

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. TOMAS LAYOS, DEFENDANT AND APPELLANT.*G. R. No. 41359. October 19, 1934*

Ponente: DIAZ, J.

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Shortly after midday on September 22, 1933, Daniel Constantino, married to Bernardina Guino, left his house situated at Sirab within the municipality of Albura of the Province of Leyte, for that of Filomeno Tan, a resident of the municipality of Ormoc, of said province, for the purpose of borrowing some money. He failed to return home and his wife had been waiting vainly for him until the 27th of said month and year. On the latter date, the municipal authorities of Ormoc and the president of the sanitary division to which said municipality belongs, found near the Panilahan River some human bones (a cranium and hip-bones which were the only ones left by the dogs) that proved to be those of a man who died about 5 or 7 days before, and a man's clothing. On that same date said clothing was identified as that of Daniel Constantino by his wife Bernardina Guino, who was brought to the place at the instance of some constabulary soldiers. At that time, the herein accused Tomas Layos was already under detention and, furthermore, had confessed to the justice of the peace of Ormoc that on the afternoon of said date, September 22, 1933, he had killed two persons, an old woman and a girl, named Andrea Paril and Bruna Caguyong, respectively (Exhibit B),

It should be stated in passing that according to the evidence said accused had already been charged with homicide for the death of the two women above stated with the result that he was convicted and sentenced in each case to the indeterminate penalty of from seven years of prison mayor to twelve years and one day of reclusion temporal, and to indemnify the heirs of each of said deceased in the sum of P1,000 (G. R. No. 41358 [1] of this court, and criminal case No. 4068 of the Court of First Instance of Leyte).

Having been subjected to a more extensive investigation after the discovery of the bones which could be no other than those of Daniel Constantino, the accused Tomas Layos had to admit, as shown by Exhibit C, that with a bolo, which he had left near the river, he wounded said deceased on the abdomen and on one side, felling him, because while he was taking a bath in the river, said deceased attacked him first, striking him twice with a bolo. He then testified that said Daniel Constantino had so acted because of resentment against him due to his alleged failure for a long time to pay the price of one thousand pieces of rattan which, with no reason whatsoever, Constantino alleged he owed him.

After the necessary charges for homicide for the death of said Daniel Constantino had been filed against the accused, the lower court, giving absolute credit to said Exhibit C, except with regard to the plea of legitimate self-defense alleged therein by said accused, found him guilty of said crime and, without stating whether or not any modifying circumstance had been proven at the trial, sentenced him to the indeterminate penalty of from twelve years and one day to twenty years of reclusion temporal and to indemnify the heirs of the deceased Daniel Constantino in the sum of P1,000. The accused appealed therefrom and his attorney de oficio, upon the five assignments of error relied upon in his brief, now contends that said court erred in imposing said sentence upon

him.

In discussing the errors allegedly committed by the lower court, counsel for the appellant contends that said appellant's guilt was not proven beyond reasonable doubt, alleging that Exhibit C, which has served as a basis for his conviction, is not a voluntary confession, having been obtained through torture and violence.

The entire evidence, however, shows that the appellant was not maltreated by the constabulary soldiers or by anybody else because, on September 28, 1933, when he claims he was maltreated by the soldiers in their quarters and made his admission appearing in Exhibit C, he was not in their custody, either directly or indirectly, having been turned over to the chief of police of Ormoc, Leyte, on the 23d of said month and year, in order to be in the letter's custody and at the disposal of the courts of justice (Exhibit F).

Furthermore, the appellant made said declaration, Exhibit C, before the justice of the peace of Ormoc, in the presence of several persons, and he then failed to state that he had been maltreated by anybody in order to induce or force him to make it. Had somebody maltreated him, nothing could have prevented him from informing the justice of the peace or any other government official thereof, as said justice of the peace could afford him all kinds of protection and furthermore he was entirely free from the influence of the constabulary soldiers. On the other hand, it is unbelievable that the constabulary soldiers or corporal Miralles or any other agent or member of the constabulary would have dared to torture or somehow maltreat him in order to compel him to confess a crime which he did not commit, in the presence of many strangers, as he attempted to prove by his testimony and that of Pascual Villares, because, inasmuch as the commission of an act or acts of maltreatment constitutes an offense, said soldiers would have been more careful not to do so in public but secretly, for in so doing publicly they ran the risk of being denounced and, certainly, the evidence does not show that they have ever been denounced.

