

## EMMA MONDRAGON, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. Nos. L-35978 & L-36069. December 26, 1974*

Ponente: BARREDO, J.

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### BARREDO, J.:

Petition for review, insofar as herein petitioner is concerned, of the decision of the Court of Appeals in CA-G.R. Nos. 06943-44-Cr. of the said court, affirming, with modification of the penalties, the judgments of the City Court of Quezon City (Branch III) which found petitioner together with her alleged paramour guilty beyond reasonable doubt of the crime of adultery in two separate cases and sentenced her to two indeterminate terms of six (6) months of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum, plus payment of the costs.

The basic and decisive question raised by petitioner is stated in her brief thus:

"THE TRIAL COURT ERRED IN CONSIDERING THE EVIDENCE RELATING TO THE ADMINISTRATIVE CASE BEFORE THE BUREAU OF POSTS AND THE CIVIL SERVICE COMMISSION AND IN NOT FINDING THE SAME WITHOUT ANY BEARING WHATEVER UPON THE CASES AT BAR."

It is not disputed that herein petitioner is married to Frank Fernando and that during said marriage she came to know rather closely her co-accused Luis Abdon Jr. It is in fact admitted by her that while her husband was away in the United States serving in the armed forces of that country, Abdon Jr. frequented the house where she was living, namely, No. 10 Cadena de Amor Street, Quezon City, although she explained that, as the said house consisted of two units with common receiving and dining rooms and Abdon Jr. was just renting one of said units for the use of his parents, the reason for his being there was to visit and stay with his parents from time to time. She herself was living together with her daughter Dora, a child of a previous marriage, who subsequently left her only when she got married.

But the Court of Appeals refused to believe petitioner's testimony and held thus:

"The record is replete with evidence positively attesting to the illicit relations between herein appellants, among these being the testimony of Aristeo Mondragon, Emma Mondragon's own brother, who asserted having seen the appellants sleeping together at No. 10 Cadena de Amor St., Quezon City, (t.s.n. pp. 62-65, May 23, 1962, Nisperos), belying appellant Mondragon's claim that he merely went to her aforesaid house to visit his parents who were then renting her bungalow. (T.s.n. pp. 228-229, June 15, 1964, id.)

Aristeo Mondragon's testimony is corroborated by that of Caridad Abdon, complainant in the concubinage charge against Luis Abdon, Jr. who declared that she became suspicious of the actuations of her husband when she found a telephone number in his wallet which she later on found to belong to appellant Mondragon; and that following her discovery of said telephone number, she went several times at night to Mondragon's house in Quezon City to verify her suspicion which were confirmed when, on one of these occasions she found both her husband and

appellant. Mondragon lying in bed under the mosquito net, the woman clad only in a chemis while the man was wearing singlets and briefs. (T.s.n. pp. 170-171, March 16, 1964, id.)

A third witness, Maria Catalan, appellant Mondragon's long-time neighbor and "comadre" admitted having seen both appellants living together like husband and wife in the latter's house, at times seeing Abdon, Jr. dressed in his pajamas and sharing the only bed in the room with his co-appellant. (T.s.n. pp. 111-112, November 23, 1962, id.)

All these witnesses have not been shown to have an ulterior motive to testify falsely against both appellants, so that the trial court did not err in giving full faith and credence to their testimonies. In fact, perhaps realizing too late the predicament his statements had placed his sister in, Aristeo Mondragon made an effort while under cross-examination to retract his testimony given at the direct examination. But we are in full accord with the lower Court's observation that the said recantation should not be given any weight as 'during the recantation of the testimony made by Aristeo Mondragon it was in the presence of his father and this Court observed the father looking sharply to his testifying son.' (P. 11, Decision.) The same is true with respect to Caridad Abdon's attempt at recantation for —

'x x x the fact that she bore child after the infidelity of her erring husband even way back from June 22, 1959 leading her to reconcile with the erring spouse is understandable. x x x' (P. 11, Decision.)

Consequently this Court is not disposed to disturb the trial Court's findings on the weight accorded the testimonies of the aforesaid witness, in keeping with the general principle in this jurisdiction that —

The general rule, based on logic and experience, is that the findings of the judge who tried the case and heard the witnesses are not disturb on appeal, unless there are substantial facts and circumstances which have been overlooked and which, if properly considered might affect the result of the case.' (People vs. Brioso and Taeza, 37 SCRA 336.)

Anent appellant Mondragon's first three assigned errors (pp. 1-2, Brief for Appellant Emma Mondragon), suffice it to say that the Court a quo did not rely upon the evidence adduced during the administrative case before the Bureau of Posts and the Civil Service Commission, nor upon the evidence submitted before the City Fiscal at the preliminary investigation of these cases, in establishing the guilt of the appellants in the two adultery cases against them, but merely referred to them in the course of its discourse on the evidence submitted to show that as early as the year 1959, Emma Mondragon and Luis Abdon, Jr. married to someone else." (Pp. 13-17, printed copy of CA decision p. 131, Rec.)

