

**EMETERIA VILLAFLOR, PETITIONER, VS. RICARDO SUMMERS,
SHERIFF OF THE CITY OF MANILA, RESPONDENT.***G. R. No. 16444. September 08, 1920*

Ponente: MALCOLM, J.

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The petitioner prays that a writ of habeas corpus issue to restore her to her liberty.

The facts are not in dispute. In a criminal case pending before the Court of First Instance of the city of Manila, Emeteria Villaflor and Florentino Souingco are charged with the crime of adultery. On this case coming on for trial before the Hon. Pedro Concepcion, Judge of First Instance, upon the petition of the assistant fiscal for the city of Manila, the court ordered the defendant Emeteria Villaflor, now become the petitioner herein, to submit her body to the examination of one or two competent doctors to determine if she was pregnant or not. The accused refused to obey the order on the ground that such examination of her person was a violation of the constitutional provision relating to self-incrimination. Thereupon she was found in contempt of court and was ordered to be committed to Bilibid Prison until she should permit the medical examination required by the court.

The sole legal issue arising from the admitted facts is whether the compelling of a woman to permit her body to be examined by physicians to determine if she is pregnant, violates that portion of the Philippine Bill of Rights and that portion of our Code of Criminal Procedure which find their origin in the Constitution of the United States and practically all state constitutions and in the common law rules of evidence, providing that no person shall be compelled in any criminal case to be a witness against himself. (President's Instructions to the Philippine Commission; Act of Congress of July 1, 1902, section 5, paragraph 3; Act of Congress of August 29, 1916, section 3, paragraph 3; Code of Criminal Procedure, section 15 [4]; United States Constitution, fifth amendment.) Counsel for petitioner argues that such bodily exhibition is an infringement of the constitutional provision; the representative of the city fiscal contends that it is not an infringement of the constitutional provision. The trial judge in the instant case has held with the fiscal; while it is brought to our notice that a judge of the same court has held on an identical question as contended for by the attorney for the accused and petitioner.

The authorities are abundant but conflicting. What may be termed the conservative courts emphasize greatly the humanitarianism of the constitutional provision and are pleased to extend the privilege in order that its mantle may cover any fact by which the accused is compelled to make evidence against himself. (Compare *State vs. Jacobs* [1858], 50 N. C., 259 with *State vs. Ah Chuey* [1879], 14 Nev., 79. See further *State vs. Nordstrom* [1893], 7 Wash., 506; *State vs. Height* [1902], 117 Iowa, 650; *Thornton vs. State* [1903], 117 Wis., 338.) A case concordant with this view and almost directly in point is *People vs. McCoy* ([1873], 45 How. pr., 216). A woman was charged with the crime of infanticide. The coroner directed two physicians to go to the jail and examine her private parts to determine whether she had recently been delivered of a child. She objected to the examination, but being threatened with force, yielded, and the examination was had. The evidence of these physicians was offered at the trial and ruled out. The court said that the proceeding was in violation of the spirit and meaning of the Constitution, which declares that "no person shall be compelled in any criminal case to be a witness against

himself." Continuing, the court said:

"They might as well have sworn the prisoner, and compelled her, by threats, to testify that she had been pregnant, and had been delivered of a child, as to have compelled her, by threats, to allow them to look into her person, with the aid of a speculum, to ascertain whether she had been pregnant and been delivered of a child. * * * Has this court the right to compel the prisoner now to submit to an examination of her private parts and breasts, by physicians, and then have them testify that from such examination they are of the opinion she is not a virgin, and has had a child? It is not possible that this court has that right; and it is too clear to admit of argument that evidence thus obtained would be inadmissible against the prisoner."

