

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VENANCIO MALILAY, ET AL., DEFENDANTS, VENANCIO MALILAY,
CARLOS GUIEB, CAMILO MELCHOR AND SANTOS MANGUBA,
DEFENDANTS-APPELL...**

G.R. No. L-27938. April 22, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

The incident with tragic consequences for the deceased Ceferino Cases, as has happened time and time again dating from one of the earliest cases reported, *United States v. Taguibao*,^[1] is traceable to the bitterness that in the Philippines usually attends conflicting land-claims. For his death, Venancio Malilay, Carlos Guieb, Camilo Melchor and Santos Manguba were prosecuted for murder and thereafter convicted, the sentence imposed on each of them being reclusion perpetua.^[2] In their appeal, they would pin their hopes for a reversal on the plea that the constitutional presumption of innocence had not been overcome, their guilt not having been shown beyond reasonable doubt.^[3] Appellants Carlos Guieb and Camilo Melchor, who jointly filed a separate brief, did likewise further stress the defense of alibi, relied upon by all the accused, and, as to them, the absence of any conspiracy. An examination of the records of the case discloses that the appealed decision does not suffer from the infirmities imputed to it. The evidence justified the finding of guilt as well as the sentence imposed except as to the amount awarded the heirs of the deceased in the concept of indemnity, which should be increased. With that modification, the judgment is affirmed.

What were the facts? As testified to by the prosecution, it was on May 9, 1961 that the fatal incident took place. The victim, Ceferino Cases, and Moises Rivera, Jr., his herdsman, had gone to Tanyag precisely to put a sign on that particular parcel of land to show ownership, to which likewise appellant Malilay had laid claim.^[4] The confrontation took place in the house of a certain Agustin Sumajit, where the two of them tarried to rest for a while. Soon after, appellants Malilay, Melchor, Guieb, Manguba and a certain Sarmiento, approached them.^[5] At first, there were no signs of an impending tragedy. It started in a rather tame manner, appellant Malilay merely telling Cases: "Wait for a while, I would like to talk with you."^[6] Then came this query: "Why is it that you fenced this lot when it is my lot?"^[7] Cases replied: "If that is yours, it is all right with me, provided you have the papers to show that it is really yours."^[8] Malilay retorted: "Tomorrow morning we shall go to the Office of the Bureau of Lands and find out who really is the owner of the land."^[9] Cases merely remarked: "Yes."^[10] The reaction from Malilay was quite unexpected: "Let us go to the middle of the land, [and you] kill me that I would not have any more consumision, * * * I would not have any more worries about this matter."^[11] Cases was quite conciliatory, saying: "I do not have the nerve to kill anybody."^[12] After that remark, Venancio Malilay grabbed the right hand of Cases. The latter fell to the ground, face downward.^[13] On seeing Cases down, Malilay said, "Tira mga bata."^[14] Evidently, he was referring to the other appellants, his companions. Cases was then hit with a hammer on the back of the head by Pineda.^[15] He was still flat on the ground,^[16] when Sarmiento hit him with a crow-bar, the blow likewise landing on the head.^[17] Guieb likewise got into the act, snatching the

hammer from Pineda and directing a blow at the back of the head. It was then Melchor's turn to use the crowbar.[18] Nor did Manguba let slip the opportunity, grabbing and hitting Cases on the same spot.[19] Malilay finished the grisly job with the same hammer and inflicted further blows on the deceased, this time aiming too at the leg.[20] He then threatened the eyewitness, Rivera, with this warning: "If you go to the town and report this matter to the barracks including all these people you saw, I will turn Hukbalahap, go to the mountains and will not surrender and will kill all of you men of Ceferino Cases." [21] Appellant Guieb drew his bolo and ran after witness Rivera, but he failed to overtake the latter.[22] The above testimony came from Moises Rivera, who was there present all the while, he being, as noted, the herdsman of the victim. The other eyewitness was Agustin Sumajit, who supplied corroboration in every important particular.[23] Ceferino Cases died of hemorrhage, internal and external, due to injuries he sustained on that day.

As set forth at the outset, a careful and thorough examination of the evidence submitted in this case fails to justify a reversal of the decision reached by the lower court.

1. The concern shown by this Court for the constitutional mandate as to the presumption of innocence to be fully adhered to, requiring that there be evidence sufficient to remove every vestige of reasonable doubt, was evident as early as *United States v. Reyes*, decided in 1903.[24] Absolute certainty, as pointed out in the leading case of *United States v. Lasada*, [25] promulgated in 1910, "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." [26] It is incumbent on the prosecution then, as was so well stressed in *People v. Dramayo*, [27] "to demonstrate that culpability lies. [Defendants are] not even called upon to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence." [28] It is the contention of appellants that such an exacting standard has not been met.

