

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PABLO RAYMUNDO ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4947. November 11, 1909*

Ponente: CARSON, J.

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Several months after judgment was rendered in this case in the court below, counsel submitted to this court a motion for a new trial on the ground of newly discovered evidence. Upon this motion final ruling was reserved, in accordance with the practice uniformly followed heretofore, pending our review of the whole record after submission of the appeal upon its merits.

A number of affidavits were submitted in support of the motion, whereby counsel for appellants undertake to establish their contention that upon a new trial, newly discovered evidence can, and will be introduced, which, if it does not conclusively establish the innocence of the appellants of the crime of which they have been convicted, will at least raise a reasonable doubt as to their guilt. This evidence consists; First, of a sworn retraction by the principal witness for the prosecution, Juliana Gutierrez, of her testimony given at the trial, which she now states, under oath, was false in every essential particular, and given at the trial under the inspiration of Captain Crame, a police officer, who forced her to testify as she did by the use of threats and violence; second, of the sworn statement of this witness that she saw the defendant Pablo Raymundo being maltreated by a police officer for the purpose of compelling him to make the confession of his guilt which was offered in evidence at the trial; third, of evidence tending to disclose that the deceased had an engagement with a certain woman of ill-repute on the night when he came to his death, and that had he undertaken to keep this engagement, he would not and could not have been in the place where the prosecution alleges, and the findings of the trial court declare he was, when he was murdered; and fourth, of evidence as to conditions existing in and around the place where the dead body was found, and of the absence of blood in the yard of the house of the defendant Arcangel, which in the opinion of counsel for the appellants sustains their contention in the court below that the deceased could not have been done to death in the house of Arcangel, and the dead body after-wards carried to the place where it was found, as alleged by the witnesses for the prosecution and set out in the findings of fact by the trial court.

The Solicitor-General opposed the motion for a new trial on the ground that only one of the affidavits upon which it is based discloses the existence of newly discovered evidence which could not have been discovered and submitted in the court below by the exercise of due diligence on the part of the appellants and their counsel; and because the alleged newly discovered evidence is not evidence which if it were submitted on a new trial would necessarily, or even probably change the result arrived at in the original proceedings.

We are satisfied that no amount of diligence on the part of the appellants, or their counsel, could have secured the retraction of the testimony of Juliana Gutierrez in time to take advantage thereof in the court below; and, while it is true that most if not all of the other affidavits set out alleged facts which, if true, might perhaps have been developed during the trial by the exercise of due diligence, we would not be disposed to apply, in all their rigor, the, technical rules touching the granting of new trials on the ground of newly discovered evidence, in a case

involving the imposition of the death penalty, if in our opinion, the evidence submitted were such that if introduced upon a new trial it would probably and properly result in an acquittal. As we understand it the granting or denial of a motion for a new trial on the ground of newly discovered evidence lies in the sound judicial discretion of the court to which it is directed to be determined as the interests of justice may demand, when the movements have brought themselves within the well-known rules governing the submission of such motions; but the state being not less, interested than the individual accused of a crime in his acquittal if he is innocent, these rules should be construed and applied with marked liberality in cases, such as that under consideration, wherein the life of an accused person is at stake.

We have, therefore, directed our attention to the contents of the affidavits submitted in support of the motion, more especially with a view to determine whether a different result would and should be arrived at, if on a new trial, in accordance with the practice heretofore adopted by this court, the record were returned to the court below with instructions to reopen the different cases against the appellants, and take the evidence of all the affiants in support of the motion for a new trial, and such other and additional evidence as the reopening of these cases might render proper and necessary.

Without attempting to enter upon an exhaustive comparative analysis and review of the voluminous record brought here on appeal, examined together with the alleged facts developed by the affidavits submitted by the movents, we might summarize our conclusions as to the probative value of the facts alleged by the various affiants, other than Juliana Gutierrez, by saying that, assuming that the record before us contained the testimony of these witnesses to the precise facts set out in their affidavits, such evidence could not and should not change or modify our conclusions as to the guilt of the appellants.

The mere fact, if it be a fact, that the policeman Delgado had an engagement to meet a woman of ill repute after going off duty on the night on which he was murdered, is in itself of small probative value, if indeed it can be said to have any value whatever, in rebuttal of direct evidence to the fact that immediately after being relieved, he went into a house just off his beat, to talk with and to be entertained by Juliana Gutierrez, or perhaps merely to rest for a little while after the labors of the day—and it is chiefly, if not solely for this purpose, that the affidavits touching this alleged engagement are submitted.

So the negative testimony contained in the statements of the affiants who say that on the morning after the murder they did not observe any traces of blood in the yard of Arcangel through which the trial judge held that the dead body of the policeman was carried to the place where it was found, has but little weight in rebuttal of the testimony of an eyewitness to the incident, substantially corroborated as it is as to one, at least, of the defendants by his extra-judicial confession and admissions, and indirectly corroborated as to all by the testimony of the witnesses who testified affirmatively to the discovery of unexplained traces of blood on the floor of the room in the house of the defendant Arcangel where the trial judge found the murderous attack was made, and on the stairs and path leading therefrom in the direction of the place where the body was found; and this, more especially, because at the time when they allege they were at the scene of the crime on the morning after it was committed, none of them had any reason to suspect that the deceased had not been done to death where he lay, so that the fact that they did not observe traces of blood along the route over which later developments tended to disclose that the dead body had been carried, is in nowise remarkable.

