

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. REMEDIOS AVELINO DE LINAO, DEFENDANT AND APPELLANT.

G.R. No. 37765. March 14, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

As this is the second appeal of this case, a brief review of the proceedings leading up to the first appeal and the decision thereof will be pertinent.

On March 26, 1930, an information was filed in the Court of First Instance of the City of Manila, charging that Antonio Ubaldo, Felix Tuazon, Agapito Toreno, Elpidio Gaspay and Remedios Avelino de Linao conspired together to murder Joaquin Linao, the husband of Remedios Avelino, and feloniously assaulted and wounded him about midnight on the 24th day of March, 1930. As Joaquin Linao survived, the information charged Remedios de Linao with frustrated parricide as follows:

"That at about midnight of the 24th day of March, 1930, in the City of Manila, Philippine Islands, the accused Remedios Avelino de Linao, then being the lawful wife of one Joaquin Linao, conspiring and confederating with her four coaccused persons who were fully aware of the existence of said marital relation, and all of said accused helping one another, did then and there willfully, unlawfully, feloniously, and with intent to kill, taking advantage of the cover of darkness which they purposely sought therefor, with evident premeditation and for a price or promise of reward, treacherously assault, beat, and wound the said Joaquin Linao at his dwelling at No. 145 Jesus Street, in said city, by then and there strangling him and stabbing him on a vital part of the chest and other parts of the body while he was asleep in his said dwelling, thereby performing all acts of execution which would produce the death of said Joaquin Linao as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of said accused persons, to wit, the timely and effective intervention of medical assistance.

"Contrary to law."

Ubaldo and Tuazon pleaded guilty and were sentenced to twelve years and one day of cadena temporal for frustrated murder. The judgment was affirmed by this court (55 Phil., 94). Toreno, on a separate trial, was also found guilty of attempted murder and sentenced to ten years of presidio mayor. This judgment was also affirmed by this court (G. R. No. 33909).[1]Gaspay was acquitted.

On her plea of not guilty, Remedios de Linao was separately tried and found guilty of the crime of attempted parricide. She was sentenced to twelve years of prision mayor. The judgment was affirmed by this court on March 10, 1931 (G. R. No. 33909).[2]

On December 26, 1931, this court granted the motion of the appellant Remedios de Linao for a new trial as follows:

"The court having regularly acquired jurisdiction for new trial of the above-entitled cause submitted by both

parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the 16th day of December, A. D. nineteen hundred and thirty-one;

"By virtue thereof it is hereby adjudged and decreed that the motion for reconsideration and the motion for rehearing are denied, and the motion for a new trial granted; and the record remanded to the court below, with instructions to reopen the case to take the evidence of the affiant Felix Tuazon in support of the motion for a new trial, and such other and additional evidence as the defense and prosecution may care to offer which in the opinion of the court may be relevant."

As a result of the new trial, the same judge again found the appellant guilty as charged, and she now appeals making the following additional assignments of error:

"I. The lower court erred in giving credit to the testimony of Bonifacio Abad, chauffeur of garage car No. G-1017, to the effect that he saw an unidentified woman standing on the second flight from the top of the stairway leading to the 'azotea' of the house of the defendant waving her hand, notwithstanding the physical impossibility for Bonifacio Abad to have seen that place at that time of the night, and the report of the government Weather Bureau (Exhibit 100) to the effect that the night of March 24, 1930, was moonless and dark.

"II. The lower court erred in disregarding entirely the unbiased testimony of Gavino San Juan who was the first person in the neighborhood who responded to the call for aid of the offended party, Joaquin Linao.

"III. The lower court erred in not giving credit to the expert opinion of Professor Jose del Rosario, chemist and handwriting expert, to the effect that Exhibit J is not a part of Exhibit J-1 and by substituting therefor its opinion and personal appreciation.

"IV. The lower court erred in not finding that the intention and real motive of Antonio Ubaldo," Felix Tuazon and Agapito Toreno in entering the house of the offended party, Joaquin Linao, was robbery.

"V. The lower court erred in rejecting the testimony of Carmen de Luna, Ildefonsa Amor de Santuico and Angel Linao on the ground that their testimony did not constitute newly discovered evidence.

"VI. The lower court erred in not giving any credit to the testimony of the defendant and appellant, Remedios Avelino de Linao, and in considering her testimony as a last minute attempt to escape criminal responsibility.

"VII. The lower court erred in not allowing the offended party, Joaquin Linao, to testify as witness in the new trial on the ground that his testimony would not constitute newly discovered evidence.

