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[G.R. No. 18869. July 28, 1923]

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS.
PABLO OCAMPO, DEFENDANT AND APPELLANT.**

D E C I S I O N

STREET, J.:

This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Pampanga, finding the appellant, Pablo Ocampo, guilty of the offence of homicide, committed on June 19, 1920, in the municipality of Macabebe, Province of Pampanga, upon the person of Liborio Bustos, and sentencing the appellant to undergo imprisonment for seventeen years, four months and one day, *reclusion temporal*, with the accessories prescribed in article 59 of the Penal Code; to indemnify the heirs of the deceased in the sum of P1,000; and to pay the costs of prosecution.

This case, though forming an independent proceeding exclusively against the present appellant, is nevertheless intimately related with *People vs. Bustos et al.*, p. 9, *ante*, in which nine other persons were jointly prosecuted for the same homicide; and the Attorney-General of the Philippine Islands, after carefully going over the proof in the present case and considering the same in relation with the proof contained in G. R. No. 17763, recommends that the judgment entered in the present case against Pablo Ocampo be reversed and that he be acquitted. This is without doubt the proper disposition to be made of the case, and this result follows as a necessary consequence from the resolution reached by us in the case against *Proceso Bustos et al.* (G. R. No. 17763).

How the present appellant happened to be convicted in the lower court in the case before us requires certain explanation, which can be given in a few words.

To begin with, this appellant is evidently without means and not capable from any resources of his own of maintaining a legal battle on equal terms with the powerful forces that were arrayed against him. From the beginning his attorney in the trial court seems to have realized that the proof submitted for the prosecution in the case against Proceso Bustos et al. (G. R. No. 17763) constituted the chief basis of any defence to be made by Pablo Ocampo in this case; and after the case against Proceso Bustos et al. had been appealed to this court, a petition was addressed to us in behalf of the present appellant, asking us to permit that record to be withdrawn from the Supreme Court for the purpose of being used as evidence for Ocampo in this case. In this connection it was made to appear that the petitioner was poor and completely without means to pay the cost of a certified copy. For obvious reasons this court was compelled to deny that petition.

When the cause came on to be heard in the lower court the prosecution presented a string of witnesses, consisting of peddlers and cockpit habitues, mostly repeaters from the other trial, who pretended to have seen Ocampo assassinate Liborio Bustos. To these were added a number of other witnesses, who had also for the most part already testified in the other case, and whose testimony was directed mainly to two points, namely, to show, first, that the homicide had not been committed at the place where the disturbance arose in the circus, and hence could not have been committed by Proceso Bustos, and, secondly, that Pablo Ocampo had a petty grievance against Liborio Bustos arising from the failure of the latter to pay certain wages due to the former.

After the prosecution had closed its case, the attorney for the accused offered in evidence the complete record in *People vs. Bustos et al.* (G. R. No. 17763) for the purpose merely of showing, so the attorney informed the court, that six of the accused in that case had been convicted of the same homicide. Apart from this, no evidence in chief was submitted in behalf of the defence. Ocampo himself was not even called upon to testify in his own behalf; and not a single one of the important witnesses who had testified in the other case was examined upon facts touching the killing of Liborio Bustos by Proceso Bustos.

From this it will be seen that the defence in the present case was allowed in effect to go by default; and the sole hope of the accused must have been that in

appraising the proof for the prosecution in this case the trial court would somehow or other take into account the proof that had been accumulated in the case against Proceso Bustos et al.

It so happened, however, that the judge who tried the present case was a different judge from the one who had presided in the other trial; and hence the judge who tried the case against Ocampo was not familiar with the facts revealed in the earlier case. Furthermore, in view of the limited purpose for which the record in the earlier case had been submitted as proof herein, the judge who heard this cause below did not consider himself at liberty to go fully into the facts as revealed in the other record for the purpose of balancing the probabilities of the guilt of the accused in the respective cases; and he, therefore, in passing judgment limited himself to the testimony presented in court in this case.

This made a foregone conclusion against the appellant, Pablo Ocampo, because no witnesses had been placed upon the stand by his attorney, except in rebuttal of minor matters brought out by the prosecution; and, if the testimony of the accusing witnesses was to be accepted at its face value, there could be no doubt as to the appellant's guilt. Judgment was therefore entered against him almost as a matter of course.