For similar reasons the opinion of the affiant McGraw that the crime was committed at or near the place where the body was found, which appears in his affidavit dated more than a year after the crime was committed, is of but little value. It was based on observations made by him on the morning after the crime was committed, at the place where the body was found, to which he appears to have been attracted by the mere idle curiosity of a passerby. He had at that time no reason to believe that the policeman had not been killed while on duty on his beat, and under

the circumstances it is not to be supposed that he made a very careful investigation for the purpose of determining whether this was true or not. In support of his opinion he says, first, that he saw no traces of blood leading away from the scene of the crime; second, that when the body was moved the flow of coagulated blood from the wounds in the throat indicated that before that time there had been no great exterior loss of blood from these wounds, from which affiant inferred that the body had not been moved after the death wounds had been inflicted; and, finally, he says that he noticed that the grass was trampled down at a point very near the place where the body lay, in such a way that affiant came to the conclusion that the deceased and his aggressors had had a struggle there.

We have already stated that in our opinion, negative testimony as to the presence of a trail of blood leading to the place where the body was found, submitted by witnesses who made their observations at a time when they had no reason to suspect that the deceased did not come to his death at the place where his body was found, is of but little probative value; and it is worthy of observation that if this affiant's inexperienced and unscientific opinion that the deceased had not suffered a heavy exterior loss of blood before he was abandoned at the place where his body was found is correct, this fact would in itself partially account for the failure of the different affiants to notice a trail of blood leading to the house of Arcangel, where the crime was committed.

As to the trampled-down grass, it is to be remembered that from his own statement it appears that affiant was not the first person on the scene of the crime, and that the evidence discloses that a number of persons had preceded him in examining the body where it lay, so that the condition of the grass which he undertakes to recall and describe in his affidavit, may well have been the result of the presence of these onlookers, or it may have been caused by those who carried the dead body of the deceased as they stood for a moment preparatory to laying or throwing it on the ground. And whatever be the correct explanation of the alleged facts set out in the statement of this affiant, as distinguished from his opinion which was formed originally under conditions which render it improbable that such opinion could afford a safe guide even were it admissible as evidence, we do not think that these facts are necessarily in conflict with the material facts developed by the witnesses for the prosecution at the trial.

The statement of Juliana Gutierrez that she saw the defendant Pablo Raymundo being maltreated by a police officer for the purpose of compelling him to make the confession of his guilt which was offered in evidence at the trial is entitled to but scant consideration in ruling upon this motion for a new trial. If her testimony at the trial was true, nothing contained in her affidavit is worthy of credence; and if, as she alleges, all her evidence at the trial was false, no new fact set out in her affidavit can be taken as proven upon the testimony of such a witness. The fact alleged in the particular statement under consideration was contradicted and denied by the various witnesses who were present when Raymundo's confession and admissions were taken, and the trial court after hearing these witnesses testify and upon mature consideration of the testimony of Raymundo himself, held that they were made "voluntarily and without compulsion or inducement;" and in our opinion this finding is fully sustained by the evidence of record. We are not unaware of the possibility and even probability that an overzealous police officer may at times succumb to the temptation to use undue methods in extorting confessions and admissions from persons suspected of the commission of grave offenses, and we are fully alive to the necessity for the most painstaking scrutiny in weighing evidence relating to alleged voluntary confessions made to police officers; but the evidence as to the voluntary character of the confessions and admissions made by this defendant is so conclusive that it can not be put in doubt by an affidavit such as that submitted by Juliana Gutierrez, and indeed the detailed and specific character of the confession and admissions under consideration tends strongly to negative the suggestion that they were extorted by the use of physical violence, and it is hardly credible that such a confession of such a crime could be extorted involuntarily from an accused person by the use of such methods as those described by this affiant. For reasons indicated at the outset of this opinion, and in view

of what has just been said, we do not deem it necessary to dwell on the cumulative quality of the alleged newly discovered evidence set out in this particular statement of the witness Juliana Gutierrez—which under a strict application of the rules governing the granting of new trials, would, perhaps, in itself afford a sufficient ground for refusing to take her statement in this regard into consideration upon this motion.

But the sworn retraction by this affiant of all her material testimony given at the trial presents a more serious question, which must be examined and decided from a wholly different standpoint from that adopted in dealing with the statements contained in the affidavits already considered; since if her retraction be accepted as genuine and true, it discloses the existence of newly discovered evidence which would justify and require the reopening of the cases now on appeal, and in all human probability the acquittal of one of the appellants upon whom the court below imposed a long term of imprisonment, and perhaps the acquittal of the two appellants upon whom capital sentences were imposed.

This affiant, Juliana Gutierrez, was the principal witness for the prosecution, and the only eyewitness of the commission of the crime of which appellants were convicted. When first examined by the police, a few days after the crime had been committed, she denied all knowledge of its commission, but upon further examination at the police station and upon learning that the defendants had been arrested, she broke down, and told the whole story of the crime, substantially as she afterwards told it on the witness stand. Later, on the preliminary investigation held by the prosecuting attorney of the city of Manila, she told, under oath, substantially the same story, except that on that occasion she said that the crime was committed on the road in front of and not inside the defendant Arcangel's house, and that Arcangel took no direct part in the commission of the crime. And, now, she declares, under oath, that the whole story was false; and her affidavit, if it could be believed, would tend very strongly to prove that none of the defendants had any part in the commission of the crime.

