

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN TENG, DEFENDANT AND APPELLANT.

G.R. No. 7081. September 07, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

This defendant was charged with the crime of rape. The complaint alleged:

"That on or about September 15, 1910, and before the filing of this complaint, in the city of Manila, Philippine Islands, the said Tan Teng did willfully, unlawfully and criminally, and employing force, lie and have carnal intercourse with a certain Oliva Pacomio, a girl 7 years of age."

After hearing the evidence, the Honorable Charles S. Lobingier, judge, found the defendant guilty of the offense of abusos deshonestos, as" defined and punished under article 439 of the Penal Code, and sentenced him to be imprisoned for a period of 4 years 6 months and 11 days of prision correccional, and to pay the costs.

From that sentence the defendant appealed and made the following assignments of error in this court:

"I. The lower court erred in admitting the testimony of the physicians about having taken a certain substance from the body of the accused while he was confined in jail and regarding the chemical analysis made of the substance to demonstrate the physical condition of the accused with reference to a venereal disease.

"II. The lower court erred in holding that the complainant was suffering from a venereal disease produced by contact with a sick man.

"III. The court erred in holding that the accused was suffering from a venereal disease.

"IV. The court erred in finding the accused guilty from the evidence."

From an examination of the record it appears that the offended party, Oliva Pacomio, a girl seven years of age, was, on the 15th day of September, 1910, staying in the house, of her sister, located on Ilang-Ilang Street, in the city of Manila; that on said day a number of Chinamen were gambling in or near the said house; that some of said Chinamen had been in the habit of visiting the house of the sister of the offended party; that Oliva Pacomio, on the day in question, after having taken a bath, returned to her room; that the defendant followed her into her room and asked her for some face powder, which she gave him; that after using some of the face powder upon his private parts, he threw the said Oliva upon the floor, placing his private parts upon hers, and remained in that position for some little time. Several days later, perhaps a week or two, the sister of Oliva Pacomio discovered that the latter was suffering from a venereal disease known as gonorrhea. It was at the time of this discovery that Oliva related to her sister what had happened upon the morning of the 15th of September. The sister at once put on foot an investigation to find the Chinaman. A number of Chinamen were collected together. Oliva was called upon to identify the one who had abused her. The defendant was not present at first. Later he arrived and Oliva identified him at once as the one who had attempted to violate her.

Upon this information the defendant was arrested and taken to the police station and stripped of his clothing and examined. The policeman who examined the defendant swore that his body bore every sign of the fact that he was suffering: from the venereal disease known as gonorrhea. The policeman took a portion of the substance emitting from the body of the defendant and turned it over to the Bureau of Science for the purpose of having a scientific analysis made of the same. The result of the examination showed that the defendant was suffering from gonorrhea.

During the trial the defendant objected strongly to the admissibility of the testimony of Oliva, on the ground that because of her tender years her testimony should not be given credit. The lower court, after carefully examining her with reference to her ability to understand the nature of an oath, held that she had sufficient intelligence and discernment to justify the court in accepting her testimony with full faith and credit. With the conclusion of the lower court, after reading her declaration, we fully concur.

The defense in the lower court attempted to show that the venereal disease of gonorrhea might be communicated in ways other than by contact such as is described in the present case, and called medical witnesses for the purpose of supporting that contention. Judge Lobingier, in discussing that question said:

"We shall not pursue the refinement of speculation as to whether or not this disease might, in exceptional cases, arise from other than carnal contact. The medical experts, as well as the books, agree that in ordinary cases it arises from that cause, and if this was an exceptional one, we think it was incumbent upon the defense to bring it within the exception,"

The offended party testified that the defendant had rested his private parts upon hers for some moments. The defendant was found to be suffering from gonorrhea. The medical experts who testified agreed that this disease could have been communicated from him to her by the contact described. Believing as we do the story told by Oliva, we are forced to the conclusion that the disease with which Oliva was suffering was the result of the illegal and brutal conduct of the defendant. Proof, however, that Oliva contracted said obnoxious disease from the defendant is not necessary to show that he is guilty of the crime. It is only corroborative of the truth of Oliva's declaration.

