

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN DACIR ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 8621. December 31, 1913*

Ponente: CARSON, J.

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The appellants in this case were convicted of the crime of robo con homicidio (robbery on the occasion of which homicide was committed), and sentenced to life imprisonment. The information charges and the trial court found as facts, that the commission of the homicide, which constituted a component part of the complex crime of which the appellants were convicted, was marked by the aggravating circumstances of alevosia (treachery), premeditacion (deliberate premeditation), and that it was done for a price. If the evidence adduced at the trial was sufficient to sustain a conviction of the crime of robo con homicidio, it was undoubtedly sufficient to sustain the findings as to the existence of these aggravating circumstances, and it follows that if the judgment of conviction should be sustained on this appeal, this court would be compelled to raise the penalty from that of life imprisonment to death, that being the penalty prescribed by law for the offense with which the appellants were charged and of which they were convicted in the court below.

The evidence conclusively establishes that the murder described in the information was committed at or about the time and place therein set forth, but the connection of these appellants with the commission of the crime and the proof of the other circumstances under which it was committed rest almost entirely on the testimony of two self-confessed accomplices, who themselves were charged with the crime together with these appellants, but as to whom the information was dismissed in the court below in order that they might be used as witnesses for the prosecution. Without their testimony the evidence of record wholly fails to establish the guilt of the appellants.

Pending this appeal a motion for a new trial was submitted by counsel for the appellants on the ground of newly discovered evidence. The affidavits filed in support of this motion are to the effect that after the appellants were convicted and the trial had terminated in the court below, one of the informers on whose testimony the conviction was had, admitted, in a conversation with some friends, that these appellants took no part in the commission of the crime, and that he and his fellow informers were its sole authors.

In general, motions for a new trial based on affidavits of this kind are entitled to but scant consideration. The mere fact that after a solemn trial in a court of justice has been terminated, one of the witnesses, in conversation with friends or under pressure from interested parties, may tell a different story as to the incidents testified to by him, does not necessarily destroy the probative value of his testimony when on the witness stand. If new trials were granted in every instance where the interested party or parties succeed in inducing some of the witnesses to vary or modify their testimony outside of court and after the trial, there would never be an end of criminal litigation. The practice of this court has been to grant new trials in such cases only in very exceptional instances, as for example, in cases wherein it is made to appear that there was no evidence sustaining the judgment of conviction other than the testimony of a witness who is shown to have made contradictory statements as to material facts, and where it appears further that under all the circumstances of the case proof that the witness had varied or modified

his testimony out of court and after the trial would lead the trial judge to a different conclusion.

The value as evidence of the testimony of a witness given in open court in the course of a trial had therein is due for the most part to the following considerations: That under such conditions it is given under the sanction of an oath and of the penalties prescribed for perjury; that the witness' story is told in the presence of an impartial judge in the course of a solemn trial in open court; that the witness is subject to cross-examination, with all the facilities afforded thereby to test the truth and accuracy of his statements and to develop his attitude of mind toward the parties, and his disposition to assist the cause of truth rather than to further some personal end; that the proceedings are had under the protection of the court and under such conditions as to remove, so far as is humanly possible, all likelihood that undue or unfair influences will be exercised to induce the witness to testify falsely; and finally that under the watchful eye of a trained judge his manner, his general bearing and demeanor and even the intonation of his voice often unconsciously disclose the degree of credit to which he is entitled as a witness. Manifestly, loose statements or even sworn statements of witnesses, made after the trial has closed, varying or contradicting their testimony given at the trial, will rarely be sufficient in the absence of special circumstances, to raise such a doubt as to the truth of their testimony given at the trial and accepted as true by the trial judge, as to justify the granting of a new trial.

Nevertheless, in the case at bar we have concluded after some hesitation to grant the prayer for a new trial.

