

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. SILVESTRE CARILLO, DEFENDANT AND APPELLANT.

*G.R. No. L-283. October 30, 1946*

Ponente: TUASON, J.

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### TUASON, J.:

The appellant was found guilty of murder by the Court of First Instance of Cebu and was sentenced to reclusion perpetua with the accessories of law and to pay the heirs of the deceased an indemnity of P2,000 and costs.

Defendant admits the commission of the crime charged. The dispute centers on the manner and the motive of the killing.

The evidence for the prosecution consists of Exhibit A, defendant's confession, made in answer to questions propounded by Capt. F. M. Palanca, a former guerilla officer attached to the Philippine Army, and Exhibit B, another confession in which he ratified Exhibit A, also in the form of questions and answers, before Assistant City Fiscal Cesar Kintanar of the City of Cebu. In his first confession, the accused stated that he had killed Pastor Calma in the early evening of June 29, 1945, at the Philippine Independent Church cemetery by shooting him with a carbine. He said his reason for taking Calma's life was "because of my hatred against him when he tried to arrest and take me to the Jap kempetai, last year, 1944." He added that Calma "not only held my neck but he also slapped me about three times and at the same time inquired from me the reason of my hanging around his place."

By way of corroboration, Jorge Daput testified that, while talking with friends he heard shooting and then saw many people gathering at the Philippine Independent Church cemetery. He went to the place, which was near defendant's house, and saw Pastor Calma dead. About a minute later, Silvestre Carillo with an American MP arrived. The American MP asked Carillo whether he was the one who shot Pastor Calma, and Carillo answered yes, but witness did not hear the other questions which the American MP asked defendant.

At the trial, defendant gave an entirely different version of the killing. He said that he was a soldier; had been one since 1943. He sought to prove that Calma was an escaped prisoner, having run away from the stockade where he had been confined as a former Japanese-employed undercover, and that when he tried to arrest Calma, the latter resisted. Calma, he said, started to rush against him to wrest his gun. Asked how he happened to sign Exhibit A, defendant answered that as Palanca was a captain and he was a mere buck private, he did no more than obey Palanca's order. He declared that in the office of the American MP he had been told to make a statement and an American had struck him in the head. He further said he did not read Exhibit B, his statements before Fiscal Cesar Kintanar; that he signed it because he was not aware of its contents. He denied that this exhibit was translated to him. He swore that he appeared in the City Fiscal's office because he had been cited and that the Fiscal suggested he plead guilty in order that he might be used as a government witness against Calma's wife whom the Fiscal was planning to prosecute.

Jorge Daput testifying for the defense stated that Calma was shot because he was an escaped prisoner and "because, as I have known, he did not want to be brought back alive to the jail," and that Calma himself told him

this at Rosing's house.

It is obvious that appellant's confession as transcribed in Exhibit A was freely made. No violence, intimidation or duress is alleged to have been employed by Capt. Palanca to wring this confession against accused's will. The reason given by defendant for repudiating Exhibit A that he could not refuse Capt. Palanca's order to sign it because Palanca was his superior in rank-cleaves out unexplained the all-important question why he made the statements themselves which are set forth in that document.

If an American MP hit the accused in the head, as the latter declared, that incident, if true, does not seem to have direct relation to his examination by Capt. Palanca. The inference we draw from his vague and unexplicit testimony on this point is that his experience with the American military police was in an investigation conducted before he was turned over to the Philippine Army in which he belonged. The accused admitted that Capt. Palanca and he were alone at Palanca's office when his statements were taken down, although, as a matter of fact, another officer, who wrote the said statements on a typewriter, was present.

Like Exhibit A, Exhibit B stands unimpeached. Speaking of Exhibit B, defendant merely said that he signed it because he did not know what it contained. He did not charge Fiscal Kintanar with having resorted to any improper means during the examination to force him to make any declaration. Defendant's testimony that the Fiscal promised to use him as a witness against Calma's wife in consideration of his confession does not make sense, and this testimony does not seem to have been given in earnest.