More specifically, appellants Malilay and Manguba would cast doubt on the veracity of the testimony of the eyewitnesses Moises Rivera Jr. and Agustin Sumajit. It is understandable why so much effort was spent in discrediting them. What appellants failed to take into account was the persuasive nature of such testimony, its conformity with events as would in the natural course of things likely arise, given the resentment that must have filled the heart of appellant Malilay. It is witness Rivera who bore the brunt of the derogatory imputation of appellants Malilay and Manguba. It is understandable why. For on May 12, 1961, three days after the gory incident, he did subscribe and swear to an affidavit before the justice of the peace of San Jose, Occidental Mindoro, wherein he admitted that he only heard of the death of the deceased Ceferino Cases. Left unexplained, the testimony thereafter given by him in court should rightfully be refused credence. On the stand, he was able to bring out the truth. He made clear that he had to sign the affidavit because of the threat posed by appellant Malilay, who then was not yet apprehended and was therefore in a position to cause him bodily harm, even to endanger his life. As he testified with candor, that fear disappeared because Malilay "is now before the honorable court." [29] There were of course inconsistencies pointed out. Appellants Malilay and Manguba should have realized that this Court is on record to the effect that precisely, far from discrediting a witness, they could be a badge of his sincerity. [30]

Insofar as appellants Guieb and Melchor are concerned, not much attention need be paid to their claim of the failure of the prosecution to prove their guilt beyond reasonable doubt. Reference to the brief for appellee filed by the then Solicitor General, now Associate Justice, Felix Q. Antonio, would clearly indicate that such an assertion is more an indication of temerity rather than of a painstaking scrutiny of the record. Thus: "In the foregoing assigned error, appellants insist once more that there is no evidence of their participation in the commission of the crime at bar. But the evidence on record shows otherwise. They consider the testimonies of Moises Rivera, Jr. and Sumajit as worthless and, therefore, as no evidence at all. Because of the change of position of witness Moises

Rivera, Jr. appellants argue that his testimony in court is worthless. It is emphasized that Moises Rivera, Jr. was not at the scene of the incident, as he stated in his extra-judicial statement of May 12, 1961. On page 19 of their brief, appellants state once more 'there was no eye-witness to the crime and now comes the fiscal including two innocent persons to the case at bar and accused them as principal and convict them as such to life imprisonment which is not backed by records of the case nor of evidence sufficient to convict them on circumstantial grounds.' We are at a loss to answer such claim of the appellants Guieb and Melchor not knowing where they based it." [31]

The contention therefore made by the four appellants that the presumption of innocence had been overcome is clearly shown to be devoid of merit.

2. Appellants then had no choice but to demonstrate that they had not incurred any criminal liability. Their common defense is that of alibi. The lower court duly took note of such an allegation and was far from convinced. The appealed decision explains why: "After evaluating the evidence in this case, this Court finds that the theory of the prosecution is fully sustained by the facts on record which were proven beyond reasonable doubt. The defense of alibi interposed by all the accused in this case has not been convincingly established and the credibility of their respective versions is doubtful. Quite irreconcilable with the positive identification of the two eyewitnesses for the prosecution, Moises Rivera and Agustin Sumajit who in clear, logical and unbiased testimony recounted how in a treacherous manner the herein accused inflicted one after the other on the defenseless Cases the several mortal wounds, fractures, and contusions on the head and extremities of victim Cases during the incident which took place right on the landing of the ladder of the house of Sumajit. The claim of Camilo Melchor and Carlos Guieb that they boarded the PC truck on the afternoon of May 9, 1961 in the poblacion of San Jose, Occidental Mindoro is negated by the testimony of Sgt. Ravina who stated that on his return trip he did not see these two accused as among the persons who boarded his truck on the return trip to the poblacion. That even admitting the possibility that they really took that bus, the killing could have already occurred at that time as the same took place between 3:00 and 4:00 in the afternoon of May 9, 1961 and they arrived in the evening of that same day in the poblacion and they proceeded to the house of Francisco Cacho, their counsel during the preliminary investigation, for consultation. As to the alibi of Santos Manguba and Camilo Melchor, the place where they claimed to be on that day is only near the barrio of Tanyag and is within the municipality of San Jose, to which place they could easily have fled. As to the version of Venancio Malilay that upon being informed by Jose Aquino that his brother-in-law, Domingo Pineda, had killed Cases in a fight and that he went to the place and found Cases already dead, and immediately thereafter had ordered Aquino to notify the authorities of the incident — such testimony does not deserve credence for the same is inconsistent, firstly with his flight, surrendering himself only on May 29, when the PC authorities were already looking for him; and secondly, with his failure to notify personally the authorities considering that it was his bounden duty to do so, as barrio lieutenant of Tanyag." [32]

