The Nature and Sufficiency of Circumstantial Evidence in Criminal Cases

A deliberate crime is always a calculated risk. On the part of the criminal it implies either the satisfaction of a criminal motive or punishment in the event of discovery. His task, therefore, is to reduce to a minimum, if not entirely to eliminate, the chances of discovery. This he can only do by committing the offense in darkness or in secrecy. And when the crime is perpetrated under such clandestine circumstances, how should it be established in order to convict the culprit? To require direct evidence would amount to frustrating justice. (Hickory v. U.S. 151 U.S. 303; State v. Stiwinter 189 S.W. 868) "Human tribunals must, therefore, act upon such indications as the circumstances of the case present or admit." (People v. Lopez [C.A.] G.R. No. 4705, May 4, 1940) It is with a view to such exigencies that the methodology of cricumstantial evidence has been evolved.

Since circumstantial evidence is proof by indirection, its exact signification may be best understood by contrasting it with direct evidence. The witness in the latter case testifies of his own knowledge as to main facts to be proved; in the former, the witness gives proofs of facts from which the court may infer other connected facts which reasonably follow from the common experience of mankind. (Devine v. Delano 111 N.E. 742; Webb v. State 203 S.W. 955; Beason v. State 69 L.R.A. 193) -Rela tive to the ultimate fact to be proved, direct and circumstantial evidence are essentially the same; their distinction is merely one of distance from the fact to be proved. (W. Wills, *On Circumstantial Evidence*, 1857, p. 31) Yet, regarded in themselves, it is likewise correct to say that they differ essentially; for one is direct and the other is indirect in their respective methods of approach. (III Encyc. of Evidence p. 63) In fact, speaking of this latter distinction, Wills goes so far as to say that circumstantial evidence is proof *reductio per impossibile*. (Cf. W. Wills, op. cit. p. 32) Be this as it may, it is nevertheless error to charge that circumstantial evidence cannot outweigh positive testimony. (Bowie v. Maddox 74 Am. Dec. 61) Flat contradictions in oral testimony as to intent and purpose, obscuring the truth and rendering it impossible of ascertainment may justify resort to circumstances as the safer guide. (Berry v. Colborn 4 S.E. 636) But great care must be exercised in drawing inferences from circumstances proved in criminal cases. (Com. v.

Webster 52 Am. Dec. 711) The reason probably consists in the greater incommensurability of circumstances with the fact of guilt. Hence, where the inference drawn is equally consistent with innocence as with guilt the accused must be acquitted (Com. v. Hurd 165 S.E. 536; U.S. v. Reyes 3 Phil. 3; U.S. v. Villos 6 Phil. 510; U.S. v. Un Che Sat et al. 5 Phil. 274), since the legal requirement as to proof beyond reasonable doubt had not been met. (Cf. Rule 123, Sec. 98, subsec. 3; People v. Pacana 47 Phil. 48)

Circumstantial evidence in any criminal case is the proof of such facts or circumstances connected with or surrounding the commission of the crime charged, as tend to show guilt or innocence of the accused. (Cunningham v. State 77 N.W. 60) "The logic upon which it is based is this: We know, from our experience, that certain things are usual concomitants of each other. In seeking to establish the existence of one, where the direct proof is deficient or uncertain, we prove the certain existence of the correlative fact, and thus establish with more or less certainty, according to the nature of the case, the reality of the principal fact." (People v. Kenedy 32 N.Y. 141)