If defendant's confession as transcribed in Exhibit A was voluntary, we have to conclude that Calma was slain in the manner and for the reason set out in that document. It is needless to say that no one in his right mind would convict himself without compulsion by fabricating a highly self-damaging story and suppressing the truth which would absolve him.

Several questions of identical character affecting the admission of Exhibits A and B are raised.

Paragraph 18, section 1, Article III of the Constitution, which provides that "no person shall be compelled to be a witness against himself," does not support the proposition that the confession of an accused is inadmissible.

The conviction of an accused on a voluntary extrajudicial statement in no way violates the constitutional guarantee against self-incrimination. What the above inhibition seeks to protect is compulsory disclosure of incriminating facts. While there could be some possible objections to the admissibility of a confession on grounds of its untrustworthiness, such confession is never excluded as evidence on account of any supposed violation of the constitutional immunity of the party from self-incrimination. (*Hendrickson vs. People*, 10 N. Y. 33; 3 Wigmore on Evidence, p.250.) The use of a voluntary confession is a universal, time-honored practice grounded on common law and expressly sanctioned by statutes. More of this presently.

Appellant assails the admissibility of Exhibits A and B on another ground. He contends that under article 24 of Commonwealth Act No. 408, otherwise known as the Articles of War, these documents should be rejected.

Article 24 of Act No. 408 is as follows:

"ART. 24. No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry or board, or before an officer conducting an investigation shall be compelled to incriminate himself, or to answer any question not material to the issue when such answer might tend to degrade him."

It is clear from the title and purpose of this enactment that article 24 has reference to court martial proceedings, not to proceedings in the ordinary civil courts of justice. And a close examination of the article will show that it seeks to protect a witness from being compelled to answer incriminating questions, or degrading questions not material to the issue, but it does not prohibit the taking of incriminating or degrading statements of witnesses who choose to give them voluntarily uninfluenced by fear of punishment, if they refuse, or "by promises of leniency or reward. This legal precept does not differ essentially from the general rule of evidence embodied in the Rules of Court as sections 14 and 96, Rule 123, which expressly make acknowledgment of guilt evidence against the person making it, subject only to the indispensable condition that it be free from any taint of compulsion sufficient to vitiate its voluntary character.

Our attention is called to paragraph 2, section 37, of Commonwealth Act No. 58, known as the Charter of the City of Cebu, by reason of which, in appellants opinion, the court below erred in admitting Exhibit B. This particular provision of the Cebu City Charter states in substance that sworn statements made before the City Fiscal in the course of an investigation conducted by him may not be accepted as evidence against the declarant in case of eventual prosecution.

The prosecution contends that the Rules of Court, which were promulgated in 1940, after the passage of Act No. 48, pursuant to section 13, Article VIII, of the Constitution, have repealed the provisions of the Charter of the City of Cebu which are inconsistent with these Rules. The case of *Ruges vs. Dosdos*, (69 Phil., 158), is cited, in which the court held that General Orders No. 58, as amended by a resolution of this court of March 24, 1937, adopted under the powers conferred upon it by the above-mentioned section and article of the Fundamental Law, abrogated section 45 of the Cebu City Charter because the latter clashed with the new rules regarding the time and manner in which an appeal should be taken from any final judgment of the justice of the peace or of the municipal court by the convicted party to the Court of First Instance. It is argued that by the same token, section 37, Paragraph 2, of Act No. 58 must give way to the above-mentioned section 14 and 96, Rule 123 of the Rules of Court, with which it is in conflict.

It is unnecessary to decide this objection and we refrain from rendering any ruling thereon. The statements in Exhibit B are mere confirmatory of the statements in Exhibit A which independently of Exhibit B establish the guilt of the appellant beyond reasonable doubt.