It only remains to be added that in thus appraising the rather infirm character of such defense, the lower court was just paying due heed to the well-settled doctrine that for alibi to be acceptable, it must be shown that the place where the accused was alleged to be when the offense was committed must be located at such a distance that it was well-nigh impossible for him to be at the scene of the crime. [33]

3. That leaves the issue raised by appellants Guieb and Melchor as to their being entitled to acquittal, no conspiracy having been shown. There was this rather astounding assertion, the brief submitted for them by counsel de oficio Jimenez B. Buendia: "No witness was able to show the participation of either of the accused, hence, no conspiracy was proved at the trial, with respect to herein appellants. There was no simultaneous attack on the victim." [34] The only possible explanation for such a categorical assertion contradicted by the facts of record, with two eyewitnesses under oath declaring that appellants Guieb and Melchor were not only present at the scene of the crime but took turns in using the hammer and the crowbar on the hapless victim, is that counsel

did not pay enough attention to the transcript of stenographic notes. That is hardly the recommended mode and manner in which counsel, whether de parte or de oficio, can attend to his task. That kind of argumentation is a boon for the prosecution.[35] It does not help the defense at all.

For a clarification on the prevailing doctrine as to when a conspiracy exists, it may be useful to refer to the recent case of *People v. Pudpud*.^[36] Thus: "A conspiracy in the statutory language 'exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.' The objective then on the part of the conspirators is to perform an act or omission punishable by law. What is required is assent to the perpetration of such a misdeed. That must be their intent. There is need in the language of Justice Mapa in the early leading case of *United States v. Magcomot*, a 1909 decision, for 'concurrence of wills' or 'unity of action and purpose.' The usual phraseology employed in many of the later cases is 'common and joint purpose and design.' At times, reference is made to 'previous concert of criminal design.' Its manifestation could be shown by 'united and concerted action.' Thus a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. The conditions attending its commission and the acts executed may be indicative of a common design to accomplish a criminal purpose and objective. If, to use the apt words of Chief Justice Bengzon, there is 'a chain of circumstances' to that effect, then conspiracy has been established. If such be the case then, the act of one is the act of all the others involved and each is to be held to the same degree of liability as the others. So it has been our constant ruling from the 1905 decision of *United States v. Maza*."^[37]

WHEREFORE, the decision of the lower court of September 6, 1968 finding appellants Venancio Malilay, Carlos Guieb, Camilo Melchor, and Santos Manguba guilty beyond reasonable doubt of murder punished under Article 248 of the Revised Penal Code without any modifying circumstance, and sentencing each of them to suffer reclusion perpetual, each to indemnify solidarity the heirs of deceased Cases in the sum of Six Thousand Pesos (P6,000.00), and each to pay the proportionate costs, is affirmed, with the modification that the solidary obligation of each of the appellants to the heirs of the deceased is in the amount of Twelve Thousand Pesos (P12,000.00).

Makalintal, C.J., Barredo, Aquino, and Concepcion, Jr., JJ., concur.

Antonio, J., no part.

[1] 1 Phil. 16 (1901). The latest case in point decided seventy-three years later is *People v. Ricohermoso*, L-30527, March 29, 1974, 56 SCRA 431.

[2] There were two other accused, Domingo Pineda and Jose Sarmiento. The former died during the trial of this case, and the latter was still at large up to the date of the promulgation of the decision on September 6, 1968.

[3] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified."

[4] T.s.n., Session of January 16, 1963, p.m., 3.

[5] *Ibid.*, 4.

[6] *Ibid.*, 5.

[7] *Ibid.*, 6.

[8] Ibid.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid. 7.

[14] Ibid. 9.

[15] Ibid.

[16] Ibid. 11.

[17] Ibid. 11-12.

[18] Ibid. 12.

[19] Ibid.

[20] Ibid. 13.

[21] Ibid. 14.

[22] Ibid. 15.

[23] Ibid. Session of February 6, 1963, 4-10.

[24] 3 Phil. 3.

[25] 18 Phil. 90.

[26] Ibid. 96-97. The latest case citing Lasada with approval is *People v. Roa*, L-35284, January 17, 1975.

[27] L-21325, October 29, 1971, 42 SCRA 59.