Counsel for movents, with no small show of reason, urge that the judgment of the court below, based as it is, in large part, on the testimony of this witness, should not be affirmed; and that the records of the various cases against the appellants should be returned to the Court of First Instance, and new trials granted. After a careful review of the whole record, however, we are satisfied beyond a reasonable doubt that the statements made in affiant's retraction are false; that her testimony given in the Court of First Instance was true; and that appellants were properly and justly, convicted upon that testimony, taken together with the other evidence in the record.

At the time when the crime was committed this witness was an ignorant servant girl some 16 years of age. Due to the fact that the defendants were each given a separate trial, she was compelled to tell her story over and over again in open court, on not less than four separate occasions. On each occasion she was subjected to a searching cross-examination by different counsel for the various defendants, some of whom were of her own race and some American. After having told her story on the witness stand, she was taken to the scene of the crime to which the court adjourned, and there again examined and reexamined. In the very nature of the story she told, it could not be developed and was not developed by categorical answers to specific questions, and necessitated the relation by her of a long series of closely connected incidents, so that her testimony in the record occupies nearly one hundred pages of typewritten matter. Throughout the entire proceedings, the trial judge was fully cognizant of the fact that upon the testimony of this witness depended, or appeared to depend the lives of one or more of the accused. He also knew that her story as told at the trial was not altogether in accord with that told at the preliminary investigation; indeed she admitted that fact when she first went on the witness stand, and explained that she had attempted in her statements made before the trial to shield Arcangel, in whose house she lived, and who had threatened to kill her or have her killed if she implicated him. And, yet, the learned and experienced judge who saw and heard her testify, with such exceptional opportunities to form a just estimate of her qualifications and credibility as a witness, was convinced beyond a reasonable doubt of the truth of the story told by her on the

witness stand.

In his decision, the trial judge says that he found no substantial contradictions, in the dramatic account of the incidents of the night in question as related by her, and that he was satisfied that her story was in nowise shaken by the severe cross examinations to which she was subjected; and our examination of the whole record fully sustains his conclusions in this regard, for a careful review of all her testimony given at the various trials in the court below discloses no discrepancies or inconsistencies which tend in the slightest degree to weaken our faith in the genuineness and sincerity of the story told by her on the witness stand. Under all the circumstances, we can not and do not believe that if her account of the crime were false in every material detail as she now alleges, and if her story had been prepared for her as she now pretends, she could have withstood such a series of examinations and cross-examinations without involving herself in some fatal contradiction, and without betraying herself at some time or other to the trained eyes of the judge before whom she testified. Such a feat would be remarkable on the part of a man of mature mind, with large experience in the proceedings in American courts of justice; it is a well-nigh impossible one on the part of an ignorant servant girl but 16 or 17 years of age.

Moreover, as stated in our decision on the merits, her story was corroborated in a number of important details by other evidence of record, and what is not less worthy of observation, it was not successfully contradicted or put in doubt by anything which developed at the trial, either in the testimony of the other witnesses, or by the admitted facts of the case as they appear in the record or as they were disclosed on the view of the scene of the crime by the trial judge; and the extrajudicial confessions and admissions of Raymundo and Arcangel fully and conclusively corroborated every essential detail of the account of the commission of the crime as related by her, and give the lie to her retraction of her testimony submitted with this motion.

Furthermore, an examination of the circumstances under which her various statements were made, and of the alleged motives which actuated her in making them, tends strongly to confirm our belief in the truth of her testimony given at the trial and the falsity of her retraction set out in her affidavit. By her affidavit, she would now have us believe that a police officer, Captain Crame, in his anxiety to secure the conviction of the defendants, induced or rather forced her to testify as she did, by speaking harshly to her, and by the use of violence and maltreatment which she states went to the extent of slapping her on the cheek or side of her head with his hand. It appears that from the time when she had this alleged interview with Captain Crame until after the trial, she lived in one of the convents of this city, and that during that time she was brought before the prosecuting attorney of the city in the course of the preliminary investigation held by that officer. Ignorant, as she undoubtedly was, it is difficult to believe that her interview with the police officer and the alleged violence of his behavior on that occasion could have so dominated and controlled her will that neither in the seclusion of the convent, nor in the prosecuting attorney's office, nor in the trial court does she appear to have made any complaint, nor told anyone what had happened, although she must have known that her testimony given at the trial would in all probability result in bringing to the gallows her friend and relative in whose house she had lived, and perhaps her three other personal friends one or two of whom were her admirers or lovers. On the other hand her statement at the trial that the accused or their friends had threatened to kill her if she testified against them, which she made in explanation of the fact that she had asked to be committed for her own personal security to a convent, explains satisfactorily her original reticence and hesitation in giving information against the accused, and also suggests an explanation of her extraordinary conduct in submitting the affidavit retracting her testimony given at the trial. Two other witnesses in the court below, who testified to the presence of some of the accused near the scene of the crime at about the time it was committed, swore that they had been threatened with sudden death if they told what they knew, and we see no reason to doubt the statement of Juliana Gutierrez on the witness stand that she also was threatened in like manner; and keeping that fact in mind, and also keeping in mind the fact that all the accused were her former friends and associates, we are strongly convinced that the trial being ended and this poor ignorant

woman having apparently passed out of the protection and guardian care of the court, she was led to make her retraction of her testimony at the trial by the exercise of some such undue influences as were undoubtedly at work in an unsuccessful effort to prevent the introduction of damaging evidence against these appellants at the trial.

