

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE VS.. SEGUNDO BADILLA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 23792. February 17, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

In the evening of March 7, 1924, Pedro Ferrer, justice of the peace of the municipality of Sagay, Occidental Negros, was fatally wounded in the house of one Leocadia Desamparado, who stated that she had inflicted the fatal wound in defense of her honor. She was immediately arrested and two days later, while still in prison, made a confession implicating Segundo Badilla, Restituto Tupas, Julian Domingo, Quirino Araez, and Jovito Carmales in the commission of the crime. The persons mentioned were thereupon arrested and on the following day, March 10, Julian Domingo and Jovito Carmales confessed that they were participants in the crime and on the same day, the provincial fiscal filed a complaint in the court of the justice of the peace of Sagay charging Segundo Badilla, Restituto Tupas, Catalino Gonzalez, Julian Domingo, Jovito Carmales, Quirino Araez, Agaton Dy-Cayco, and Leocadia Desamparado with the crime of murder. On March 12 an amended complaint was filed including Epifanio Tupas as one of the defendants. At the preliminary investigation held on the same day, the fiscal presented a motion asking that Leocadia Desamparado and Jovito Carmales be excluded from the complaint on the ground that they were the least culpable of the accused and that their testimony was necessary to establish a case for the prosecution. This motion was granted by the acting justice of the peace. Upon the termination of the preliminary investigation, the following information was filed in the Court of First Instance:

"That on and before March 7, 1924, the defendants Epifanio Tupas, Segundo Badilla, Restituto Tupas, and Agaton Dy-Cayco in connivance with one Leocadia Desamparado, Jovito Carmales and their codefendants Catalino Gonzalez alias Mack Gonzales, Julian Domingo alias Julian Bongol, and Quirino Araez, all said defendants being members of a local secret society known as Kusug Sang Imol desiring to take revenge for supposed abuses and arbitrary acts of the justice of the peace Pedro Ferrer of the municipality of Sagay of this Province of Occidental Negros, in connection with his official functions, of which they believed without any ground that the defendants Epifanio Tupas and his son Restituto Tupas, specially, and Epifanio Tupas, Restituto Tupas, Segundo Badilla, Agaton Dy-Cayco and all the defendants herein had been the victims, being active members, as they are, of the aforesaid society Kusug Sang Imol, and desiring likewise the death of said justice of the peace Pedro Ferrer to eliminate him from the office by any illicit means, so that he should not continue to commit similar supposed abuses and arbitrary acts, said defendants Epifanio Tupas, his son Restituto Tupas, Segundo Badilla, and Agaton Dy-Cayco did maliciously, intentionally and criminally induce said Leocadia Desamparado, by simulating that she had to legalize her marital relations with her paramour Jose Lobaton which they had been maintaining up to that time, to invite the justice of the peace Pedro Ferrer to spend some time in her house situated in the municipality of Sagay, Province of Occidental Negros, Philippine Islands, just on the night of said March 7, 1924, which inducement was several times and on several occasions ratified persistently by the defendants Epifanio Tupas, Segundo Badilla, Restituto Tupas and Agaton Dy-Cayco, with promise of reward, immunity and assurance to furnish her an attorney who would defend her