[28] Ibid. 64. Cf. *People v. Macaraeg*, L-32806, Oct. 23, 1973, 53 SCRA 285; *People v. Molina*, L-30191, Oct. 27, 1973, 53 SCRA 495; *People v. Zamora*, L-34090, Nov. 26, 1973, 54 SCRA 47; *People v. Alvarez*, L-34644, Jan. 17, 1974, 55 SCRA 81; *People v. Barbo*, L-30988, March 29, 1974, 56 SCRA 459; *People v. Reyes*, L-36874, Sept. 30, 1974, 60 SCRA 126; *People v. Roa*, L-35284, Jan. 17, 1975.

[29] T.s.n., Session of January 17, 1963, 36.

[30] Cf. *People v. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812; *People v. Pan Provo*, L-28347, Jan. 20, 1971, 37 SCRA 19; *People v. Mercado*, L-30298, March 30, 1971, 38 SCRA 168; *People v. Otto*, L-29631, Jan. 31, 1973, 49 SCRA 306; *People v. Jovellano*, L-32421, March 27, 1974, 56 SCRA 156; *People v. Genoguin*, L-23019, March 28, 1974, 56 SCRA 181.

[31] Brief for the Appellee, 7.

[32] Decision, Appendix A to Brief for Appellants Guieb and Melchor, 38-39.

[33] Cf. *People v. Almirez*, L-16109, Oct. 20, 1961, 3 SCRA 252; *People v. Llanto*, L-15634, April 23, 1962, 4 SCRA 978; *People v. Domenden*, L-17822, Oct. 30, 1962, 6 SCRA 343; *People v. Bautista*, L-17772, Oct. 31,

1962, 6 SCRA 522; *People v. Rival*, L-14077, March 31, 1964, 10 SCRA 462; *People v. Maranan*, L-18211, April 30, 1965, 13 SCRA 642; *People v. Daga*, L-22371, Oct. 26, 1967, 21 SCRA 525; *People v. Alcantara*, L-16832, Nov. 18, 1967, 21 SCRA 906; *People v. Atencio*, L-22518, Jan. 7, 1968, 22 SCRA 88; *People v. Peralta*, L-19069, Oct. 29, 1968, 25 SCRA 759; *People v. Vacal*, L-20913, Feb. 27, 1969, 27 SCRA 24; *People v. Lumantas*, L-28355, July 17, 1969, 28 SCRA 764; *People v. Hamtig*, L-27431, Aug. 22, 1969, 29 SCRA 14; *People v. Bautista*, L-27638, Nov. 28, 1969, 30 SCRA 558; *People v. Carpin*, L-28356, Jan. 30, 1970, 31 SCRA 354; *People v. Pingol*, L-26931, May 28, 1970, 33 SCRA 73; *People v. Alcantara*, L-26867, June 30, 1970, 33 SCRA 812; *People v. Brioso*, L-28482, Jan. 30, 1971, 37 SCRA 336; *People v. Esmael*, L-28533, Feb. 24, 1971, 37 SCRA 601; *People v. Entienza*, L-29215, March 27, 1974, 56 SCRA 107; *People v. Ybañez, Jr.*, L-30421, March 28, 1974, 56 SCRA 210.

[34] Brief for Appellants Guieb and Melchor, 7.

[35] It is likewise to be noted that with quite a number of Supreme Court decisions that maybe referred to, counsel de oficio for reasons best known to him relied on some Court of Appeals decisions, not particularly notable for persuasiveness.

[36] L-26731, June 30, 1971, 39 SCRA 618.

[37] Ibid. 624-625. *Magcomot* is reported in 13 Phil. 386. The decision of Chief Justice Bengzon is *People v. Villanueva*, L-12687, July 31, 1962, 5 SCRA 672. *United States v. Maza* is reported in 5 Phil. 346. The other cases that may be mentioned are *People v. Abrina*, 102 Phil. 695 (1957); *People v. Izon*, 104 Phil. 690 (1958); *People v. Monroy*, 104 Phil. 759 (1958); *People v. Tila-on*, L-12406, June 30, 1961, 2 SCRA 653; *People v. Indic*, L-18071, Jan. 31, 1964, 10 SCRA 130; *People v. Castro*, L-17465, Aug. 31, 1964, 11 SCRA 699; *People v. Estrada*, L-26103, Jan. 17, 1968, 22 SCRA 111; *People v. Capito*, L-24466, March 19, 1968, 22 SCRA 1130; *People v. Fontillas*, L-25298, April 16, 1968, 23 SCRA 74; *People v. Magcamit*, L-25555, March 28, 1969, 27 SCRA 450; *People v. Tapitan*, L-21492, April 25, 1969, 27 SCRA 959.

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