

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AGAPITO LASADA, DEFENDANT AND APPELLANT.

G.R. No. 5324. December 28, 1910

Ponente: TRENT, J.

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TRENT, J.:

On December 9, 1908, the provincial fiscal of the Province of Leyte filed a complaint against Agapito Lasada, Santiago Lasada, Macario Lasada, and Panfilio Closa, charging them with the crime of murder. The case was called for hearing on the 26th of January, 1909. The accused Agapito Lasada, upon his own application, was granted a separate trial, which commenced on that day. On being arraigned on this charge he plead not guilty. After hearing and considering the proofs and arguments presented the trial court found this accused, Agapito Lasada, guilty of the crime of homicide and sentenced him to seventeen years four months and one day of reclusion temporal, to the accessory penalties, to indemnify the heirs of the deceased, and to pay one-fourth of the costs. He appealed to this court, and his case is the only one before us at this time.

Pedro Sopriengco, a Chinaman and resident of the barrio of Tarragona, municipality of Abuyog, Province of Leyte, left his house about 8 a. m. on March 30, 1908, to visit his coconut grove or rice fields, with the intention of returning early that same afternoon. His body was found the next day, March 31, about 100 brazus from the bridge which crosses the River Balacoue, within the jurisdiction of his barrio.

Counsel for the appellant insists: First, that the prosecution failed to establish the guilt of his client of the crime charged; and, second, that it has not been shown that the wounds inflicted upon the body of the Chinaman were the direct cause of his death. We will determine the second proposition first:

That the Chinaman's body was found on March 31 at a certain place near the river is not questioned, neither is it questioned that when he left home the day before he was enjoying reasonably good health. By order of the justice of the peace Ramon Mandia, a mediquillo, examined this body on the day it was found, and according to this witness's testimony, which is not contradicted, the body presented the following described wounds and contusions: A contusion on the forehead, apparently made by a blow; a wound in the right side caused by a sharp cutting instrument. This wound was 5 centimeters deep and 4 centimeters long. On the neck and face there were livid marks. In the opinion of this witness the wound in the side would not, necessarily, have caused the death of the Chinaman, but the blow on the forehead would have caused his death.

Julia Sopriengco, daughter of the deceased, gave about the same description of the wounds on the body as did the mediquillo. The blow on the forehead was evidently caused by some heavy blunt instrument, and we are fully satisfied that this blow, together with the other wounds, was the direct cause of the death of this Chinaman.

Agapito Lasada and Santiago Lasada were charged in the Court of First Instance of the Province of Ley te with the crime of lesiones graves. It was alleged in this complaint that these two men did on the 23d of February, 1906, criminally and maliciously maltreat Pedro Sopriengco, inflicting upon the person of the said Sopriengco three contusions. The Court of First Instance found Agapito Lasada guilty of the crime as charged in the complaint and

sentenced him to be confined for the period of four months and to indemnify the injured party in the sum of P50. Lasada appealed to the Supreme Court and this court affirmed the verdict of guilty but reduced the penalty to twenty-five days' imprisonment in the municipal jail of Abuyog, and fixed the amount of the indemnity the same as the trial court.[1] The certificate, returning the record in this case to the Court of First Instance for the execution of the sentence, was signed by the clerk on the 31st of January, 1908, and it must have arrived in the capital of the Province of Leyte some eight or ten days later, and it required a few days more in sending the order from the capital to Abuyog to the municipal president, directing him to carry the sentence of this Supreme Court into effect. Agapito Lasada was, in a way, serving this sentence on the 30th of March of that year; in fact he was then spending his time in the municipality of Abuyog, but was not confined in the municipal jail. He was permitted by the president, Vicente Tiauzon, to go where he pleased in the town and stayed, at least a part of the time, in the house of Tiauzon. On account of Tiauzon failing to confine the accused in accordance with the decision of this court, the deceased Chinaman desired to go to the capital of the province in order to notify the provincial authorities of the noncompliance with the order directing the confinement of Lasada by Tiauzon.

The two principal witnesses for the prosecution were Espiridion Moldes and Benito Resardo, who testified substantially as follows: That about 5 o'clock on the afternoon of the 30th of March, 1908, as they were returning to the barrio of Tarragona, and while they were washing their feet in the creek of Tañguigui, the Chinaman, Pedro Sopriengco, came along; that they asked him to wait and all three of them would go together, but the Chinaman did not wait, saying that he had to make some collections and went on, leaving the other two there. A little later, Moldes and Resardo continued their march, looking for the main road. After they had crossed the Balocaue River—it then beginning to get a little dark—they heard screams, saying: "Do not kill me." That on hearing these screams they walked a little faster, turning away from the main road and hiding in the shrubbery; that from the place of their hiding they saw, at a distance of about 4 brazas, Agapito Lasada, Santiago Lasada, Macario Lasada, and Panfilio Closa, the three first named armed with sticks and the last with a dagger, beating Pedro Sopriengco; that the Chinaman was then on the ground and this accused, Agapito Lasada, was holding him by the hair; that they then heard the accused Agapito Lasada say, speaking to the Chinaman: "You are efficient in making complaints, now you will not do it again."