in the event that by reason of her taking part in the perpetration of the crime to which she was induced, she should be prosecuted in the courts of justice; that Leocadia Desamparado, prompted by said inducement, invited the justice of the peace Pedro Ferrer to come, as he in fact did come, on the night of the aforesaid day, March 7, 1924, to her house for the aforesaid purpose and that once there and seated on a chair with its back toward the door of the kitchen where the defendants Segundo Badilla, Restituto Tupas, Agaton Dy-Cayco, Catalino Gonzalez alias Mack Gonzalez, Julian Domingo alias Julian Bongol and Quirino Araez had previously placed themselves, obeying the instructions and orders of the defendant Epifanio Tupas given under the circumstances aforementioned for the purpose of successfully killing said justice of the peace Pedro Ferrer, and taking advantage of the fact that the latter was unaware of the treacherous plot against him and had no means of defense, the aforesaid defendants Segundo Badilla, Restituto Tupas, Agaton Dy-Cayco, Catalino Gonzalez alias Mack Gonzalez, Julian Domingo alias Julian Bongol and Quirino Araez and one Jovito Carmales, previously provided with daggers and canes and other deadly weapons, and cooperating with one another, did willfully, unlawfully and criminally through craft, premeditation and treachery, and with abuse of superior strength, and taking the law in their own hands, assault, beat and attack said justice of the peace Pedro Ferrer, inflicting the following bruises and injuries, to wit: (1) One penetrating wound, mortal by necessity, in the epigastric region of the abdomen 1½ inches wide and 4½ inches deep; (2) one contusion on the back of the left hand; (3) one contusion on the sides of both knees; (4) one contusion in the right iliac region; and (5) several contusions on the superior and inferior parts of both knees; as a result of which he died a few minutes later.

"Contrary to article 403 of the Penal Code with the concurrence of the sixth, eighth, ninth, twelfth, fourteenth, fifteenth and twentieth circumstances of article 10 of the same Code."

To this information the defendants pleaded not guilty, but upon trial the court below found them guilty as charged and sentenced each of them to suffer the penalty of cadena perpetua, and to jointly and severally indemnify the heirs of the deceased in the sum of P1,000, with their proportional shares of the costs. From this sentence all of the defendants appealed.

It appears from the evidence that at the time the crime was committed there were two secret societies or associations in the municipality of Sagay of which one was called Kusug Sang Imol and the other Mainawaon; that bitter feeling existed between the two associations which sometimes resulted in personal violence; that the deceased was a "protector" of the Mainawaon and was accused of favoritism by the Kusug Sang Imol of which society all of the defendants were members; that late in the afternoon of March 7, 1924, while on his way to the house of one Bernabe Nunez to perform a marriage ceremony, the deceased was approached by Leocadia Desamparado who asked him to come to her house that evening as she had important matters to discuss with him; that the deceased accepted the invitation and told Leocadia that he would come to her house after the termination of the marriage ceremony; and that he went there about 10 o'clock that evening.

As to what subsequently occurred, we have the testimony of Jovito Carmales who, on the witness stand, stated among other things that in the evening of March 7, 1924, the defendant Segundo Badilla, vice-president of the Kusug Sang Imol, came to his house and told him that Epifanio Tupas, the local president of the same society, wanted to see him; that he went with Segundo Badilla to the house of Epifanio; that on their arrival there they found all the other accused in this case present, and a meeting was held presided over by Epifanio Tupas; that upon the meeting being called to order, Epifanio announced that the purpose of the meeting was to inform the members present that in the town of Sagay there was a tyrant and oppressor whose death was necessary for the prosperity of the Kusug Sang Imol; that as long as this tyrant and oppressor was living, there would be no peace in the town of Sagay; and that this man was the justice of the peace, Pedro Ferrer.

Carmales further testified that Segundo Badilla then expressed some misgivings as to what would befall them if they killed the justice of the peace, but Epifanio Tupas answered that they needed have no fear because they