Without accepting as true the testimony of the two witnesses who admitted their own participation in the commission of the bloody murder charged in the information, and as to whom the information was dismissed in order that they might be called to testify as to the alleged participation of the appellants, the judgment convicting the latter cannot be sustained. Indeed there is not a shred of evidence of record tending to connect two of the three appellants with the commission of the crime other than the testimony of these self-confessed accomplices. And while we have frequently held that the testimony of self-confessed accomplices is competent and admissible, and that it is sufficient, even when uncorroborated, to sustain a conviction in a criminal case if the court is satisfied as to its truth beyond a reasonable doubt, nevertheless, as we have indicated in a number of decisions, such evidence, especially when uncorroborated, should always be accepted doubtingly and subjected to the most painstaking scrutiny in view of the polluted source from which it comes. (U. S. vs. Ocampo, 4 Phil. Rep., 400; U. S. vs. Granados, 16 Phil. Rep., 419; U. S. vs. Bernales, 18 Phil. Rep., 525.) The trial judge, who saw and heard these witnesses testify, was convinced that they spoke the truth, and in the absence of the affidavits filed with the motion for a new trial, we might have some hesitation in disturbing his findings in that regard. But reviewing the evidence of record in the light of these affidavits, we are inclined to think that upon a new trial, he might have some hesitation in accepting as true the story told by these witnesses at the former trial. Under all the circumstances surrounding the commission of the crime as developed by the evidence before us, there is nothing inherently improbable in the contentions of counsel for the appellants, based on the affidavits filed with the motion for a new trial. There can be no doubt that the two informers might have committed the crime in the manner and form in which it was in fact committed, without the intervention of the appellants; and that the motive which actuated them in murdering their victim, which was robbery, is as clearly disclosed under the theory of the commission of the crime contended for by counsel for the appellants as under that maintained by the prosecution. Furthermore, the dismissal of the charges against them in order that they might be used as witnesses for the prosecution offers a full and sufficient explanation of their attempt to incriminate the appellants, if in truth they themselves were the only guilty parties.

We are the more disposed to grant the motion for a new trial, because the trial judge, while he was fully convinced of the guilt of the appellants, states in his opinion that he suspected that the evidence of record did not thoroughly develop all the circumstances surrounding the commission of the crime, and that he was satisfied that

some of the witnesses were concealing facts which if disclosed to the court would shed further light on the motives which actuated the guilty parties and would clear up some features of the case which had not been satisfactorily developed at the trial.

The judgment appealed from should be reversed, with the costs of this instance de oficio, and the record returned to the court wherein it originated for a new trial, wherein, following the practice laid down in the case of *United States vs. Singuimuto* (3 Phil. Rep., 176, 183), both the prosecution and the defense will be permitted to offer such further and additional evidence as they desire to submit, but without the necessity of retaking the evidence already in the record.

So ordered.

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

Trent, J., dissents.

CONCURRING

MORELAND, J.,

Generally speaking, I concur in this decision. If, however, it is meant by the last paragraph thereof to lay down the doctrine that, on a new trial in a criminal case, the court will be compelled, in spite of the objections of the accused, to receive, in favor of the prosecution and as a basis of conviction in the new trial, the typewritten declarations of the witnesses of the prosecution taken on the former trial, none of the witnesses being recalled, I dissent from the doctrine laid down therein.

As is seen, recurring to the decision, that paragraph provides: "The judgment appealed from should be reversed, with the costs of this instance de oficio, the record returned to the court wherein it originated for a new trial, wherein, following the practice laid down in the case of *United States vs. Singuimuto* (3 Phil. Rep., 176, 183), both the prosecution and the defense will be permitted to offer such further and additional evidence as they desire to submit, but without the necessity of retaking the evidence already in the record."

The case referred to in this quotation provides, in this connection, simply that "it will not be necessary to retake the testimony introduced at the trial up to that page of the record, but without prejudice to the rights of the parties to introduce such other evidence as they may desire to submit."

It is clear that this decision does not necessarily lay down the doctrine that, on a new trial in a criminal case, the prosecution has the unqualified right to present upon the new trial the typewritten testimony taken in the old and that the court must receive that testimony as the basis of the conviction of the defendant, even though he object to its introduction and ask to be confronted by the witnesses who testify against him. We have interpreted that decision in two or three subsequent decisions, some of them comparatively recent ones, in which we have held that it will not be necessary to retake any of the evidence received on the former trial, provided the parties consent.

In the case of *Mariano Nable Jose* (R. G. No. 8125; not reported), we ordered a new trial, saying with respect to the procedure to be adopted in relation to the evidence taken on the former trial: "The judgment is annulled and a new trial granted, with the understanding that, if the parties so agree, it will not be necessary to again present proofs already submitted."