The defendant attempted to prove in the lower court that the prosecution was brought for the purpose of compelling: him to pay to the sister of Oliva a certain sum of money.

The defendant testified and brought other Chinamen to support his declaration, that the sister of Oliva threatened to have him prosecuted if he did not pay her the sum of P60. It seems impossible to believe that the sister, after having become convinced that Oliva had been outraged in the manner described above, would consider for a moment a settlement for the paltry sum of P60. Honest women do not consent to the violation of their bodies nor those of their near relatives, for the filthy consideration of mere money.

In the court below the defendant contended that the result of the scientific examination made by the Bureau of Science of the substance taken from his body, at or about the time he was arrested, was not admissible in evidence as proof of the fact that he was suffering from gonorrhea. That to admit such evidence was to compel the defendant to testify against himself. Judge Lobingier, in discussing that question in his sentence, said:

"The accused was not compelled to make any admissions or answer any questions, and the mere fact that an object found on his person was examined; seems no more to infringe the rule invoked, than would the introduction in evidence of stolen property taken from the person of a thief."

The substance was taken from the body of the defendant without his objection, the examination was made by competent medical authority and the result showed that the defendant was suffering from said disease. As was

suggested by Judge Lobingier, had the defendant been found with stolen property upon his person, there certainly could have been no question had the stolen property been taken for the purpose of using the same as evidence against him. So also if the clothing which he wore, by reason of blood stains or otherwise, had furnished evidence of the commission of a crime, there certainly could have been no objection to taking such for the purpose of using the same as proof. No one would think of even suggesting that stolen property and the clothing in the case indicated, taken from the defendant, could not be used against him as evidence, without violating the rule that a person shall not be required to give testimony against himself.

The question presented by the defendant below and repeated in his first assignment of error is not a new question, either to the courts or authors. In the case of *Holt vs. U. S.* (218 U. S., 245), Mr. Justice Holmes, speaking for the court upon this question, said:

"But the prohibition of compelling a man in a criminal court to be a witness against himself, is a prohibition of the use of physical or moral compulsion, to extort communications from him, not an exclusion of his body as evidence, when it may be material. The objection, in principle, would forbid a jury (court) to look at a person and compare his features with a photograph in proof. Moreover we are not considering how far a court would go in compelling a man to exhibit himself, for when he is exhibited, whether voluntarily or by order, even if the order goes too far, the evidence if material, is competent."

The question which we are discussing was also discussed by the supreme court of the State of New Jersey, in the case of *State vs. Miller* (71 N.J. Law Reports, 527), In that case the court said, speaking through its chancellor:

"It was not erroneous to permit the physician of the jail in which the accused was confined, to testify to wounds observed by him on the back of the hands of the accused, although he also testified that he had the accused removed to a room in another part of the jail and divested of his clothing. The observation made by the witness of the wounds on the hands and testified to by him, was in no sense a compelling of the accused to be a witness against himself. If the removal of the clothes had been forcible and the wounds had been thus exposed, it seems that the evidence of their character and appearance would not have been objectionable."

In that case also (*State vs. Miller*) the defendant was required to place his hand upon the wall of the house where the crime was committed, for the purpose of ascertaining whether or not his hand would have produced the bloody print. The court said, in discussing that question:

"It was not erroneous to permit evidence of the coincidence between the hand of the accused and the bloody prints of a hand upon the wall of the house where the crime was committed, the hand of the accused having been placed thereon at the request of persons who were with him in the house."

It may be added that a section of the wall containing the blood prints was produced before the jury and the testimony of such comparison was like that held to be proper in another case decided by the supreme court of New Jersey in the case of *Johnson vs. State* (30 Vroom, N. J. Law Reports, 271). The defendant caused the prints of the shoes to be made in the sand before the jury, and witnesses who had observed shoe prints in the sand at the place of the commission of the crime were permitted to compare them with what they had observed at that place.

