

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. FAUSTO V. CARLOS, DEFENDANT AND APPELLANT.*G.R. No. 22948. March 17, 1925*

Ponente: OSTRAND, J.

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This is an appeal from a decision of the Court of First Instance of the City of Manila finding the defendant Fausto V. Carlos guilty of the crime of murder and sentencing him to suffer life imprisonment, with the accessory penalties prescribed by law and with the costs.

It appears from the evidence that the victim of the alleged murder, Dr. Pablo G. Sityar, on March 3, 1924, in Mary Chiles Hospital, performed a surgical operation upon the defendant's wife for appendicitis and certain other ailments. She remained in the hospital until the 18th of the same month, but after her release therefrom she was required to go several times to the clinic of Doctor Sityar at No. 40 Escolta, for the purpose of dressing the wounds caused by the operation. On these occasions she was accompanied by her husband, the defendant. The defendant states that on one of the visits, that of March 20, 1924, Doctor Sityar sent him out on an errand to buy some medicine, and that while the defendant was absent on this errand Doctor Sityar outraged the wife. The defendant further states that his wife informed him of the outrage shortly after leaving the clinic. Notwithstanding this it nevertheless appears that he again went there on March 28th to consult the deceased about some lung trouble from which he, the defendant, was suffering. He was given some medical treatment and appears to have made at least one more visit to the clinic without revealing any special resentment.

On May 12, 1924, the defendant, suffering from some stomach trouble, entered the Philippine General Hospital where he remained until May 18, 1924, and where he was under the care of two other physicians. While in the hospital he received a letter (Exhibit 5) from Doctor Sityar asking for the immediate settlement of the account for the professional services rendered his wife. Shortly after his release from the hospital the defendant sought an interview with Doctor Sityar and went to the latter's office several times without finding him in. On one of these occasions he was asked by an employee of the office, the nurse Cabanera, if he had come to settle his account, to which the defendant answered that he did not believe he owed the doctor anything.

In the afternoon of May 26th the defendant again went to the office of the deceased and found him there alone. According to the evidence of the prosecution, the defendant then, without any preliminary quarrel between the two, attacked the deceased with a fan-knife and stabbed him twice. The deceased made an effort to escape but the defendant pursued him and overtaking him in the hall outside the office, inflicted another wound upon him and as a consequence of the three wounds he died within a few minutes. The defendant made his escape but surrendered himself to the Constabulary at Malolos, Bulacan, in the evening of the following day.

The defendant admits that he killed the deceased but maintains that he did so in self-defense. He explains that he went to Doctor Sityar's office to protest against the amount of the fee charged by the doctor and, in any event, to ask for an extension of the time of payment; that during the conversation upon that subject the deceased insulted

him by telling him that inasmuch as he could not pay the amount demanded he could send his wife to the office as she was the one treated, and that she could then talk the matter over with the deceased; that this statement was made in such an insolent and contemptuous manner that the defendant became greatly incensed and remembering the outrage committed upon his wife, he assumed a threatening attitude and challenged the deceased to go downstairs with him and there settle the matter; that the deceased thereupon took a pocket-knife from the center drawer of his desk and attacked the defendant, endeavoring to force him out of the office; that the defendant, making use of his knowledge of fencing, succeeded in taking the knife away from the deceased and blinded by fury stabbed him first in the right side of the breast and then in the epigastric region, and fearing that the deceased might secure some other weapon or receive assistance from the people in the adjoining room, he again stabbed him, this time in the back.

The defendant's testimony as to the struggle described is in conflict with the evidence presented by the prosecution. But assuming that it is true, it is very evident that it fails to establish a case of self-defense and that, in reality, the only question here to be determined is whether the defendant is guilty of murder or of simple homicide.

The court below found that the crime was committed with premeditation and therefore constituted murder. This finding can only be sustained by taking into consideration Exhibit L, a letter written to the defendant by his wife and seized by the police in searching his effects on the day of his arrest. It is dated May 25, 1924, two days before the commission of the crime and shows that the writer feared that the defendant contemplated resorting to physical violence in dealing with the deceased.