I am opposed to the proposition that, on a new trial in a criminal case granted either by the trial or the appellate

court, it is the unqualified right of the Government to refuse to produce the witnesses who testified on the first trial and to offer the typewritten evidence given by them on the first trial as proof of defendant's guilt; and that that evidence must be received by the court and made the basis of a conviction in spite of the objections of the accused who demands that the witnesses be produced and sworn. Where the defendant objects to that procedure and asks that the witnesses be presented, I am of the opinion that the court should require them to be produced in court except, of course, in those cases where the statute specially provides that the testimony of a witness given upon a former trial may be read in a subsequent trial. The principal reasons for my opposition to such a doctrine are:

In the first place, the statute requires that the defendant shall have a new trial. The word "trial," when used in connection with the word "new," has the same meaning essentially that it has when used alone. A new trial is not a new trial unless it is, with certain minor differences provided by law for special conditions, like the first trial. There is no reason why a "trial," when it is a first trial, should be a different thing from a "trial" when it is a second trial. The word "trial" wherever used in the Code of Criminal Procedure means the same thing, whether it be a first trial, a second trial, a new trial, or an old trial. It is always a trial. The modifying word before it refers to time and not to substance. It is conceded that in the first trial the defendant is entitled to have the witnesses produced so that he may cross-examine them and that the court may see and observe them to determine whether they are testifying truthfully or falsely. Unless the statute prohibits it, and it does not, he is entitled to the same rights upon a new trial. Trials are trials. Neither interpretation nor construction should destroy their essential attributes.

In the second place, the judge who hears the new trial may not be the same judge who heard the old. That very frequently happens in this jurisdiction as a result of the changing personnel of the judiciary, brought about not only by natural causes and the nature of judicial tenure in this jurisdiction, but also as a result of the law giving the Secretary of Finance and Justice the power to transfer judges from one district or province to another and to name judges to hold special terms of court in provinces not their own. This frequent change of judges in the provinces is important in view of the fact that this court has laid down the rule repeatedly that, where the testimony adduced by the parties in a criminal trial is conflicting, the declarations of the witnesses for the prosecution being flatly in contradiction of those for the defense, this court will not interfere with the judgment of the trial court resolving these contradictions in favor of one set of witnesses or of the other except in very special cases. These holdings are grounded solely upon the fact that the trial judge had an opportunity to see the witnesses, to observe their manner in testifying, to study their attitudes and expressions, to uncover the motives and influences which dominated them—in short, to acquaint himself thoroughly with every circumstance of the trial, and that, from these personal notes, observation and study, he is able to form a judgment as to the relative credibility of the witnesses more nearly correct than a judge who did not have those opportunities. Let us suppose that an accused who is convicted of murder obtains a new trial at the hands of this court and goes back for retrial before a different judge than presided at his first trial. Let us assume, further, that the witnesses who testified on the first trial are the only witnesses for the government; and that it is the law that these witnesses need not be again produced but that their declarations on the former trial may be read in evidence on the new trial. What is the result? It is that a defendant may be tried and convicted of murder and sentenced to be hanged by a judge who never saw or heard a single witness against him. I do not believe that this court ought by mere interpretation to lay down a rule which will produce such a result. There is absolutely no reason, practical or legal, for such a doctrine. Not at all to the point is the contention that the witnesses who declared in the first trial in favor of the prosecution may be out of the country when the new trial occurs. That is no reason why the court should, by interpretation or construction, entirely change the nature of a trial and make it the farce it would be under such circumstances. I do not believe that this is any reason for making the word "trial" mean a mere hearing on affidavits. It is the province

of the legislature and not the courts to change definitions, alter procedure, make judges try men on records and not on the testimony of witnesses, rob them of that most distinctive and important function of personal observation, deprive appellate courts of the advantages of the full and free exercise of that function and the conclusions based thereon—in short, to abrogate trials. In this jurisdiction the Supreme Court is the only court authorized by law to try cases on records. Such authority does not pertain to trial courts unless it is conferred by consent of all parties.

Thirdly, I am of the opinion that such a doctrine would be, to some extent at least, in violation of the principles laid down in *United States vs. Donato* (9 Phil. Rep., 701); *United States vs. Manlimos* (11 Phil. Rep., 547); and *United States vs. Pobre* (11 Phil. Rep., 51). These were all cases in which counsel agreed that, if certain additional witnesses were produced and sworn on behalf of the prosecution as well as of the defense, they would testify as actual witnesses had done as to the very substance of the issue.

In the case first cited the court said as to the regularity of such a proceeding: "This court, however, upon attempting to review the evidence, has found it impossible to do so, because of the reprehensible abuse committed in resorting to such unlawful agreements, thereby frustrating the purposes of the law, which has been openly violated."

In the case last cited the court said in relation to a similar agreement: "The agreement entered into between the fiscal of Ilocos Norte and the counsel for the defendant refers to facts which favor the defense and to others connected with the prosecution; no evidence whatever was adduced, nor was the testimony of the witnesses mentioned in the agreement taken. This is a practice which is not authorized and defeats the purpose of the criminal law, being an open violation of the rules of criminal procedure, and particularly of the provisions of section 32 of General Orders, No. 58."