"VIII. The lower court erred in not acquitting the defendant and appellant of the crime charged."

Referring to the fifth and seventh errors assigned above, it appears that the lower court, upon objection of the prosecution, refused to admit the testimony of Joaquin Linao, Carmen de Luna, Ildefonsa Amor de Santuico and Angel Linao, on the ground that their testimony would not constitute newly discovered evidence (pp. 134, 154, 155, t. s. n.). It appears also that other evidence, which counsel for the accused thought important, was excluded by the court on the same ground (e. g. page 116, t. s. n.).

The court below misconstrued the order of this court granting new trial and the above-mentioned exclusions were erroneous. When this court remands a criminal case for new trial without restriction, the previous adjudication is wiped out and the case should proceed de novo and be conducted, as far as practicable, as if there had been no previous trial. (U. S. vs. Dacir, 26 Phil., 503, 517.) But the order granting the new trial may restrict the same to particular issues or particular parties, or permit both the prosecution and the defense to offer such further and additional evidence as they may desire to submit without the necessity of retaking the evidence already in the record. (U. S. vs. Singuimuto, 3 Phil., 176, 183.) The order of this court of December 16, 1931,[1] granting the

motion for new trial and remanding the record to the court below with instructions to take the evidence of Felix Tuazon and "such other and additional evidence as the defense and the prosecution may care to offer which in the opinion of the court may be relevant," was not intended to restrict the evidence on the new trial to such as in the opinion of the lower court may be newly discovered, evidence. In other words, the court below was not warranted in substituting for the word "relevant" the words "newly discovered". This is the more apparent because the case was reopened for the prosecution as well as the defense. Such a restriction as the court below read into our order might render rebuttal evidence impossible for either side. The evidence thus erroneously rejected—specially the evidence of the appellant's husband, Joaquin Linao—was doubtless material and important to the defense. But it is not necessary to sustain the errors assigned by the appellant in this respect in view of the other conclusions we have reached on this appeal.

The evidence presented to us on this appeal makes out a very different case from that presented to us on the first appeal as relates to the accused Remedios de Linao. At the first trial the appellant was not called and did not testify as a witness. In our decision promulgated on March 10, 1931, we indicated a number of circumstances which were not denied or explained by the accused, and we said:

"It must be conceded that no one of the foregoing links in the chain of circumstantial evidence, standing alone and within itself, is sufficient to sustain a conviction. Even so when all of these respective links of sworn testimony of eyewitnesses are forged into one chain, no one of which are denied, except by inference or presumption, a strong case of circumstantial evidence is made out against the appellant."

At the new trial which is now under review on this appeal, the defense introduced nine witnesses (including the appellant) and the prosecution, one in rebuttal. The evidence offered by the defense on the new trial, besides supplementing that given at the first trial, was intended to explain the circumstantial evidence which this court, in its previous opinion, had mentioned as pointing to the guilt of the appellant; and this testimony may be summarized as follows:

Joaquin Gallego, an employee of the Weather Bureau, testified that at the time the crime in question was perpetrated on the night of March 24, 1930, there was no moon; that the moon did not rise until 2.41 a. m. The object of this testimony was doubtless to impeach the Government's witness, Abad, who had testified at the original trial as follows:

"P. ¿Estaba ella cerca de alguna luz?—R. Frente a su casa habia un poste de luz electrica encendida cuya claridad le daba hacia ella, y ademas era noche de luna."

Gavino San Juan, (who was subpoenaed as a witness for the prosecution at the first trial but not used), testified that he is a close neighbor of the Linaos; on the night of March 24, 1930, he saw the chauffeur of the Linaos, whom he recognized, and two other men, whom he did not know, enter the Linao house. Shortly afterwards, he heard cries and shouts coming from the Linao house indicating a fight, and following that, Angel Linao came running out. He met Angel and, while inquiring of him what had happened, one of the men ran past them and they pursued him. There was no automobile parked in front of the Linao house, but a garage car was standing near the church. He turned back and went up into the Linao house. On seeing him, Joaquin Linao started to strike him, saying: "Is this another one?", but Mrs. Linao told him that he was a neighbor. Remedios de Linao was supporting her husband with her right arm and told him to take her husband to the hospital and gave him a sheet to wrap about her husband. She brought the sheet herself. He, the witness, helped Joaquin Linao down to the automobile. Remedios de Linao accompanied them to the car. The witness helped Mr. Linao into the car; Paulita, Angel and the chauffeur were in the car. Mrs. Linao told them to wait for her because she wished to go with them. She ran back to get her child who was crying. Angel suggested they should hurry to the hospital which they did. After they left Mr. Linao at the hospital, he and the garage chauffeur went directly to the Luneta Station to report

what occurred. A detective returned to the hospital with them and when they arrived there, they saw Mrs. Linao at the hospital. After that, he and the detectives went in the same car to Pandacan.