Counsel for the defendant argues vigorously that the letter was a privileged communication and therefore not admissible in evidence. The numerical weight of authority is, however, to the effect that where a privileged communication from one spouse to another comes into the hands of a third party, whether legally or not, without collusion and voluntary disclosure on the part of either of the spouses, the privilege is thereby extinguished and the communication, if otherwise competent, becomes admissible. (28 R. C. L., 530 and authorities there cited.) Such is the view of the majority of this court.

Professor Wigmore states the rule as follows:

"For documents of communication coming into the possession of a third person, a distinction should obtain, analogous to that already indicated for a client's communications (ante, par. 2325, 2326); i. e., if they were obtained from the addressee by voluntary delivery, they should still be privileged (for otherwise the privilege could by collusion be practically nullified for written communications); but if they were obtained surreptitiously or otherwise without the addressee's consent, the privilege should cease." (5 Wigmore on Evidence, 2d ed., par. 2339.)

The letter in question was obtained through a search for which no warrant appears to have been issued and counsel for the defendant cites the causes of *Boyd and Boyd vs. United States* (116 U. S., 616) and *Silverthorne Lumber Co. and Silverthorne vs. United States* (251 U. S., 385) as authority for the proposition that documents obtained by illegal searches of the defendant's effects are not admissible in evidence in a criminal case. In discussing this point we can do no better than to quote Professor Wigmore:

"The foregoing doctrine (i. e., that the admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain the evidence) was never doubted until the appearance of the ill-starred majority opinion of *Boyd vs. United States*, in 1885, which has exercised unhealthy influence upon subsequent judicial opinion in many States.

* * * * *

"The progress of this doctrine of *Boyd vs. United States* was as follows: (a) The *Boyd Case* remained unquestioned in its own Court for twenty years; meantime receiving frequent disfavor in the State Courts (ante, par. 2183). (b) Then in *Adams vs. New York*, in 1904, it was virtually repudiated in the Federal Supreme Court, and the orthodox precedents recorded in the State courts (ante, par. 2183) were expressly approved, (c) Next, after another twenty years, in 1914—moved this time, not, by erroneous history, but by misplaced sentimentality—the Federal Supreme Court, in *Weeks vs. United States*, reverted to the original doctrine of the *Boyd Case*, but with a condition, viz., that the illegality of the search and seizure should first have been directly litigated and established by a motion, made before trial, for the return of the things seized; so that, after such a motion, and then only, the illegality would be noticed in the main trial and the evidence thus obtained would be excluded. * * * " (4 *Wigmore on Evidence*, 2d ed., par. 2184.)

In the *Silverthorne Lumber Co. case* the United States Supreme Court adhered to its decision in the *Weeks Case*. The doctrine laid down in these cases has been followed by some of the State courts but has been severely criticized and does not appear to have been generally accepted. But assuming, without deciding, that it prevails in this jurisdiction it is, nevertheless, under the decisions in the *Weeks* and *Silverthorne cases*, inapplicable to the present case. Here the illegality of the search and seizure was not "directly litigated and established by a motion, made before trial, for the return of the things seized."

The letter Exhibit L must, however, be excluded for reasons not discussed in the briefs. The letter was written by the wife of the defendant and if she had testified at the trial the letter might have been admissible to impeach her testimony, but she was not put on the witness-stand and the letter was therefore not offered for that purpose. If the defendant either by answer or otherwise had indicated his assent to the statements contained in the letter it might also have been admissible, but such is not the case here; the fact that he had the letter in his possession is no indication of acquiescence or assent on his part. The letter is therefore nothing but pure hearsay and its admission in evidence violates the constitutional right of the defendant in a criminal case to be confronted with the witnesses for the prosecution and have the opportunity to cross-examine them. In this respect there can be no difference between an ordinary communication and one originally privileged.

The question is radically different from that of the admissibility of testimony of a third party as to a conversation between a husband and wife overheard by the witness. Testimony of that character is admissible on the ground that it relates to a conversation in which both spouses took part and on the further ground that where the defendant has the opportunity to answer a statement made to him by his spouse and fails to do so, his silence implies assent. That cannot apply where the statement is contained in an unanswered letter.