In the second case cited we have this statement as an additional reason why such agreements should not be permitted: "Nor is it possible for a trial court to weigh with exact nicety the contradictory declarations of witnesses not produced so as to be subjected to its observation and its judgment as to their credibility,"

While these cases are not in point so far as the questions decided are concerned, they rest upon reasons some of which move me to oppose the doctrine stated. The witnesses having already been sworn and the same judge who conducted the first trial presiding at the second, the objection going to the fact that the court did not see the witnesses or hear them testify is, partially at least, eliminated, and, under such circumstances, the full force of the doctrine stated in these cases would not apply if the defendant consents to the introduction of the testimony taken on the first trial. Where, however, a different judge presides at the new trial the precise objection urged by the court in the case of *United States vs. Manlimos* applies, and it is clear from the holding in that case that the testimony taken on a previous cause, if that were the only testimony against the accused, would scarcely be acceptable before a different judge even if the defendant consented to its introduction. If the defendant objects to the testimony, there can be no question that it should be rejected under the decision of the court in *United States vs. Manlimos*, and very probably also under the other cases cited.

In the case of *United States vs. Laranja* (21 Phil. Rep., 500), it was held that "a conviction cannot be set aside solely for the admission of testimony taken in another case, in pursuance of a voluntary stipulation between parties or their counsel, even if the appellant is represented only by the counsel assigned to him by the court; in making such a stipulation, the appellant waives his constitutional right to be confronted with the witnesses."

While this case distinguished the case of *United States vs. Manlimos*, it in no way affected the proposition to which I am using it as an authority. Touching this case the court said: "In the last case, while it is true that this court said that it could not accept as the full equivalent of proof on oath that if certain witnesses were produced they would testify as the actual witnesses had done as to the very substance of the issue, yet the decision did not

rest upon this ground, but upon the ground that if a crime had been committed at all it was not that of estafa."

This case is in no sense in point relative to the matter here under discussion. It may be said, however, that the whole trend of the reasoning of this case is toward the proposition that if the defendant had objected to the introduction either of the record in the Iyon case or had demanded that the witnesses of the Government be called, it would have been error if the court had refused to accede to the of United States vs. Lorenzana (12 Phil. Rep., 64), and that of United States vs. Raymundo (14 Phil. Rep., 416). Both of these seem to assume that the introduction of the testimony taken on a previous trial of the accused or on a trial of a coaccused was inadmissible over the objection of the defendant.

There is an expression of opinion in the case of the United States vs. Anastasio (6 Phil. Rep., 413) which is substantially in point in this case, although it may, perhaps, be obiter. That was an appeal on a second trial of the accused had upon an information based upon the same facts as those forming the gravamen of the charge in the first trial. The evidence taken at the first trial against the accused was offered in the second trial in the form of the typewritten declarations of the witnesses sworn for the Government. The accused consented to the introduction of those declarations and the case of the prosecution was submitted and rested solely upon that evidence. The defendant having been convicted appealed to this court and raised the question that the trial was illegal as being in violation of his constitutional right to be confronted with the witnesses against him and to cross-examine them. This court held that, by consenting to the introduction of the evidence taken on the first trial, he had waived the constitutional right referred to, and that the conviction based upon the evidence of record was sustainable. One paragraph of the decision of the court in that case, although, as I have said, it may be mere opinion, supports to the full the proposition I am urging and was the deliberate opinion of a unanimous court, the same judge writing that decision who writes this. The court, by Mr. Justice Carson, said: "This trial and the former trial were heard before the same judge and were based on the same facts and the accused and his counsel were present when the evidence of record in the former trial was taken, and exercised the right to cross-examine the witnesses for the prosecution and to present his own witnesses for the defense. It thus appears that both the primary and secondary purposes of confrontation were attained and, while there can be no doubt that the accused had the right to demand that the witnesses be called again to testify if they could be produced, there does not appear to be any reason based on the circumstances of this particular case which would prohibit him from waiving this right, nor does it appear that he was in any wise prejudice thereby."

In my judgment to lay down in this case the doctrine that I am opposing, it will be necessary to hold that the opinion of the court therein relative to that doctrine was badly conceived, immature, and unsound, and should not have been expressed. It is a clear and unequivocal declaration that the accused has the same rights on the second trial that he had on the first; and, being clearly founded in law as well as in justice, should not now be discarded for an interpretation which violates the express provisions of the Code of Criminal Procedure and makes a mockery of a trial

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