

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. AMBROSIO ESTABILLO AND ROMAN ESTABILLO, DEFENDANTS AND APPELLANTS.

G.R. No. 3934. January 21, 1908

Ponente: CARSON, J.

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CARSON, J.:

The appellants, Ambrosio Estabillo and Roman Estabillo, were charged with the crime of assassination (murder) committed as follows:

"That on or about the night of the 14th of last June, the accused, accompanied by Isidro Leones, intentionally and criminally waited in the store of a Chinaman called Ache, for the Aglipayano priest, Leocadio Soriano, whom, after he had passed the store, they followed and when they had almost reached the Aglipayano church situated in the municipality of Pura of the Province of Tarlac, Philippine Islands, and without giving the said Soriano time to defend himself, with premeditation and for the purpose of treacherously committing this crime, Ambrosio Estabillo seized the said Soriano by the throat, and when the latter made a motion to put his hands into the pocket of his robe which he wore, the said Ambrosio Estabillo ordered his companions to bind his hands, which they, in fact, did. The said Leocadio Soriano being bound in this manner, Ambrosio Estabillo struck him with a bolo, inflicting various wounds upon his chest and right side some fifteen or twenty-five millimeters long; the priest having fallen to the earth, he struck him another blow which severed his head from his body. Soriano being dead, the said Ambrosio Estabillo and his companions buried him in the place where the corpse was afterwards found, doing this by means of a hoe and a spade which they brought for that purpose from the house of Ambrosio Estabillo. Before burying the body of the deceased Isidro Leones found a revolver in his pocket, which he gave to Roman Estabillo, who said, upon the following day, that he had buried it in the lot of the accused, Ambrosio Estabillo, by his orders.

"All of which was done contrary to the law."

Both the appellants were found guilty of the crime with which they were charged, and sentenced to life imprisonment (*cadena perpetua*), the accessory penalties prescribed in article 54 of the Penal Code, the indemnification of the heirs of the deceased in the sum of 1,000, and to the payment of the costs.

Leocadio Soriano, a priest of the Aglipayan church at Pura, Tarlac, lived with the accused, Ambrosio Estabillo, vice-president of Pura, from October, 1905, until the night of the 14th of June, 1906, when he disappeared. On the morning of the 20th of June, 1906, a number of dogs were seen dragging a human head along the ground near the Aglipayan church; and a short time thereafter a headless body, clothed in a priest's robe, was discovered buried near the place where the head was found. An examination of the corpse disclosed ten mortal wounds in and about the breast, and one on the right side.

A youth named Isidro Leones confessed to the justice of the peace of Pura and the provincial fiscal of Tarlac that he, together with Ambrosio Estabillo and Roman Estabillo, assassinated the priest, Leocadio Soriano, and signed a complaint charging the said Ambrosio Estabillo and Roman Estabillo with the crime of assassination.

The sergeant of police of Pura testified that, when Ambrosio was arrested, and saw that Isidro and Roman were also under arrest, he said to the witness, "You need not go to any more trouble because we, and we alone, were those who killed him," adding that he did it because of resentment (resentimientos) which he felt toward the priest whom he had fed in his house, and who nevertheless had betrayed him. This witness (the sergeant of police) also testified that Roman Estabillo and Isidro Leones made the following statement to him:

"That, on the night of that Thursday at 7 o'clock Don Ambrosio Estabillo went to the house of Isidro Leones, called him, and said, 'Take your bolo; we are going for a walk.'