would have a lawyer to defend them and that the Government was theirs; that Epifanio thereupon directed the defendant Quirino Araez to read the form of the secret oath taken by the members of Kusug Sang Imol upon their joining the society; that after the oath had been read, Epifanio said dramatically: "Here is the dagger, the knife, and the flashlight," and thereupon delivered the dagger Exhibit O, knife Exhibit G, and flashlight Exhibit L to Segundo Badilla, some of the other defendants being given sticks or clubs of palma brava; that after the weapons had been distributed the meeting adjourned and the defendants went to the house of Leocadia Desamparado and entered the kitchen of the house; that the door opening between the kitchen and the main part of the house was covered by a curtain or petate; that Segundo Badilla peeped through the curtain and found that the deceased was sitting on a bench inside of the house with his back towards the kitchen door, and that Leocadia was sitting on another bench opposite the deceased with a table between them upon which there was a lighted lamp; that thereupon Badilla, followed by the other defendants, entered the room, Badilla stealthily approaching the deceased from behind and seized him by the neck blowing out the light at the same time; that the other defendants also laid hold of the deceased and overpowered and held him while Badilla, with the aid of the flashlight, lifted up the undershirt of the deceased and stabbed him with the dagger Exhibit O in the abdomen near the navel; that after having done so, Segundo Badilla handed Leocadia the knife Exhibit G, and told her to cry out; that Leocadia did so, whereupon the defendants made their escape, some of them passing through the main door of the house and the others through the kitchen; that after having left the house of Leocadia Desamparado, the defendants again went to the house of Epifanio Tupas to give him an account of the result of their expedition and, upon arriving there, Segundo Badilla said to Epifanio Tupas: "I doubt that he will survive."

It appears from the testimony of other witnesses that after the deceased was wounded, he was with some difficulty able to walk to his own house near by, where he expired in about six minutes after his arrival.

Leocadia Desamparado was also presented as a witness against the accused, but, to the apparent surprise of the prosecuting attorney, retracted her confession and testified that while she was sleeping in her house on the evening in question, she was awakened by the deceased who attempted to force her to have intercourse with him and that in the ensuing struggle, she remembered that she had a knife Exhibit G in her bed and that seizing the knife she stabbed the deceased.

Though the testimony of Carmales seems straightforward and convincing and remained unshaken by a very lengthy and ably conducted cross-examination, we are mindful of the fact that it is the testimony of a coconspirator and accomplice and, as such, must be received with great caution. As to the defendant Julian Domingo, it is fully corroborated by the latter's confession with which it is substantially in accord. In the appellants' brief some stress is placed on the fact that Domingo began his confession with a denial of all personal knowledge of the commission of the crime and that it was not until he had been examined at some length that he admitted his participation therein and implicated most of his codefendants. In our opinion, this fact, so far from weakening the confession, rather strengthens it and tends to show that it was not obtained by improper means; had it been the purpose of the investigating authorities to extort a false confession from Domingo, the first part of his statement would hardly have been reported in full.

At the trial of the case the confession of Leocadia Desamparado was admitted in evidence to contradict her testimony and the appellants assign as error that the court below apparently took her confession and that of Julian Domingo into consideration upon certain points affecting the whole case. The general rule is that extrajudicial declarations of a coconspirator made before the formation of the conspiracy or after the accomplishment of its object, are inadmissible in evidence as against the other coconspirators, on the ground that the accused in a criminal case has the constitutional right to be confronted with the witnesses against him and to cross-examine them. It has, however, been held that where extrajudicial confessions had been made by several persons charged

with a conspiracy and there could have been no collusion with reference to the several confessions, the fact that the statements are in all material respects identical is confirmatory of the testimony of an accomplice. It was so held in the important case of *United States vs. Lancaster* (44 Fed., 896), where three persons were jointly charged with a conspiracy, one of whom made a voluntary confession, another was permitted to become a witness for the Government under implied pardon and testified, and the third made a declaration during the pendency of the criminal enterprise, the court saying among other things that "* * * while the testimony of the two accomplices could not corroborate each other, and while the confession of Clemens cannot be considered as evidence against the other prisoners, yet the unanimity of statements of the three, made without the opportunity of conference, or without proof that they did confer, is a fact which tends to corroborate the three statements so made. * * *"

In other words, while an extra judicial declaration of a coconspirator may not be directly introduced in evidence against another coconspirator as proof of specific facts, it may nevertheless under certain conditions be taken into consideration as a circumstance in judging the credibility of the testimony of an accomplice.