When the case reached this court, the Attorney-General, evidently appreciating the fact that vital interests of justice were at stake, considered the case against Ocampo in the light of all the proof revealed in both records; and conceding to this appellant the benefit of the proof contained in the record against Proceso Bustos and others, the Attorney-General recommended that Pablo Ocampo be acquitted, as intimated at the beginning of this opinion. This was undoubtedly the proper course to pursue under the circumstances of the case, as this court could not possibly permit a judgment to stand against a person whom it knows to be innocent, regardless of the technical condition of the record. In other words, we concede to the present appellant the benefit of the demonstrated facts appearing of record in the prosecution against Bustos et al. although the proof in that case was not technically submitted to the lower court as proof for all purposes.

So much having been said by way of preface, we proceed to pass a few words of

comment upon the additional proof incorporated in this record showing, or tending to show, that Pablo Ocampo killed Liborio Bustos; and it must be understood that what is now to be said is merely supplemental to the discussion contained in our opinion in *People vs. Bustos et al.* (G. R. No. 17763). In other words we shall not pause here to demonstrate again the perjuries which we attributed in that opinion to certain witnesses who have merely repeated in this record the testimony given by them in that case.

The outstanding fact in the present record, so far as relates to proof of the prosecution, is that two additional witnesses have been introduced who pretend to have been eyewitnesses to the killing of Liborio Bustos by Pablo Ocampo. These are Juan Tuiud and Pedro San Agustin. These two personalities are about on a level, as regards character and antecedents, with the others who, as witnesses for the defence, testified to the same effect in the case against *Proceso Bustos* and his companions; for Juan Tuiud admits that he is an habitue of the cockpit, and Pedro San Agustin is a peddler by trade. Both of these persons were procured to act as witnesses by Francisco Isip, an uncle of *Proceso Bustos*, who is the same person who procured Honorio Garcia and Fausto Navarro, who first appeared as witnesses in the other case after the judgment of conviction had been there entered against six of the accused.

Both of the two witnesses to whom reference is now made, namely, Tulud and San Agustin, admit that they had never communicated the information which they possess with reference to the homicide to any person prior to the time when they casually let it out in the presence of the other two and within hearing of Isip. The reason they gave for this reticence is that they believed, from rumors current in Macabebe, that any person communicating facts relative to the homicide to the public officers investigating the case would be joined in the prosecution as an accused; and Juan Tulud even pretends that Roman Bondoc was actually joined as a defendant in the other case because he had inadvertently told something that he knew about the homicide. This story is of course only a repetition of the excuse given by their companion witnesses who testified upon the same point in the other case.

A noteworthy fact connected with the testimony of Juan Tulud and Pedro San Agustin is that, when the disturbance arose in the circus on the night of June 19, 1920, both of these witnesses were admittedly on the outside of the tent.

Tulud says that, having heard some one say that there had been a disturbance in the circus, he started to go in to get a grandson who was in the general admission. When he arrived at the door on his way in he saw Liborio Bustos coming out, and at the same instant he saw Pablo Ocampo strike Liborio Bustos with a big knife just as had been described by other witnesses. Pedro San Agustin also states that he was on the outside of the circus but was preparing to go in when he saw Ocampo deliver the fatal blow in the way described by other witnesses.

As both these witnesses place the scene of the tragedy immediately at the entrance to the circus, as seen by a person coming from without, their testimony is in harmony with the revised version of the proof relative to this act as fixed by Garcia and Navarro as witnesses for the defence in the case against Proceso Bustos and his companions; for it will be remembered that the first three witnesses who there testified about this matter (Laquindanum, Manansala, and Cunanan) placed the scene of tragedy well within the tent.

Again, according to the two witnesses whose testimony is now being considered, as well as others whose testimony is discussed in the earlier opinion, no commotion was made by this assault upon Liborio Bustos by Pablo Ocampo at the entrance to the circus door; and apart from certain exclamations which the witnesses put in the mouth of Ocampo and Liborio Bustos respectively, the tranquillity of the departure of Liborio Bustos from the tent was not marred by the slightest commotion.