In that case also the clothing of the defendant was used as evidence against him.

To admit the doctrine contended for by the appellant might exclude the testimony of a physician or a medical expert who had been appointed to make observations of a person who plead insanity as a defense, where such medical testimony was against the contention of the defendant. The medical expert must necessarily use the person of the defendant for the purpose of making such examination. (*People vs. Austin*, 199 N. Y., 446.) The doctrine contended for by the appellant would also prevent the courts from making an examination of the body of the defendant where serious personal injuries were alleged to have been received by him. The right of the courts

in such cases to require an exhibit of the injured parts of the body has been established by a long line of decisions.

The prohibition contained in section 5 of the Philippine Bill that a person shall not be compelled to be a witness against himself, is simply a prohibition against legal process to extract from the defendant's own lips, against his will, an admission of his guilt.

Mr. Wigmore, in his valuable work on evidence, in discussing the question before us, said:

"If, in other words, it (the rule) created inviolability not only for his [physical control of his] own vocal utterances, but also for his physical control in whatever form exercised, then it would be possible for a guilty person to shut himself up in his house, with all the tools and indicia of his crime, and defy the authority of the law to employ in evidence anything that might be obtained by forcibly overthrowing his possession and compelling the surrender of the evidential articles - a clear *reductio ad absurdum*. In other words, it is not merely compulsion that is the kernel of the privilege, * * * but testimonial compulsion" (4 Wigmore, sec. 2263.)

The main purpose of the provision of the Philippine Bill is to prohibit compulsory oral examination of prisoners before trial, or upon trial, for the purpose of extorting unwilling confessions or declarations implicating them in the commission of a crime. (*People vs. Gardner*, 144 N.Y., 119.)

The doctrine contended for by the appellant would prohibit courts from looking at the face of a defendant even, for the purpose of disclosing his identity. Such an application of the prohibition under discussion certainly could not be permitted. Such an inspection of the bodily features by the court or by witnesses, can not violate the privilege granted under the Philippine Bill, because it does not call upon the accused as a witness - it does not call upon the defendant for his testimonial responsibility. Mr. Wigmore says that evidence obtained in this way from the accused, is not testimony by his body but his body itself.

As was said by Judge Lobingier:

"The accused was not compelled to make any admission or answer any questions, and the mere fact that an object found upon his body was examined seems no more to infringe the rule invoked than would the introduction of stolen property taken from the person of a thief."

The doctrine contended for by the appellant would also prohibit the sanitary department of the Government from examining the body of persons who are supposed to have some contagious disease.

We believe that the evidence clearly shows that the defendant was suffering from the venereal disease, as above stated, and that through his brutal conduct said disease was communicated to Oliva Pacomio. In a case like the present it is always difficult to secure positive and direct proof. Such crimes as the present are generally proved by circumstantial evidence. In cases of rape the courts of law require corroborative proof, for the reason that such crimes are generally committed in secret. In the present case, taking into account the number and credibility of the witnesses, their interest and attitude on the witness stand, their manner of testifying and the general circumstances surrounding the witnesses, including the fact that both parties were found to be suffering from a common disease, we are of the opinion that the defendant did, on or about the 15th of September, 1910, have such relations as above described with the said Oliva Pacomio, which under the provisions of article 439 of the Penal Code makes him guilty of the crime of "abusos deshonestos," and taking into consideration the fact that the crime which the defendant committed was done in the house where Oliva Pacomio was living, we are of the opinion that the maximum penalty of the law should be imposed. The maximum penalty provided for by law is six years of prison correccional. Therefore let a judgment be entered modifying the sentence of the lower court and sentencing the defendant to be imprisoned for a period of six years of prison correccional, and to pay the costs. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Trent, JJ, concur.

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