On the night in question it was dark. The witness admitted signing a statement at the police investigation.

In response to questions of the court, he stated that it was about half past eleven at night when he saw the three men enter the Linao house. The night was cloudy and dark. From the fence (verja), one could see to the "azotea". At the time he saw the three men enter the fence gate, he saw no one on the "azotea". The three men came walking from Calle Beata. The man he and Angel pursued was one of the three. When they reached the automobile, the men jumped from the car. When he went up and met Joaquin Linao, he was standing, Mrs. Linao supporting him. He observed spots on his undershirt. Mrs. Linao came down with them to the car. She asked him to wait for her as she desired to go with them. She said that after the child cried. To the best of his recollection, Mrs. Linao was wearing a nightgown. He did not remember the color because he paid no attention to it. He could not say if Mrs. Linao was holding a child while supporting her husband. He was much excited and there was a big crowd at that time. He is a native of Pandacan. The first statement he made to the police was very brief because he was dead sleepy and tired (mareado).

The testimony of Felix Tuazon at the new trial is summarized in the Attorney-General's brief as follows:

"The testimony of Felix Tuazon, one of the accused who plead guilty and who is now serving his sentence in Bilibid Prison, tends to show that on the night of March 24, 1930, he met his co-defendants Antonio Ubaldo, Agapito Torenó and Elpidio Gaspay in a restaurant in M. H. del Pilar Street, Manila, where they took supper that night; that Ubaldo told them that his master, Joaquin Linao, had plenty of money and he proposed to them to rob him that night; that they agreed to commit the robbery and the four of them took a garage automobile and then proceeded to the house of the Linaos in Pandacan; that once upstairs Ubaldo indicated to Tuazon where Joaquin Linao was sleeping, whereupon, Tuazon and Torenó went to the sala and there found Joaquin Linao's coat hanging on a chair; that from one of the pockets of the coat Tuazon took a big envelope containing paper money; that Tuazon then went near Joaquin Linao in search of his pocket-book, because according to Ubaldo most of Linao's money was in the pocketbook; that while Tuazon was looking for the pocketbook Linao woke up, whereupon Tuazon got hold of Linao's neck; that immediately thereafter a struggle between the two followed, with Torenó helping Tuazon; that Linao was wounded; that afterwards Tuazon and Torenó ran away downstairs towards an automobile that was waiting for them out in the street; that no sooner had they got into the automobile or had gone a short distance than many people went after them; that they later left the automobile and ran towards a grass field; that while on the grass field Torenó threw away the envelope containing money; and that soon afterwards Torenó and Tuazon were apprehended by the people. Tuazon's testimony further tends to show that that was the first time that he went up the house of the Linaos; that Mrs. Linao never went to the house of Tuazon or Torenó, nor did she ever offer to give them P200 if they would kill her husband; that when Tuazon and his companions went up the house the night in question, he did not see Mrs. Linao there; that in going up the house, their intention was to rob and not to kill Mr. Linao; that Tuazon saw Mrs. Linao for the first time at the Luneta Police Station that same night after he was arrested; and that it was Detective Pescante who indicated to him at the police station who Mrs. Linao was (pp. 78-119, t. s. n., new trial)."

The testimony of Dr. Jose del Rosario tends to show that the piece of paper Exhibit J had not been torn off and was no part of the piece of paper Exhibit J-1 which was found in the drawer of a bureau in the house of the accused. The testimony of Carmen de Luna and of Ildefonso Amor de Santuico corroborates the statement of the appellant that she and her husband were with her sick sister at the Centro Escolar de Señoritas from about 5:30 on the afternoon of March 24, 1930, until 10 o'clock the same night.