Lorenzo Gonzaga, another witness for the prosecution, testified that about 4 p. m. on that day he saw the accused, Agapito Lasada, carrying a club and dressed in cañamo clothes, arrive hurriedly at the River Vito, outside the town of Abuyog, and that the accused crossed this river in his (the witness's) banca; that after crossing the river the accused continued his march in the direction of Tarragona, but he did not travel in the usually traveled road.

Lope Margate testified that on returning from the town of Abuyog to the barrio of Tarragona he saw this accused about 8 p. m. on March 30; that the accused was then dressed in cañamo clothes and carried a club or stick; that at that time the accused was accompanied by three men, two of whom he knew, being Santiago Lasada and Panfilio Closa; that these four men, including the accused, entered the house of Santiago Lasada in that barrio.

Ramon Mandia, another witness for the prosecution, testified that he saw the defendant, Agapito Lasada, on the morning of March 31 a little after 8 o'clock, some distance from the tribunal in that part of the town called Vitug, the municipal building being on the other side of town, or in that part called Nalibunan; that when he saw the accused on this morning he was dressed in cañamo clothes.

The defense sought to establish an alibi, and for this purpose presented Vicente Tiauzon, his son Jose Tiauzon, Ramon Gonzaga, Espiridion Vera, and Doctor Stallman.

Vicente Tiauzon was at that time municipal president of the town of Abuyog. He testified that the defendant was in his house in the town on March 30; that he never left the town during that day, nor that night; that he was there

serving a sentence, but was not in the municipal jail on account of his sickness; and that he slept in his (witness's) house on the night of March 30.

The second witness, Jose Tiauzon, testified that the defendant was in his (witness's) father's house and that they dined together there about 8 p. m. on March 30; that he remembers this because they had quite a conversation on that night.

Ramon Gonzaga testified that he saw the defendant on March 30 in the tribunal and that when he was taking a walk he saw him (the defendant) in the window of the house of the president about ten minutes after 6 in the evening.

Espiridion Vera stated that he went to the house of the municipal president one night during the latter part of the month of March, but he could not remember the day. Counsel for the defendant withdrew the testimony of this witness.

Mr. Stallman, a surgeon in the regular United States Army, testified that he saw the defendant on the 14th of March and various other times from that time until April 4; that the defendant had beriberi; that when he saw the defendant on the 4th of April he was in a worse condition with this disease than he was on the 14th of March, and on being asked whether or not the defendant could make a journey on foot which would require two or three hours' walking, he replied that the defendant could walk for three hours by stopping at intervals, but to do so it would be very difficult; that it would take a person in the condition of the defendant nearly four hours to walk from the town of Abuyog to the barrio of Tarragona. This witness further testified that he saw the defendant walking around the town before and after the 4th of April; that he did not treat this defendant for this disease, but his attention was called to it when he went to the house of the president, and that he examined the defendant twice, first on the 14th of March and the second time on the 4th of April.

If the testimony of the witnesses for the defense be accepted as true, the judgment must be reversed and the defendant acquitted, but if the prosecution's witnesses have truthfully stated the facts, the defendant is guilty. To determine this question an analysis of the proofs is necessary. The law presumes that a defendant is not guilty of any crime, and this presumption stands until it is overturned by competent and credible proof. 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 engendered 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. There are several modes of impeaching¹ a witness. One mode is by close cross-examination to involve the witness in contradictions and discrepancies as to material facts stated by him. Immaterial discrepancies or differences in the statements of witnesses do not affect their credibility, unless there is something to show that they originate in willful falsehood. If there are conflicts in the statements of different witnesses, it is the duty of the court to reconcile them, if it can be done, for the law presumes that every witness has sworn the truth. But if the conflicts in the testimony can not be so reconciled as to admit of every witness swearing the truth, the court must adopt that testimony which it believes to be true; and in reaching this conclusion it can take into consideration the general character of the witness, his manner and demeanor on the stand while testifying, the consistency or inconsistency of his statements, their probability or improbability, his ability and willingness to speak the truth, his intelligence and means of knowledge, his motive to speak the truth or swear a falsehood.

In reaching a conclusion in the case under consideration we are deprived of the advantage of seeing the witnesses,

hearing them testify, and noting their demeanor on the stand, which are of great assistance in reaching a conclusion when the testimony is so conflicting.

Counsel for the defendant in his printed brief points out what he considers a number of contradictions in the testimony presented by the prosecution, and also he gives what he thinks a number of good reasons why this testimony can not be believed.

Benito Resardo and Espiridion Moldes make different statements as to whether or not there were houses near the place where they saw the defendant and his companions maltreating the Chinaman, and also as to whether or not they separated after leaving that place or continued their journey together. These are immaterial differences. The attention of these witnesses was not specially directed to the question whether or not there were houses close by, and it is of no importance so far as the truthfulness of their testimony is concerned whether there were houses close by or whether they continued their journey together. Their attention was directed to what they saw and they were not thinking about these minor matters. It must be remembered that this trial took place some ten months after the occurrence and these witnesses were no doubt honestly mistaken as to some of the minor details, such as to where they were on the following day when the authorities came to investigate the matter and with whom they talked on that day.