In the present record, therefore, we have a string of seven witnesses who pretend to have seen Ocampo kill Liborio Bustos. These persons pertain without exception to an irresponsible class, or classes, of people from whose ranks perjurers might most readily be recruited, namely, peddlers and cockpit habitues. Furthermore, we have shown, in our opinion in the other case, that at least two of these individuals (Laquindanum and Navarro) were not present at the circus on the night of the homicide; and in the present record Felicisimo Bustos corroborates the proof on this point as to Navarro. Again, it will be noted that the two additional witnesses brought before the court in this case, who pretend to have seen Ocampo kill Liborio Bustos, admit that they were not among the spectators in the circus when the trouble arose, but were both then on the streets of Macabebe. In the light of these and other facts more fully brought

out in our other opinion the falsity of the present charge against Pablo Ocampo, which supposes him to be the actual slayer of Liborio Bustos, is most manifest; and the only proper interpretation which a court can place upon evidence of this character is that the witnesses are mechanical perjurers, who have been induced to tell this impossible story in order to wreck the prosecution against Proceso Bustos and his companions.

But there is another aspect of the case which requires a brief discussion. It will be remembered that, according to the story told in the other case by Pablo Ocampo himself, a conspiracy had been formed, with Proceso Bustos at its head, to take the lives of Liborio Bustos and Aureliano Dizon. Pablo Ocampo further admits, though with reservation as to his moral guilt, that he had participated in the principal conference at which the death of the two persons mentioned had been determined; and he admits that he went with the conspirators to the circus on the occasion when he knew the homicides were designed to be committed and that he himself had been deputed to slay one of the victims. The qualification which he makes as to his participation in the conspiracy is that his participation was external only, and that he had no intention whatever at any time of carrying out his part of the murderous compact. In other words, in testifying as a witness for the prosecution in the other case, Pablo Ocampo came very near to establishing his own guilty participation in the crime, though not in the role of slayer; and it must be admitted in his favor that he abstained from making the assault upon Aureliano Dizon, which had been assigned to him.

The most plausible case that could be imagined against Pablo Ocampo would be one in which he would appear as one of several conspirators, with Proceso Bustos at the head. But this is not the theory of the present prosecution. As the case against Ocampo is here presented, he is guilty as the sole slayer of Liborio Bustos, or he is not guilty at all. There is not before us in this case a line of proof that would tend to show complicity on his part in a conspiracy promoted by another; and when the proof tending to exhibit him in the role of actual slayer is eliminated from the record, there is nothing to show his connection with the crime in any way. It goes without saying that the prosecution in this case did not introduce in evidence against Ocampo the admissions which he had made on the stand as a witness in the other case, tending to show his complicity in a conspiracy, promoted by Proceso Bustos, to take the lives of Liborio Bustos

and Aureliano Dizon. It results that it is necessary to acquit Ocampo because of demonstrated falsity of the testimony of those witnesses who pretend that he was the actual slayer of Liborio Bustos and the total failure of the proof to show complicity in any other character.

From what has been said it follows that the judgment in this case must be reversed, and the defendant will be absolved from the complaint. So ordered, with costs of both instances *de officio*.

Araullo, C.J., Malcolm,
Avanceña, Villamor, and Romualdez, JJ., concur.

DISSENTING

JOHNS, J.:

This is a companion case to the *People vs. Bustos et al.*, p. 9, *ante*, in which the defendant here was convicted of committing the same crime as the defendants in *People vs. Bustos*.

The majority opinion of this court has found the defendants in the *Bustos* case guilty of the crime alleged to have been committed by Ocampo in this case; hence it follows that the majority opinion here has found Ocampo not guilty of the crime alleged.

The judgment of the lower court in the case of *People vs. Bustos* was rendered on April 29, 1921, and the case was then appealed to this court. Pending that appeal, an information was filed charging Ocampo with the commission of the same crime, upon which he was tried before his Honor, Judge E. P. Revilla, and on March 9, 1922, was found guilty as charged in the information; that is to say, his Honor, Judge Bartolome Revilla, found the defendants guilty in the *Bustos* case and thereafter his Honor, Judge E. P. Revilla, found the defendant Ocampo guilty of the same crime. That is a point worthy of consideration.

