

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. BERNARDINO MANABAT AND DOMINGO SIMEON, DEFENDANTS. DOMINGO SIMEON, APPELLANT.

G. R. No. 16717. December 22, 1921

Ponente: OSTRAND, J.

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OSTRAND, J.:

On May 23, 1919, the laborers in the car house, machine shop, power plant, and transportation departments of the Manila Electric Railroad and Light Company, a corporation operating the Manila street car system, declared a strike against that corporation. The strikers numbered nearly five hundred and all were members of a society for mutual support called "Nagsumakit" which consisted exclusively of employees of said corporation, and of which one Pedro Angeles was president. In the course of the strike several acts of violence were committed by the strikers culminating on June 20th at about 4:30 p. m., in the explosion on Plaza Goiti of a quantity of powder contained in a cardboard box placed under one of the seats of a street car by the defendant, Bernardino Manabat, one of the strikers. In depositing the box, Manabat, by means of a lighted cigarette ignited a fuse connected with the powder, whereupon he immediately left the car. Before the fuse reached the powder the conductor of the car discovered the box, with its burning fuse, and threw it out of a window of the car and into the street. It was there picked up by a newsboy, Leonardo Sacramento, in whose hands it exploded, inflicting wounds upon him from the effects of which he died the following morning. A number of other persons were also injured through the explosion. Manabat was recognized by several persons and was captured a few minutes after the explosion within a short distance of the place where it occurred. He was at once taken to the headquarters of the Manila secret service where he at first denied his guilt, but after having been closely examined by several secret service men "more or less continuously" (see testimony of John W. Green) for about twenty-three hours, made a confession in which he implicated the defendant, Domingo Simeon, claiming that the latter had given him the bomb, with instructions to take it aboard a street car and there explode it. Domingo Simeon was thereupon arrested, brought to secret service headquarters and there confronted with Manabat, who, in his presence, repeated the story that Simeon had furnished the bomb and given him the instructions mentioned. As some importance has been attached to the point, we may here mention that while Manabat told his story, Simeon showed no excitement or emotion, and did not interrupt or even look at him. However, as soon as asked by the chief of the secret service, Simeon emphatically denied the truth of Manabat's statement.

An information was filed by the prosecuting attorney of the city charging both Manabat and Simeon with murder and lesiones (physical injuries). The two accused were tried separately. Manabat pleaded guilty but sentence was withheld until the termination of the trial of Simeon. The latter, after a lengthy trial, was found guilty of homicide and lesiones, and sentenced to twenty years of reclusion temporal. Manabat was given the benefit of article 11 of the Penal Code and sentenced to twelve years and one day of reclusion temporal. The case is now before this court on appeal taken by Simeon.

In addition to the facts above stated, the record shows that the "Nagsumakit" was affiliated with the Congreso

Obrero, a federation of labor associations and of which Potenciano Salita was president and Domingo Simeon, secretary. When dissatisfaction arose among the laborers of the Street Car Company, Pedro Angeles, as president of the "Nagsumakit" and feeling unequal to the task of directing a strike, sought the assistance of the Congreso Obrero. A petition directed to Mr. Rockwell, vice-president of the Street Car Company, and containing a number of peremptory demands was thereupon prepared. The petition was signed by Potenciano Salita, as president of the Congreso Obrero, and countersigned by Simeon as secretary. The company being unwilling to treat with outsiders in regard to its relations with its employees, the strike above-mentioned was at once declared.

"Labor Hall," the headquarters of the Congreso Obrero also became the headquarters of the strike. Simeon, who in addition to being secretary of the Congreso Obrero, was also the treasurer of the Printers' Union, had his office in a room adjoining the assembly room of Labor Hall and separated therefrom, in the daytime, by swinging halfdoors of wire cloth. In the same room several other persons had their offices or desks, among them the treasurer and the secretary of the Cigarmakers' Union.

At the beginning of the strike, Salita was a candidate for member of the Municipal Council and as his time was taken up with the electoral campaign, the management of the strike devolved upon Simeon until June 8th, when the elections being over, Salita assumed the management. On that date a meeting of the strikers and their sympathizers was held at the Zorrilla Theater, which meeting was opened by Simeon and afterwards presided over by Salita. At the meeting one Crisanto Evangelists made an inflammatory speech in which he criticised the Government for protecting the "scabs" with Constabulary guards and secret service men, and stated that in other countries such repressive measure led to violence on the part of strikers. He finally, however, advised the audience to remain peaceful while justice took its course.