It may be revealing a judicial secret but nevertheless we cannot refrain from saying that, greatly impressed with the weight of these decisions, especially the one written by Mr. Justice McClain, in *State vs. Height*, supra, the instant case was reported by the writer with the tentative recommendation that the court should lay down the general rule that a defendant can be compelled to disclose only those parts of the body which are not usually covered. But having disabused our minds of a too sensitive appreciation of the rights of accused persons, and having been able, as we think, to penetrate through the maze of law reports to the policy which lies behind the constitutional guaranty and the common law principle, we have come finally to take our stand with what we believe to be the reason of the case.

In contradistinction to the cases above-mentioned are others which seem to us more progressive in nature. Among these can be prominently mentioned decisions of the "United States Supreme Court, and the Supreme Court of these Islands. Thus, the always forward looking jurist, Mr. Justice Holmes, in the late case of *Holt vs. United States* ([1910], 218 U. S., 245), in resolving an objection based upon what he termed "an extravagant extension of the Fifth Amendment," said: "The prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material." (See also, of same general tenor, decision of Mr. Justice Day in *Adams vs. New York* [1903], 192 U. S., 585.) The Supreme Court of the Philippine Islands, in two decisions, has seemed to limit the protection to a prohibition against compulsory testimonial self-incrimination. The constitutional limitation was said to be "simply a prohibition against legal process to extract from the defendant's own lips, against his will, an admission of his guilt." (*U. S. vs. Tan Teng* [1912], 23 Phil., 145; *U. S. vs. Ong Siu Hong* [1917], 36 Phil., 735, and the derivatory principle announced in 16 *Corpus Juris*, 567, 568, citing the United States Supreme Court and the Supreme Court of the Philippine Islands as authority.)

Although we have stated a proposition previously announced by this court and by the highest tribunal in the United States, we cannot unconcernedly leave the subject without further consideration. Even in the opinion of Mr. Justice Holmes, to which we have alluded, there was inserted the careful proviso that "we need not consider how far a court would go in compelling a man to exhibit himself." Other courts have likewise avoided any attempt to determine the exact location of the dividing line between what is proper and what is improper in this very broad constitutional field. But here before us is presented what would seem to be the most extreme case which could be imagined. While the United States Supreme Court could nonchalantly decree that testimony that an accused person put on a blouse and it fitted him is not a violation of the constitutional provision, while the Supreme Court of Nevada could go so far as to require the defendant to roll up his sleeve in order to disclose tattoo marks, and while the Supreme Court of the Philippine Islands could permit substances taken from the person of an accused to be offered in evidence, none of these even approach in apparent harshness an order to make a woman, possibly innocent, to disclose her body in all of its sanctity to the gaze of strangers. We can only consistently consent to the retention of a principle which would permit of such a result by adhering steadfastly to the proposition that the purpose of the constitutional provision was and is merely to prohibit testimonial compulsion.

So much for the authorities. For the nonce we would prefer to forget them entirely, and here in the Philippines, being in the agreeable state of breaking new ground, would rather desire our decision to rest on a strong foundation of reason and justice than on a weak one of blind adherence to tradition and precedent. Moreover, we believe that an unbiased consideration of the history of the constitutional provision will disclose that our conclusion is in exact accord with the causes which led to its adoption.

The maxim of the common law, *Nemo tenetur seipsum accusare*, was recognized in England in early days, but not in the other legal systems of the world, in a revolt against the thumbscrew and the rack. A legal shield was raised against odious inquisitorial methods of interrogating an accused person by which to extort unwilling confessions with the ever present temptation to commit the crime of perjury. The kernel of the privilege as disclosed by the text writers was testimonial compulsion. As forcing a man to be a witness against himself was deemed contrary to the fundamentals of republican government, the principle was taken into the American Constitutions, and from the United States was brought to the Philippine Islands, in exactly as wide-but no wider-a scope as it existed in old English days. The provision should here be approached in no blindly worshipful spirit, but with a judicious and a judicial appreciation of both its benefits and its abuses. (Read the scholarly articles of Prof. Wigmore in 5 Harvard L. R. [1891], p. 71, and 15 Harvard L. R., 1902, p. 610, found in 4 Wigmore on Evidence, pp. 3069 et seq., and U. S. vs. Navarro [1904], 3 Phil., 143.)

