

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. EUGENIO TOLEDO AND SISENANDO HOLGADO, DEFENDANTS. EUGENIO TOLEDO, APPELLANT.

G.R. No. 28655. August 06, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal taken by Eugenio Toledo from a judgment of the Court of First Instance of Mindoro, finding him guilty of the crime of homicide, and sentencing him therefor to imprisonment for fourteen years, eight months, and one day, reclusion temporal, with the corresponding accessory penalties, indemnity, and costs.

Sisenando Holgado and Filomeno Morales had had disputes about the occupation of certain land situated in the municipality of Pinamalayan, Province of Mindoro. On the morning of June 15, 1927, the two men happened to meet. The argument was renewed, and they agreed to fight. They did engage in a bolo duel with a fatal result for Filomeno Morales, who was killed almost instantly. Sisenando Holgado was also seriously wounded but was able to proceed to a neighboring house. From there Sisenando Holgado was taken to the municipal building where he made a sworn statement before the municipal president, in which he declared that only he and Filomeno Morales fought. About one month later, Sisenando Holgado died from the wounds received in the fight.

The prosecution and the defense alike agree on the facts above outlined. The disputable point is whether the accused Eugenio Toledo intervened in the quarrel and dealt a mortal blow to Filomeno Morales. For the prosecution, there was presented the witness Justina Villanueva, the querida of Filomeno Morales, who testified to the presence and participation of Eugenio Toledo. Her testimony was partially corroborated by that of the witness Justina Llave. On the other hand, the theory for the defense was that Toledo was in another place when the fight between Morales and Holgado occurred and that his only participation was on meeting Holgado, who was his landlord or master, in helping him to a nearby house. To this effect is the testimony of the accused and of Conrado Holgado, the son of Sisenando Holgado. The defense also relied upon the affidavit of Sisenando Holgado, Exhibit 1, which was identified by the municipal president of Pinamalayan.

Counsel de oficio in this court makes the following assignment of errors:

"I. The lower court erred in not admitting in evidence Exhibit 1.

"II. The lower court erred in not finding that accusedappellant Eugenio Toledo did not take part in the fight between accused Sisenando Holgado and deceased Filomeno Morales, resulting in the death of the latter.

"III. The lower court erred in not giving accused-appellant Eugenio Toledo the benefit of a reasonable doubt." Exhibit 1 above-mentioned in assignment of error No. 1, made originally in Tagalog, in translation reads as follows:

"AFFIDAVIT

"I, Sisenando Holgado, married, of legal age, and resident of this municipality of Pinamalayan, Province of

Mindoro, P. I., after being sworn in accordance with law, state the following:

"My additional homestead situated in Calingag was cleaned by me and is at present planted with palay (rice), on which I also plant hemp, but the hemp planted by my workers is frequently uprooted by Filomeno Morales who claims that said land is his, whereas when I was cleaning said land nobody objected to it, but now that it is already cleaned, Filomeno Morales says that one-half of the land occupied by me is his; for this reason I decided to see Filomeno Morales about this matter and when I talked to him this morning¹ (Wednesday) at about nine o'clock, at the hemp plantation of Victorio Saudan situated in Calingag, he told me that if I should plant there anything he would cut my neck, and to this I answered that if he was going to cut my neck we would fight and thereupon he stabbed me with a penknife and then I slashed at him; after this we separated, and I went to Dalmacio Manlisc's house. When we fought, there was nobody present.

"Question by president: When you went to the house of Dalmacio Manlisc, did you not meet anybody before reaching said house?

"Answer: I met one of my workers named Eugenio Toledo, who accompanied me to the house of Dalmacio Manlisc.

"Question by president: How do you know that the hemp you planted on your land above-mentioned was frequently uprooted by Filomeno Morales?

"Answer: Because he said so to my worker named Eulogio Supleo.

"Question by president: Do you have anything more to say about the incident?

"Answer: No more.

"In testimony of all that I stated above, I signed this document in the presence of two witnesses and then swore to it in the presence of the municipal president here at Pinamalayan, Mindoro, this June fifteenth, nineteen hundred twenty-seven.

HIS

"SISENANDO HOLGADO

Mark

"In the presence of:

(Sgd.) "ILLEGIBLE

"HILARION NIEVA

"Signed and sworn to before me, this June fifteenth, 1927.

(Sgd.) "ILLEGIBLE

"Municipal President"

The discussion of the case in court has revealed three different points of view among the members participating, all leading to the same result of acquittal. Under such circumstances, it is, of course, difficult for the writer of the opinion to do entire justice to those theories which do not conform to his own. However, an effort will be made to present the various opinions, leaving it for any individual member to enlarge upon the same, if he so desires.