Joaquin Linao, the husband of the appellant and the person who was robbed and assaulted on the night of March

24, 1930, wished to take the stand as a witness for his wife but, as stated, the trial court declined to receive his testimony on the ground that the same was not newly discovered evidence. The defense offered in evidence a petition which Joaquin Linao had intended to file in this court on behalf of his wife before we granted the motion for new trial, in which petition he sets out certain facts within his personal knowledge. The court below admitted the petition presumably for the purpose of showing the facts to which this witness would have testified had the court so permitted. Said petition is as follows:

"Comparece el infrascrito ante esta Hon. Corte y, respetuosamente, solicita permiso para exponer:

"1.º Que habiendo tenido ocasion de revisar la mocion de nueva vista presentada por los abogados de la acusada, con todos los documentos y affidavits anexos, demostrativos de haberse descubierto nuevas pruebas, el que subscribe concurre plenamente con todas y cada una de las alegaciones de la acusada en la citada mocion, convencido de que reflejan fielmente la verdad;

"2.º Que como parte ofendida en esta causa, el infrascrito se permite manifestar a este alto Tribunal que se halla intimamente convencido de la inocencia de la acusada, no solo por los fundamentos, razones y circunstancias expuestas en los escritos, alegato y memorandums de la acusada y sus abogados, sino porque el que subscribe tiene sus propios motivos para pensar en la ausencia de culpabilidad de dicha acusada, entre ellos, los siguientes:

"(a) Durante los muchos anos de su convivencia conyugal con la acusada, despues de hacer un escrutinio minucioso, el que subscribe no recuerda haber dado ocasion ni haber realizado algun acto que fuera causa suficiente para que una persona normal e inteligente, como es su esposa, haya abrigado por un instante siquiera el deseo de causar o hacer que se cause la muerte del padre de sus hijos;

"(b) A raiz del inicio de esta causa, el que subscribe se puso a recordar y examinar la conducta de la acusada, en un esfuerzo para buscar algun antecedente que tuviese relacion logica, de cualquier indole que sea, con el proposito delictuoso que se le imputa por la acusacion, y no obstante los muchos dias y muchas noches de concentrada y angustiosa reflexion consagrados a la materia, el infrascrito no ha conseguido hallar ni un solo indicio compatible con el deseo de privarle de la vida;

"(c) En los muchos anos de convivencia con la acusada, el declarante ha tenido completa oportunidad de conocer la psicologia de su esposa, no solo por haber visto su manera de ser y de conducirse en su vida de relacion con el que subscribe y sus hijos, con otras personas, parientes, conocidos y extranos, sino tambien por las conversaciones y discusiones de diversos asuntos y por las manifestaciones de la intimidad familiar, pues el infrascrito cree que su esposa exactamente se caracteriza por la personificacion del caracter apacible, completamente incapaz de abrigar sordas rebeldias en el corazon o de adoptar resoluciones violentas o extremas, siempre predispuesta a considerar las contrariedades con espiritu conciliador o animo dulcemente resignado, constantemente cauta para evitar que sus actos o sus palabras pudieran causar daño, siendo excesivamente indulgente hasta con las mayores travesuras de sus hijos y sin atreverse a castigarlos nunca;

"(d) El que subscribe no ha visto o notado en su esposa ningun acto ni le ha oido pronunciar palabra alguna que denotara animadversion o aversion hacia el infrascrito, ni nada que indique el deseo de alejarse o separarse o de estar libre o de huir de la presencia del esposo, ni aun en los caos de que entre ella y el que subscribe haya surgido la mayor divergencia de criterio sobre cualquier asunto;

"(e) Como quiera que el declarante, siendo natural de la Provincia de Bataan, tenia y tiene sus asuntos principalmente en dicha Provincia, en donde tenia que permanecer mucho tiempo, aun mucho antes del suceso de autos, la acusada le habia rogado que viese la manera de permanecer mas tiempo en Manila, a su lado, y para conseguir este objeto, dicha acusada estuvo haciendo gestiones para que el que subscribe pudiese ocupar algun puesto en la Ciudad de Manila, y al infrascrito le consta que la acusada hasta solicito la ayuda de su hermana, Doña Librada Avelino, Directora del Centro Escolar, para que pudiese ocupar un puesto en Manila, y

permaneciese aqui al lado de su esposa y de sus hijos, y estas gestiones de la acusada revelan no solo el proposito de estar mas cerca del que subscribe sino tambien su vivo interes por la carrera y el porvenir de su marido, cosas incompatibles con lo que se le imputa en la querella;

"3.º Que uno de los hechos en que la acusacion ha insistido, consiste en el siguiente testimonio del Sargento Vicente Antonio:

" 'Toreno dijo que aquella mujer que se fue a su casa en la tarde del 24 de marzo, le habia demostrado un sobre diciendole que contenia P200 y que si ellos conseguian matar a Mr. Linao o al marido de aquella mujer, el dinero que contenia aquel sobre seria para el y para su compañero.'