"Isidro came downstairs and followed Don Ambrosio to the store of a Chinaman; on arriving there he ordered Isidro to call Roman; Isidro went to the house of Roman, stayed there awhile, and a little later when they were going back to the store they met the priest and Captain Ambrosio; Ambrosio embraced the priest and they all walked on together; when they reached the bell tower of the Aglipayan church, according to them, Don Ambrosio seized his throat, and then he told them to come up and he ordered Roman to hold the priest and Don Ambrosio choked him. The priest fell to the ground and he (Ambrosio) ordered Roman and Isidro to stand upon the feet of the priest, and when he had thus fallen Ambrosio told Isidro to stab him with a bolo, and after Isidro had stabbed him with his bolo, they said that Captain Ambrosio took the bolo and also stabbed him. When he was dead, they said that a person passed by wearing a white camisa; after this person had passed they put the body in a hole, where a post of the bell tower had been, and left it there; a little later they returned bringing a hoe and a spade, Captain Ambrosio having ordered Roman to go for them, and when they returned to this place they dug a ditch in the ground and there they put the padre. After this they said that Captain Ambrosio said to them that he would kill whoever told it. After this I asked the two men Isidro and Roman why they had done this and if they had no fear—why they had obeyed these orders, knowing that it was wrong. They said that Captain Ambrosio told them that it was not wrong; that a man who committed a crime ought to be killed and that it was not a sin in the sight of God."

The provincial fiscal, Mauricio Ilagan, testified that he was present at the preliminary trial before the justice of the peace; that Ambrosio Estabillo, after hearing the complaint, charging him with the assassination of Soriano, admitted that the allegations of the complaint "were all true," and that "he had done it because the priest, Soriano, had dishonored him;" and that the accused further said, in conversation with the witness, that he was aided in the commission of the crime by his nephew, Roman Estabillo, and by Isidro Leones, but that he wanted to take upon himself all the responsibility, because they were mere children (chiquillos) who by themselves would never have committed the crime. This witness further testified that the other accused, Roman Estabillo, on being informed by him of the charge, also confessed that he was present when Ambrosio Estabillo and Isidro killed the priest.

The justice of the peace, Juan Aquino, testified that Ambrosio Estabillo, after having had the complaint read to him at the preliminary trial, replied that it was true that he had committed the acts set out therein, but that he would not "plead guilty," because the priest had dishonored him; and asked at the same time for a continuance of eight days before pleading to the charge. This witness also testified that he had a conversation with the other accused, Itoinan Estabillo, who admitted to him that he had been with Isidro Leones when the offense was committed.

Mateo Fernandez, president of the municipal board of health, under whose direction the corpse was exhumed, testified that he was in the municipal building on the date when the preliminary trial was had; that he had a conversation with Ambrosio Estabillo, in which Ambrosio confessed that he had killed the priest, Leocadio Soriano. His testimony as to this confession was given in the following language:

"Q. Do you know who killed this priest, Leocadio Soriano?

"WITNESS. Yes, sir.

"Q. How did you know it?

"WITNESS. Because the day on which the first investigation was held in Pura, as the proceedings were suspended at the request of the attorney for the accused, before I went away, and as he was my acquaintance and I might say my friend, I went up to him in order to greet him and to talk with him.

"Q. What is the name of your accused friend?

"WITNESS. Ambrosio Estabillo. I approached him and spoke to him and he said to me, 'Pardon me, my friends, in that I was not frank with you, but I now wish to blot it out of my mind.' I asked him why. He said, 'Because my wife has told me the truth; if she had not I would have killed-her.'

"Q. Do you say that he was going to kill her also?

"WITNESS. Yes, sir; he told me that he had killed the priest, Leocadio Soriano, and that he was going to kill his wife also; and then our conversation was cut short on this point for he was carried away to the carcel."

This witness identified the corpse as that of the deceased, Leocadio Soriano, whom he well knew in his lifetime, and stated that he found the key of the deceased, Soriano, in the pocket of the robe in which the corpse was clothed.

Inocencio Marcelino testified that he lived near the place where it is alleged the crime was committed; that on the night of the 14th day of June, 1906, between 10 and 11 o'clock, he was awakened by the barking of dogs, and thinking that it might be that robbers had entered the town, he went to the window to listen; that he could see nothing on account of the darkness of the night, but that he heard the voice of the accused, Ambrosio Estabillo, who was warning his companions, with whom he was walking, that they should keep still, and should not reveal anything to anybody, adding that he would punish them if they did. The witness stated that he was a brother-in-law of the accused, and knew his voice well, and could not mistake it for another.