The Attorney-General in support of the contrary view quotes *Wigmore*, as follows:

" * * * Express communication is always a proper mode of evidencing knowledge or belief. Communication to a husband or wife is always receivable to show probable knowledge by the other (except where they are living apart or are not in good terms), because, while it is not certain that the one will tell the other, and while the probability is less upon some subjects than upon others, still there is always some probability,—which is all that can be fairly asked for admissibility. * * * " (1 *Wigmore*, id., par 261.)

This may possibly be good law, though *Wigmore* cites no authority in support of his assertion, but as far as we can see it has little or nothing to do with the present case.

As we have already intimated, if Exhibit h is excluded, there is in our opinion not sufficient evidence in the record to show that the crime was premeditated.

The prosecution maintains that the crime was committed with alevosia. This contention is based principally on the fact that one of the wounds received by the deceased showed a downward direction indicating that the deceased was sitting down when the wound was inflicted. We do not think this fact is sufficient proof. The direction of the

wound would depend largely upon the manner in which the knife was held.

For the reasons stated we find the defendant guilty of simple homicide, without aggravating or extenuating circumstances.

The sentence appealed from is therefore modified by reducing the penalty to fourteen years, eight months and one day of reclusion temporal, with the corresponding accessory penalties and with the costs against the appellant. So ordered.

Johnson, Malcolm, Johns, and Romualdez, JJ., concur.

DISSENTING

VILLAMOR, J.:

His Honor, the judge who tried this case, inserts in his decision the testimony of the witness Lucio Javillonar as follows:

"The witness, Lucio Javillonar, testified that he went to the office of the deceased some minutes before six o'clock in that evening in order to take him, as had previously been agreed upon between them, so that they might retire together to Pasig, Rizal, where they resided then; that having noticed that the deceased was busy in his office, talking with a man about accounts, instead of entering, he stayed at the waiting room, walking from one end to another, while waiting for that man to go out; that in view of the pitch of the voice in which the conversation was held between the deceased and his visitor, and what he had heard, though little as it was, of said conversation, he believes that there was not, nor could there have been, any change of hard words, dispute or discussion of any kind; that shortly thereafter, he saw the screen of the door of the deceased's office suddenly open, and the deceased rush out stained with blood, and followed closely by the accused who then brandished a steel arm in the right hand; that upon seeing the deceased and overtaking him, leaning upon one of the screens of the door of a tailor shop a few feet from his office, slightly inclined to the right, with the arms lowered and about to fall to the floor, the accused stabbed him on the right side of the chest, thereby inflicting a wound on the right nipple; and that then the accused descended the staircase to escape away, at the same time that the deceased was falling to the ground and was being taken by him with the assistance of other persons from said place to a lancape (a sofa) where he died a few minutes later, unable to say a word."

In deciding the question as to whether the act committed is murder, with the qualifying circumstance of treachery, as claimed by the Attorney-General, the trial judge says that the principal ground of the prosecution for holding that the commission of the crime was attended by the qualifying circumstance of treachery is a mere inference from the testimony of Lucio Javillonar, and that the nature of the wounds found on the epigastric region of the deceased and his back do not mean anything, because they could have been inflicted while the deceased was standing, seated or inclined.

A careful consideration of the testimony of Lucio Javillonar, as set out in the judgment appealed from, will show that, according to said eyewitness, the deceased was with his arms lowered and about to fall to the floor when the accused stabbed him on the right side of the chest with the weapon he was carrying, thereby inflicting a wound on the right nipple, and that, according to the doctor who examined the wounds, anyone of them could have caused the death of the deceased. These being the facts proven, I am of opinion that application must be made here of the doctrine laid down by this court in the case of *United States vs. Baluyot* (40 Phil., 385), wherein it was held that "Even though a deadly attack may be begun under conditions not exhibiting the feature of *alevosia*, yet if the

assault is continued and the crime consummated with alevosia, such circumstance may be taken into consideration as a qualifying factor in the offense of murder." I admit that none of the witnesses who testified in this case has seen the beginning of the aggression; but it positively appears from the testimony of the said witness Lucio Javillonar that, notwithstanding that the deceased was already wounded and about to fall to the floor, he struck him with another mortal blow with the weapon he was carrying, which shows that the accused consummated the crime with treachery.

For the foregoing, I am of opinion that the judgment appealed from must be affirmed, considering the act committed as murder, with the qualifying circumstance of treachery, and in this sense I dissent from the majority opinion.

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