

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. DALMACIO ANTIPOLLO, DEFENDANT AND APPELLANT.

G.R. No. 13109. March 06, 1918

Ponente: FISHER, J.

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FISHER, J.:

The appellant was prosecuted in the Court of First Instance of the Province of Batangas, charged with the murder of one Fortunato Dinal. The trial court convicted him of homicide and from that decision he has appealed. One of the errors assigned is based upon the refusal of the trial judge to permit Susana, Ezpeleta, the widow of the man whom the appellant is accused of having murdered, to testify as a witness on behalf of the defense concerning certain alleged dying declarations. The witness was called to the stand and having stated that she is the widow of Fortunato Dinal was asked: "On what occasion did your husband die?" To this question the fiscal objected upon the following ground:

"I object to the testimony of this witness. She has just testified that she is the widow of the deceased, Fortunato Dinal, and that being so I believe that she is not competent to testify under the rules of procedure in either civil or criminal cases, unless it be with the consent of her husband, and as he is dead and cannot grant that permission, it follows that this witness is disqualified from testifying in this case in which her husband is the injured party."

Counsel for defendant insisted that the witness was competent, arguing that the disqualification which the fiscal evidently had in mind relates only to cases in which a husband or wife of one of the parties to a proceeding is called to testify; that the parties to the prosecution of a criminal case are the Government and the accused; that, furthermore, the marriage of Dinal to the witness having been dissolved by the death of her husband, she is no longer his wife, and therefore not subject to any disqualification arising from the status of marriage.

These propositions were rejected by the trial judge, and the objection of the fiscal as to the testimony of the woman Ezpeleta was sustained. To this objection counsel took exception and made an offer to prove by the excluded witness the facts which he expected to establish by her testimony. Concerning these facts it is sufficient at this time to say that some of them would be both material and relevant, to such a degree that if proven to the satisfaction of the court, they might have lead to the acquittal of the accused, as they purported to relate to the dying declarations of the deceased, concerning the cause of his death, the general purport being that his injuries were due to a fall and not to the acts imputed to the accused.

Section 58 of General Orders No. 58 (1900) reads as follows:

"Except with the consent of both, or except in cases of crime committed by one against the other, neither husband nor wife shall be a competent witness for or against the other in a criminal action or proceeding to which one or both shall be parties."

The reasons for this rule are thus stated in Underbill's work on Criminal Evidence (second edition) on page 346:

"At common law, neither a husband nor a wife was a competent witness for or against the other in any judicial

proceedings, civil or criminal, to which the other was a party. * * * If either were recognized as a competent witness against the other who was accused of crime, * * * a very serious injury would be done to the harmony and happiness of husband and wife and the confidence which should exist between them."

In Greenleaf's classical work on evidence, in section 337 [vol. I], the author says, in stating the reason for the rule at common law:

"The great object of the rule is to secure domestic happiness by placing the protecting seal of the law upon all confidential communications between husband and wife; and whatever has come to the knowledge of either by means of the hallowed confidence which that relation inspires, cannot be afterwards divulged in testimony even though the other party be no longer living."

This case does not fall with the text of the statute or the reason upon which it is based. The purpose of section 58 is to protect accused persons against statements made in the confidence engendered by the marital relation, and to relieve the husband or wife to whom such confidential communications might have been made from the obligation of revealing them to the prejudice of the other spouse. Obviously, when a person at the point of death as a result of injuries he has suffered makes a statement regarding the manner in which he received those injuries, the communication so made is in no sense confidential. On the contrary, such a communication is made for the express purpose that it may be communicated after the death of the declarant to the authorities concerned in inquiring into the cause of his death.

The same theory as that upon which section 58 of General Orders No. 58 is based, underlies section 383, paragraph 3 of Act No. 190, which reads as follows:

"A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterwards, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other, or to a criminal action or proceeding for a crime committed by one against the other."

The only doubt which can arise from a reading of this provision relates to the meaning of the words "during the marriage or afterwards," and this doubt can arise only by a consideration of this phrase separately from the rest of the paragraph. Construed as a whole it is evident that it relates only to cases in which the testimony of a spouse is offered for or against the other in a proceeding to which the other is a party. The use of the word "afterwards" in the phrase "during the marriage or afterwards" was intended to cover cases in which a marriage has been dissolved otherwise than by the death of one of the spouses—as, for instance, by decree of annulment or divorce.

The declarations of a deceased person while in anticipation of certain impending death, concerning the circumstances leading up to the death, are admissible in a prosecution of the person charged with killing the declarant. (*U. S. vs. Gil*, 13 Phil. Rep., 530.) Such dying declarations are admissible in favor of the defendant as well as against him. (*Mattox vs. U. S.*, 146 U. S., 140.) It has been expressly held in several jurisdictions in the United States that the widow of the deceased may testify regarding his dying declarations. In the case of the *State vs. Ryan* (30 La. Ann., 1176), cited by appellant in his brief, the court said:

"The next bill is as to the competency of the widow of the deceased to prove his dying declarations. We see no possible reason for excluding her * * * after the husband's death she is no longer his wife, and the rule's of evidence, as between husbands and wives, are no longer applicable."

In the case of *Arnett vs. Commonwealth* (114 Ky., 593, 596), the testimony of the widow of the deceased as to his dying declarations made to her was objected to upon the express ground that under the terms of the Kentucky

Code, "the wife was incompetent to testify even after the cessation of the marriage relation, to any communication made to her by her husband during marriage,"

This contention was rejected, the court saying:

"On grounds of public policy the wife can not testify against her husband as to what came to her from him confidentially or by reason of the marriage relation, but this rule does not apply to a dying communication made by the husband to the wife on the trial of the one who killed him. The declaration of the deceased made in extremis in such cases is a thing to be proven, and this proof may be made by any competent witness who heard the statement. The wife may testify for the state in cases of this character as to any other fact known to her. * * * It can not be contended that the dying declaration testified to by the witness was a confidential communication made to her; on the contrary, it was evidently made in the furtherance of justice for the express purpose that it should be testified to in the prosecution of the defendant."

We are therefore of the opinion that the court below erred in excluding the testimony of the witness Susana Ezpeleta, and that by reason of such exclusion, the accused was deprived of one of his essential rights. That being the case, a new trial must be granted.

For the reasons stated, the judgment of the court below is hereby set aside and a new trial is granted at which the testimony of the witness Susana Ezpeleta will be admitted, together with any additional evidence which may be offered on the part of the prosecution or the defense. At the new trial granted the accused, the testimony taken at the former hearing shall be considered. The costs of this appeal shall be de officio. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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