In conclusion, we may add, that even if it were admitted that this affiant's retraction were sufficient to cast a doubt upon the truth of her testimony in the court below, any testimony which she might give on the reopening of the trial in the court below would be equally unworthy of belief. If her testimony given at the former trial is unworthy of credence, no new testimony which she might give on a new trial would merit the slightest consideration. The result would necessarily be that the trial judge would be compelled to decide the case on the record substantially as it stands, striking out therefrom all the testimony of this witness; and in our opinion the evidence left in the record, while it would not be sufficient to sustain the conviction of the appellant Gutierrez (who was sentenced to imprisonment), would be wholly sufficient to sustain the conviction of the appellants Raymundo and Arcangel, upon whom death sentences were imposed, their extrajudicial confessions and admissions establishing their guilt as found by the trial court beyond a reasonable doubt.

And it may be well to add further, that in seeking to ascertain the truth or falsity of the statements contained in the retraction of her testimony in the court below by the affiant, Juliana Gutierrez, we have not limited ourselves to a review of the record in any one of the separate trials in the court below, partly because the motion for a new trial together with this affidavit was submitted jointly in behalf of all the appellants, but chiefly because this motion being directed to the sound discretion of the court, the question of the truth or falsity of this affiant's retraction justifies and requires a review of the whole record before us, the fact that separate trials were granted in the court below in nowise limiting the breadth of the inquiry.

Convinced as we are of the falsity of the statements contained in the retraction of her testimony by this affiant, and of the immateriality of the evidence set out in the statements of the other affiants, it is clearly our duty to deny the motion under consideration and it is so ordered.

Arellano, C. J., Torres, Mapa, and Moreland, JJ., concur.

DECISION UPON THE MERITS.

CARSON, J.:

On the morning of the 17th day of January, 1908, a dead body was found in a zacate field close by a narrow Jane running off Calle Panaderos in Santa Ana, and within the jurisdictional limits of the Court of First Instance of the city of Manila. Upon it were two or three wounds in the throat and neck, and one in the abdominal region. The medical officer who examined the body about half past 8 on the morning of the day when it was found was of opinion that death had resulted from the wounds inflicted in the throat and neck, and that it must have occurred some seven or eight hours prior to the autopsy. The body was identified as that of a policeman named Vicente Delgado, who on the day prior to his death was on duty in precinct No. 16, Paco district, in the city of Manila, from 3 o'clock in the afternoon until 44 minutes after 10 that night, his precinct including Calle Panaderos, off which the body was found.

Four persons, Pablo Raymundo, Felix Arcangel, Lorenzo Gutierrez, and Apolonio Leyva, were charged with the assassination of the deceased in an information filed by the prosecuting attorney of the City of Manila, which reads as follows:

"As a result of a preliminary investigation previously made by the undersigned, prosecuting attorney of the city of Manila, Philippine Islands, in compliance with the provisions of section 39 of Act No. 183 of the United States Commission in the Philippine Islands, and its amendments, the undersigned, prosecuting attorney of the

city of Manila, files an information against Pablo Raymundo, Apolonio Leyva, Lorenzo Gutierrez and Felix Arcangel and against each of them, charging all and each of them with the crime of assassination committed as" follows:

"That on or about the 16th day of January, 1908, in the city of Manila, Philippine Islands, the said Pablo Raymundo, Lorenzo Gutierrez, Apolonio Leyva, and Felix Arcangel and each of them, by conspiring, confederating and cooperating between them, did willingly, illegally, and criminally, with known premeditation, treachery and malice aforethought at nighttime and in an uninhabited place, murder, kill and treacherously deprive of his life a certain Vicente Delgado, by surprising him perfidiously, and suddenly attacking him and wounding him with their poniards and other deadly and dangerous weapons, to wit, knives and bolos, while the said Vicente Delgado was laying in bed, late at night, and then and there inflicted several cuts, stabs, and mortal wounds in the neck and throat and on the body of the said Vicente Delgado with said deadly and dangerous weapons, in consequence of which he died. All contrary to law."

The defendants were tried separately, and Raymundo and Arcangel were convicted as principals, and Gutierrez and Leyva as accomplices of the crime of assassination, marked with the aggravating circumstances of deliberate premeditation and nocturnity. Raymundo and Arcangel were sentenced to death and Gutierrez and Leyva to seventeen years and four months' cadena temporal (imprisonment), together with the accessory penalties prescribed by law. All the convicts appealed except Leyva, as to whom, of course, the judgment of the lower court has become final.