The lower court convicted the accused of murder with evident premeditation, apparently, as qualifying circumstance. The Solicitor General, in recommending affirmance of the sentence bases his recommendation on the alleged presence of this qualifying circumstance. Treachery was not proved and is not now urged.

We are not fully satisfied that evident premeditation, within the meaning of this term as used in the Revised Penal Code, has been proven beyond a reasonable doubt. Although in appellant's confession there is a statement that, on the morning of June 29, when he heard that Calma was at large, he proposed to kill the now deceased, there is an entire absence of evidence showing that he meditated and reflected on his intention between the time it was conceived and the time the crime was actually perpetrated. Defendant's proposition was nothing but an expression of his own determination to commit the crime, which is entirely distinct from the premeditation which the law requires to be well defined and established to aggravate the criminal responsibility. (*United States vs. Angeles* (6 Phil., 480.)) To authorize the finding of evident premeditation, it must appear not only that the accused had made a decision to commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection, or persistent attempt. As has been pointed out, the evidence fails to prove that appellant meditated and reflected on his purpose to permit the formation of a deliberate determination.

We cannot close this decision without making a reference to the defamatory remarks which counsel for appellant

makes in his brief, casting aspersions on the trial Judge's motives and conduct. These remarks have no relevancy to the case, are of no value to us in the decision of the issues, and are not borne out by the record. To say that it is unprofessional worthy of the highest rebuke for a lawyer to attribute to a judge motives which do not appear on the record and have no materiality to the case is to reassert a platitude. (Ferrer vs. De Inchausti, 38 Phil., 905.)

The fact that counsel, according to a writing filed later with this Court, has apologized to the Judge and the judge has expressed satisfaction with the apology, has not written finis to the episode; for the libel transcends the confines of personalities, injured feelings or mental anguish. Its poison infects the judiciary of which the judge is a member. In attempting to heap ridicule on the Judge and bring him into disrepute without justifiable ends and basis, in connection with the performance of his official duties, counsel by his act put in jeopardy the good name of and confidence in the Court over which the Judge presides.

Counsel should conduct himself towards the judges who try his cases with that courtesy all have a right to expect. As an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice.

We find the appellant guilty of homicide and modify the judgment from which this is an appeal by sentencing him to an indeterminate penalty of from (6) years and (1) day of prison mayor to (14) years (8) months and (1) day of reclusion temporal, with the accessories of law, to pay the heirs of the deceased P2,000 by way of indemnity, and to pay the costs of both instances.

Moran, C. J., Feria, Pablo, Bengzon, Briones, and Padilla, JJ., concur.

**MORAN, C. J.:**

I certify that Mr. Justice Hilado concurred in this decision.

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## CONCURRING AND DISSENTING

**PERFECTO, J.:**

At the trial of this case which took place on October 1, 1945, accused Silvestre Carillo was 18 years old. The deceased Pastor Calma, a Japanese undercover, arrested and tied during the Japanese occupation a neighbor of the accused who failed to appear again. After the liberation Calma was made a prisoner, but escaped sometime before June 29, 1945, the date when he was killed. The accused, being a soldier, tried to stop him at about 7 p. m. of said day for the purpose of bringing him to the M.P. headquarters, but Calma resisted and tried to wrest from him his rifle, and the accused shot him.

Jorge Dapat, witness for the prosecution, testified that he was a friend of Pastor Calma and knew him as a Japanese undercover on account of whom many lives were sacrificed during the Japanese occupation. Calma was kept as prisoner in the concentration camp by the M.P.'s from where he escaped. The witness heard that Calma "did not like to be caught alive," and "he did not want to be brought back alive to the jail," and this was heard by the witness from "Calma himself" in the house of Rosing. The witness asked Calma why he happened to be out of the jail and "he answered that he escaped. He said that they were two that escaped. I do not know who was the other one, and if there is anybody who bring him to jail, he did not want to be brought alive."