* * * * *

'Que en aquella tarde, aquella mujer iba acompañada de Ubaldo, el chofer de la familia.' (F. 381-382, traduccion de las N. T.) Pero esta es una falsedad, porque fue fisicamente imposible que en la noche del 24 de marzo de 1930, pudiese la acusada ir, acompañada por el chauffeur Ubaldo, a la casa de Toreno para ofrecerle la referida cantidad de P200, porque cuando el infrascrito llego a su casa, situada en la Calle Jesus, Pandacan, Manila, a las 12.30 de la tarde de aquella fecha, encontro en la casa a su esposa con quien el que subscribe permanecio en la casa hasta las 3 de la tarde, en que bajo de casa y se embarco en el automovil, guiado este por el chauffeur Antonio Ubaldo, y estuvo haciendo uso de dicho automovil continuamente hasta las 5 de la tarde poco mas o menos, hora en que volvio a su casa. Durante el tiempo en que el infrascrito estuvo usando el automovil, este estuvo guiado por Ubaldo. Cuando el declarante llego a su casa a las 5 de la tarde su esposa le informo que la Directora del Centro Escolar se hallaba enferma y, para visitarla, la acusada y el que subscribe se dirigieron en aquellos mismos momentos al Centro Escolar, en donde la acusada y el que subscribe permanecieron hasta las 9.30 de la noche proximamente, y durante todo el tiempo en que estuvieron en el Centro Escolar la acusada estuvo junto a su esposo y no tuvo la menor oportunidad de salir del edificio del Centro Escolar sin conocimiento y sin que le pudiese ver el infrascrito. Este y la acusada partieron del Centro Escolar a las 9.30 de la noche proximamente y se retiraron a su casa, tambien juntos, en donde estuvieron conversando hasta ya pasadas las 11 proximamente, cuando ambos se retiraron para dormir. Y fue a eso de las 11.30 de la noche cuando el que subscribe fue despertado por la agresion perpetrada en su persona;

"4.º Que el que subscribe esta convencido de que el movil del crimen que se perpetro en su persona debio ser el robo, pues efectivamente en aquella noche de autos se le ha perdido la suma de P800, sin que hasta ahora se hubiese recuperado;

"5.º Que la experiencia humana ha demostrado que hay inocentes que sufren penas en la carcel y hay culpables que gozan de libertad, y para evitar que se cometa injusticia a la acusada, siendo inocente, que sufra alguna penalidad, y teniendo en cuenta los affidavits prestados por personas desinteresadas en apoyo de la nueva vista de la causa, el infrascrito ha tenido a bien someter a la consideracion de esta Hon. Corte esta peticion para que la misma la tome en cuenta en la resolucion de la mocion de nueva vista presentada por los abogados de la defensa.

"Por tanto, a esta Hon. Corte respetuosamente pide se sirva ordenar la nueva vista de la causa para la practica y presentacion de las pruebas nuevamente descubiertas para cumplir mejor con los fines de la justicia y de la ley.

"Orion, Bataan, para Manila, diciembre 15, 1931.

"Muy respetuosamente sometida,

(Fdo.) "JOAQUIN LINAO

"Esposo de la uqui acusada y

parte ofendida en esta causa"

The proffered testimony of the accused's husband, as set out in the foregoing document, would have fully corroborated her own testimony and completely and satisfactorily accounted for the acts and whereabouts of the accused during the entire afternoon and evening of March 24, 1930, thus refuting the imputation of the convicted aggressors that she visited the house of Toreno in Ermita that afternoon and then and there hired them to assassinate her husband that night.

Angel Linao, the son of Joaquin Linao and Remedios de Linao, 17 years of age and a student, was not permitted to testify. The court sustained the objection of the fiscal to the effect that this witness, having testified at the first trial, nothing he could testify to now would be newly discovered evidence (p. 212, t. s. n.). Without repeating what we have already said as to the error of the court in excluding this witness, it cannot be doubted that his corroboration of the testimony of Gavino San Juan would have added to its convincing effect.