I

The Chief Justice and Mr. Justice Villamor would disregard entirely the first assignment of error and would, therefore, refrain from all discussion relative to the admissibility of Exhibit 1. Confining themselves exclusively to an analysis of the evidence other than Exhibit 1, they find that Eugenio Toledo has not been proved guilty

beyond a reasonable doubt. The contradictions in the testimony for the prosecution pointed out by the trial judge do not impress these members of the court so seriously. In reality, there being but one witness for the prosecution who, on account of her relations with Filomeno Morales, and the land troubles, might be expected to exaggerate, and there being on the contrary exculpatory evidence for the defense, even without Exhibit 1, the Government has not made out its case. Consequently, on the testimonial facts, these members vote for acquittal.

II

The second view is that for which Messrs. Justices Komualdez and Villa-Real are responsible, and is that Exhibit 1 should have been admitted in evidence as a part of the *res gestae*, and that giving it effect, in relation with the other evidence, the accused has not been proved guilty. What has heretofore been said with reference to the state of the record need not here be repeated. It only remains to be stated that Exhibit 1 was made by Sisenando Holgado on the same morning that the fight occurred and without the interval of sufficient time for reflection. The declaration of Sisenando Holgado fulfilled the test of the facts talking through the party and not the party talking about the facts. There was such a correlation between the statement and the fact of which it forms part as strongly tends to negative the suggestion of fabrication or a suspicion of afterthought. The nature and circumstances of the statement do not disclose intrinsic evidence of premeditation as revealed in a long, coherent, closely connected story. The modern tendency is toward the extension of the rule admitting spontaneous declarations to meet the needs of justice when other evidence of the same fact cannot be procured. (22 C. J., pp. 461 et seq.; *U. S. vs. David* [1903], 3 Phil., 128.)

III

The third opinion in court is that held by Messrs. Justices Street, Malcolm, and Ostrand, who would resolve the first assignment of error by holding that the court erred in not admitting Exhibit 1 as the statement of a fact against penal interest. Had Exhibit 1 been received, it is believed that its influence would have been felt by the trial court. Without Exhibit 1, the appellate court is bound by the appreciation of the evidence made in the trial court, and could, with little propriety, set aside the findings made by a learned trial judge. The case calls for an examination of the right of the courts to receive in evidence documents of the character of Exhibit 1.

Hearsay evidence, with a few well recognized exceptions, it has been said on high authority, is excluded by courts in the United States that adhere to the principles of the common law. One universally recognized exception concerns the admission of dying declarations. Another exception permits the reception, under certain circumstances, of declarations of third parties made contrary to their own pecuniary or proprietary interest. But the general rule is stated to be that the declarations of a person other than accused confessing or tending to show that he committed the crime are not competent for accused on account of the hearsay doctrine.

Professor Wigmore, one of the greatest living authorities on the law of evidence, has attempted to demonstrate the false premises on which the arbitrary limitation to the hearsay rule rests. He shows that the limitation is inconsistent with the language originally employed in stating the principle and is unjustified on grounds of policy. Professor Wigmore in turn has been answered by no less a body than the Supreme Court of Mississippi in the case of *Brown vs. State of Mississippi* ([1910], 37 L. R. A., New Series, 345). The editor of the Mississippi case in L. R. A., however, comes to the support of Professor Wigmore saying the unanimity of the decisions "is as complete as the shock which they give the general sense of justice." The question has likewise in recent years gained attention by the Supreme Court of the United States in the case of *Donnelly vs. United States* ([1913], 228 U. S., 243). There it was held that the court below properly excluded hearsay evidence relating to the confession of a third party, then deceased, of guilt of the crime with which defendant was charged. Mr. Justice Pitney, delivering the opinion of the court, said: "In this country there is a great and practically unanimous weight of authority in the

state courts against admitting evidence of confessions of third parties, made out of court, and tending to exonerate the accused." Mr. Justice Van Devanter concurred in the result while Mr. Justice Holmes, with whom concurred Mr. Justice Lurton and Mr. Justice Hughes, dissented. Mr. Justice Holmes said:

"* * * The rules of evidence in the main are based on experience, logic, and common sense, less hampered by history than some parts of the substantive law. There is no decision by this court against the admissibility of such a confession; the English cases since the separation of the two countries do not bind us; the exception to the hearsay rule in the case of declarations against interest is well known; no other statement is so much against interest as a confession of murder; it is far more calculated to convince than dying declarations, which would be let in to hang a man (*Mattox vs. United States*, 146 U. S., 140; 36 Law. ed., 917; 13 Sup. Ct. Rep., 50); and when we surround the accused with so many safeguards, some of which seem to me excessive; I think we ought to give him the benefit of a fact that, if proved, commonly would have such weight. The history of the law and the arguments against the English doctrine are so well and fully stated by Mr. Wigmore that there is no need to set them forth at greater length. (2 Wigmore, Evidence, pars. 1476, 1477.)"