At the same meeting several committees were appointed, among them a committee on finance of which Simeon was made chairman. As such chairman, he had charge of the collection of funds from the public for the benefit of the strikers and also of the distribution of such funds. The greater part of the funds were used for the purchase of food, and meals were served the strikers daily at the Labor Hall. Among the persons so receiving meals was Manabat, who sometimes was accompanied by his wife, and Simeon came to know both of them. Manabat testifies that from the beginning of the strike he went to Labor Hall nearly every day and that a large number of the other strikers did likewise.

The facts here related as to Simeon's close connection with the strike and his silence when confronted with Manabat in the office of the chief of the secret service are relied on by the prosecution as corroboration of Manabat's statements inculcating Simeon. A critical examination of these circumstances will, however, show that they are of little, if any, corroborative value, and that Simeon's conviction depends entirely on the credibility of the, on this point, practically uncorroborated testimony of an accomplice. Such testimony coming, as it does, from a polluted source must be accepted with extreme caution and its inherent probability must be carefully tested. This is especially so when, as in the present case, we have only the testimony of one man without any means of comparing and verifying it with other testimony to the same effect. The cases in which the uncorroborated testimony of an accomplice has been held sufficient to convict of grave offenses have been very rare indeed. Upon this subject Bishop, in his new Criminal Procedure, second edition, section 1169, says:

"So manifest is the danger of convicting men on evidence from a source confessedly corrupt and delivered by the witness to shield himself from merited punishment, that the judges, while explaining to the jury their right to convict on it alone, by way of caution advise them not to return a verdict of guilty unless it is corroborated by evidence from a purer source. Yet they are not as of law required to give this advise."

And again, in section 1170:

"* * * corroborating evidence must tend to prove the defendant's guilt, not merely the credibility of the

accomplice."

The rule stated by Bishop is based on wisdom and experience and while it may not have been formally adopted in our local jurisprudence, it is, nevertheless, of great persuasive force.

Now, what corroboration is there as to Simeon's complicity? That he had his office at Labor Hall and that Manabat also was present in the building between the hours of 2 and 3 o'clock in the afternoon of June 20th, as testified to by two secret service men? There is nothing strange in this; where else would both Simeon and Manabat be more likely to be at that hour? Neither is Simeon's silence and his failure to show agitation or emotion when first confronted with Manabat's charge, inconsistent with his entire innocence. He would, perhaps, have been quite as likely to make a display of resentment if he were guilty and had been betrayed by Manabat. If this incident proves anything at all, it indicates a degree of self-control which makes his participation in Manabat's illconsidered and reckless exploit all the more improbable. Neither can Simeon's participation in the management of the strike be regarded as a corroborating circumstance of the character required by the rule above quoted; there were many persons similarly circumstanced and who, in addition, had a pecuniary interest in the strike which Simeon lacked. The record contains ample corroboration of Manabat's confession of his own guilt; as to Simeon's complicity it is singularly deficient.

We therefore have to fall back on the testimony of Manabat. He testifies that he arrived at Labor Hall at 8 o'clock in the morning of June 20th and remained there until 4 o'clock in the afternoon; that he, at this later hour, was covering with a number of other strikers of whom about fourteen were present outside of the door of Simeon's office, when a person whom he did not know came out of Simeon's office and asked for Bernardino Manabat; that upon his, Manabat, stepping forward, this person told him that Simeon wanted to see him; that he thereupon entered the office where he found Simeon alone; that he asked Simeon what he wanted of him and that Simeon then asked him "Do you see that thing on the chair?" He further states that he asked Simeon what it was and was told that it was only a firecracker for the street car. When asked if he was willing to explode it in a car, he answered that he was afraid on account of his family and was told to have no fear for the family as he would be protected in the event he was arrested. He further states that the so-called firecracker was in a white paste-board box about 12 inches long, 4 inches wide, and 4 1/3 inches high; that he was curious to see what was inside the box, but that Simeon told him not to open it; that after some further discussion, lasting altogether about twenty-five minutes, he put the box under his left arm and in that manner carried it out of Simeon's office and through the hall and all the way from there to the corner of Calles Dasmariias and Rosario where he, after waiting a couple of minutes, boarded a street car bound for Plaza Goiti where the "firecracker" was exploded. He asserts that he did not think the "firecracker" was dangerous but simply would frighten the public from using the street cars.

When it is considered that Labor Hall was a public place, frequented by many people, that Simeon's desk was visible not only through the half-doors separating his office from the hall, but also open to public view from the outside through the windows, and that both Simeon and the strikers knew that Labor Hall was being watched by the secret service, Manabat's story certainly challenges our credulity. It is highly improbable that Simeon, an intelligent, and as the record shows, self-possessed man, should, without any previous conversation have intrusted a man he had known casually only for a few weeks with such a desperate venture and should have delivered to this man, practically in public view, such a conspicuous object as the box in question.