In the present case there is no indication that the three declarations were the result of collusion or that the declarants had the opportunity of conferring with each other before making the declarations. Neither is there any valid reason to believe that the statements made by the declarants were laid in their mouths by other persons. On the contrary, the declarations themselves indicate that they were spontaneous expressions of what was in the minds of the declarants at the time. All three declarations were legally before the court and we do not think that in these circumstances the court erred in giving some consideration to the fact that they were very similar to each other and substantially in accord.

On the other hand, the court undoubtedly erred in using the confession of Leocadia Desamparado as the sole source of the finding that she was induced to cooperate in the killing of Pedro Ferrer by the promise of a remuneration of P1,000 and five heads of carabaos; the confession was not admissible as direct proof of that fact.

But even if the confessions are left wholly out of consideration, there is in our opinion sufficient corroboration of Carmales' testimony to sustain the judgment of the court below. It is abundantly proven that there was a very bitter feeling on the part of the defendants against the deceased and strong motives for the commission of the crime. It is also sufficiently established by additional evidence that several persons took part in the crime; the widow of the deceased, an apparently reliable witness, testifies that he, on his arrival at his house after having been wounded, said "me han traicionado" (they have betrayed me) and that he instructed her to close the doors and windows because they were going to kill him. We have also the testimony of the witness Teofilo Alvarado that he heard several persons run away from Leocadia's house immediately after the wounding of the deceased and the witness Tomas Rodriguez states that he, about 9 o'clock in the evening, saw Restituto Tupas and Agaton Dy-Cayco with two companions in front of the house of Leocadia.

Another corroborating circumstance is that according to the testimony of the two physicians who examined the body of the deceased, the fatal wound was inflicted by a double edged weapon such as the dagger Exhibit O, the width of the blade of which was found to correspond to the length of the lips of the wound. This dagger was found hidden behind a post in the house of Epifanio Tupas. The palma brava clubs, in regard to which Carmales testified, were found in the same house hidden behind a trunk and covered with rugs. The flashlight Exhibit L was also found in Epifanio's house. The statement of Carmales that the deceased was sitting at the table in Leocadia's house when attacked by the defendants is corroborated by the fact that his cigarette holder together with ashes of cigarettes were found on the table and that his slippers were found under the same table together with his folded raincoat.

The theory of the defense that Ferrer was killed by Leocadia Desamparado in defense of her honor is contradicted

by the fact that he came to her house at her invitation as testified to by Buenaventura Rodriguez. It is also to be noted that her bed, located in a portion of the house separated from the sala by a curtain, was found undisturbed and that the small knife with which she claimed to have inflicted the wound is one edged and was found on the floor of the sala; and that it was covered with an oily substance and had no blood on it. This fact also corroborates the testimony of Carmales that the knife was not used in wounding the deceased, but was handed to Leocadia by Segundo Badilla in the sala of the house. Another circumstance which also corroborates Carmales' testimony is that two benches in the sala were overturned indicating that a struggle had taken place in that part of the house. It is also suggested by the defense that the crime might have been committed by Jose Lobaton, a policeman with whom Leocadia was living and who was the father of her two children. It appears however that Lobaton was not in the town of Sagay on the evening in question. Moreover, he was a member of Mainawaon society and probably on friendly terms with the deceased. If, as we think has been clearly proven, Leocadia and the deceased were merely sitting at the table in the sala of the house conversing with each other, Lobaton could hardly have had sufficient motive to resort to physical violence. The fact that the deceased On his arrival at his house, after being wounded, asked his wife to close the doors and windows and send for the police because "they" were going to kill him, is also a strong argument against this theory, and so is the fact that when the fatal wound was inflicted upon the deceased, the dagger penetrated the lower hem of his undershirt thus showing that the garment was pulled up to his waist at that time, a fact which corroborates Carmales' testimony and could not very well have occurred if there had been only one assailant.

