

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR CASTELO, ET AL., ACCUSED-APPELLANT.

G.R. No. L-10774. August 24, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Pursuant to our resolution of February 16, 1961, this case was ordered remanded to the court of origin "solely for the purpose of reconstructing the testimony of the witnesses the stenographic notes of whose original testimony had been lost, by retaking the testimony of those original witnesses still available and, if desired and necessary, of some other witness who had personal knowledge of the facts testified to by the first witness who had already died." (*Italics supplied.*)

In an order dated May 15, 1961, Her Honor, Cecilia Muñoz-Palma, acting as vacation Judge of the Court of First Instance of Rizal, Pasay City (Branch II), returned the case to this Court "for new instructions as the task of reconstructing the original testimony of the witnesses concerned has become legally and physically impossible of accomplishment." (*Italics supplied.*)

The position taken by Her Honor, it is believed, must have been based on a misinterpretation or miscomprehension of our said directive. This is evident from her use of the phrase "original testimony of the witnesses", instead of the term "testimony of those original witnesses". By the very nature of things, it is of course physically impossible to reproduce word for word the original testimony of the witnesses. What is required is the reconstruction, substantial as much as possible, of the testimony given by the original witnesses on the matter originally testified to by them. And this is permissible under the law and jurisprudence on the matter.

The requirement of a new trial and a new decision is applicable in cases where the entire testimonial evidence has been lost or become unavailable. In the present case, the entire record is complete save only for the missing portion of the testimony of Edgar Bond (now deceased) and that of Mariano Almeda, Raymundo Tal Villareal, Matias Soriano, and Francisco Espiritu, who are all still available. Article 43 of Act No. 3110 provides that "In case of the partial loss or destruction of a judicial record, the destroyed portion may be reconstituted in accordance with the provisions of this Act." It is, therefore, unnecessary for us to make further instructions other than those already prescribed in our Resolution of February 16, 1961.

Let this case be again remanded to the Court of First Instance of Rizal (Pasay Branch) where it was originally heard, for compliance with the Resolution of this Court of February 16, 1961. So Ordered.

Bengzon C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, De Leon, and Natividad, JJ., concur.

Bautista Angelo, J., on leave, took no part.

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