In addition to its inherent improbability, Manabat's story is further weakened by being contradicted in important details by the testimony of fairly credible witnesses. It is, for instance, conclusively proven that instead of being in Labor Hall during the forenoon of June 20th, he was at the Bureau of Labor as a witness in an investigation conducted by that Bureau. It must also be regarded as proven that there were at least two other persons present in

Simeon's office at the time of the alleged delivery of the cardboard box to Manabat It is hardly likely that the delivery could have been made without being noticed by them. It is furthermore significant that Manabat did not know any of the men with whom he was talking when he was called into Simeon's office, and that he, apparently, has been unable to so describe them as to lead to their identification. It is also remarkable that he has been unable to give any clue to the identity of the person who called him into the office.

It has been intimated that if Manabat had not been telling the truth he could not have adhered to his story under cross-examination. To this we may say that the story was relatively simple, the witness fairly intelligent and the cross-examination was not very searching. There are hints in the record that the testimony before the court differed materially from the confession made to the secret service, but as the confession has not been presented in evidence we cannot take this into consideration.

It has also been suggested that Manabat could have had no motive for implicating Simeon. As to this, we are not left entirely to conjectures. Two witnesses testify that on one occasion Manabat was highly offended at Simeon's reluctance to lend him a peso out of the funds collected for the strikers and that he, on leaving Simeon's office, expressed his dissatisfaction in strong terms. There is also some probability of his having resented the attentions shown his wife by Simeon. That Simeon on being questioned at the time of his examination by the secret service failed to recall, on the spur of the moment, any cause for resentment on Manabat's part is not as strange as it at first blush may seem. Being in charge of the distribution of the strike funds, he was peculiarly exposed to suspicions of unfairness. The strikers were numerous and the funds scant; he could not very well satisfy everyone, and, unwittingly, may have made many enemies. Even if aware of the enmity he might easily forget individual instances. Manabat being, as the evidence shows, a man of a morose and aggressive temperament might easily have taken umbrage at comparatively slight incidents. Furthermore, when it is remembered that he was captured almost in the act of the commission of the crime and that the evidence against him was overwhelming, it requires no wide stretch of the imagination to conclude that the lengthy examination by the secret service was directed not so much towards establishing his guilt as towards ascertaining whether he had any accomplices, and being a fairly intelligent man (he was a machinist by trade and had studied two years in the Manila Trade School) it could not have taken him long to realize what was wanted. By governing himself accordingly and implicating one of the leaders of the strike he succeeded in creating the impression that he himself was merely the ignorant tool of a more intelligent person. He was consequently convicted of manslaughter instead of murder and given the benefit of article 11 of the Penal Code, thereby shortening his term of imprisonment by eighteen years less one day. Men have committed perjury for less.

Much as we abhor the crime committed, we cannot convict men on evidence as flimsy as that against the defendant Domingo Simeon in the present case, and as to him the sentence of the lower court is therefore reversed, and it is hereby ordered that the complaint against him be dismissed and that he be discharged from the custody of the law with the costs de oficio. So ordered.

Araullo, C. J., Avancena, Villamor, Johns, and Romualdez, JJ., concur.

Johnson, J., dissents.

DISSENTING

STREET, J.,

I am unable to concur in the judgment of acquittal in this case and am constrained, with some reluctance, to record my belief that the accused is guilty. To exhibit clearly the reasons for this belief, it is necessary to show the relation of the appellant to the strike referred to in the opinion of the court, and which at the time of the commission of the crime, was nearing the stage of dissolution.

In this connection it appears that for sometime prior to the strike an association had been organized among the company's employees, known as the Nagsumakit. This body was in turn member of a larger labor organization called the Congreso Obrero, composed of representatives of working men in all branches of labor. The latter body had as its president at this time Potenciano Salita, and as its secretary, the present appellant, Domingo Simeon. From the inception of the trouble between the company and its employees these two personages, as officials of the Congreso Obrero, had assumed the guidance of the affairs of the employees; but during the first two or three weeks of the strike, Salita was occupied with his candidacy for the office of councilman. It thus happened that responsibility for the direction of the strike rested chiefly on Domingo Simeon, until the night of June 8, when a meeting attended by the strikers was held and president Salita assumed charge of the management of the strike.