In order to secure a conviction based on circumstantial evidence under our law, the following requisites must concur: (a) there should be more than one circumstance, (b) the facts from which the inferences are derived must be proved, and finally, (c) the combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt. (Rule 123, Sec. 98; U.S. v. Aquino 27 Phil. 462; U.S. v. Indica and Yadao 17 Phil. 325) The requirement as to plurality of circumstances is intended to safeguard the accused against hasty generalization. Where, as it is, multiple facts are demanded of the prosecution, "a chain of circumstances is less likely to be falsely prepared and arranged, and falsehood and perjury are more likely to be detected and fail of their purpose." (Cf. I Moore *On Facts*, 597 sqq; Wills, op. cit. p. 243. On the shortcoming of direct evidence. by way of contrast, cf. Bowie v. State 49 S.W. [2d] 1049, 83 A.L.R. 426; Com. v. Webster 52 Am. Dec. 711) The reason for the plurality of circumstances from the standpoint of relevancy is given by the Virginia Supreme Court of Appeals in the case of Karnes v. Com. 4 A.L.R. 1509, 1513, thus, "While a single circumstance, standing alone, may appear to be entirely immaterial and irrelevant, it frequently happens that the combined force of many concurrent and related circumstances, each insufficient in itself, may lead a reasonable mind irresistibly to a conclusion." On the other hand, while the aforesaid requirement is strongly protective of the interests of the accused, it does not follow conversely that it hamstrings the prosecution. For the modern doctrine is extremely liberal in the admission of any circumstance which may aid in the investigation of a disputed fact. (Coffin v. U.S. 162 U.S. 644; Jenkins v. Com. 3 A.L.R. 1522) Therefore "whenever the necessity arises for a resort to circumstantial evidence, either from the nature of the inquiry or the fail-

ure of direct proof, objections to the testimony on the ground of irrelevancy are not favored, for the reason that the force and effect of circumstantial evidence usually, and almost necessarily, depend upon their connection with each other." (Moore v. U.S. [1893] 150 U.S. 57, citing Castle v. Bullard 23 How. 172, 187)

It is interesting to note, however, that cases may arise which may warrant the finding of an inferential fact based upon a single circumstance, e.g. unexplained possession of an article recently stolen. (Tompkins v. State 32 Ala. 569) Would conviction founded upon such a single circumstance lie under the doctrine of plurality of circumstances required by our law? Assuredly yes, for the unexplained possession of a recently stolen article is *not one* circumstance. It is in fact a synthesis of the following circumstances: unexplained possession of an article *and* the fact of loss of the very same article by its possessor. The ruling, therefore, in the case of Tompkins v. State (supra) is an oversimplification of an essential legal requisite.

The facts from which the inferences are derived must be proved. (Rule 123, Sec. 98, subsec. 2) Does this provision prohibit an "inference upon an inference"? Contextual analysis of this provision does not appear to yield an affirmative answer and neither do the decisions of our Supreme Court negative its employment. We may, therefore, safely state that this kind of reasoning is admissible in the absence of its express disallowance (Cf. Rule 123, Sec. 3), and is in line with the best modern authorities. (Cf. I Wigmore *On Evidence,* 1940, pp. 434-438)

As to the degree of proof required for each incriminating circumstance, our Supreme Court laid down the following rule in the case of U. S. v. Villos, 6 Phil. 510, "When independent acts and circumstances are relied upon to identify the accused as the person who committed the crime charged, each material independent fact or circumstance necessary to complete the chain or series of independent facts tending to establish a presumption of guilt should be established to the same degree of certainty as the main fact." (Citing People v. Ah Chung, 54 Cal. 398; State v. Messemer 75 N. C. 385; U.S. v. Vanranst, Fed. Cases 16608) Likewise, in the case of U.S. v. Un Che Sat et al. 5 Phil. 274, it was held that the "circumstances must be as clear and as conclusive as positive testimony." The reason for the rule doubtless consists in the fact that "if one link may be left out, another may, and in the end the jury may be authorized to throw a few established links together in a heap, and guess that the chain is completed, or would be if the other links could be found." (People v Aiken 33 N. W. 821, 830) There is, however, a more liberal rule which does not so much consist in the rigorous appraisal of each individual circumstance as in the appraisal of all the circumstances combined. "It is not a reasonable doubt of any one proposition of fact in the case which entitles to an acquitttal. It is a reasonable doubt of guilt arising upon a consideration of all the evidence in the case." (State v. Hayden 45