The testimony of the principal witness as to the manner in which the deceased came to his death was succinctly and accurately summarized by the trial judge in his decision as follows;

"Juliana Gutierrez testified that she first met the deceased two days before his death and again the next day, and that as a result of the last interview she arranged to meet him on the evening of the 16th at Arcangel's house, where for some time she had been sleeping, being employed during the day as a domestic in the home of Mr. Squires, whose house is near Arcangel's. She says that when she went to the latter on the night in question she met the deceased at a police alarm box not far from the house and entered, passing Arcangel himself, who was outside cooking; that, shortly afterward the deceased himself came in and after a brief conversation, stating that he was tired, lay down on the floor, with his head toward a window facing the road, and his feet toward the door; that very soon after, three of the accused, Gutierrez, Leyva and Raymundo, entered the house, the first placing his knee on the stomach of the deceased, the second seizing his left arm, and the third his right; that Raymundo stabbed the deceased in the neck with a sharp pointed instrument which he had in his possession, and that Arcangel then came in from outside, took two bolos from the side of the house and stabbed the deceased in the neck, giving the other bolo to Gutierrez, who stabbed the deceased in the abdomen; that the deceased soon expired and that all four' carried him out of the house and laid him first under a tree in the yard and waited while Gutierrez went out to the road to see if the coast was clear, and finding it so, reported to the others, and all then carried the body outside to the zacate field, where it was found; that subsequently they returned, procured several buckets of water and washed the floor, which had been stained with blood, changed their clothes, threatened her with death if she revealed what she had seen, when all but Arcangel departed."

The testimony of this witness as to the amorous attentions paid her by two of the accused, Raymundo and Gutierrez, and by a municipal policeman, named Antonio Montealegre, who preceded the deceased in the precinct in which he was on duty on the night of the murder, tends to disclose, but not conclusively, a motive for the crime, in the jealousy which may have been aroused in the minds of her other suitors by her favorable reception of attentions from the municipal policeman.

Her testimony as to the manner in which the deceased was murdered and as to the connection of the accused with the commission of the crime is corroborated by independent evidence of the fact that all four of the accused were

in the immediate vicinity of the scene of the crime at or about the time that it was committed; by the discovery of blood stains upon the floor of Arcangel's house at or about the place where she stated the crime was committed; by the location of the wounds upon the body of the deceased, which was such as to justify the inference that they were inflicted while Delgado was in a recumbent position; by the fact that, although the underclothes of the deceased were cut by the assassin's knives or bolos, his uniform was not injured, which renders it probable that he was off duty with his jacket thrown open when the murder was committed; and by evidence that cries were heard coming from the direction of the house of Arcangel at or about the time when she alleges the crime was committed, followed by loud barking of dogs, which she stated broke out immediately after the accused left the house with the body of the deceased: and her story is indirectly corroborated, by the fact that none of the details of the crime minutely and at length described by her were put in doubt by the ocular examination of the scene of the crime by the trial court, or by the evidence as to the conditions existing there on the night when it was committed, and on the following morning when the police discovered the body.

As to the defendant, Raymundo, her testimony is conclusively corroborated by an extra judicial confession made by him in the presence of several police officers after he was arrested, wherein he gave a detailed account of the commission of the crime substantially identical with that given by Juliana; this confession disclosing, furthermore, that the murder was the result of a conspiracy between this accused and others, which had been in existence some ten days prior to the commission of the crime, and which had for its object the killing of a municipal policeman whose attentions were favorably received by Juliana.

As to the defendant, Arcangel, her testimony is substantially corroborated by his extrajudicial admissions and self-incriminating statements made after his arrest, wherein he admitted having participated in the commission of the crime and having struck one of the blows inflicted by the attacking party, although he insisted, (manifestly for the purpose of extenuating the criminality of the part taken by him) that the crime was committed on the street outside his house, and that he struck the deceased in the abdomen and not in the throat, as testified by Juliana. This accused at first denied having participated in the commission of the crime, but upon his confrontation with Raymundo in the police station, a dispute arose between them, in the course of which they charged each other with having inflicted the fatal wounds in the neck and throat of the deceased, each insisting that he himself struck the blow in the abdomen which was not supposed to be fatal. The admissions of this defendant also disclose his guilty connection with the conspiracy to kill the municipal policeman whose attentions to Juliana were resented by the murderers, at least as far back as 2 o'clock in the afternoon of the day upon which the crime was committed.

There is also evidence in the record—the testimony of the witnesses Gabriel and Dullavin—which tends to disclose the guilty knowledge of Raymundo, Leyva and Gutierrez of the commission of the crime, almost immediately after it had taken place, and an effort on their part to conceal the fact that they had been in the vicinity at that time; but the judgment of conviction in the court below rests substantially on the testimony of the witness Juliana Gutierrez, corroborated as to Raymundo and Arcangel by their respective extrajudicial confessions and admissions.

We agree with the trial judge, that "the explanations of the accused are not sufficient to shake one's confidence in the story of Juliana;" and that the testimony of the witnesses called on behalf of the different defendants is wholly unworthy of credit or belief.

Accepting the testimony of Juliana Gutierrez as true, as did the trial judge, there can be no reasonable doubt as to the guilt of all the accused as principals of the crime of assassination, since it is very clear that all of the accused took "a direct part in the execution of the act," and that it was committed with "alevosia" (treachery), that is to say, that means were employed which tended directly and specially to insure the execution of the crime without

risk to the person of the criminals arising from any defense which might be made by the injured party. (Arts. 10, 13, and 403, of the Penal Code; 1 Phil. Rep., 331[1]; 2 Id., 54,[2]; 102[3]; 3 Id., 112,[4] 260,[5] 728[6]; 6 Id., 480, 483[7]; 11 Id., 56[8].)