Remedios de Linao. The testimony of the defendant-appellant Remedios de Linao on her own behalf is summarized by the Attorney-General as follows:

"She is married to Joaquin Linao, the offended party herein. She never conspired against his life. She is a member of the Philippine Bar. She has five children. Her husband was practicing law in Bataan Province and was planning to be a candidate for the governorship of that province. Shortly after noon on March 24, 1930, he came home at Pandacan, Manila. They conversed until 3 p. m. of that day when he left in the family automobile driven then by Antonio Ubaldo, the chauffeur of the Linao family. When Mr. Linao returned home at 5.30 p. m. on the same day, she told him that her sister, Miss Librada Avelino, was sick in the Centro Escolar de Senoritas. Upon his suggestion, they called on her that same afternoon. From the time they arrived at the Centro Escolar de Senoritas until 10 o'clock the following night, she never left the place. From the Centro Escolar de Senoritas, they went home direct. Upon coming home, they chatted for some time about politics until she went to bed. She slept with her small children in one of the rooms, while her husband slept in the sala. Before going to bed, she was telling her husband that she did not like politics. She was trying to help him secure an employment in Manila (pp. 217-225, t. s. n., new trial). In the night in question, she was awakened by her husband's outcries; he was calling her name. She immediately got up and carrying in her arms her son Pedring, who had also been awakened, rushed to her husband and found him in the antesala. Mr. Linao had been wounded and was bleeding. With small Pedring in her arms, she immediately embraced her husband. Mr. Linao told her that certain individuals wanted to kill him, to which she replied that they might be his political enemies. He rejoined that the matter had nothing to do with politics. She then told her son Angelina to look for an automobile to take her wounded husband to the hospital. Not long afterwards, Angelina returned with one of the neighbors named Gavino San Juan, saying that he had already found an automobile. She requested San Juan to carry her wounded husband to the automobile, which he did after she had put a flannel sheet around Mr. Linao. She followed her husband downstairs, but when she was getting into the automobile she heard her son Pedring crying and so she went back upstairs to get him, telling them to wait for her. But while she was upstairs, the automobile left. Her husband, their son Angelina, their daughter Paulita, and their neighbor Gavino San Juan went together to the Philippine General Hospital. She then changed her son's clothing and her own nightgown, on both of which there were blood stains (pp. 225-229, t. s. n., new trial). Within an hour later, the automobile returned with a policeman. In the same automobile, she went to the Philippine General Hospital with her son Pedring. For a short time, she was with her husband at the hospital until 1 o'clock in the night in question when she was put under arrest. While there, Mr. Linao asked her if she had seen the envelope containing P800, and she replied that she had not. He asked her to go back home to look for the envelope, and so she left the hospital in the same automobile with Gavino San Juan and a policeman. But instead of taking her home, they took her to the Luneta Police Station together with her son Pedring. She came to know that she was under arrest, because, when she wanted to go home to look for the missing money, they would not allow her to leave. She remained in the police station until 5 a. m. of the following day, March 25, 1930, when, accompanied by a patrolman, she was allowed to go home in order to change her dress. While at home, she looked for the envelope containing P800, but did not find it. After changing her dress and after

taking breakfast, she was taken back to the Bagumbayan or Luneta Police Station. At 4 o'clock on the afternoon of the same day, she was released on bail (pp. 229-234, t. s. n., new trial). While in the Bagumbayan Police Station, she was questioned by the police authorities, but she did not give any answer. She was made to line up with four women prisoners, and made to stay in the middle of them. Then she noticed that a policeman went to a dark place which she later learned to be a cell. Afterwards, she saw the policeman talking to an individual and afterwards the two of them proceeded to a dark corner. While they were talking together, she saw the policeman pointing out to her. She did not hear what the two were talking about. The individual was then taken near her and in her presence he pointed her out (pp. 234-237, t. s. n., new trial). She did not offer the sum of P200 to the said individual. Before her husband was attacked in the night in question, she had not seen or known his assailants; she saw them for the first time at the Luneta Police Station in the same night, because there was a detective who stated that it was they who attacked her husband. She had had no communication with them before. She never had any motive whatever for wishing to destroy the life of her husband; she has always been in need of him. Before her husband was attacked in the night in question, she had not seen his assailants, nor had she been at the azotea of her house before the crime was committed that same night. She was then sleeping (pp. 237-239, t. s. n., new trial). She had not seen Exhibit J before it was presented in evidence by the prosecution. She did not write the words appearing on said Exhibit J, nor had she seen Exhibit J-1. In the night in question, she did not write any note reading, 'Tulog, pero hindi naghihikil.' Neither had she delivered such note to anybody that night. She had not seen Exhibit U before the same was offered in evidence by the prosecution, nor had she had anything to do with it (pp. 239-241, t. s. n., new trial). The handkerchiefs, Exhibits M, M-1, and M-2, are hers, but she has not given them to any person. She had not seen the ring, Exhibit N, nor the pin, Exhibit N-1, before they were presented in evidence by the prosecution (pp. 241-242, t. s. n., new trial). Her husband, Joaquin Linao, does not snore while sleeping. She denied having offered P500 to any person on condition that the latter would destroy Exhibit J. She denied having offered any sum of money to detective Pescante. She denied having talked with anybody in connection with Exhibit J-1. She also denied having made any sign to Antonio Ubaldo or having instructed him to say nothing about the affair (pp. 242-244, t. s. n., new trial). She did not go to the house of the defendant Toreno on Arquiza Street, Ermita. She denied having waved her hand to the assailants of her husband before he was attacked by them. She did not know that Exhibit U had been found within her house, nor did she have any conversation with any policeman regarding it. She denied having had a talk at the police station with Sergeant Vicente Antonio and having told him that she and her children were hiding in the bath room of her house while her husband was being attacked and was asking for help. She did not make such statement to any policeman; she and her children were not in the bath room at the time. When she was awakened and when she heard that her husband was calling her, she was in bed and she got up to go to the place where he was, but as she could not open the main door to the room because she was carrying her child, she went out of the room through the toilet adjoining the same room. She denied having been identified at the police station in the night in question by Toreno as the woman who had gone to his house and had shown him P200 (pp. 244-247, t. 8. n., new trial). She knows Dr. Eduque and Dr. Rustia, both of whom having been for some time family physicians of the Linaos, but she never solicited their services for unlawful purposes. She studied pharmacy (p. 249-250, t. s. n., new trial).