Resardo said that he had only testified in this case once. A document was presented to him and he was asked if it was signed by himself. He said it was. The witness said he was only asked questions in the justice of the peace court. The preliminary investigation, if any were held, is not made a part of this record. The witness said that he did not testify before the justice of the peace, but explains this by saying that the justice of the peace only asked him questions. This appears to be a satisfactory explanation on that point. The same witness stated that he was not related to Julia Sopriengco, the daughter of the deceased Chinaman; but, as the court below said, he later explained this mistake.

The testimony of Geronimo Barbasan and Justino Mundala, wherein they stated that they, together with Moldes and Resardo, were invited to the house of Julia Sopriengco and while they were all there the said Julia offered them ₱200 each on condition that they would testify that the defendant and his brothers killed her father, is so unreasonable that it can not be believed. This testimony was flatly denied by Moldes, Resardo, and Julia; in fact Julia and her sister Felisa testified that they were not at home at any time from the 1st of April to the 7th of April. It is not reasonable that Julia would have called these four men together and made this offer in the presence of all of them, knowing the enmity which existed between Barbasan and Mundala on one side and Moldes on the other.

Vicente Tiauzon, the principal witness for the defense, was evidently deeply interested in this case. He had been directed to confine the defendant in accordance with a decision of this court. He failed to do so and was keeping the defendant at his own house. According to Julia Sopriengco, her father had complained to the president about not confining the defendant, so it was to his interest to testify in favor of the defendant. The same influence was no doubt brought to bear upon his son, Jose Tiauzon.

The other witness, Gonzaga, as we have said, testified that he saw the defendant in the house of the president about ten minutes after 6 on the evening of March 30. This testimony was given some ten months afterwards.

Doctor Stallmen's testimony is the strongest in support of the alibi, but he testified that the defendant could have made the trip on foot from the town of Abuyog to the barrio of Tarragona, which would have taken about three hours. He also testified that he saw the defendant walking around the town during those days. The defendant could and, in fact, did walk around in the town during that time and never was in a condition so that he could not travel. According to the doctor, as we have said, it would have taken the defendant about three hours to walk to this barrio, but it must be remembered that the cocales or rice fields where the deceased went that day are between

the barrio and the town, and it took the deceased, walking fast, a little less than an hour to walk from his home toward the town to these cocales.

The Chinaman was killed near the river on that day. Two witnesses saw the defendant and his companions commit this murder. The testimony of these two witnesses is corroborated by the witnesses Gonzaga and Margate. It is also corroborated to a certain extent by Mandia. The testimony of all these witnesses is reasonable. The motive on the part of the defendant for killing the deceased is clearly shown.

The testimony of the witnesses for the defense, who sought to establish an alibi, can not overcome the positive and direct testimony of the witnesses for the prosecution, especially when we consider the fact that the main witness for the defense, Vicente Tiauzon, was deeply interested in favor of the defendant. Doctor Stallman's testimony can be accepted as true and then the alibi would not, by any means, be established, as he stated that the defendant could have made that trip, and it has been clearly established that the defendant was walking around the town during these days.

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.

On the 5th of April, 1909, counsel for the defendant presented in this court a motion for the reopening of this case for the purpose of presenting newly discovered evidence. This motion is sworn to and accompanied by two affidavits. The first is that of Apolonio Monton, and according to this affidavit Monton had a conversation with Panfilio Closa in the carcel on the 2d day of March, 1909, and that during this conversation the said Closa told this witness that he, Closa, and a brother-in-law of his were the men who killed the Chinaman, and that this defendant and his brothers had nothing to do with this murder. The other affidavit was made by Agapito Suganob, and according to this affidavit Suganob heard this conversation between Closa and Monton, and heard Closa say to Monton that he, Closa, and his brother-in-law were the authors of this crime.

Panfilio Closa was charged, along with this defendant and the other accused, in the same complaint, with having killed the Chinaman. He escaped from jail a very short time after this alleged confession. These parties said nothing about this confession until after Closa had made good his escape. He was confined in the jail at Tacloban when this trial took place and he could have been presented without any difficulty as a witness in favor of this defendant, and if his confession were true this could have been ascertained at the time this trial took place. No reason is given why Closa made this confession. The statements of these two men in these affidavits are so improbable and so unreasonable that they can not be believed, especially in view of the fact that they said nothing about this matter until Closa made his escape. For these reasons this motion is denied.

Three other affidavits were filed on February 10, 1910, but they were not accompanied by any motion asking for a reopening of the case, or giving any reasons why these witnesses were not presented during the trial. So these affidavits can not be considered.

The judgment appealed from is, therefore, affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres and Johnson, JJ., concur.

[1] 9 Phil. Rep., 609.

DISSENTING

MORELAND, J.,

I am so unfortunate as to differ from my associates as to the disposition of this case, I have earnestly endeavored to be reconciled to their judgment, but without success, having found it impossible to rest easy in the conclusions upon which such judgment is founded. Differing thus with those in whose judgment I have the profoundest faith, I am constrained to set out my reasons for so doing.

After a careful study of this case I am convinced that the guilt of the accused has not been proved. I have the very gravest doubt that he was able to commit the crime, even if he had had the inclination. To say the very least, There is a reasonable doubt of his guilt.