The trial judge was erroneously of opinion that Leyva and Gutierrez were merely accomplices, basing his opinion on his finding that "the sole part which Leyva is shown to have taken in the act was to hold the right arm of the deceased while the others stabbed," and that Gutierrez "is shown to have used a smaller bolo and stabbed the deceased in the right side of the abdomen," inflicting a relatively small wound, which the medical expert was of opinion was not of importance; these being in the opinion of the trial judge acts which were not of such a nature that the crime "could not have been accomplished" without them. But it is to be observed that not only are "those who cooperate in the execution of the act by another act without which it could not have been accomplished" guilty as principals, but also "those who take a direct part in the execution of the act," and clearly both Leyva and Gutierrez took a direct part in the commission of the assassination as it was described by the eyewitness upon whose testimony they were convicted. (Art. 13, Penal Code; 3 Phil. Rep., 89[(1)]; 11 Phil. Rep., 150,[(2)] 225.[(3)])

It appears furthermore from the extrajudicial confessions and admissions of Arcangel and Raymundo that the crime was committed by them with deliberate premeditation; but these extrajudicial confessions and admissions being clearly inadmissible as evidence against their co-accused, for the purpose of showing the existence of deliberate premeditation (not having been made during the life of the alleged conspiracy, and there being no other evidence in the record of the existence of a conspiracy for any length of time prior to the commission of the crime), the finding by the trial court that the crime as committed by the third appellant Gutierrez was marked by this aggravating circumstance can not be sustained, the record containing no other evidence whatever of his connection with the attacking party prior to the time when the crime was actually committed.

Each of counsel for the various appellants submits a large array of assignments of error, all of which, however, may for convenience be summarized as follows and discussed together:

First. The trial court erred in compelling the defendants to proceed to trial without giving them the benefit of a preliminary trial.

Second. The trial court erred in denying to the accused the right to a separate trial.

Third. The trial court erred in admitting testimony touching the alleged extrajudicial confessions and admissions of Raymundo and Gutierrez.

Fourth. The trial court having admitted evidence as to these confessions and admissions erred in taking them into consideration in weighing the evidence as to the coaccused of the parties who are alleged to have made them.

Fifth. The trial court erred in admitting the testimony of witnesses when the accused had no opportunity to confront and cross-examine.

Sixth. The trial court erred in taking into consideration the testimony of certain witnesses, taken during the separate trials of some of the accused, as to their coaccused, although such testimony was not repeated in the separate trials given to the latter.

Seventh. The trial court erred in writing a joint decision against all and each of the defendants, despite the fact that the evidence was submitted as to each defendant in a so-called separate trial.

Eighth. The trial court erred in accepting the testimony of the witnesses for the prosecution as true.

Ninth. The trial court erred in convicting the defendants of the crime of assassination and imposing the death

penalty upon Raymundo and Arcangel and seventeen years, and four months of cadena temporal upon Gutierrez.

In answer to the first assignment of error it is sufficient to point out that, as appears from the above-set-out copy of the information, the accused were brought to trial in the Court of First Instance of Manila upon an information based upon an investigation of the facts by the prosecuting attorney, in accordance with the provisions of section 39 of Act No. 183, amended by section 1 of Act No. 612 of the Philippine Commission, and were not, therefore, entitled, as of right, to any other or further preliminary trial or examination. (U. S. vs. Wilson, 4 Phil. Rep., 317; U. S. vs. McGovern, 6 Phil. Rep., 621.)

The second assignment of error is completely disposed of by an examination of the voluminous record which clearly discloses that each of the defendants was in fact given a separate trial, the trial judge on various occasions calling the attention of counsel to this fact, and throughout the proceedings exercising marked precautions to secure to each of the accused the full and complete enjoyment of his right in this regard. The record of the trial of the appellant Pablo Raymundo will be found under its proper title, separate and apart, on pages 2 to 230 of the joint record in the court below (English version) ; the record of the trial of the appellant Felix Arcangel, on pages 231 to 397 of that joint record; and the record of the trial of the appellant Lorenzo Gutierrez, on pages 398 to 450 thereof. And while it is true that by agreement of counsel and with the consent of the accused under advice of counsel, "the testimony of the witnesses for the prosecution together with the cross-examination thereof" taken on the trial of Arcangel was received in evidence in the separate trial of Gutierrez, counsel for Gutierrez reserving and exercising the right to recall and cross-examine these witnesses and further to introduce such evidence for the defense as he saw fit, it is manifest that the mere admission by consent or otherwise of a portion of the record in one criminal case on the trial of another criminal case, is in nowise equivalent to the trial of those cases together.

The third assignment of error is based on counsel's contention that the alleged extrajudicial confessions and admissions of Raymundo and Arcangel were not voluntary and therefore under the provisions of section 4 of Act No. 619, not competent evidence. It is alleged that these defendants were subjected to cruel and abusive treatment by the police to compel them to make these statements. But the record discloses that Arcangel did not introduce any testimony for the purpose of rebutting the testimony of the witnesses for the prosecution who swore to the contrary; and there is not a scintilla of evidence in the record of his separate trial which even tends to put in doubt the truth of the testimony of the witnesses for the prosecution as to the voluntary admissions made by him, although these admissions taken together with the testimony of Juliana Gutierrez establish his guilty participation in the commission of the crime beyond a shadow of a doubt. And the evidence of record establishes beyond a reasonable doubt the falsity of the allegations of Raymundo that certain scars which he exhibited during the course of the proceedings were the result of maltreatment at the hands of the police, it having been conclusively proven that the injuries which produced these scars were received in a fight in which Raymundo took part prior to his arrest. We are satisfied that the overwhelming weight of the testimony establishes affirmatively the contention of the prosecution that these extrajudicial confessions and admissions were made voluntarily, and therefore that they were competent and admissible evidence against the defendants who made them.