"On cross-examination, Mrs. Linao testified that she had five children with her husband, Mr. Joaquin Linao, the eldest and youngest being Angel Linao and Eduardo Linao, respectively; that Eduardo was born on August 17, 1930, in the Centro Hospital, Manila, the attending physician being Dr. Rustia; that she did not know whether Eduardo's birth had been registered in the corresponding office of the Government; that her husband knew when she gave birth to Eduardo; that he was in Bataan Province at the time; that she believed and she knew that her husband had seen Eduardo but that she did not know when; that she stayed in the hospital for a week, but her husband did not call at the hospital while she was there; that from the hospital, she and her child Eduardo went to her house at No. 145 Calle Jesus, Pandacan, Manila; that when her husband left the hospital after he had been wounded in the night in question, he was taken to Bataan and there he had remained up to the time Mrs. Linao testified at the new trial (April 22, 1932) (pp. 134-140, t. s. n., new trial); that when Mr. Linao came home at noon on March 24, 1930, she was eating with her children; that she did not know whether

Antonio Ubaldo, the family chauffeur, who was at the Linaos' conjugal home at the time, was also taking his meal; that Ubaldo had been employed by the Linaos as chauffeur without board and lodging and so he neither lived nor took his meals in the Linao's home (p. 143, t. s. n., new trial); that Ubaldo began to work as chauffeur for the Linao since the year 1929; that he left for sometime but afterwards he returned; that on March 24, 1930, she was already a lawyer, she having been admitted to the Bar in September, 1918; that it was in the Bagumbayan Police Station in the night in question when she learned for the first time that she was under arrest; that she did not inquire for what crime she had been arrested; that it did not occur to her to find out why the individual referred to hereinbefore was pointing out to her or why she was made to line up with other women at the police station (pp. 144-154, t. s. n., new trial); that in December, 1929, she became aware that she was pregnant; and that she consulted Doctor Rustia about her pregnancy (pp. 176 et seq., t. s. n., new trial.)"

In the light of the new evidence before us, we have come to the conclusion that robbery was the motive for the assault on Joaquin Linao, and that the Government's hypothesis, that this appellant hired thugs to assassinate her husband simultaneously with the robbery, has not been proven beyond a reasonable doubt. That robbery was the motive stands out clear as day from the fact that robbery was committed. *Res ipsa loquitur*. The new evidence convinces us that Remedios de Linao was not present at the time and place where her codefendants, in their alleged confessions, stated that she hired them for P200 to kill her husband. Moreover, the said confessions, competent as they are against the confessors, are inadmissible against the appellant. They are no part of the *res gestæ*. This appellant was not present when they were made and had no part therein and knew nothing of them when they were made. We said in the case of *People vs. Orenciada and Cenita* (47 Phil., 970):

