returned to the place where he left his wife and told her to rush back home.[14] On January 1, 1969, Matias Talisic, a brother of Ptolomeo, was informed by another brother, Alfredo, that the deceased did not come home after attending the Cotcot fiesta on December 29, 1968.[15] Matias and Alfredo proceeded to the house of the Mahinays, where Fortunata and her aunt, Ildefonsa, informed them that they were with Ptolomeo when they went home from Cotcot, even adding that they invited Ptolomeo to stay with them overnight and to go home only the next morning.[16] The two ladies, replying to the inquiry of the Talisic brothers, said that Ptolomeo was not in the house.[17] It was the brother, Matias, who not being satisfied with the answer given by them, went back later to the Mahinay residence and noticed at a distance of thirty meters a two-foot long wooden club, a cigarette pack with sticks of cigarettes inside, and overturned stones.[18] When he arrived at the house of the Mahinays, he saw Vicente and he inquired about the whereabouts of Ptolomeo, receiving the reply from the latter that he did not know, coupled with the suggestion that a telegram should be sent to Ormoc.[19] Quite worried about his brother's fate, he decided to keep on looking.[20] The search for Ptolomeo Talisic ended on January 3, 1969 when his dead body was discovered in the farm of Gaudioso Jayme.[21] The police and a doctor were summoned to the place to conduct an investigation and autopsy.[22] Appellant Vicente Mahinay arrived at the scene of the exhumation at about five o'clock in the afternoon and immediately he said, "That shirt is mine," referring to the sweater which was found near the body of Ptolomeo.[23] He also prodded the policeman who was then at the scene of the exhumation to immediately arrest Gaudioso Jayme, his own nephew, who was reared by and lived with him until marriage, as the person responsible for the killing of Ptolomeo.[24] The sweater and the shoes which were found near the body of Ptolomeo were given by Vicente to Gaudioso Jayme when the latter was still living with Vicente.[25] Upon the discovery of Ptolomeo's body, Gaudioso disappeared from the barrio and his whereabouts had not been found.[26] The autopsy conducted on the body of Ptolomeo[27] revealed that the victim died between five to six days before the date of the autopsy on January 3, 1969. His death thus occurred on or before December 29, 1968.[28]

It was on the basis of such evidence that the conviction of appellants was predicated. The thirty-page decision[29] of Judge Francisco Ro. Cupin is notable for the care and circumspection with which the respective versions of the prosecution and defense were appraised and analyzed. As noted at the outset, there is no justification for a reversal.

1. It is readily apparent why the brief for appellants in their first two assignments of errors alleged that their guilt had not been proved beyond reasonable doubt and that there was no moral certainty as to their participation in the offense. For prior to the presumption of innocence being expressly embodied in the 1935 Constitution,[30] the controlling rule of evidence was that there must be a showing beyond reasonable doubt of

the culpability of the person accused. As set forth in the opinion of Justice Trent in the leading case of *United States v. Lasada*,^[31] a 1910 decision: "It is incumbent upon the prosecution to establish the guilt of the defendant beyond a reasonable doubt, and if there remains a reasonable doubt as to his guilt or innocence this doubt must be resolved in his favor and he must be acquitted. By reasonable doubt is not meant that which of possibility may arise, but it is that doubt endangered by an investigation of the whole proof and an inability, after such investigation, to let the mind rest easy upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense."^[32] As a matter of fact, in the first case after the 1935 Constitution, relying on the constitutional presumption of innocence, *People v. Dalmani*,^[33] Justice Laurel relied on the *Lasada* doctrine: "There are, however, facts and circumstances of record which considered in isolation may seem unimportant, but if taken together and considered in the light of certain events now to be referred to, are sufficient to raise in the mind of this court a grave doubt as to the guilt of the defendant-appellant Dalmani, 'that doubt endangered by an investigation of the whole proof and an inability after such investigation, to let the mind rest easy upon the certainty of guilt.'"^[34] In two other cases, *People v. Peralta*,^[35] and *People v. Sarmiento*,^[36] the then Justice, later Chief Justice, Moran, in acquitting the accused in both instances, spoke of this Court being unable "with a peaceful mind" in the former, and letting its mind "rest at ease" in the latter to explain why such Constitutional presumption of innocence had not been overcome.