It was proven at the trial that on the night of the 16th of June, four days before the discovery of the corpse, Ambrosio Estabillo, who was vice-president of the municipality of Pura and at that time acting president, took the police guard, Domingo Balan, and two prisoners from the presidencia, saying that he was going to cover a hole where a pig had been buried, which smelled badly; that he brought these prisoners to the southern part of the bell tower of the Aglipayan church, and pointed out to them the spot where he said the pig was buried, which was the place from which the corpse was afterwards disinterred.

Evidence was also introduced to show that Roman Estabillo, upon being interrogated by the sergeant of police as to the whereabouts of the revolver of the deceased (which Isidro Leones had said was taken from the deceased and kept by the said Roman Estabillo) stated that he had buried it in the yard of Ambrosio Estabillo; and that the revolver was later discovered at the place where Estabillo stated it had been hidden.

The accused, Ambrosio and Roman Estabillo, at the trial in the Court of First Instance, denied all knowledge of the crime with which they are charged. Isidro Leones denied the truth of his statements made before the justice of the peace and the provincial fiscal, and swore that his alleged confession was the result of maltreatment by the municipal police who arrested him. Ambrosio and Roman Estabillo attempted to prove an alibi. Ambrosio Estabillo and his witnesses declared positively that on the evening of the 14th of June, Ambrosio Estabillo, accompanied by his wife, Jacinta Garcia, went to the house of Maria Tutelar, because of the death of a child, the goddaughter of the said Jacinta Garcia, and that they continued there until after midnight. Jacinta Garcia having been called to the witness stand, stated that she was not accompanied by her husband to the house of Maria Tutelar, but that she was there all day, and that her husband came by himself in the evening after he had finished his work at the municipal building. Roman Estabillo and his witnesses testified that he was working in the fields

outside the town of Pura from the 1st to the 19th of June.

The testimony of the witnesses for the defense is not convincing, and if the above-cited confessions were properly admitted in evidence, there can be no doubt as to the guilt of the accused. Counsel for the appellants pointed out a number of unimportant contradictions and apparent inconsistencies in the testimony of the principal witnesses for the prosecution, but we do not think these are deserving of serious consideration; they are not of such a nature as to raise a doubt as to the veracity of the witnesses, or the substantial accuracy of their testimony.

The extrajudicial confession of Isidro Leones, before the justice of the peace and the provincial fiscal, which was repudiated at the trial in the Court of First Instance, is not admissible as testimony against the accused, who do not appear to have been present at the time when it was made, and had no opportunity to contradict or deny his statements. (Bishop, Criminal Procedure, Vol. I, p. 1248.)

It is doubtful whether the confession of Roman Estabillo to the sergeant of police should be taken into consideration as evidence against him, because, while the sergeant of police positively swore that the confession was made to him voluntarily, there is evidence of record which tends to show that the statements made to the police by Roman Estabillo were not voluntary, and were procured by the exercise of force and cruelty. We are of opinion, however, that, excluding the confessions made to the police, there remains sufficient in the admissions made by the accused to the justice of the peace, the provincial fiscal, and the president of the board of health, which were undoubtedly made voluntarily and without promise or hope of reward, to establish the guilt of both the accused beyond a reasonable doubt.

Counsel for the accused insists that the best and only evidence of what took place before the justice of the peace is the record of the preliminary proceedings, which shows that the accused, Ambrosio Estabillo, pleaded "not guilty" to the crime charged in the complaint, but does not set out any other statements made by him at the preliminary trial. In support of his contention counsel relies upon the rule laid down in various jurisdictions wherein it has been held that when the officer holding the preliminary investigation is required by law to reduce all the statements of the accused to writing, it will be presumed that if anything has been written, the officer has complied with the law, and that all such statements were in fact reduced to writing; so that in such cases oral evidence is held not to be admissible as to other or different statements alleged to have been made by the accused.