In the Philippine jurisdiction, we have never felt bound to follow blindly the principles of the common law. A re-examination of some of those principles discloses anomalies.

A dying declaration is admitted of necessity in order, as the Supreme Court of Mississippi states, "to reach those manslaughterers who perpetrate their crimes when there are no other eyewitnesses." But the person accused of a crime, under the same principle of necessity, is not permitted to free himself by offering in evidence the admission of another under oath that this other committed the crime. Again admissions are receivable against either a pecuniary or a proprietary interest, but not against a penal interest. We fail to see why it can be believed that a man will be presumed to tell the truth in the one instance but will not be presumed to tell the truth in the other instance. Again the exhibit would have been admitted against its maker at his trial, if he had not died. But the document is held inadmissible to exonerate another. Yet the truth of the exhibit is not different in the first case than in the second.

A study of the authorities discloses that even if given application they are not here controlling. Most of them do not concern the confessions of declarants shown to be deceased. Practically all of them give as the principal reason for denying the admission of a confession of a third person that he committed the crime with which the accused is charged, that it was not made under oath. Here the declarant is deceased and his statements were made under oath. They also read in such a way as to ring with the truth. When Sisenando Holgado declared "When we fought, there was nobody present," it was at the end of just such a rambling statement as a wounded man would be expected to make. When Sisenando Holgado declared "I met one of my workers named Eugenio Toledo, who accompanied me to the house of Dalmacio Manliscic," he did so in response to a question by the municipal president. Exhibit 1 should have been received not as conclusive evidence of innocence, but as evidence to be taken into consideration in connection with the other proven facts.

We cannot bring this decision to a conclusion without quoting the well considered language of Professor Wigmore on the subject, the pertinent part of a decision coming from a court which has gained respect particularly in criminal cases, and an editorial note. Professor Wigmore has said:

"PAR. 1476. History of the Exception; Statement of Fact against Penal Interest, excluded; Confessions of Crime by a Third Person.—It is today commonly said, and has been expressly laid down by many judges, that the interest prejudiced by the facts stated must be either a pecuniary or a proprietary interest, and not a penal interest. What ground in authority there is for this limitation may be found by examining the history of the exception at large.

"The exception appears to have taken its rise chiefly in two separate rivulets of rulings, starting independently as a matter of practice, but afterwards united as parts of a general principle. * * *

"These lines of precedent proceeded independently till about the beginning of the 1800s, when a unity of principle for some of them came gradually to be perceived and argued for. This unity lay in the circumstance that all such statements, in that they concerned matters prejudicial to the declarant's self-interest, were fairly trustworthy and might therefore (if he were deceased) be treated as forming an exception to the hearsay rule.

"This broad principle made its way slowly. There was some uncertainty about its scope; but it was an uncertainty in the direction of breadth; for it was sometimes put in the broad form that any statement by a person 'having no interest to deceive' would be admissible. This broad form never came to prevail (post, par. 1576). But acceptance was gained, after two decades, for the principle that all declarations of facts against interest (by deceased persons) were to be received. What is to be noted, then, is that from 1800 to about 1830 this was fully understood as the broad scope of the principle. It was thus stated without other qualifications; and frequent passages show the development of the principle to this point.

"But in 1844, in a case in the House of Lords, not strongly argued and not considered by the judges in the light of the precedents, a backward step was taken and an arbitrary limit put upon the rule. It was held to exclude the statement of a fact subjecting the declarant to a criminal liability, and to be confined to statements of facts against either pecuniary or proprietary interest. Thenceforward this rule was accepted in England; although it was plainly a novelty at the time of its inception; for in several rulings up to that time such statements had been received.

"The same attitude has been taken by most American courts, excluding confessions of a crime, or other statements of facts against penal interest, made by third persons; although there is not wanting authority in favor of admitting such statements.

"PAR. 1477. Same: Policy of this Limitation.—It is plain enough that this limitation, besides being a fairly modern novelty, is inconsistent with the broad language originally employed in stating the reason and principle of the present exception (ante, pars. 1457, 1476) as well as with the settled principle upon which confessions are received (ante, par. 1475).

"But, furthermore, it cannot be justified on grounds of policy. The only plausible reason of policy that has ever been advanced for such a limitation is the possibility of procuring fabricated testimony to such an admission if oral. This is the ancient rusty weapon that has always been drawn to oppose any reform in the rules of evidence, viz., the argument of danger of abuse. This would be a good argument against admitting any witnesses at all, for it is notorious that some witnesses will lie and that it is difficult to avoid being deceived by their lies. The truth is that any rule which hampers an honest man in exonerating himself is a bad rule, even if it also hampers a villain in falsely passing for an innocent.