Upon this occasion a committee was appointed to raise funds and means in support of the strikers, and of this committee Domingo Simeon was made chairman. In this capacity he remained in close and active relations with the strikers during the continuance of the trouble, and maintained headquarters at the Labor Hall, a place much frequented in those days by the strikers. From his hand came the subsistence which was officially supplied for the maintenance of the strikers, many of whom were in straits for lack of means to support themselves and families.

Among the strikers thus reduced to extremity, and burdened with the petty obligations incurred by reason of the strike, was Bernardino Manabat, who had known Domingo Simeon from the time the Nagsumakit had been organized, and who had now become in a measure dependent on Domingo Simeon for the supplies necessary for the immediate requirements of himself and family. Moreover, as an idler, or hanger-on, around the Labor Hall during the strike, Manabat had frequent occasions to see Domingo Simeon and was not infrequently used by the latter to do errands, such as carrying letters and buying food or periodicals.

The narrative of Manabat, so far as relates to the alleged participation of the appellant in the offense in question, is to the effect that at about 4 p. m., of June 20, while standing in the precincts of the Labor Hall, he (Manabat) was called into the office of Simeon, who was at the time alone. Upon entering Manabat was shown the cardboard box mentioned in the opinion of the court, and was asked by Simeon if he could explode it on a Street car, in which connection he was told that it was nothing more than a firecracker. Manabat at first objected, saying that he had a family to look after, but his misgivings were allayed by the assurance that if he would cause an explosion on a car, this act would instil fear into the people to such an extent that they would not use the cars and the strikers would triumph.

When Manabat's assent had been obtained he was shown a hole in the bottom of the box through which a short fuse protruded and was told that it could be lighted from a cigarette. He was then directed to cause the explosion on a car at some point between Rosario Street and Plaza Goiti for the reason that, as there are always many people in those limits, information of the occurrence would at once be propagated throughout the city. As Manabat took the box in his hands to depart, Simeon told him that whatever occurred he would not be left alone and, if arrested, a way would be devised to get him out. The witness then departed, made his way to Rosario Street, and boarded the car on which the bomb was later ignited, as stated in the opinion of the court.

The conviction depends on the credibility of Manabat, and the question is whether his testimony is sufficient, in connection with the circumstances surrounding the case, to prove the guilt of the appellant beyond a reasonable

doubt. I think it is.

In the light of the facts, and especially in view of the position occupied by Manabat, it is impossible to believe that he planned the stroke, manufactured the bomb, and carried the affair into execution all by himself. In the nature of things he was a mere tool in the hands of some more intelligent individual, and in Domingo Simeon is found a person who had a powerful motive for such an act and intelligence enough to direct its execution, even if he did not plan it.

Of course Bernardino Manabat knows where and from whom he got the box, and the only question is whether he has actually and truly revealed the knowledge that is within him. A careful perusal of what he says is, in my opinion, convincing that his story is true. Among minor features of his testimony, it is clearly revealed that he had no knowledge of the existence of the box, or its contents, prior to receiving it, as is apparent from his manifestation of curiosity when he wanted to see into the box in the presence of Simeon, but was told not to open it.

His ignorance of the size, color, and appearance of the bomb is repeatedly and, I think, truly shown in different parts of his testimony; and his differing statements as to the length of the fuse are evidently mere guesses founded on casual inspection through the little square hole in the bottom of the box—certainly not on any definite personal knowledge of his own. It is practically certain that he could not have fabricated the agent of destruction; and I believe that he received it at the time and place and from the person stated by him.

Moreover, it is evident that he had little or no idea of the death-dealing power of the explosive, and he was in a measure appalled at the consequences of his act. At most he probably expected a noisy report that would carry trepidation to passengers on the cars and by-standers, but he did not expect anything like the tragic consequences that in fact followed. This circumstance supplies, I think, the moral necessity for his confession, and adds greatly to the probability that he has named in Domingo Simeon the true author by induction of the crime and the cause of his own undoing.

Another circumstance which in my opinion in some measure accredits the truth of Manabat's narrative is that no adequate motive is shown which would have led him to implicate the appellant, supposing the latter to be innocent. On the contrary, the friendly feeling of fellowship and respect which Manabat must have entertained towards Simeon would have supplied a powerful incentive to Manabat to shield him; and it is safe to say that if Manabat had designed to implicate some innocent person in order merely to gratify the importunity of his interrogators at the police station, he would have been very likely to have named some other person; and if he had thus implicated an innocent person, he must sooner or later have wavered in his story and in some way would have revealed the falsity of his testimony.