In England under the ancient statutes of Philip and Mary, the committing magistrate, before whom a prisoner charged with felony was brought, was required to take the examination of the prisoner in writing, which was to be, subscribed by the magistrate, and delivered to the court before which the further proceedings were to be had, and these statutes have been made the basis of similar statutory enactments in many of the States. In such cases it has been frequently held that, where a confession is contained in a written examination of the prisoner taken in conformity with the provisions of such statutes, the confession can be proven only by the production of the writing itself unless the writing has been lost or destroyed or its non-production otherwise explained; but it appears to have been uniformly held that the requisition upon the magistrate to reduce the examination to writing is directory merely, and, consequently, when an examination in writing was not taken, or, if taken, is entirely void for irregularity, oral proof of any confessions made by the prisoner before the magistrate may be given. (A. & E. Encyl. of Law, 2d ed., Vol. VI, p. 578, and cases there cited.)

The reason for the rule rests on the statutory provision which makes it the duty of the official presiding at the preliminary trial to reduce all the statements of the accused to writing, and further on the presumption that the official, if he reduced any part of such statements to writing, complied with the statutory obligation, and did in fact reduce all of the statements to writing.

Act No. 194, which prescribes the procedure which must be adopted by a justice of the peace in the course of a

preliminary trial in criminal cases, does not provide for the reduction to writing of all the statements of the accused during the trial, though it does provide that, if the accused desires so to do, he may testify under oath, in which case he may be cross-examined as any other witness, and his evidence must then be reduced to writing and signed by him. An examination of the record of the preliminary proceedings clearly discloses that none of the statements of the accused, Ambrosio Estabillo, which were offered in evidence at the trial in the Court of First Instance, were made by the accused as a witness in his own behalf while under oath and subject to cross-examination by the prosecution, and that he did not go on the witness stand in his own behalf. Since the statutory provision requiring all the statements of the accused to be reduced to writing is not in force in these Islands, and, further, since it appears that none of the statements of the accused made at the preliminary trial were in fact reduced to writing, we are of opinion that the testimony of the witnesses as to such confessions and admissions were properly admitted in evidence, and may be taken into consideration as against the said Ambrosio Estabillo.

Furthermore, the reason of the rule relied upon by counsel for the appellants in no case applies to confessions made prior to the preliminary trial or extrajudicially, nor to anything said incidentally by the accused at the time of the trial which was not reduced to writing by the justice of the peace, and which was not a necessary part of the proceedings which it was the duty of the justice of the peace to reduce to writing. The admissions of Ambrosio Estabillo made in conversation with the witnesses Ilagan and Fernandez were not a necessary part of the preliminary proceedings, though it is true they appear to have been made at or about the time when the accused was in the court of the justice of the peace, for the purpose of answering the complaint. There can be no question, therefore, as to the admissibility of these statements, and we think that, excluding all the other confessions, they are sufficient in themselves, together with the corroborative evidence as to the corpus delicti, to establish the guilt of this accused beyond a reasonable doubt.

The admissions of Roman Estabillo to the justice of the peace and the provincial fiscal were not made in the course of a preliminary trial, and as to them the contention of counsel for the accused has no application.

It is said that the plea of "not guilty" entered of record in the preliminary proceedings before the justice of the peace is in conflict with the alleged admission of the accused that he had committed the acts set out in the complaint, but that he would not plead "guilty" because the priest had dishonored him. There is nothing in this contention. A formal plea of "not guilty" is properly entered by the court for an accused person, if he admits the truth of some or of all the allegations of the complaint, but sets up, or attempts to set up, new or additional facts which, if proven, would exempt or relieve him in whole or in part of the criminal responsibility which would attach on proof of guilt of the crime with which he is charged. (U. S. vs. Betiong, 2 Phil. Rep., 126.) This appears to have been the course adopted by the justice of the peace in this case, and while we think it would be better to have the record show the statements of the accused in the exact language in which they were made, in explanation of the plea of "not guilty" entered for him by the court, nevertheless, there is no provision of law expressly requiring this procedure; we do not think that the failure of the justice of the peace in this case to set out the statements in writing justifies the conclusion that such statements were not made, or renders oral testimony as to such statements inadmissible.

The judgment of conviction and the sentence of the trial court should be, and are hereby, affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

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