Perhaps the best way to test the correctness of our position is to go back once more to elements and ponder on what is the prime purpose of a criminal trial. As we view it, the object of having criminal laws is to purge the community of persons who violate the laws to the great prejudice of their fellow men. Criminal procedure, the rules of evidence, and constitutional provisions, are then provided not to protect the guilty but to protect the innocent. No rule is intended to be so rigid as to embarrass the administration of justice in its endeavor to ascertain the truth. No accused person should be afraid of the use of any method which will tend to establish the truth. For instance, under the facts before us, to use torture to make the defendant admit her guilt might only result in inducing her to tell a falsehood. But no evidence of physical facts can for any substantial reason be held to be detrimental to the accused except in so far as the truth is to be avoided in order to acquit a guilty person.

Obviously a stirring plea can be made showing that under the due process of law clause of the Constitution every person has a natural and inherent right to the possession and control of his own body. It is extremely abhorrent to one's sense of decency and propriety to have to decide that such inviolability of the person, particularly of a woman, can be invaded by exposure to another's gaze. As Mr. Justice Gray in *Union Pacific Railway Co. vs. Botsford* ([1891], 141 U. S., 250) said, "To compel any one, and especially a woman, to lay bare the body, or to submit to the touch of a stranger, without lawful authority, is an indignity, an assault, and a trespass." Conceded, and yet, as well suggested by the same court, even superior to the complete immunity of a person to be let alone is the interest which the public has in the orderly administration of justice. Unfortunately, all too frequently the modesty of witnesses is shocked by forcing them to answer, without any mental evasion, questions which are put to them; and such a tendency to degrade the witness in public estimation does not exempt him from the duty of disclosure. Between a sacrifice of the ascertainment of truth to personal considerations, between a disregard of the public welfare for refined notions of delicacy, law and justice cannot hesitate.

The protection of accused persons has been carried to such an unwarranted extent that criminal trials have sometimes seemed to be like a game of shuttlecocks, with the judge as referee, the lawyers as players, the criminal as guest of honor, and the public as fascinated spectators. Against such a loose extension of constitutional guaranties we are here prepared to voice our protest.

Fully conscious that we are resolving a most extreme case in a sense, which on first impression is a shock to one's sensibilities, we must nevertheless enforce the constitutional provision in this jurisdiction in accord with the

policy and reason thereof, undeterred by merely sentimental influences. Once again we lay down the rule that the constitutional guaranty, that no person shall be compelled in any criminal case to be a witness against himself, is limited to a prohibition against compulsory testimonial self-incrimination. The corollary to the proposition is that, on a proper showing and under an order of the trial court, an ocular inspection of the body of the accused is permissible. The proviso is that torture or force shall be avoided. Whether facts fall within or without the rule with its corollary and proviso must, of course, be decided as cases arise.

It is a reasonable presumption that in an examination by reputable and disinterested physicians due care will be taken not to use violence and not to embarrass the patient any more than is absolutely necessary. Indeed, no objection to the physical examination being made by the family doctor of the accused or by doctor of the same sex can be seen.

Although the order of the trial judge, acceding to the request of the assistant fiscal for an examination of the person of the defendant by physicians was phrased in absolute terms, it should, nevertheless, be understood as subject to the limitations herein mentioned, and therefore legal. The writ of habeas corpus prayed for is hereby denied. The costs shall be taxed against, the petitioner. So ordered.

Mapa, C. J., Araullo, Avanceña, Moir and Villamor, JJ., concur.

CONCURRING

CARSON, J.,

I concur.

I think, however, that the scope of our ruling in this matter should be expressly limited, in positive and definite terms, so as to make it clear that the examination of the person of the accused shall not be carried beyond a mere ocular inspection, wherein the use of instruments or of physical force upon the person of the accused would be prohibited.

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