The testimony of the appellant's witnesses Bruno Gonzalez and Pascual Villares with whom he claimed he had been working during the whole day of September 23, 1933, and part of the following morning, serves him to no purpose because said witnesses referred to a date different from the one under consideration and stated that they were not certain as to the day on which they worked in the appellant's field inasmuch as, according to their own testimony, they were not familiar with dates, and furthermore because they had contradicted themselves on a certain detail of great importance, to wit: that Bruno Gonzalez claimed that he and Pascual Villares arrived together to work in the appellant's field, while the latter emphatically stated that when Bruno Gonzalez arrived, he and the appellant were already at work.

The next question to be decided is whether the appellant's plea of legitimate self-defense contained in Exhibit C should necessarily be taken into consideration inasmuch as said evidence is relied upon to show that he is the author of Daniel Constantino's death.

In the case of *United States vs. Alano* (32 Phil., 381), this court, citing favorably a decision of the Supreme Court of Spain, dated May 8, 1875, stated as follows:

"The free and frank confession made of a crime by the defendant, containing certain statements of the motive and circumstances which impelled him to commit it, must in strict justice be admitted and considered in its entirety, for the circumstance of immediate provocation alleged in his confession is intimately connected therewith in such wise that the circumstance and the confession form but one complex fact, so that the crime confessed is essentially conditioned by the circumstance alleged, and for this reason the defendant's confession is qualificative, individual and indivisible, when it does not appear that his confession and defense were disproved or invalidated by any contradictory evidence, even circumstantial."

It should be noted that there is no similarity between this case and that of *Alano*. *Alano* testified in his case that he killed his wife because he had surprised her in the act of having sexual intercourse with Martin Gonzalez. No

other evidence, than his own testimony, was presented against him to prove the motive which impelled him to commit the crime, and this was not contradicted in the least by anybody, much less, by himself. In this case the accused made his declaration, Exhibit C, wherein he admits having killed Daniel Constantino, stating at the same time that he acted in self-defense, long before the opening of the trial. However, upon testifying in his behalf at the trial which took place four months later, he entirely changed his defense by abandoning that of having acted in legitimate self-defense. On that occasion, he pleaded an alibi which he failed to prove, and made efforts to show that his declaration, Exhibit C, had been obtained through torture and violence.

The rule that a confession should be admitted and considered in its entirety, whether a part thereof be favorable or unfavorable to the accused, stated in general terms in the above cited case of Alano, should not be taken as absolute in all cases as there may be instances, and in fact there are some instances, where only a part of confessions or admissions of the nature of Exhibit C herein is admissible, rejecting the rest by reason of the improbability of the facts or statements therein contained, or because there are other reasons or facts showing that said portion is false or making it unworthy of credit. This seems to be clear because it is the natural tendency of every transgressor, with perhaps very rare exceptions, to acquit himself, while he can do so, from all liability that might arise from his act, or at least mitigate it in the eyes of the law and of those of his fellow men.

The same rule exists in American jurisprudence but it does not require that when a confession, which, at the same time contains a defense, is presented in evidence, said defense must necessarily be taken into consideration.

In the various cases cited in the American Law Reports Annotated, originating from the various States therein enumerated, the following has been said:

"General Rule.

"In the proof of confessions, the whole of what the accused said on the subject, at the time of making the confession, should be taken together. The prosecution is entitled to show the whole statement, or, if any part is omitted, the accused is entitled to supply it." (2 A. L. R., 1017.)

"It is well settled that, if a confession is made under such circumstances as to authorize its admission in evidence, the accused is entitled to have the entire conversation, including any exculpatory or self-serving declarations connected therewith, also admitted. However, it is for the jury to say what weight shall be given to the several parts of the statement, as they may believe that part which charges the prisoner, and reject that which tends to exculpate him." (2 A. L. R., 1022.)

In the case of *Mortimore vs. State* (24 Wyo., 452; 161 Pac., 766), it was stated that " * * * when a confession is offered and admitted, the defendant is entitled to have all that was said at the time introduced in evidence, including exculpatory statements, and that a statement directly involving guilt does not lose its character as a confession from the fact that it was accompanied by statements of an exculpatory nature seems to be conceded or recognized in the many cases applying the rule as to confessions to such statements, without referring to the distinction between a mere admission and a confession. The jury may believe the inculpatory statement and disbelieve what the defendant said on the same occasion in his own favor. * * *."

In the case of *Brown vs. Commonwealth* (9 Leigh [Va.], 633; 33 Am. Dec., 263), the following was held;

"When the confession of a party, either in a civil or criminal case (for the rule is the same in both), is given in evidence, the whole, as well that part which makes for him as that which is against him, must be taken together and go to the jury as evidence in the case. But, like other evidence, it must be weighed, and believed or disbelieved, in whole or in part, as reason may decide. The jury can not, by a mere arbitrary exercise of the will, take a part to be true, and reject the residue. If, therefore, there be nothing in the case warranting such a discrimination, the whole must be taken to be true."