As to the fifth assignment of error based on the alleged denial of the right of the accused to confront and cross-examine the witnesses called by the prosecution, which it is said was a necessary consequence of the fact that by agreement of counsel and with the consent of the accused, a part of the evidence taken in the trial of Arcangel was admitted on the trial of Gutierrez, it might be sufficient answer to cite the decision of this court in the case of United States vs. Anastasio (6 Phil. Rep., 413), wherein after an exhaustive discussion of the authorities, it was held that "the right to be confronted with the witnesses in a criminal prosecution, as guaranteed by section 5 of the Act of Congress of July 1, 1902, is a personal one and may be waived." But it is worthy of observation that the accused having been given the privilege of recalling and cross-examining the witnesses

whose testimony was admitted under the agreement, and the chief purpose of confrontation being to secure the opportunity for cross-examination (Greenleaf on Evidence, Vol. I, par. 163), appellant's substantial rights can not be said to have been prejudiced by the stipulation of which he now complains, which was entered into under the advice of counsel, in open court, and for reasons then considered sufficient by himself and his counsel.

We have heretofore held in the case of *United States vs. Fernandez et al.* (9 Phil. Rep., 269) that "when two or more defendants are charged in the same complaint and demand separate trials, the fact that the court rendered but one judgment, with separate findings of fact, is not reversible error, in the absence of timely objection;" and where various defendants are charged in a single complaint or information with the commission of the same offense, we know of no provision of law which imposes upon the trial judge an obligation to set out his reasoning and to make his findings of fact and of law in separate opinions as to each of them, merely because they have been granted separate trials; we do not understand that in such cases the substantial rights of any of the defendants are in anywise prejudiced thereby, provided that the findings of fact and the conclusions of law based thereon as to each separate defendant are clearly set out, in such manner that they may be reviewed on appeal, separately and apart from the findings touching his codefendants in, the complaint or information. The right to a separate trial does not necessarily carry with it the right to be charged in a separate complaint or information before the actual trial has begun, or to have the opinion of the court, and the reasoning upon which it is based set out in a separate instrument after the actual trial of the accused has closed. The purpose and object of the provision of law securing to an accused person the right to a separate trial would not be advanced by a contrary holding; and on the other hand, such a ruling would in many cases impose a wholly unnecessary burden upon the trial courts. In the case at bar, we are of opinion, and so hold, that the trial judge committed no error in handing down his judgment as to each and all of the appellants in a single opinion or decision, the findings of fact and the conclusions of law as to each defendant being stated in such form that they may be considered and reviewed separately, and the rights of each defendant secured to him by the grant of a separate trial not being affected or in anyway impaired thereby. Trial has been defined to be "the examination before a competent tribunal, according to the laws of the land, of the facts put in issue in a cause, for the purpose of determining such issue" (4 Mass., 232), and such an examination of the facts put in issue by the plea of not guilty, entered by or for each of the defendants in this action, was granted to them, and it is clear that it is such a separate examination and no more that is secured to accused persons by the provisions of law as to separate trials in criminal causes.

We have already stated that in our opinion, based on a review of the whole record, the trial judge properly accepted as true the material testimony of the witnesses for the prosecution and properly rejected as unworthy of credit or belief the evidence introduced by the defense, in the separate trials given to the various appellants; and that there is no error prejudicial to the rights of the accused in his conclusions of law based on the facts disclosed by this testimony save his finding of the existence of deliberate premeditation as to Gutierrez; and as a further and extended discussion as to the credibility of the witnesses for the prosecution has been rendered necessary by the motion for a new trial submitted to this court on the ground of newly discovered evidence, it is unnecessary at this time to consider at length the assignments of error in this regard.

As to the contentions of appellants that the trial court improperly took into consideration extrajudicial confessions and admissions of some of the defendants as against their codefendants, it must be admitted that the trial court manifestly erred in this regard, though upon examination, it will be found that the substantial rights of the appellants were not prejudiced thereby. Subsection 6 of section 298 of the Code of Civil Procedure provides that evidence may be given upon a trial "after proof of a conspiracy" of "the act or declaration of a conspirator relating to the conspiracy," and the reason upon which this rule rests renders it as applicable in criminal as in civil trials; it always being understood, however, that "acts and declarations of a conspirator can not be admitted as against a coconspirator, unless such acts were performed or declarations made in aid or execution of the conspiracy," and,