As may be seen, while the Court of Appeals found as a fact that the two principal witnesses of the prosecution, Aristeo Mondragon, petitioner's brother, and Caridad Abdon, the wife of her alleged paramour, recanted during their cross-examination all the inculpatory evidence they had given against petitioner in the course of their testimonies-in-chief, it nevertheless proceeded to evaluate their declarations and held that their direct testimonies should be believed in preference to their contrary declarations during the cross-examination. In other words, the Court of Appeals upheld the reasoning of the trial judge which ran as follows:

"As regards the two cases of Adultery against Emma Mondragon and Luis Abdon, Jr. under Criminal Cases Nos. 50386 and 50391, it is the belief of this Court that the defense relied too much on the motive behind the filing of the complaints regarding the ownership or acquisition by the Fernandos of the properties acquired by both spouses and the recanted testimonies of both Aristeo Mondragon and Caridad Abdon the complaining wife in the case of Concubinage. Considering the retraction of the testimonies of a witness, this Court relies on the concept of that recantation in the principle enunciated by the Supreme Court in 'People vs. Samson L-9528, October 31, 1957', which states in part that it would be a dangerous rule for courts to respect testimonies solemnly taken before courts of justice simply because the witness had given them and later on changed their minds for one reason or another. More so that during the recantation of the testimony made by Aristeo

Mondragon it was in the presence of his father and this Court observed the father looking sharply to his testifying son. As regards Caridad Abdon, the fact that she bore child after the infidelity of her erring husband even way back from June 22, 1959 leading her to reconcile with her erring spouse is understandable. It is therefore the belief of this court, that not withstanding the recantation made by the said witnesses, the court still finds in the truth of their testimonies which they first gave during the direct examination, especially that of Aristeo Mondragon, the brother of Emma Mondragon, who saw them kissing each other before Abdon, Jr. leaves the house and sleeping in one room where there is only one bed, and more so when corroborated by Mrs. Catalan, a neighbor and a kumadre living just adjacent to her house, who in her testimony was worrying of her kumadre's illicit relationship with Abdon, Jr., and Emma when asked by her kumadre of such anomalous situation, told her that her husband (Frank Fernando) might not be arriving anymore. To these testimonies may also be added, that of Caridad Abdon, which could be considered as this is a joint trial of the three cases, who has gone twice in the midst of the night at No. 10 Cadena de Amor, Quezon City, where in those instances she found them alone in their room sleeping together in one bed." (Pp. XVII-XIX, Appellant's brief in CA.)

In regard to the rulings thus made by the court below, petitioner submits that it was an error of law for said courts to have considered or taken into account the testimonies of her brother and Mrs. Abdon, after they confessed having willfully testified falsely during their direct examination because they were taught to do so by the private prosecutor. She contends that under the circumstances, the court should have disregarded completely said testimonies, particularly because Atty. Vicente Fernando, the private prosecutor, made no effort to rebut their accusations against him.

In order to better appreciate the extent of the contradictions and retractions referred to by petitioner, We have, in the exercise of Our plenary judicial power, gone over the complete record of the trial of these cases. After a review thereof, We are convinced that it would be unsafe to draw any positive conclusion from the declarations of the witnesses referred to. In the course of the cross-examination of both of them, they categorically admitted having tailored their declarations-in-chief to what had been taught to them by the private prosecutor, and that the truth was what they said on cross-examination. In the redirect examination by the private prosecutor, they gave more revealing circumstances of how they stayed in the residence of the family of the offended party, a brother of the private prosecutor. In particular, Aristeo Mondragon revealed what considerations were offered and given to him for his testimony favorable to the prosecution.

Involving a witness in contradictions during cross-examination is one of the recognized modes of impeachment which renders the evidence from his lips worthless for both parties. Neither one of his contradictory declarations can be relied upon. In the cases at bar, We have something more than mere contradictions. What the witnesses did here was to correct their previous inculpatory testimonies, explaining the reasons therefore. And from their answers given in the lengthy redirect questioning of Atty. Fernando, We are not prepared to say that they are not believable, specially because no rebuttal evidence was even offered against them.

The earlier cases of more than sixty years ago<sup>[1]</sup> dealt with either inconsistencies between different witnesses or inconsistencies between statements of the same witness on different occasions. In *Lasada*, the Court enjoined that the discrepancies in the testimonies of different witnesses should be reconciled whenever possible, since all witnesses are presumed to tell the truth, but if the conflicts cannot be reconciled, "the court must adopt that testimony which it believes to be true . . . taking 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" (at p. 97). On the other hand, in *Pala*, the Court postulated that "(W)hen a witness makes two statements, both being sworn to as a witness in one case, and these two statements incur in the gravest contradiction, then the Court cannot accept either the first or the second

statements as proof. He himself by his own act of giving false testimony impeaches his own testimony and the court is compelled to exclude it from all consideration." These rulings are still good law.

As already noted, in the instant cases, however, witnesses Aristeo Mondragon and Caridad Abdon, did not in a sense incur in contradictions; when they were cross-examined, they positively stated that their testimonies on direct examination damaging to accused-petitioner were not exactly true and by way of explanation, they both pointed to the private prosecutor as the one who instructed them what to say. Thus, We find here an instance where the explanation of the self-contradictions of witnesses shows willful falsehood induced by counsel for the private prosecution. We hold that in such a situation, the evidence from said witnesses cannot as a matter of law be evaluated to determine which of the contradictory material statements is true and both have to be disregarded.

Now, without the testimonies of Aristeo Mondragon and Caridad Abdon, the remaining evidence given by the third witness Maria Catalan, which in the light of the efforts displayed by the private prosecutor in tailoring the testimonies of Aristeo and Caridad has become suspect, cannot serve as basis for conviction.

IN VIEW OF ALL THE FOREGOING, it is our judgment that for insufficiency of evidence, petitioner should be as she is hereby acquitted in both cases before Us, with the consequent reversal of the decision of the Court of Appeals under review and without prejudice to the appropriate proceedings that may be instituted against those who appear as discussed above, to have imposed on the good faith of the courts.

#### **COSTS DE OFFICIO.**

Fernando, (Chairman), Antonio. Fernandez, and Aquino, JJ., concur.

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[1] U.S. vs. Lasada, 18 Phil. 90; U.S. vs. Pala, 19 Phil. 190.

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