The testimony of the accused regarding the circumstances under which he shot Calma is not contradicted except by Exhibit A and B, the statements which he had signed involuntarily and under duress. He testified that he signed Exhibit A because he had to obey, he being a mere soldier, the order of Captain Palanca, his superior, who wrote

Exhibit A. The accused says: "In the office of the MP I was compelled to make a statement, and an American hit me in the head." He did not read Exhibit A before signing it.

Exhibit B was signed by the accused without being informed of its contents. Fiscal Kintanar summoned him to his office and suggested to him to plead guilty "to be used as witness for the Government."

At the time Calma was shot by the accused, he was armed with a big pen knife. She accused, upon arriving at his house at about 10 a.m., coming from the mountains, heard that several prisoners, among them Calma, escaped. The accused had been in the mountains rendering patrol service. When he saw Calma at the cemetery, he halted him, but Calma approached him in an attitude of lunging upon him and with the purpose of wresting the rifle with which accused was armed. Before Signing Exhibit A, the accused was hit in the head by an American MP with something as hard as a revolver. Captain Palanca was stern and furious.

Under the facts as proved by the evidence of record, we are of opinion that the accused was justified in defending himself by shooting Calma. The deceased was a Japanese undercover. He was an escaped prisoner, and had boldly announced that he would not be caught alive. He was seen by the accused in the cemetery, at about 7 o'clock p.m., recognizing him only by the light coming from a lumse near the cemetery. He halted him, but Calma, instead of stopping, advanced toward the accused, intending to flounce upon him and take his arm. Calma was a dangerous character, having caused, as a Japanese undercover, the death of many persons. Being an immature young man of 18 years, the accused could not have thought better than to shoot Calma, as the accused was in the firm belief that it was the only way of saving his life or defending himself from a great bodily harm.

The statements attributed to the accused in Exhibit A and B, having been wrested from him by illegal means by duress, violence, and false promise can not be considered, they must be discarded. It is possible to elaborate on a hypothesis in which a man of more mature age with better experience and knowledge of life, would have successfully resisted the external means employed in securing the statements Exhibit A and B, but such hypothesis can not be applied to a person of tender age as the accused herein.

We agree with the proposition that a voluntary extrajudicial statement of an accused in no way violates the constitutional guarantee against self-incrimination, as provided in section 1:18 of Article III of the Constitution, although we can never subscribe to the theory that the guarantee against self-incrimination is a mere privilege and that it only covers "statements made in court under processes as witness," because such limitation can not find, any ground or justification in the text of the fundamental law. The guarantee is general and was adopted specially, not only against tribunals, but against all officers and agencies of government, such as the police officers and other agents of law whose iniquitous abuses in resorting to inquisitorial means to exact involuntary admissions and confessions provoked a revolting reaction in the universal conscience of justice.

We agree with the proposition that article 24 of Commonwealth Act No. 408, contrary to appellant's contention, is not applicable to the present case, and that paragraph 8, section 37 of Commonwealth Act No. 58 has been repealed and superseded by the present Rules of Court.

We also agree with the pronouncement in the decision, concerning the defamatory remarks made by counsel for appellant against the trial judge, being completely groundless upon the record of this case. We believe that counsel's conduct deserves more than a mere rebuke.

Counsel must be courageous enough to point out errors, arbitrariness, and injustices of courts and judges. The fear of provoking displeasure of the affected judges must not deter them from complying with their civil and legal duty to object to, oppose, and protest against illegal or erroneous judicial decisions, resolutions, acts, or conduct. Judges and tribunals are not infallible. As eternal vigilance is the price of democracy and liberty, so it is in the

case of Justice. Its efficient administration needs the assistance of a vigilant bar, composed of persons who will never sacrifice any principle for the sake of personal friendship with any judge. But at the same time lawyers must avoid at all cost launching groundless and irresponsible defamatory remarks against any member of the bench, and any member of the bar who should do so must be sternly dealt with, as a cancerous excrescence in our system of justice.

To overcome cancer no less than scalpel and cautery are needed.

We vote for the acquittal of accused.

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