Two witnesses swear that they saw the accused commit the crime. Two others testify that they saw him in the locality where the crime was committed, about the time of its commission. On the other hand, three witnesses testify that at the time the crime was committed they saw the accused at a place about 8 miles from the scene of the crime, in another barrio; that he had been there for hours before and was there hours after; and that it was therefore impossible that he should have been the author of the crime.

It is the admitted proof in the case that, at the time of the commission of the crime for which the accused stands convicted, he, the accused, was serving a sentence of twenty-five days' imprisonment in the municipal jail at Abuyog imposed upon him by the Supreme Court upon conviction of a misdemeanor; that while serving said sentence he was suffering severely with the disease known as beriberi; that while there in that condition, and on the 14th day of March, 1908, he was examined professionally by George P. Stallman, a regular physician and surgeon of the United States Army, who gave it as his opinion that, by reason of the unsanitary and uninhabitable condition of said jail, it would probably result injuriously if not fatally to the accused if he should be confined therein; that he strongly advised against such incarceration; that, by reason of such recommendation, the president of the village of Abuyog permitted the accused to remain at his home under his personal care and vigilance, feeling that he would not be warranted in exposing the life of the prisoner to such imminent danger; that it was while the accused was thus serving his sentence in the president's house that the said crime was committed.

The said village president, his son, and a neighbor were the witnesses before mentioned who testified that at the exact hour of the commission of the crime at Tarragona, and for hours before and for hours after, the accused was at the house of the said village president in Abuyog, some 6 or 8 miles from the scene of the crime, so ill of beriberi that it was practically impossible for him to have made the journey necessary for the commission of the offense.

With these directly opposing declarations before him, the trial court found himself under the necessity of determining who of the witnesses were telling the truth. It was while thus engaged that he made, in my judgment, the error of which I complain. Under such circumstances it was the manifest duty of the trial court to take into consideration not only the personal interests and predilections of the various witnesses, but also the circumstances in which the whole case was found embedded and in which it was completely enveloped. He was required not only to regard the witnesses from the standpoint of their personal interest and relationships, but also the reasonableness of the whole case as made by the prosecution under all the evidence. I am constrained to believe that the learned trial court did not do this. While he considered to some extent the personal predilections of the witnesses and their consequent bias, he disregarded almost completely the important and weighty circumstances

which gave color and consistency to the case as a whole. Inasmuch as the Supreme Court has followed precisely the course and method adopted by the trial court, my suggestions in this connection apply to both judgments. I proceed to detail the reasons for my position.

Concerning the testimony of Vicente Tiauzon, the said president, the trial court said:

"The president of Abuyog, Vicente Tiauzon, another witness for the defense who sought to support with his oath the alibi of Agapito Lasada, in the opinion of the court, is not entitled to any credit whatever. This witness has a decided interest in favoring the alibi in order to hide the grave dereliction of duty of which he would be responsible otherwise, for, as will be seen presently, Agapito Lasada, at the time of the commission of the crime, was a prisoner sentenced by the Supreme Court, who ought to have served his sentence in the municipal jail of Abuyog, but who, instead, was serving it in the home of his witness, Tiauzon. It is not necessary to do more than note the answers of the latter to the questions of the fiscal on cross-examination to see instantly the improbability of his testimony and at the same time the partiality of the witness. The same may be said of the other witness of the defense, Jose Tiauzon, son of the president, and his evidence. The testimony of the other witnesses to the alibi is hardly worth mentioning by reason of its inconsistency and improbability."

This statement requires notice on account of the reasons which the trial court therein gives, as before mentioned, for rejecting absolutely and entirely the testimony of the defense and refusing to give it any weight or influence whatever. The reasons given for the rejection of the testimony of the village president, as is readily seen, are two: (1) The interest which the witness had in covering up the fact that he removed the accused from the municipal jail to his house. (2) A reading of the cross-examination of the witness shows at once the improbability of his testimony and the partiality of the witness.

The first reason, the interest of the witness in covering up the removal of the prisoner, is rendered doubly important and interesting in view of the fact that the Supreme Court has adopted that as the sole reason for disregarding as utterly worthless the testimony of this witness, as well as that of his son. This court says:

"Vicente Tiauzon, the principal witness for the defense, was evidently deeply interested in this case. He had been directed to confine the defendant in accordance with a decision of this court. He failed to do so and was keeping the defendant at his own house. According to Julia Sopriengco, her father had complained to the president about not confining the defendant, so it was to his interest to testify in favor of the defendant. The same influence was no doubt brought to bear upon his son/ Jose Tiauzon."

In my humble judgment, the reason thus given for rejecting: this testimony has no sure foundation and is given under an entire misconception of the transaction. It is undisputed in this case, as I have before stated, that the accused was, at the time of his sentence to confinement in the municipal jail, ill of beriberi; that a physician and surgeon of the United States Army, after a personal examination of the accused and an inspection of the jail in which he was to be confined, gave it as his opinion that, owing to the grave nature of the illness of the accused and the condition hygienically in which he found the jail, together with the fact that, by reason of its dilapidation and the fact that the rainy season was on, it was practically uninhabitable by a human being, the safety of the accused required that he be not incarcerated therein; that it was owing to this advice and in accordance therewith that the witness Tiauzon took the accused from the jail and sheltered him in his house under his own personal custody and vigilance.