Iowa 17) Therefore "it is not necessary that each essential fact in the chain of circumstances solely relied on to connect the accused with the commission of the offense, when separately considered, be found beyond reasonable doubt. Such a fact, though having little to sustain it when standing alone, may derive such support from others immediately connected therewith as to exclude all doubt of its existence." (State v. Cohen 78 N. W. 857) What preeminently matters is the inference, either of guilt or of innocence, resulting from all the circumstances, and not the proof beyond reasonable doubt of any single circumstance. (State v. Oscar 52 N. C. 305; Otmer v. People 76 Ill. 149) Nevertheless, even under the Philippine rule, it may be reasonably stated that failure to prove a collateral circumstance, not necessary to the conclusion, but offered by way of corroboration, would not destroy the chain (Com. v. Webster 52 Am. Dec. 711), and may not affect an affirmative finding of guilt. (State v. Cohen 78 N. W. 857)

In order to convict, all the material circumstances must lead to only one fair and reasonable conclusion—the guilt of the accused, and such conclusion must convince the court beyond reasonable doubt. (Rule 123, Sec. 98, subsec. 3; U.S. v. Reyes 3 Phil. 3; U.S. v. Villos 6 Phil. 510; U.S. v. McCormick 15 Phil. 185; U.S. v. Levente 18 Phil. 439) Where the alleged inculpatory facts are not entirely incompatible with the guilt of the accused, the moral certainty of guilt cannot be said to have been established and cannot thus serve as a legitimate premise for conviction. (People v. Pacana 47 Phil. 49) There is, however, some jurisprudence which holds that an acquittal is not called for because the court can reconcile the evidence with some theory of innocence. (Black v. State 37 S.E. 108; Padfield v. People 35 N.E. 469; Duffin v. People 47 Am. Rep. 431) It is submitted that this doctrine is not as revolutionary as it apparently appears. Shorn of its overstatements, it simply means that the court should not make an *actively conscious* effort at reconciling the evidence with the innocence of the accused. Such effort would pass beyond judicial evaluation of evidence, but would constitute judicial manufacture of the same. The meaning most probably intended is that the determinate character of evidence should originate from the evidence itself rather than from our own active interposition.

It is likewise submitted that the idea of Wills that proof by circumstantial evidence is proof *per reductio ad impossibile* cannot be accepted in our jurisdiction. For the proof *per reductio ad impossibile* concludes to the guilt of the accused by establishing the improbability of his innocence. The reasoning proceeds, as it were, by the so-called method of residues in experimental induction, and does not touch directly the issue of guilt. This is not to impugn the value of the *reductio* as a method of proof. It is simply that our Supreme Court has, as a matter of caution, required proof over and above the bare *reductio.* As held in the case of People v. Ludday, 61 Phil. 222, all the circumstances and facts must be "ab-

solutely incompatible upon any reasonable hypothesis with the innocence of the accused, and *incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused.*" (italics supplied) This supposes antecedently the proof of guilt of the accused. "It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it." (People v. Reyes 3 Phil. 3).

Wharton gives the following as the fundamental rules for testing circumstantial evidence: 1st, circumstantial evidence should be acted upon with caution; 2nd, all the essential elements must be consistent with the hypothesis of guilt, as that is to be compared with all the facts proved; 3rd, the facts must exclude every other theory but that of guilt; 4th, the facts must establish such a certainty of guilt of the accused as to convince the judgment beyond a reasonable doubt that the accused is the one who committed the offense. (People v. Ludday 61 Phil. 221, citing Wharton's *Crim. Evidence* Vol. II p. 1643) In weighing the evidence, the court should be guided by probabilities, not possibilities. (II Wigmore *On Evidence*, Sec. 235)

The phrase "reasonable doubt" is at once evocative of logical and psychological associations. The doubt, in order to be reasonable, must be controlled by objective facts. To this extent it is logical. Nevertheless it cannot be said that it is entirely immune from the subtle influences of past psychological experiences. Hence, what is reasonable to one may not be so to another. At any rate, because of "emergent social pressures" our Supreme Court had, in an early case, defined the legal import of reasonable doubt in as precise a way as human language can possibly make it. It is "such proof, to the satisfaction of the court, keeping in mind the presumption of innocence, as precludes every reasonable hypothesis except that which it is given to support. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely to be true than the contrary. It must establish the truth of the fact to a reasonable and moral certainty—a certainty that convinces and satisfies the reason and the conscience of those who are to act upon it." (People v. Reyes 3 Phil. 3)

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