"It is well established in this jurisdiction that a confession made by one or two or more accused persons, without the intervention of the others, is competent only against the declarant (*U. S. vs. Castillo*, 2 Phil., 17; *U. S. vs. Paete*, 6 Phil., 105; *People vs. Tabuche*, 46 Phil., 28)." See also *People vs. Rodriguez*, G. R. No. 37122, promulgated December 5, 1932.[1]Applying this doctrine to the instant case, in view of the evidence of the new trial, the hypothesis of the prosecution that the motive for the crime was the desire of this appellant to conceal her shame from her husband, rests entirely upon imputations contained in the confession of the chauffeur Ubaldo. If we were to admit that sort of evidence, no. honorable maid or matron's reputation, no home, in the Philippines would be safe against the foulest slanders of low-minded criminals.

At the first trial of this cause, perhaps the most damaging evidence against the appellant was the testimony of Detective Clemente Pescante that the appellant offered him P500 if he would destroy Exhibit J. This was not denied by the accused who did not take the stand at the first trial. On the new trial, she denounced Pescante's testimony as false (*una falsedad*). We have encountered considerable difficulty in attempting to reconcile this contradictory testimony.

The Attorney-General, in his summary of the evidence adduced at the original trial in so far as it concerns Remedios de Linao, refers to said Exhibit J as follows:

"When they (Tuazon, Toreno and Ubaldo) got close to the stairs, she came out and said to Ubaldo: 'I have been long waiting for you; your master has been sleeping soundly for some time already.' She then left them and went up into the house. On coming back, she waved her hand for Ubaldo to go upstairs. Meanwhile, Tuazon and Toreno remained downstairs, waiting for signal or orders from her to carry out the agreement to kill her husband (Exhibit Q, pp. 152 and 74, roll of exhibits, pp. 165-173, t. s. n., original trial).

"Ubaldo went upstairs, and she whispered to him that his master (her husband) was still sleeping, and so the plan to kill him (her husband) must then be carried out. She also handed to Ubaldo the note Exhibit J, which reads as follows: 'Tulog, pero hindi naghihulik. Tulog' (Asleep, but not snoring. Asleep) (p. 61, roll of exhibits), telling him to tear it afterwards so that nobody would see it (Exhibit Q, pp. 150 and 70, roll of exhibits, pp. 165-173, t. s. n. original trial)."

It is inconceivable to the writer that any sane woman, after having told Ubaldo twice by word of mouth that her husband is sleeping, should then reduce the same statement to writing and hand it to Ubaldo. Exhibit J, under the circumstances stated, borders on the ludicrous. It is, therefore, difficult for us to understand why the appellant, an intelligent woman and a member of the Bar, would offer Detective Pescante such a large sum of money (if she had it) without any reason to believe that he is the kind of officer that could be bribed, and well knowing, as any lawyer must know, that the destruction of that exhibit would not prevent secondary evidence of its contents, if it had any importance at all in the case. These considerations occur to us quite apart from the question whether Exhibit J was in the handwriting of the appellant, which was denied by her and a handwriting expert.

Excluding the confession of Ubaldo which incriminated and made the foulest charges of infidelity against her, and considering the statements of her husband as well as her own, we can find no rational motive established by the evidence which would have actuated a woman of the intelligence and character of Remedios de Linao to commit the grave crime of which she is charged. At the original trial, the husband himself, as a Government witness, testified that they had never had any misunderstandings (disgustos). He intended to appeal on her behalf in this court, and at the new trial he aided his wife and tried to take the stand to testify on her behalf. All these circumstances indicate a relationship of conjugal harmony in the home which is incompatible with the prosecution's theory that assassination and not robbery was the motive of the assault on Joaquin Linao.

Out of the mass of trivial details and the many apparent or real contradictions in the testimony, we have endeavored to sift the salient facts in arriving at the conclusion that the evidence at the original trial, read in the light of the evidence at the new trial, leaves in our minds a reasonable doubt as to the guilt of the appellant. The evidence at the new trial breaks the chain of circumstantial evidence which we could not ignore when we rendered our decision on the former appeal.

The judgment is reversed and the appellant acquitted, with costs de oficio.

Street, Ostrand, Villa-Real, Abad Santos, Vickers, and Imperial, JJ., concur.

Villamor, J., concurring: In view of the result of the evidence presented during the new trial of this case, I am compelled to concur with the majority opinion.

[1]Promulgated March 10, 1931, not reported.

[2]Not reported. [1]56 Phil., 360, 866. [1] 57 Phil., 1001.

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