While, from a strictly legal point of view, there might possibly be some question as to the propriety of the act of president in removing the accused from the jail to house, something which I doubt very much and do not here discuss, there is, from the other point of view, still the question whether the municipality, or its officials personally, would not have been responsible to the accused if his confinement in the jail under the circumstances and conditions described had resulted in serious damage to him, It is, therefore, a matter of serious doubt whether

there was anything in this act of the president which needed to be covered up. It may fairly be assumed, under all the circumstances, that he acted with the knowledge and consent of the municipal council and that his act tended to relieve the municipality from the possibility, if not probability, of being asked to respond in damages for injuries resulting from the confinement of the accused in a building which had been condemned by a competent physician as wholly unfit to be occupied, especially during the rainy season, by a person suffering from beriberi. One's sense of justice cries out against incarcerating the accused in such a place at such a time, suffering as he was from a terrible and, in many cases, fatal disease; and the law would need to be very explicit indeed if he were to be punished for an act so humane, so in accord with civilized sentiment, especially when it appears to have been done with the knowledge and approval of the municipal council.

For these reasons I have great difficulty in appreciating the reasons upon which the court bases its assertion that the act of the president in removing the accused from the municipal jail was of such a heinous character that it needed to be covered up and hidden, even at the expense of perjury. As a natural consequence I meet the same difficulty in trying to fathom the reasons of the court in utterly rejecting upon this ground alone the testimony of the president and his family.

It must not be forgotten that the jail, according to the undisputed evidence, was in such a condition of dilapidation that a prisoner confined therein, who was able to walk from 12 to 16 miles and lend effective assistance in killing an able-bodied man, as the accused is charged to have done, would have been able to escape therefrom easily. Moreover, if the testimony of Doctor Stallman concerning the physical condition of the accused is true, and it is neither disputed nor challenged by anybody, he was, in effect, chained to his place in the village of Abuyog substantially as effectively as if he had been manacled and shackled. His chances of escape, under all the conditions, were so few as to be practically negligible—at least, they would have been in nowise decreased by confinement in the jail.

I do not discuss the other reason given by the trial court for rejecting the testimony of this witness, namely, that a reading of his cross-examination would show instantly the improbability of the evidence and the partiality of the witness. Such discussion is unnecessary on account of the fact that the Supreme Court has itself rejected that reason and has placed itself expressly and solely on the one first mentioned. It needs only to be said that, after a careful reading of the testimony of the witness, including the cross-examination, I, and I think the rest of the court also, arrived at the conclusion that, upon its face (and it is in that respect and in that respect only that the trial court finds fault with it) it bears every appearance of good faith, is thoroughly consistent, entirely probable, and discloses a complete absence of partiality. In fact, it is a model of fair, impartial, and consistent testimony on cross-examination.

It must be borne in mind that the trial court did not place his rejection of the testimony of the defendant's witnesses in any way or to any extent on their appearance on the witness stand or their manner and demeanor while testifying. He placed it solely on the two grounds named: (a) The interest which Tiauzon had in covering up the fact that the accused was at his house instead of in jail, and (b) his evidence as it appears in the cross-examination. Therefore, that portion of the majority opinion which says "and in reaching this conclusion it [the trial court] can take into consideration the general character of the witness, his manner and demeanor on the stand while testifying," as well as that part wherein the court declares that "in reaching a conclusion in the case under consideration we are deprived of the advantage of seeing the witnesses, hearing them testify, and noting their demeanor on the stand, which are of great assistance in reaching a conclusion when the testimony is so conflicting" is apparently inapplicable. The trial court gave specifically the reasons why he rejected the testimony of defendant's witnesses. The reasons stated in the foregoing quotations are not among them. This court in a criminal case ought not to assign such reasons.

The following observation of this court is also beside the point and for the same reasons:

"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."

We have absolutely no knowledge, from the record, that the witnesses for the prosecution appeared to the trial court better, or fairer upon the stand than those of the defense. The trial court having assigned his reasons for rejecting the testimony in favor of the defense, we must assume that he presented them all. I am confident that a careful study of the record leaves the advantage decidedly with the witnesses for the defense. Neither the trial court nor this court has been able to point out in the testimony of a single witness for the defense a place where there was a contradiction, an attempt to create a false impression, or an appearance of unfairness. If the witnesses of the defense lied, their testimony carries upon its face no badge of falsity. They need no explanations to excuse contradictions, or laborious reasoning to dissipate the effect of flagrant misstatements of admitted facts. On the other hand, some of the leading witnesses for the prosecution made in their declarations admittedly false statements in relation to material facts, thereby misleading and deceiving the court. This is particularly true of the witness Resardo, whose misstatements we shall presently note, and the witness Gonzaga, whose statement that he saw the accused on the day of the crime in the vicinity where it was committed carries certain allegations concerning the appearance and activity of the accused which, as we shall presently see, render such statement unbelievable.

The trial court spent a considerable portion of the space allotted to his opinion in excusing the various contradictions in which witnesses for the prosecution involved themselves in giving their testimony. In the testimony of the witness Benito Resardo, one of the witnesses who testified that he actually saw the accused kill the deceased, appear on cross-examination these questions and answers:

"Q. How many times have you already testified in this case? - A. This is the first time.

"Q. Do you swear that this is the first time that you have testified? - A. Yes, sir.

