

THE PEOPLE OF THE PHILIPPINES, PETITIONER, VS. THE HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH, AND JUAN CONSUNJI AND ALFONSO PANGANIBA...

G.R. No. L-9181. November 28, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In an amended information filed by the City Attorney of Quezon City on March 22, 1955, Juan Consunji, Alfonso Panganiban, and another whose identity is still unknown, were charged with having conspired together in the murder of one Jose Ramos (Criminal Case No. Q-1G37 of the Court of First Instance of Quezon City). Trial of the case started on May 3, 1955, and in several hearings the prosecution had been presenting its evidence. During the progress of the trial on May 18, 1955, while the prosecution was questioning one of its witnesses, Atty. Arturo Xavier of the National Bureau of Investigation, in connection with the making of a certain extra-judicial confession (allegedly made before him) by defendant Juan Consunji to the witness, counsel for the other defendant Alfonso Panganiban interposed a general objection to any evidence on such confession on the ground that it was hearsay and therefore incompetent as against the other accused Panganiban. The Court below ordered the exclusion of the evidence objected to, but on an altogether different ground: that the prosecution could not be permitted to introduce the confessions of defendants Juan Consunji and Alfonso Panganiban to prove conspiracy between them, without prior proof of such conspiracy by a number of definite acts, conditions, and circumstances. Thereafter, according to the transcript, the following remarks were made:

"Fiscal Lustre:

May we know from counsel if he is also objecting to the admissibility of the confession of Consunji as against the accused Consunji himself?

Court:

That would be premature because there is already a ruling of the Court that you cannot prove a confession unless you prove first conspiracy thru a number of indefinite acts, conditions and circumstances as required by law." Annex "B" of the petition, p. 9

The prosecution then moved in writing for a reconsideration of the order of exclusion, but again the motion was denied. Wherefore, this petition for certiorari was brought before this Court by the Solicitor General, for the review and annulment of the lower Court's order completely excluding any evidence on the extra judicial confessions of the accused Juan Consunji and Alfonso Panganiban without prior proof of conspiracy.

We believe that the lower Court committed a grave abuse of discretion in ordering the complete exclusion of the prosecution's evidence on the alleged confessions of the accused Juan Consunji at the stage of the trial when the ruling was made.

Section 14, Rule 123, Rules of Court, is specific as to the admissibility of the extrajudicial confession of an accused, freely and voluntarily made, as evidence against him.

"Sec. 14. Confession.—The declaration of an accused expressly acknowledging the truth of his guilt as to the offense charged, may be given in evidence against him."

Under the rule of multiple admissibility of evidence, even if Consunji's confession may not be competent as against his co-accused Panganiban, being hearsay as to the latter, or to prove conspiracy between them without the conspiracy being established by other evidence, the confession of Consunji was, nevertheless, admissible as evidence of the declarant's own guilt (*U. S. vs. Vega*, 43 Phil. 41; *People vs. Bande*, 50 Phil. 37; *People vs. Buan*, 64 Phil. 296), and should have been admitted as such.

The rule cited by the Court below in support of its exclusion of the proffered evidence is Sec. 12 of Rule 123, providing that:

"The act or declaration of a conspirator relating to the conspiracy and during its existence may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration."

Manifestly, the rule refers to statements made by one conspirator during the pendency of the unlawful enterprises ("during its existence") and in furtherance of its object, and not to a confession made, as in this case, long after the conspiracy had been brought to an end (*U. S. vs. Empeinado*, 9 Phil., 613; *U. S. vs. Raymundo*, 14 Phil. 416; *People vs. Badilla*, 48 Phil., 718; *People vs. Nakpil*, 52 Phil., 985).

Besides, the prosecution had not yet offered the confessions to prove conspiracy between the two accused, nor as evidence against both of them. In fact, the alleged confessions (both in writing and in tape recordings) had not yet even been identified (the presentation of Atty. Xavier was precisely for the purpose of identifying the confessions), much less formally offered in evidence. For all we know, the prosecution might still be able to adduce other proof of conspiracy between Consunji and Panganiban before their confessions are formally offered in evidence. Assuming, therefore, that section 12 of Rule 123 also applies to the confessions in question, it was premature for the respondent Court to exclude them completely on the ground that there was no prior proof of conspiracy.

It is particularly noteworthy that the exclusion of the proffered confessions was not made on the basis of the objection interposed by Panganiban's counsel, but upon an altogether different ground, which the Court issued *motu proprio*. Panganiban's counsel objected to Consunji's confession as evidence of the guilt of the other accused Panganiban, on the ground that it was hearsay as to the latter. But the Court, instead of ruling on this objection, put up its own objection to the confessions—that it could not be admitted to prove conspiracy between Consunji and Panganiban without prior evidence of such conspiracy by a number of indefinite acts, conditions, circumstances, etc. and completely excluded the confessions on that ground. By so doing, the Court overlooked that the right to object is a mere privilege which the parties may waive; and if the ground for objection is known and not reasonably made, the objection is deemed waived and the Court has no power, on its own motion, to disregard the evidence (*Marella vs. Reyes*, 12 Phil., 1).

We see no need for the present to discuss the question of the admissibility of the individual extrajudicial confessions of two or more accused for the purpose of establishing conspiracy between them through the identity of the confessions in essential details. After all, the confessions are not before us and have not even been formally offered in evidence for any purpose. Suffice it to say that the lower Court should have allowed such confessions to be given in evidence at least as against the parties who made them, and admit the same conditionally to establish conspiracy, in order to give the prosecution a chance to get into the record all the relevant evidence at its disposal

to prove the charges. At any rate, in the final determination and consideration of the case, the trial Court should be able to distinguish the admissible from the inadmissible, and reject what, under the rules of evidence, should be excluded.

Once more, attention should be called to the ruling of this Court in the case of *Prats & Co. vs. Phoenix Insurance Co.*, 52 Phil., 807, 816-817:

"In the course of long experience we have observed that justice is most effectively and expeditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the form of the questions should be avoided. In a case of any intricacy it is impossible for a judge of first instance, in the early stages of the development of the proof, to know with any certainty whether testimony is relevant or not; and where there is no indication of bad faith on the part of the Attorney offering the evidence, the court may as a rule safely accept the testimony upon the statement of the attorney that the proof offered will be connected later. Moreover, it must be remembered that in the heat of the battle over which he presides, a judge of first instance may possibly fall into error in judging of the relevancy of proof where a fair and logical connection is in fact shown. When such a mistake is made and the proof is erroneously ruled out, the Supreme Court, upon appeal, often finds itself embarrassed and possibly unable to correct the effects of the error without returning the case for a new trial,—a step which this Court is always very loath to take. On the other hand, the admission of proof in a court of first instance, even if the question as to its form, materiality, or relevancy is doubtful, can never result in much harm to either litigant, because the trial judge is supposed to know the law; and it is its duty, upon final consideration of the case, to distinguish the relevant and material from the irrelevant and immaterial. If this course is followed and the cause is prosecuted to the Supreme Court upon appeal, this Court then has all the material before it necessary to make a correct judgment."

There is greater reason to adhere to such policy in criminal cases where questions arise as to admissibility of evidence for the prosecution, for the unjustified exclusion of evidence may lead to the erroneous acquittal of the accused or the dismissal of the charges, from which the People can no longer appeal.

Wherefore, the order excluding the confessions of the accused Juan Consunji and Alfonso Panganiban is annulled and set aside and the Court below is directed to proceed with the trial in accordance with law and this opinion. Costs against respondents Juan Consunji and Alfonso Panganiban. So ordered.

Paras, C. J., Bengzon, Padilla, Monjtemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

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