"The only practical consequences of this unreasoning limitation are shocking to the sense of justice; for, in its commonest application, it requires, in a criminal trial, the rejection of a confession, however well authenticated, of a person deceased or insane or fled from the jurisdiction (and therefore quite unavailable) who has avowed himself to be the true culprit. The absurdity and wrong of rejecting indiscriminately all such evidence is patent.

"The rulings already in our books cannot be thought to involve a settled and universal acceptance of this limitation. In the first place, in almost all of the rulings the declarant was not shown to be deceased or otherwise unavailable as a witness, and therefore the declaration would have been inadmissible in any view of the present exception (ante, par. 1456). Secondly, in some of the rulings (for example, in North Carolina) the independent doctrine (ante, pars. 139-141) was applicable that, in order to prove the accused's non-commission of the offense by showing commission by another person, not merely one casual piece of evidence suffices but a 'prima facie' case resting on several concurring pieces of evidence must be made out. Finally, most of the early rulings had in view, not the present exception to the hearsay rule, but the doctrine of admissions (ante, pars. 1076, 1079) that the admissions of one who is not a co-conspirator cannot affect others jointly charged.

"It is therefore not too late to retrace our steps, and to discard this barbarous doctrine, which would refuse to let an innocent accused vindicate himself even by producing to the tribunal a perfectly authenticated written confession, made on the very gallows, by the true culprit now beyond the reach of justice. Those who watched (in 1899) with self-righteous indignation the course of proceedings in Captain Dreyfus' trial should remember that, if that trial had occurred in our own courts, the spectacle would have been no less shameful if we, following our own supposed precedents, had refused to admit what the French court never for a moment hesitated to admit,—the authenticated confession of the escaped Major Esterhazy, avowing himself the guilty author of the treason there charged." (3 Wigmore on Evidence, 2d ed., secs. 1476, 1477.)

In the case of *Pace vs. State* ([1911], Court of Criminal Appeals of Texas, 135 Southwestern, 379), the appellant offered to prove in the trial court by the witness Byron Kyle that on Saturday morning following the killing of the deceased on the previous Sunday he had a conversation with Dick Cain, one of the parties to the homicide, in which Dick Cain admitted that he killed the deceased. The court ruled:

"* * * Wherever the state seeks to fasten criminality upon the party on trial, the accused had a right to meet and rebut any testimony which may be offered against him in any legitimate way. If Cain had been upon trial, his confession to the witness Kyle would have been admissible beyond any shadow of doubt, and would have been strong evidence to go before the jury. The state would have been seeking to introduce this and with great earnestness, and correctly so. If appellant could prove that another party or others committed the homicide, it might prove his innocence, and would be strong evidence to go before the jury in his favor. Any legitimate fact or circumstance which would meet or tend to meet the state's case and break the force of criminative facts introduced against the accused is always admissible. Appellant's contention was that he did not kill the deceased, but that Cain did. The state's theory was that appellant shot the deceased, and Cain did not shoot him. Under the rules of evidence this testimony was clearly inadmissible."

We would like finally to turn attention to what was said by the editor of *L. R. A.* in his note in volume 37 hereinbefore referred to, viz.:

"The purpose of all evidence is to get at the truth. The reason for the hearsay rule is that the extrajudicial and unsworn statement of another is not the best method of serving this purpose. In other words, the great possibility of the fabrication of falsehoods, and the inability to prove their untruth, requires that the doors be closed to such evidence. So long therefore as a declarant is available as a witness, his extrajudicial statement should not be heard. Where, however, the declarant is dead or has disappeared, his previous statements out of court, if not inadmissible on other grounds, are the best evidence. But they are not rendered inadmissible by the mere fact that the declarant is unavailable,—something else is necessary. One fact which will satisfy this necessity is that the declaration is or was against the declarant's interest, and this is because no sane person will be presumed to tell a falsehood to his own detriment.

"Again, if, as seems indisputable, the desire to close the door to falsehood which Cannot be detected dictates the exclusion of such testimony, the question as to the effect to be given to such a confession is solely one of weight and credibility. * * *"

Any man outside of a court and unhampered by the pressure of technical procedure, unreasoned rules of evidence, and cumulative authority, would say that if a man deliberately acknowledged himself to be the perpetrator of a crime and exonerated the person charged with the crime, and there was other evidence indicative of the truthfulness of the statement, the accused man should not be permitted to go to prison or to the electric chair to expiate a crime he never committed. Shall Judges trained and experienced in the law display less discerning common sense than the layman and allow precedent to overcome truth?

JUDGMENT

For three somewhat divergent reasons, we are all of the opinion that the defendant-appellant Eugenio Toledo should be given the benefit of the reasonable doubt which prevails in our minds. Accordingly, the judgment appealed from will be reversed and the defendant and appellant acquitted, and as it appears that he is now confined in Bilibid Prison, an order will immediately issue directing his release, with costs de oficio.

Avanceña, C. J., Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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