"Q. Did you not testify before the justice of the peace of Abuyog? - A. No, sir.

"Q. Do you swear that you did not testify in the court of the justice of the peace of Abuyog?—A. Yes, sir, I swear.

"Q. Do you swear? - A. I swear."

After these questions and answers were given, it developed that this witness had in reality testified before the justice of the peace of Abuyog in this case.

In the testimony of the same witness appear the following questions and answers, the questions being put by the court:

"Q. Have you any enmity or resentment against the accused? - A. No, sir.

"Q. Have you any friendship or relationship with the family of the deceased? - A. No."

The attorney for the accused then asked the witness certain questions, as follows:

"Q. Have you any relationship with Julia Sopriengco? - A. No, sir.

"Q. Are you not a cousin of Julia Sopriengco? - A. My father is Filipino; her father is Chinese.

"Q. Is it not true that Julia's mother and your father are brother and sister? - A. No, sir. My father is from Samar."

It was later proved in the case and is now an admitted fact that said witness and Julia Sopriengco, daughter of the deceased, are blood cousins. The trial court, in excusing this witness for his apparent lack of frankness, if not of truth, said:

"The witness for the prosecution, Benito Resardo, has been censured for the relationship which he bears to the daughter of the deceased and for having denied such relationship; but it is certain that being called by the court to testify a second time as a witness, he gave satisfactory explanation by saying that he had denied his relationship with Julia Sopriengco upon the understanding that he had been asked in relation to the masculine line and not the feminine, and for that reason he said that his father was from Samar, that is, a Filipino from the Visayas, while the father of Julia is Chinese."

The two witnesses for the prosecution, Resardo and Moldes, the two who claim to have seen the defendant in the act of killing¹ the deceased, make different statements as to whether or not there were houses near the place where they saw the defendant engaged in murdering the Chinaman, and also as to whether or not they separated after leaving that place or continued their journey together. They also differ as to where they were when the authorities investigated the crime on the following day. Both the trial court and this court, on appeal, say in relation to these discrepancies:

"These are immaterial differences. The attention of these witnesses was not specially directed to the question whether or not there were houses close by, and it is of no importance so far as the truthfulness of their testimony is concerned whether there were houses close by or whether they continued their journey together."

This is undoubtedly true and I am very far from desiring to present a criticism of testimony based upon trivial differences. However, these two witnesses were well acquainted with the locality in which the crime was committed, in fact, they lived in that vicinity, and should have known thoroughly the location of all houses thereabouts. I mention these differences simply for the purpose of emphasizing the fact that the testimony of the witnesses for the defense, from the record presented, did not apparently receive the same consideration accorded to that of the prosecution. This court, as well as the trial court, finds itself continually under the necessity of excusing the evasions of the witnesses for the prosecution, and yet, in spite of that, gives those witnesses full faith and credit, while rejecting utterly the testimony of the witnesses for the defense, in whose declarations is found nothing which needs excuse. This court says in its opinion:

"Resardo said that he had only testified in this case once. A document was presented to him and he was asked if it was signed by himself. He said it was. The witness said he was only asked questions in the justice of the peace court. The preliminary investigation, if any were held, is not made a part of this record. The witness said that he did not testify before the justice of the peace, but explains this by saying that the justice of the peace only asked him questions. This appears to be a satisfactory explanation on that point. The same witness stated that he was not related to Julia Sopriengco, the daughter of the deceased Chinaman; but, as the court below said, he later explained this mistake."

But these are not the only inconsistencies in the testimony of the witnesses of the prosecution which need to be explained or excused. The testimony of Mandia, the mediguillo who examined the body of the deceased the day after the tragedy, is entirely at variance with the sworn declaration of the witnesses Moldes and Resardo. These two witnesses declare that they saw the accused and others strike the deceased in the head with clubs while he was lying on the ground face downward; while Mandia testifies, and this is an admitted fact, that there was evidence of only one blow upon the head and that was in the forehead. Confronted with this condition, the prosecution, in order to escape so patent an inconsistency, obtained from the witness the statement that it was possible that the

wound in the forehead might have been produced from the rear. He said:

"As I understand the wound it might have been produced when the deceased had his back turned. I have never studied wounds, but as I understand it the wound had the appearance of having been made from the rear."

It should be remembered that the witness is not a doctor and has no special knowledge of wounds. His evidence as to the position from which the blow was given is entitled to no more weight than that of the ordinary man. How a person may be struck several times in the head with a club while he is lying on the ground face downward and show evidence of only one blow and that in the forehead is difficult to understand.