The case for the defense has been very ably argued and our attention has been called to several apparent flaws in the evidence for the prosecution, but after a painstaking examination of the voluminous record, we cannot find that the judge of the court below erred in his appreciation of the evidence, and have no reasonable doubt as to the guilt of the accused. It may well be that Carmales in describing what occurred in the house of Leocadia drew to some extent on his imagination in regard to details which could hardly have been accurately observed in the darkness, and considering that he probably was anxious to exculpate himself as far as possible, we need not necessarily believe that he was the last of the conspirators to enter the room in which the crime was committed; but one cannot read the transcript of his testimony without becoming impressed with his apparent sincerity and without feeling that he in the main told the truth.

There are certain things which have not been satisfactorily explained and in regard to which the record leaves us more or less in the dark, but which are not of decisive importance. There is, for instance, no explanation of the fact that while there was blood on the undershirt and drawers of the deceased, there were no signs of it on the trousers alleged to have been worn by him on the occasion in question and it is quite possible that he did not wear them at the time the dagger wound was inflicted. There is also room for the suspicion that he did not visit Leocadia with the purest of motives at such a late hour and that he in view of her invitation entertained expectations which do not appear to have been fulfilled. In these circumstances he may have felt reluctant to inform his wife as to his whereabouts and this may be the reason why he did not give her any details when she asked him how he was wounded, but limited himself to saying "me han traicionado; me han traicionado." It is, of course, also possible that he at that time was too feeble to think coherently and to describe what had taken place.

Counsel for the defense strenuously argue that the statement of Carmales as to the manner in which the crime was committed is so improbable as to be unworthy of belief. We do not think so; the facts narrated are unusual, but considering the situation as a whole, the story told by the witnesses for the prosecution is not improbable, though it may suffer from minor inaccuracies.

It is insisted that had it been the intention to kill Ferrer, all of his assailants would have been armed. But when it is considered that the plan evidently was to have it appear that the killing- was done by Leocadia in self defense, the

reason for arming only one of the defendants with a cutting instrument becomes quite apparent; had more than one of them been so armed, it would perhaps have been difficult to control them and several wounds might have been inflicted which would have rendered Leocadia's story less credible. There would also, in the deep darkness, have been the danger of the conspirators wounding each other. Badilla seems to have taken special care to place the wound in a vital spot and the persons who planned the crime undoubtedly knew that a single deep dagger wound in that spot would mean certain death and would serve their purpose.

Counsel also scout the idea that the small knife Exhibit G was handed to Leocadia by Badilla after he had wounded the deceased with the dagger Exhibit O, but we see nothing unreasonable or improbable therein. Exhibit G is a small knife which might be used for peeling or cutting vegetables and which a woman would be likely to have within reach and use, whereas her possession of a dagger such as the Exhibit O, might be more difficult to explain. Badilla could, of course, have used the small knife in stabbing the deceased, but naturally preferred to use the larger weapon as the more effective and sure.

The various assignments of error on legal points are in our opinion of little merit. The court below unquestionably erred in allowing the fiscal, over the objection of the defense, to have the alleged oath of the Kusug Sang Imol read to the witness Carmales and then to ask the witness if that was the oath he had taken. The question was leading and should not have been allowed, but as there is other evidence as to the main features of the oath, the error is of comparatively little importance and is non-prejudicial.

Neither is the failure of the court to make specific findings of fact in regard to the defenses of alibi reversible error. Such defenses are frequently relied on in criminal cases, but oral evidence tending to prove alibi is so easily manufactured and usually so unreliable that it can rarely be given credence. The evidence with which alibi is sought to be established in this case is of the usual order and we do not think the trial judge greatly erred in failing to discuss it at length.