The conditions under which the confession was finally made by Bernardino Manabat, revealing the complicity of the appellant, were not in my opinion such as to impair the credibility of the witness. No promise of indulgence was held out to him, if he would reveal the names of other guilty persons, and no pressure was imposed upon him which could have operated to induce falsehood. The only instrument that seems to have been used by the chief of police to extract the truth was the prolongation of the examination over a period of nearly a full day—a process certainly debilitating to the resisting powers of the human will, but not in itself likely to elicit falsehood. On the contrary, the only relief of his burdened spirit under such conditions was to reveal the truth. In addition to this it is to be noted that, after making a full revelation of the facts, as stated in his declaration before the chief of police, this witness has not faltered in his fidelity to that narrative, and he persisted in it to the end of the trial both of himself and of his coaccused.

Under all the circumstances the accusing witness is in my opinion entitled to full credit, and I think the conviction

should be sustained.

DISSENTING

MALCOLM, J.,

With all due consideration for the learned opinion of the majority, yet duty impels me to register my dissent and to say that in my judgment the court has fallen into a grave error in acquitting Domingo Simeon of the crime of murder.

The main decision states nothing new when it relies on the rule announced in *Bishop on Criminal Procedure* as to the weight which should be given to the testimony of an accomplice. (U. S. vs. Remigio [1918], 37 Phil., 599; U. S. vs. Ambrosio and Falsario [1910], 17 Phil., 295; U. S. vs. Ocampo [1905], 4 Phil., 400; U. S. vs. Balisacan [1905], 4 Phil. 545; U. S. vs. Ocampo [1905], 5 Phil., 339; U. S. vs. Bernales [1911], 18 Phil., 525; U. S. vs. Soriano [1913], 25 Phil., 624; U. S. vs. Briones [1914], 28 Phil., 367; U. S. vs. Lazaro [1915], 34 Phil., 871; U. S. vs. Claro [1915], 32 Phil., 413, and other cases.) In a decision on appeal from this court, the United States Supreme Court laid down the rule that although the accomplice was a low type of man, "yet his testimony or confession is not to be summarily discarded but is to be judged of by confirming or opposing circumstances as well as by his character and the influences that may invest him." (*Valdez vs. U. S.* [1917], 244 U. S., 432.) The decision of the higher court in the case just mentioned is most illuminating. Let us, therefore, contrast the facts in that case, in which the United States Supreme Court affirmed the judgment of conviction, with the facts of the instant case in which the Supreme Court of the Philippines reverses the judgment of conviction.

The guilt or innocence of the defendant Valdez turned solely or principally upon the testimony of the accomplice Juan Gatmaitan. The guilt or innocence of the instant defendant Simeon turns solely or principally upon the testimony of the accomplice Bernardino Manabat. Gatmaitan was found by the different courts to be a densely ignorant man, of a low order of intelligence, lacking in instruction both mental and moral, and a convicted cattle thief. Manabat is shown to be a laborer of the usual type, of a fair order of intelligence, who has heretofore been a law-abiding citizen. Gatmaitan first testified in one manner as to the guilt of the defendant Valdez, subsequently retracted the accusation, and later retracted the retraction. Manabat has told only one story connecting Domingo Simeon with the horrible crime and this story has never been shaken even when confronted with his chief Simeon, and even when undergoing a grilling by an expert cross-examiner. In the Valdez case the court thought it possible to conclude that Valdez planned the crime in the crude manner certain to be detected, described by Gatmaitan. In the Simeon case the court does not believe that Domingo Simeon, the secretary of Nagsumakit, and a prominent leader in the street railway strike, would issue an order for the explosion of the bomb from his office in the Labor Hall. Finally, in the Valdez case the judgments of the court of first instance, of the Supreme Court of the Philippine Islands, and of the Supreme Court of the United States, were based on the testimony of Gatmaitan; while here the court discredits completely the testimony of Manabat.

To make just one more reference to the opinion of the United States Supreme Court in *Valdez vs. United States*, supra, we note that the court there said that "the judgment should not be reversed upon a mere abstraction." Judgment should here also not be reversed upon a mere abstraction. A perusal of the testimony of Bernardino Manabat shows a straightforward narration of events, reasonable in every respect. It is assuming the impossible as a basis for acquittal to make the assertion that Manabat concocted the story implicating Simeon during the time he was being examined by the secret service, in order that he might shorten his term of imprisonment.

Acquittal in this case leaves the active head of a vicious strike against the Manila Electric Railway and Light

Company, and the real perpetrator of a crime which caused the death of an innocent child and the grave wounding of various other persons, with his liberty, while the ignorant tool of the strike leader must languish in prison for a long period of years. This is not justice. I am strongly of the opinion that judgment should be affirmed.

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