In the case of *State vs. Curtis* (70 Mo., 594), the following was likewise stated:

"In considering what the defendant said after the fatal stabbing, the jury must consider it all together. The defendant is entitled to the benefit of what he said for himself, if true, as the State is anything he said against himself in any conversation proved by the State. What he said against himself in any conversation the law presumes to be true, because against himself; but what he said for himself the jury are not bound to believe because said in a conversation proved by the State; they may believe or disbelieve it as it is shown to be true or false by all the evidence in the case."

And in that of *Griswold vs. State* (24 Wis., 144), it was held:

"Where one part of a statement inculcates the defendant, and another would excuse him, the whole statement must be considered by the jury; but they are not bound to give equal credit to both branches of the statement, but, if the other evidence requires it, the jury may believe the confession of guilt, and reject that part of the statement exculpating the accused."

This court has adopted the same criterion in the cases of *United States vs. Gavarlan* (18 Phil., 510), and *People vs. Diaz* (59 Phil., 768), stating in the former, as follows:

"As a general rule, part of a confession can not be admitted and the rest rejected, unless there are proofs in the record that would justify such a course."

In order that the appellant's plea of having acted merely in legitimate self-defense, which is alleged by him in Exhibit C, may now be taken into consideration, it was necessary for him to prove it at the trial but he failed to do so. On the contrary he himself abandoned it by setting up an entirely new defense undoubtedly because he knew that his former defense was not true. When an accused retracts by repudiating his declaration wherein he admitted having committed the crime with which he is charged and pleaded an apparently good defense, and later sets up another entirely different defense which he fails to prove, the former defense is necessarily rendered useless thereby leaving valid only his admission of having committed the crime. The reason for this is that a criminal ordinarily resorts to falsehood and to lies in order to defend himself, while, on the contrary the innocent relies absolutely upon the support and backing afforded by pure truth. One who considers himself innocent has nothing to fear by telling the naked truth because this is his most effective weapon of defense.

If the appellant truly acted in self-defense, there was no reason for him not to have stated said fact upon testifying at the trial, much less to have resorted, as he did, to falsehood, by attempting to prove a useless alibi, and furthermore, unjustly charging those who heard the confession, Exhibit C, with having annoyed, maltreated and tortured him.

The question should therefore be decided in the affirmative, that is, in the appellant's case, only that part of his confession, Exhibit C, wherein he admits having killed Daniel Constantino should be accepted, rejecting that part wherein he alleges having committed said act in self-defense. This court cannot give credit to said defense of the appellant because if it were true that he was attacked by the deceased Daniel Constantino while he, then in the water, was at a very much greater disadvantage with respect to the deceased, he should have been able to show some wound or injury or any other trace thereof, and furthermore, he would have been able to produce the bolo with which, he claims, the deceased had attacked him. On the other hand, the fact that he had abandoned said defense at the trial clearly proves that he was convinced that such thing never took place.

In the case of *People vs. Conroy* (97 N. Y., 62), wherein those of *United States vs. Randall* (Deady, 524); *State vs. Reed* (62 Me., 129); and *Commonwealth vs. Goodwin* (14 Gray, 65), have been cited, the following was held :

"The resort to falsehood and evasion by one accused of a crime affords of itself a presumption of evil intentions, and has always been considered proper evidence to present to a jury upon the question of the guilt

or innocence of the person accused."

In view of the proven facts and of the foregoing considerations, this court arrives at the conclusion that the appellant is guilty of the crime with which he was charged and, it appearing from the record that he lacks instruction, this mitigating circumstance should be taken into consideration in his favor, all the more so because it is compensated by no aggravating circumstance, for which reason the penalty which should be imposed upon him is the minimum of that prescribed by the law, that is, twelve years and one day of reclusion temporal.

Wherefore, the appealed judgment is modified by sentencing the appellant to twelve years and one day of reclusion temporal; and pursuant to the provisions of Act No. 4103, the minimum of said penalty is fixed at seven years, affirming said appealed judgment in all other respects, with costs against the appellant. So ordered.

Avancena, C. /., Street, Malcolm, Villa-Real, Abad Santos, Hull, Vickers, Imperial, and Goddard, JJ., concur.

[1] P. 224, ante.

CONCURRING

BUTTE, J.,

I fully concur in the foregoing decision. The defendant has been convicted in accordance with law. However, there is one circumstance that I think should be mentioned. Though his counsel de oficio made no plea of insanity, the defendant's irrational acts and fantastic testimony indicate the possibility that he is a paranoiac. The record also indicates that he has a local reputation of being "loco." If he is, he will be a menace to his prison guards and his fellow prisoners. Prudence and humanity seem to require that he should be given a prompt psychiatric examination by the proper authorities.

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