2. Even a cursory reading of the appealed decision would readily disclose why the trial judge reached the conclusion that the guilt of appellants was proved beyond reasonable doubt, the stage of moral certainty being reached. As a matter of fact, there was reference to such a question in the appealed decision: "Was the evidence of the prosecution sufficient enough to establish the guilt of the accused for the commission of the crime of murder beyond a shade of doubt?"^[37] Moreover, he made clear that as the prosecution, in his own language, "leaned heavily on the testimonies" of the eyewitnesses, Jacinto Longakit and the witness Vicente Tagalog who, while not seeing the perpetration of the act, saw the two appellants with the other accused leading a carabao on the top of which was the body of a man at the scene of the crime, "it is incumbent upon the Court to evaluate their respective declarations with caution."^[38] That norm of conduct he did observe; in the next pages of the decision, there was a careful analysis of the defense raised by appellants. Only then did he state why a finding of guilt against them is justified. Thus: "After a careful review of the evidence and mature deliberation, the Court is definitely convinced that the accused had been sufficiently identified to have committed the crime charged in the information, and that they should be held liable for the death of Ptolomeo Talisic. The Court is persuaded by the evidence on record that prosecution witness Jacinto Longakit saw the accused Vicente Mahinay, Isidro Mahinay and Gaudioso Jayme beat and club to death Ptolomeo Talisic at about midnight of December 29, 1968, in Sitio Mahayahay, Liloan, Cebu. This fact was corroborated by another witness, Vicente Tagalog, who saw the same three accused passed by leading a carabao with the body of a man loaded on the back of a carabao. While it is true that there were inconsistencies and discrepancies extracted by the accused from the witnesses for the prosecution on cross-examination, the Court has observed that these were minor matters and not very material to the case. Besides, if the prosecution witnesses' testimony at times varied at length, the fact was that they were sufficiently explained on redirect and on rebuttal; they could easily reconcile the alleged discrepancies to the material points raised in the case at bar."^[39]

Nor did the trial judge stop there: "The Court believes that credence should be given more weight in favor of the government witnesses. In the first place, no motive has been shown why they should fabricate the facts and foist a very serious crime against the accused. Secondly, the identification of the accused by prosecution witnesses Jacinto Longakit and Vicente Tagalog were clear and positive, considering that they had the best opportunity for observation. Not only that, these prosecution witnesses have known for quite a long time all the accused considering that they live in the same place and being familiar with their movements, their figures, and the manners and peculiarities of their individual personalities, these must have been literally burned into their

memory to enable them to identify the accused vividly with confidence. Following the argument of the defense that these two prosecution witnesses had shown serious discrepancies and contradictions in their testimonies on the witness stand, it is the opinion of the court that even the most intelligent witnesses commit inconsistencies and discrepancies as to a particular fact, but this does not necessarily render such testimony unworthy of credence. In fact, our Supreme Court has consistently held: 'Where the testimony of a witness is in conflict in some of its details with her extrajudicial confession due to her imperfect memory in matters of detail and also to the lengthy cross-examination to which she was subjected by a renowned and justly feared criminal lawyer, but the contradictions in important parts have been satisfactorily explained by her and on the whole her statement agree as to the main and ultimate facts the testimony of the witness may be given weight.' (People vs. Go, et al., 38 Phil. 203, 213)."[40]

1. Clearly then, the first two assignments of error that there was no showing of guilt beyond reasonable doubt and that the stage of moral certainty was not reached find no support in the evidence of record. Under the facts as testified to by disinterested witnesses, possessed of a high persuasive quality, the insistence on the constitutional presumption of innocence is futile.

2. It is likewise evident considering the foregoing, that there is no basis for the third assignment of error that the lower court should not have given credence to the testimony for the prosecution and should not have disregarded the evidence for the defense. A rational mind bent on objectively appraising the matter would have reached the same conclusion. What was testified to by the prosecution was clearly deserving of belief. This observation found in the decision would further bolster the stand of the trial judge: "Besides, the Court has observed the behavior of the accused which was unusual and inconsistent with human experience. Their actions betray their guilty conscience."[41] Again, an excerpt from the opinion of Justice Trent in Lasada would demonstrate how well-grounded in the law was the actuation of the lower court: "The trial judge had an opportunity to see these witnesses, hear them testify, and observe their demeanor on the witness stand. This is one of the best ways of determining the credibility of a witness. After hearing all these witnesses testify he was convinced beyond a reasonable doubt that the witnesses for the prosecution testified the truth. In view of these facts we must give great weight to the findings made by the trial court. We only have the record, and, as we have said, the testimony for the prosecution is reasonable. It is direct and positive. In view of the clear and explicit findings made by the trial court, and after a careful consideration of the testimony presented, we are fully satisfied that the defendant is guilty of this crime."[42]

3. That is the norm invariably followed by this Court since then. There is a restatement of such a principle in a fairly recent decision, *People v. Carandang*: [43] "Thus in *People v. Angcap*, it was said: 'There is need to stress anew that this Court has long been committed to the principle that the determination by a trial judge who could weigh and appraise the testimony as to the facts duly proved is entitled to the highest respect, unless it could be shown that he ignored or dis-regarded circumstances of weight or influence sufficient to call for a different finding.' So it was announced by Justice Moreland in 1915 in one of the first cases of consequence enunciating such a doctrine. As he pointed out, in the event of a conflict in the testimony of the witnesses, 'the peculiar province of the trial court is to resolve the question of credibility, and, unless there is something in the record impeaching by fair interpretation the resolution of the trial court in relation to that question, this court will assume that he acted fairly, justly, and legally in the exercise of that function.'" So it has been since then. In a case reported in the latest volume of the Philippine Reports, Justice Paredes, speaking for this Court succinctly stated "that with respect to the credibility of witnesses, the trial court's findings and conclusions, command great respect and weight." Its more usual formulation was also set forth by Justice Malcolm in these words: "After everything is said and done, we come back, as we invariably do in cases of this nature, to a recognition of the rule that the Supreme Court will not interfere with the judgment of the trial court in passing on the credibility of the opposing witnesses, unless there appears in the record some fact or circumstances of weight and influence, which has been overlooked or the significance of which has been misinterpreted." [44]