We find nothing illegal in the examination of the defendants and other witnesses by the fiscal previously to the filing of the complaint. This proceeding is authorized by section 1687 of the Administrative Code and while it in a sense may be inquisitorial, it is often the only means of discovering the persons who may be reasonably charged with a crime so as to enable the fiscal to prepare his complaint or information. In one form or another, similar investigations are permitted under all systems of criminal procedure.

In answer to the contention that the court erred in refusing, upon the simple verbal request of counsel for the defense, to compel the production of the affidavit or confession of Jovito Carmales made during the investigation held by the fiscal preliminary to the filing of the complaint, we can do no better than to quote the language of the court upon a similar question in the case of *United States vs. Baluyot* (40 Phil., 385):

"The fourth specification is addressed to the supposed error of the court in refusing to compel the provincial fiscal to produce in court at the request of the attorney for the accused certain written statements which had been made by the witnesses Pedro Gonzales, Gregorio de Guzman, and Antonio Aranjuez in a preliminary inquiry conducted by the fiscal preparatory to this prosecution. It appears that after the witnesses above mentioned had been examined in court for the prosecution, they were turned over to the attorney for the accused and were by him fully cross-examined. Later, when the giving of testimony for the prosecution had been concluded, the defense proceeded to introduce sundry witnesses who were examined in due course. After four had thus testified, and immediately before the accused was placed upon the stand in his own behalf, his attorney made the request that the declarations or statements above referred to should be produced. The attorney for the prosecution objected on the ground that one party cannot be compelled to produce evidence in favor of the other. The court was of the opinion that the written declarations the production of which was sought were of a privileged nature and accordingly overruled the motion*

We are of the opinion that the court was not in error in refusing to compel the production of the documents in question. They were not original or independent evidence of such a character as to give the accused an unqualified right to compel their production, and no proper basis was laid in the cross-examination of the witnesses who had made those statements to justify their production with a view to the impeachment of the declarants. The request was of course based upon the supposition or expectation that if the statements of the witnesses before the fiscal were produced, they might be found to contain something different from what was contained in their testimony given in court.

"We know of no rule of practice which sustains the contention of the appellant. The statements in question were not the sworn declarations of witnesses taken in conformity with the requirements of section 13 of General Orders, No. 58, and which are commonly attached to the 'expediente' transmitted by the committing magistrate to the Court of First Instance. In the case at bar the preliminary examination before the committing magistrate was waived by the accused, and the declarations of the witnesses for the prosecution were therefore not taken before the magistrate. The declarations referred to were, on the contrary, taken in an investigation conducted by the fiscal under the authority of section 1687 of the Administrative Code. This section authorizes the fiscal, if he deems it wise, to conduct an investigation into the matter of any crime or misdemeanor for the purpose of instituting or carrying on a criminal prosecution. It is expressly declared that this section shall not be construed to authorize a provincial fiscal to act as a justice of the peace in any preliminary investigation. The proceeding here contemplated is of an administrative character, and the information thereby acquired is intended for the use of the fiscal in the conduct of the prosecution. Such declarations therefore pertain to the official file in the office of the public prosecutor and are not subject to production at the mere request of the attorney for the accused where no ground therefor had been laid.

"In order that we may not be misunderstood, as well as for the purpose of clarifying the practice in such matters, a few words may here be properly said in respect to the proper mode of proceeding in a case where a party wishes to get before the court contradictory statements made by a witness who is testifying for the adversary party. For instance, if the attorney for the accused had information that a certain witness, say Pedro Gonzales, had made and signed a sworn statement before the fiscal materially different from that given in his testimony before the court, it was incumbent upon the attorney when cross-examining said witness to direct his attention to the discrepancy and to ask him if he did not make such and such statement before the fiscal or if he did not there make a statement different from that delivered in court. If the Witness admits the making of such contradictory statements, the accused has the benefit of the admission, while the witness has the opportunity to explain the discrepancy, if he can. On the other hand, if the witness denies making any such contradictory statement, the accused has the right to prove that the witness did make such statement; and if the fiscal should refuse upon due notice to produce the document, secondary evidence of the contents thereof would be admissible. This process of cross-examining a witness upon the point of prior contradictory statements is called in the practice of the American courts 'laying a predicate' for the: introduction of contradictory statements.