Moreover, it is admitted that the body of the deceased showed only two injuries one in the forehead made by a club, as we have said, and one in the right side produced by a dagger. According to the witnesses for the prosecution, the deceased was lying on the ground face downward, apparently dead or mortally injured, when they first saw him. That his face and forehead were, from their statements, in contact with the earth is made doubly certain from the fact, as stated by them, that the accused held the deceased by the cue while he hit him. They say he never moved while they were watching. They saw the dagger wound inflicted. It was done while he was lying down. Now, either the deceased lay down on his face before he was injured at all or else he was thus laid low by the blow in the forehead. But if he received the blow in the forehead before he fell then these two witnesses testified mistakenly or falsely when they said that they saw the accused and his companions deal the deceased several blows in the head with their clubs while he was thus lying face downward; for, where is the evidence of those blows? It is the undisputed fact (see the majority opinion in this case), as we have before stated, that the person of the deceased presented only two wounds—one a club wound in the forehead and the other a dagger wound in the right side. Were those blows, so vividly and graphically described by these two witnesses, wholly imaginary? Where on the body of the deceased, that silent piece of clay that can not lie, is the evidence of their delivery? Surely those vicious blows with heavy bludgeons upon the unprotected head of an unresisting man would leave their indelible imprint and tell to all the world the story of their treacherous delivery! If such blows had really been delivered, that body would have presented the record of them as inevitably and ineffaceably as though that record had been carved in rock. If, on the other hand, it be said that he received the blow in the forehead after he fell, we naturally inquire, in the first place, why he fell at all and lay so still, being, up to that moment, wholly uninjured; in the second place, we should like to know how he could have been struck in the forehead, lying as he was face downward; and, in the third place, why did his body not disclose evidence of more than one blow? View it as we will, there is something wrong with the testimony of these two witnesses of the prosecution.

Furthermore, it is the universal testimony of every witness for the prosecution who claims to have seen the accused on the fatal day that he moved with the ease, celerity, quickness, and rapidity which would naturally characterize a thoroughly sound man engaged in such an enterprise. Each witness testified that the accused showed no signs of illness or difficulty of movement, but walked not only easily and naturally but very rapidly. From the condition in which the accused admittedly was at the time, suffering from a disease which effectually prevented his walking except with extreme difficulty, we know that the story of these witnesses in this respect is untrue. It would have been utterly impossible for the accused to have walked in the manner described. That the disease with which he was admittedly afflicted at the time would certainly have prevented this, is the undisputed evidence of the case.

I point out these things not to carp or to be hypercritical, but merely to demonstrate that, while no excuse whatever need be offered for contradictions in the testimony of the witnesses for the defense, their testimony being entirely free therefrom even in minor matters, as much can not be said of the testimony of the witnesses for the prosecution.

But I do not rest my conclusion wholly or even mainly upon the inconsistencies pointed out. I base it rather upon the affirmative evidence of the defense. To demonstrate this there remains to be pointed out that portion of the evidence of the defense which, in my judgment, throws the gravest doubt upon the ability of the accused to kill the Chinaman at the place, at the time, and in the manner alleged. As we have before stated, the accused at the time the crime was committed was suffering severely from the disease known as beriberi. The distance from the house of the witness Vicente Tiauzon to the place where the Chinaman was found dead; although not shown definitely by the evidence, is probably about 8 miles. To reach the place from the Tiauzon house one would be compelled to traverse on foot a wild and broken country, crossing two rivers on the way. There is no other contention than that he made the journey on foot. Doctor Stallman, the witness heretofore mentioned, testified that he saw and personally examined the accused on the 14th day of March, sixteen days before the commission of the crime. That he was suffering from beriberi. That he again examined him on the 4th day of April, four days after the commission of the crime, and that the disease had progressed in intensity. That between these two dates he saw him at various times in the village, sometimes walking; that he walked only with extreme difficulty; that in the condition in which he was on the 4th of April the defendant "would be able to walk for three hours, but he would be obliged to stop at intervals to rest." Asked whether or not it would be easy to make a journey of that length, the doctor replied "it would be extremely difficult. It would take about four hours for the accused in the state in which I found him on the 4th of April to go from Abuyog to Tarragona."

In the light of the testimony of Doctor Stallman and the authorities hereafter cited, which demonstrate conclusively the condition in which the accused was at the time the crime was committed, it would have been extremely improbable, if not practically impossible, that the accused travel the distance required within the time allotted and commit the crime charged against him so improbable that I have been wholly unable to bring myself to believe under the evidence that he actually did so.

In this connection, I again call attention to the testimony of the witness Lorenzo Gonzaga, as well as the others who testified as to how the accused walked on the fatal day. He swore that on the day in question, at about 4 o'clock in the afternoon, he ferried the accused across the Vito River in his banca and that the accused was going in the direction of Tarragona. In his testimony appear the following questions and answers:

"Q. How was the accused walking, fast or slow? - A. Fast.

"Q. Was he walking well when you saw him? - A. He was walking well.

"Q. Did he walk like a well man? - A. He did not appear to have any trouble whatever."

In the light of the condition in which the defendant was at the time alleged, this testimony of the witness is little short of absurd.

Beriberi is defined as "an acute disease occurring in certain tropical regions, chiefly in India and Ceylon, characterized by multiple inflammatory changes in the nerves, producing great muscular debility, a painful rigidity of the limbs, and a condition of general ill health and malnutrition." The uniform and invariable accompaniment of beri-beri is the inability to walk naturally, strongly, or rapidly. One medical authority, speaking of a patient suffering from the disease, says, giving it as a typical case:

"The variety in the severity, progress, and duration of beriberi is infinite; but in all cases the essential symptoms are the same - greater or less oedema, especially over the shins; muscular feebleness and hyperaesthesia, especially of the legs; numbness, especially over the front of the shins; liability to palpitation from cardiac dilation, and to sudden death from the same cause." (Manson, Tropical Diseases, pp. 224, 226.)