therefore, that "the acts and declarations must occur during the life of the combination, that is after the formation of the corrupt agreement, and before the consummation or abandonment of the object of the conspiracy." (8 Cyc, 680, 681, and cases there cited.) Applying this doctrine, it is evident that the trial court erred in finding in the extrajudicial confessions and admissions of Raymundo and Arcangel corroboration of the evidence introduced in the separate trial of their coaccused in the joint information, and proof of the existence of deliberate premeditation in the commission of the crime by the appellant Gutierrez. That he did so seems clear from the fact that except as it appears from these confessions and admissions there is no evidence in the record of the existence of a conspiracy, or of the connection of Gutierrez therewith, for any length of time prior to the commission of the crime, the facts admitted respectively by Raymundo and Arcangel being the only evidence in the record upon which a finding of deliberate pre-meditation could have been based; and also because an examination of the whole opinion, taken together with the following citation quoted therefrom in brief of counsel for Gutierrez, appears to sustain counsel's contention that not only as to Leyva, who is specifically mentioned in the citation, but also as to Gutierrez, the trial court took into consideration the extrajudicial statements made by Arcangel and Raymundo in making findings of fact as to the participation of Gutierrez in the commission of the crime. "Apolonio Leyva is not named among the original conspirators of January 2. But his counsel is in error in stating that there is no testimony directly against him save that of Juliana Gutierrez, for Leyva is mentioned in Arcangel's confession as one of the participants in the affair, and the fact that Leyva is not so mentioned by Raymundo may well be due to the fact that the latter is the former's uncle." But as has already been shown, judgment of conviction of each of the appellants is fully sustained by the competent evidence adduced in each separate trial, without relying upon the testimony touching confessions or admissions by his alleged coconspirators, and this court having amended the finding of the trial court as to the commission of the crime by Gutierrez with deliberate pre-meditation, none of the appellants can be said to be prejudiced in any substantial right by the error of the trial court in this regard, since the findings of fact and the conclusions of law based thereon, (as clearly appears from the reasoning of the opinion of the court below, and from a review of the whole record) would be precisely the same, had the trial judge strictly limited himself to the competent evidence in the record of each separate trial in making the findings of fact disclosed thereby.

As to the contention that the trial court erred in taking into consideration other testimony taken at the trial of some of the accused as against their coaccused who were given separate trials, we think that an examination of the opinion of the trial court shows that it is not well founded. It is true, as pointed out by counsel for Gutierrez, that the trial judge found corroboration of the testimony of Juliana Gutierrez to the effect that the defendant Raymundo wore a gray suit which became smeared with blood in the testimony of the witness de la Cruz as to Raymundo's effort to send a message from the police station to friends outside to destroy certain blood-stained clothing, which was afterwards discovered at his home and introduced in evidence on his trial; and that the testimony of this witness was not taken at the trial of Gutierrez: but it is very clear that the trial judge, who had throughout the trial taken the utmost pains to secure to the various defendants their right to a separate trial, did not intend that his finding based on the testimony of this witness should be taken into consideration as a ground upon which his judgment of conviction of any other accused than Raymundo should rest, although it is also true that he does not expressly say so. And, however this may be, we are of opinion that the findings as to the guilt of Arcangel and Gutierrez are in nowise affected or weakened by the fact, even were it admitted as true, that in convicting them the trial judge had in mind the testimony of De la Cruz taken on the separate trial of Raymundo, as additional corroboration of the truth of the testimony of Juliana Gutierrez.

We find no error in the proceedings prejudicial to the rights of the appellants and we are satisfied beyond a reasonable doubt that the evidence of record establishes their guilt of the crime of assassination as found by the trial court, except that the record discloses the guilt of the appellant Gutierrez as a principal and not as an

accomplice, and fails to sustain the finding of the trial court that the crime as committed by him was marked with the aggravating circumstance of deliberate premeditation.

The judgment of conviction of both and each of the appellants Raymundo and Arcangel as principals of the crime of assassination, marked with the aggravating circumstances of deliberate premeditation and nocturnity, and no extenuating circumstances, should be and is hereby affirmed and the sentences of death together with the accessory penalties prescribed by law, which were imposed upon both and each of these appellants are therefore affirmed, with a proportionate share of the costs of this appeal against each of them.

The judgment of conviction of the appellant Gutierrez of the crime of assassination, as pronounced by the trial court, should be modified by substituting for so much thereof as finds him "guilty as accomplice" a finding of "guilty as principal," and by substituting for so much thereof as declares that the commission of the crime by him was marked with the aggravating circumstances of "deliberate premeditation and nocturnity," a declaration that the only aggravating circumstance which it was proven marked the commission of the crime by this appellant was that of "nocturnity," and thus modified the judgment of conviction of this appellant should be and is hereby affirmed. It appearing that this appellant was less than 18 years and more than 15 years old when the crime was committed, the sentence which should be imposed upon him as a principal in the commission of the crime is that immediately inferior to that prescribed in article 403 of the Penal Code, defining and penalizing the crime of assassination, that is to say, from the maximum degree of presidio mayor to the medium degree of cadena temporal, or from ten years and one day to seventeen years and four months' imprisonment; and since the evidence discloses that the crime committed by him was marked with the aggravating circumstance of nocturnity, and no extenuating circumstances, save that of age, this penalty should be imposed in its maximum degree. The penalty imposed by the trial judge (who while holding Gutierrez guilty merely as an accomplice and finding that he was less than 18 years of age, nevertheless took only one of those facts into consideration in fixing the penalty) was that of seventeen years and four month of cadena temporal, and the sentence imposed by the trial court upon this appellant, Gutierrez, should therefore be, and is hereby affirmed, with his proportionate share of the costs of this appeal against him.

Arellano, C. J., Torres, and Moreland, JJ., concur.

[1] U. S. vs. Rubeta.

[2] U. S. vs. Feria.

[3] U. S. vs. Babasa.

[4] U. S. vs. Santiago.

[5] U. S. vs. Punsalan.

[6] U. S. vs. Tomulac.

[7] U. S. vs. Angeles.

[8] U. S. vs. Salgado.

[(1)] U. S. vs. Bundal.

[(2)] U. S. vs. Estabillo.

[(3)] U. S. vs. Reyes.

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