It is almost universally accepted that unless a ground is thus laid upon cross-examination, evidence of contradictory statements are not admissible to impeach a witness; though undoubtedly the matter is to a large extent in the discretion of the court.

"We wish to add that in a case of this kind, if the accused had, by affidavit or otherwise, made it appear to the satisfaction of the court that the witnesses named had made statements in their declarations before the fiscal materially at variance with their statements in court and that the production of said declarations was necessary or even desirable, in the interests of justice, the court would have had ample power to order their production. No such showing, or intimation, was made, in this case; and the attorney who made the motion was merely angling at random to discover something that might prove to be favorable to his client. To put a court in error for refusing to entertain such a motion would encourage frivolous delays and tend to embarrass the speedy and proper administration of Justice."

Counsel also assigns as error that the court below sanctioned the failure of the fiscal to include Jovito Carmales

and Leocadia Desamparado in the information and afterwards permitted their presentation as witnesses for the prosecution without following the procedure prescribed by section 2 of Act No. 2709 which reads as follows:

"When two or more persons are charged with the commission of a certain crime, the competent court, at any time before they have entered upon their defense, may direct any of them to be discharged, that he may be a witness for the Government when in the judgment of the court:

"(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

"(b) There is no other direct evidence available for the proper prosecution of the crime committed, except the testimony of said accused;

"(c) The testimony of said accused can be substantially corroborated in its material points;

"(d) Said accused does not appear to be the most guilty, and

"(e) Said accused has not at any time been convicted of the crime of perjury or false testimony or of any other crime involving moral turpitude."

In this case the discharge of Carmales from the original complaint was ordered by the justice of the peace upon motion of the fiscal during the preliminary investigation. Whether the justice of the peace exceeded his jurisdiction in doing so at that stage of the proceedings, need not here be determined. If he lacked such jurisdiction, it would merely have the effect of laying Carmales open to another prosecution for the same offense, but would not affect his competency as a witness for the prosecution at the trial of the case. An examination of the section quoted shows clearly that its only object is to prevent unnecessary or arbitrary exclusions from the complaint of persons guilty of the crime charged, and that it has nothing to do with the admissibility of their testimony or their competency as witnesses. Consequently, the court below did not err in permitting Carmales to testify (U. S. vs.. Abanzado, 37 Phil., 658; U. S. vs.. Enriquez, 40 Phil., 603; U. S. vs.. De Guzman, 30 Phil., 416; U. S. vs.. Alabot, 38 Phil., 698; and People vs.. Velazco, 42 Phil., 75).

Considering the evidence and giving due weight to the findings of the trial judge who had the opportunity to observe the witnesses and form an estimate of their credibility, we are of the opinion that the judgment appealed from must be affirmed. The imposition of the death penalty might, perhaps, be justified, but in committing the crime, the defendants were laboring under strong provocation, and the court is not unanimous as to the propriety of that penalty in this case.

The judgment appealed from is therefore affirmed, each of the appellants to pay one-seventh of the costs. So ordered.

Avancena, C. J., Street, Malcolm, Villamor, Romualdez, Johns, and Villa-Real, JJ., concur.

DISSENTING

JOHNSON, J.,

I cannot bring myself to agree to a sentence sending men and women to prison during their natural lives upon the sole testimony of self-convicted criminal. I am now referring to the facts contained in the record and not merely to the facts stated in the majority opinion. Eliminating the extrajudicial confessions of the witnesses used by the Government, there is no sufficient evidence in the record to show that the defendants are guilty of the crime charged. In all justice they should be acquitted, the complaint against them should be dismissed, and they should be discharged from the custody of the law. Judgment affirmed.

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