4. Lastly, there is the defense of alibi, certainly in the light of so many past decisions hardly sufficient to call for a reversal of the conviction. Another excerpt from *People v. Carandang* is relevant: "Nor is their case for a reversal bolstered by their plea of alibi. This is not to lose sight of the fact that the presence elsewhere of the accused would preclude their participation in a crime. Such a fact, if there be such, has to be shown though by evidence that commands assent. Unfortunately for appellants in this case, they were unable to do so. The categorical nature of the identification made by the offended spouses placed a burden on them too difficult to overcome by the allegation that they could not have been the perpetrators of the foul deed." [45] The case for the prosecution was stronger in this case. Appellants were identified by disinterested witnesses. The matter was more succinctly put in *People v. Berame*: [46] "The defense of alibi was indisputably devoid of merit. There was positive identification." [47]

WHEREFORE, the decision of December 23, 1969, finding appellants guilty beyond reasonable doubt of the offense of murder and sentencing each of them to suffer the penalty of reclusion perpetua with all the accessory penalties, to indemnify the heirs of the deceased in the sum of P12,000.00 and to pay the costs, is affirmed. In the service of their sentence, the appellants are entitled to be credited with the full period of their preventive imprisonment.

Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.
Barredo, J., did not take part.

[1] A certain Gaudioso Jayme was likewise charged in the information, but at the time the case was tried, he had not yet been apprehended.

[2] Decision, 2.

[3] Article IV, Section 19 of the Constitution, insofar as pertinent, reads: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, * * *."

[4] T.s.n., Session of August 20, 1969, 101-102; August 21, 1969, 128; Session of September 25, 1969, 71.

[5] Ibid, Session of August 21, 1969, 129.

[6] Ibid, Session of August 21, 1969; Ibid, Session of September 2, 1969, 12.

[7] Ibid, Session of August 21, 1969, 130.

[8] Ibid, Session of August 21, 1969, 137-138.

[9] Ibid, Session of August 20, 1969, 103.

[10] Ibid, Session of August 20, 1969, 104-105.

[11] Ibid, Session of August 18, 1969, 36-38.

[12] Ibid, Session of August 18, 1969, 38.

[13] Ibid, Session of August 18, 1969, 38-39.

[14] Ibid, Session of August 18, 1969, 40.

[15] Ibid, Session of August 25, 1969, 150-151.

[16] Ibid, Session of August 25, 1969, 151-152.

[17] Ibid, Session of August 25, 1969, 153.

[18] Ibid, Session of August 21, 1969, 153-154.

[19] Ibid.

[20] Ibid.

[21] Ibid, Session of August 21, 1969, 155-156.

[22] Ibid, Session of August 21, 1969, 156-157.

[23] Ibid, Session of August 21, 1969, 156.

[24] Ibid, Session of August 21, 1969, 156-157.

[25] Ibid, Session of September 10, 1969, 83-84.

[26] Ibid, Session of September 10, 1969, 84.

[27] Ibid, Session of July 22, 1969, 12; Exhibit J.

[28] Ibid, Session of July 2, 1969, 30-31.

[29] Appendix A.

[30] The present constitutional provision, insofar as the accused is presumed innocent until the contrary is proved, is a reproduction of Article III, Section 1, paragraph 17 of the 1935 Constitution.

[31] 18 Phil. 90.

[32] Ibid, 96-97.

[33] 63 Phil. 188 (1936).

[34] Ibid, 192. Cf. *People v. Castañeda*, 63 Phil. 480 (1936); *People v. Manoji*, 68 Phil. 471 (1939); *People v. Marcos*, 70 Phil. 468 (1940).

[35] 67 Phil. 293 (1939).

[36] 69 Phil. 740 (1940).

[37] Decision, 15.

[38] Ibid, 15-16.

[39] Ibid, 21-22.

[40] Ibid, 22-23.

[41] Ibid, 28.

[42] 18 Phil. 90, 100.

[43] L-31012, August 15, 1973, 52 SCRA 259.

[44] Ibid, 267-268. Angcap, L-28748, Feb. 29, 1972, 43 SCRA 437. The excerpt from the opinion of Justice Paredes came from *People v. Cristobal*, 110 Phil. 741 (1961) and that from Justice Malcolm came from *People v. De Otero*, 51 Phil. 201 (1927). Cf. *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; *People v. Alonso*, L-32163, Oct. 19, 1976, 73 SCRA 483; *People v. Velasco*, L-31920, Oct. 29, 1976, 73 SCRA 574.

[45] 52 SCRA 259, 268.

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

[47] *Ibid*, 191.

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