After the conviction in the Bustos case, the court, who saw and heard the witnesses testify in the Ocampo case and had before him the record in the Bustos case, found the defendant Ocampo guilty.

The majority opinion points out that after the prosecution had closed the Ocampo case, the attorney for the defendant offered the complete record in the case of *People vs. Bustos* to show that six of the accused in that case had been convicted of the same crime; that no other evidence was offered by the defense and that Ocampo himself did not testify, from which it is contended that no bona fide effort was made by his attorney to defend Ocampo. That is not tenable.

This court should not criticize the attorney for the defendant because he failed to call his client as a witness. For many and different reasons no good lawyer will ever call a guilty client as a witness. It is very probable that the acquittal of Ocampo by the majority opinion now is very largely due to the fact that he was not called as a witness in his own defense. The majority opinion says: “* * * if the testimony of the accusing witnesses was to be accepted at its face value, there could be no doubt as to the appellant’s guilt.” The trial court, who saw and heard the witnesses testify, did accept their testimony at its face value and there is no valid reason shown in the record why this court should not do the same thing. To justify its conviction in the Bustos case, the majority opinion in the instant case says:

“When the cause came on to be heard in the lower court the prosecution presented a string of witnesses, consisting of peddlers and cockpit habitues, mostly repeaters from the other trial, who pretended to have seen Ocampo assassinate Liborio Bustos. To these were added a number of other witnesses, who had also for the most part already testified in the other case, and whose testimony was directed mainly to two points; namely, to show, first, that the homicide had not been committed at the place where the disturbance arose in the circus, and hence could not have been committed by *Proceso Bustos*, and, secondly, that Pablo Ocampo had a petty grievance against Liborio Bustos arising from the failure of the latter to pay certain wages due to the

former.”

That statement is both unfair and unjust. The record shows that the witnesses for the prosecution in this case were:

Honorio Garcia, 42 years of age, cloth peddler.

Fausto Navarro, 43 years old, cloth peddler.

Dr. Monserrat, who testified that the incision of the wound was made by some person in front and to the left of the deceased.

Juan Tulud, 62 years old, owner of the cockpit.

Pedro San Agustin, 39 years old, cloth peddler.

Tomas Laquindanum, 40 years old, storekeeper.

Ciriaco Cunanan, 33 years old, merchant.

Jacinto Manansala, 45 years old, day laborer.

Fidel Dunca, 33 years old, cloth peddler, and his son Sergio Dunca, 17 years old.

Hilarion Viray, 77 years old, fisherman.

Francisco Isip, 61 years old, farmer.

Marcelo Bautista, 28 years old, landowner.

Juan Alfonso, 31 years old, landowner.

Celerio de Franco, 27 years old, physician.

Roman Bondoc, 27 years old, merchant.

Alejandro Ronquillo, 22 years old, laborer.

Tiburcio Manansala, 48 years old, laborer.

Aureliano Dizon, 53 years old, laborer.

Antonio Gomez, 45 years old, Constabulary captain.

Yet, the majority opinion says “that the prosecution presented a string of witnesses, consisting of peddlers and cockpit habitues, etc.”

Again, it appears from the record that the defendant Ocampo, whom the trial court says was a poor man without friends, had just been released from Bilibid where he had served a long sentence for a serious crime, another fact which is overlooked in the majority opinion.

No attempt was made in the majority opinion to analyze the testimony for the prosecution, and a detailed analysis of it would not serve any useful purpose in the dissenting opinion. Suffice it to say that in the Ocampo case the trial court, who saw and heard the witnesses testify, had before it the complete record in the Bustos case and heard a large amount of testimony that was never introduced in the Bustos case, found the defendant guilty of the same crime about one year after the conviction in the Bustos case.

As I read and construe the record, Ocampo is the one who stabbed Liborio Bustos at or near the entrance to the theatre as he was leaving it and is guilty of the crime, and Liborio Bustos was not stabbed in the pit or body of the theatre as found by the majority opinion in the Bustos case.

Before leaving
for the States, Mr. Justice Ostrand read and re-read the record in the instant case and, with me, was firmly convinced of the guilt of the defendant Ocampo in this case, and that the judgment of the lower court should be affirmed.