"On the patient being got out of bed and started to walk, if he is able to progress at all his gait will be markedly

ataxic; but he is not ataxic merely, for, just as with the hands, it will be seen that, in addition to a want of co-ordinate power, there is great muscular weakness. If he is laid on the bed and asked to raise his legs, he is perhaps hardly able to get them off the mat, to cross them, or to place one foot on the top of the other. Very probably he is the subject of marked ankle-drop, so that he drags his toes when he attempts in walking to advance the foot; he has therefore to raise the foot very high, letting it fall on the ground with a flop when he brings it down again. His ataxia and his muscular weakness, as well as the partial anesthesia from which he suffers, make him adopt all sorts of devices to assist him in progression." (Manson, Tropical Diseases, pp. 224, 226.)

Another authority puts it thus:

"The first characteristic symptom of the disease is the patient's peculiar way of walking, not always easy to describe. The patient ordinarily becomes tired at the slightest exertion; has a sensation of weakness in the joints, especially of the knees. It requires great mental effort and all the physical strength of the patient to enable him to lift his feet from the ground and move his legs forward - hence the peculiar way of walking of those suffering from beriberi, as though they were beating time with the feet, the tendency of the knees to give way, and the common name of the disease, which means 'weakness.' While the patient can walk at all, instead of lifting the foot from the ground gradually, he does so with a jerk by stiffening the knees and keeping the same in that position for a while and then dragging the whole leg forward, first resting on the ground, for this purpose, the big toe and the ball of the foot and immediately thereafter the rest of the foot. As Van Overbeck of Meijer aptly illustrates it, 'they walk as though the legs were wrapped up in soaking wet cloth.' " (Diccionario Enciclopédico de Medicina y Cirugía, by Dr. A. Eulenburg, vol. 2, p. 48.)

The testimony of Doctor Stallman, taken in connection with the above authorities, demonstrates clearly that it would have been, practically, little short of impossible for the accused to commit the crime charged, under the circumstances. I do not think that the court meant, in the following extract from its opinion, to be taken strictly and literally. It says:

"Doctor Stallman's testimony can be accepted as true and then the alibi would not, by any means, be established, as he stated that the defendant could have made that trip, and it has been clearly established that the defendant was walking around the town during these days."

Doctor Stallman does not say, unqualifiedly, that the defendant "could have made that trip." He says:

"He would be able to walk for two or three hours, by stopping at intervals. He could walk only with extreme difficulty, I saw him at various times walking in the streets of Abuyog and noticed that it was very difficult for him to walk. I have said that it was very difficult for the accused to walk and that I should judge that it would require four hours for him to walk from Abuyog to Tarragona."

It is to be noted that the doctor does not say that the accused could have made that trip at all; that is, that trip which he would have been obliged to make to commit the crime charged. He says simply that although the accused had great difficulty in walking, still he could walk from Abuyog to Tarragona if given time enough and if he was permitted to rest at intervals. The question is not was the accused able to make that trip. The real question is whether, having in mind all the circumstances, including the admitted physical condition of the accused at the time, it is reasonable to say that he did make the trip. The question is not might he do it, but did he do it. It is on record in medical journals that men have been known to walk for rods after having been shot straight through the heart. Nevertheless, no one would hesitate a moment to say that, ordinarily, a person shot through the heart would not be able to walk at all. So here. It is, perhaps, within the realm of possibility that the accused might have been able to walk that distance and commit that crime. But I do not think there ought to be a moment's hesitation in saying that, under all the circumstances, he did not do so.

I can not bring myself to believe that the accused, afflicted as he was, walked from 12 to 16 miles and took an active part in murdering a Chinaman. Especially can I not believe so when the exact contrary is proved by the declarations of the three witnesses whose testimony is not only unimpeached but is richly corroborated by the significant and vital circumstances of the case.

As is natural and proper, much stress is laid upon the motive for committing the crime which the accused is alleged to have had. It is admitted that he had been convicted of assault and battery against the deceased, and he was, at the time of the murder, engaged in serving the sentence imposed under such conviction. This may have been a sufficient motive. The attempt, however, to ascribe to the accused the further motive arising from the alleged fact that the deceased was about to make a complaint to the authorities against the village president, Vicente Tiauzon, founded upon his failure to confine the accused in the municipal jail, can not be justified, since it does not appear anywhere in the case that this alleged purpose ever came to the knowledge of the accused. The same may be said of the attempt to impute a further motive growing out of the alleged fact that the deceased had complained to the village president himself that the accused should be confined in jail instead of being permitted to go at large. There is no proof whatever that this ever came to the knowledge of the accused. Indeed there is no competent proof that such a complaint was ever made at all. The only testimony on that subject is that referred to in the opinion of the court where the court says:

"According to Julia Sopriengco, her father had complained to the president about not confining the defendant, so it was to his interest to testify in favor of the defendant."

So far as can be gleaned from the record, this is pure hearsay evidence, as it would appear that whatever Julia knew in relation to this matter is what her father told her.

In any event, whatever motive the accused may have had is substantially immaterial. If he was physically unable to make the journey and effort necessary to commit the murder, that is an end of it, motive or no motive.

There being a reasonable doubt of defendant's guilt, he should be acquitted.

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