EVIDENCE—1953

CENON S. CERVANTES, JR.*

ZENAIDA SANTOS **

No branch of law is in more constant use in judicial proceedings than the law of evidence. And since "evidence is that which brings to the mind a just conviction of the truth or falsehood of any substantive portion which is asserted or denied",[1] it is not unusual to find that in the Philippines the rules of evidence are the same in all courts and on all trials and hearings, whether civil or criminal.[2] Possibly, therefore, "evidence is the basis of justice".[3]

The past year has seen the Supreme Court apply our rules of evidence with singular adherence to past decisions and rulings. While a few cases tend to extend the application of the rules, the cases for the most part do not deviate from established principles. The article, therefore, in gleaning over the cases will seem familiar—a result of the lack of drastic changes in the principles and their applications.

A. ALIBI

One of the weakest defenses that an accused can resort to is alibi,[4] and requires for its proof, positive, clear and satisfactory evidence.[5] These requirements were absent in *People v. Dasig*[6] where the alibi was not believed, nor in *People v. Valdez*[7] where the alibi was even weakened because of the statement of the corroborating witness that the date had been taught to him before going to trial, while in *People v. Dacanay*[8] it was held that the alibi corroborated by the testimony of close relatives—the father and brother cannot outweigh the positive evidence of their participation, and so does

* LL.B., U.P. (1954); formerly staff member, Student Editorial Board, Philippine Law Journal.

** LL.B., U.P. (1954); formerly staff member, Student Editorial Board, Philippine Law Journal.

[1] Mr. Justice Edward Livingston, cited in Wigmore on Evidence 3d ed., Vol. 1, p. 5.

[2] Rules of Court, Rule 123, Section 2.

[3] WIGMORE, A STUDENT'S TEXTBOOK OF THE LAW OF EVIDENCE, 1935 ed., p. 1.

[4] MORAN, COMMENTS ON THE RULES OF COURT, 3d ed., Vol. III, p. 15.

[5] *Ibid.*, p. 16, citing the cases of *U.S. v. Olais; People v. Limbo*, 49 Phil. 94; *People v. Pili*, 51 Phil. 965 and others.

[6] G. R. No. L-5275, August 25, 1953.

[7] G. R. No. L-5177, March 28, 1953.

[8] G. R. No. L-4838, March 28, 1953.

the defense of alibi become weak when as held in *People v. Sulit*[9] the distance between the two places is less than twenty kilometers with buses continually plying between the two places. Neither can alibi stand where the defendant is clearly identified. This was the gist of the rulings in *People v. Peralta*[10] where the court held that the denial and alibi of the accused cannot prevail over the true and positive testimonies of witnesses who actually recognized the accused, and also in *People v. Sulit*[11] where the defendant was clearly identified, and in *People v. Rivera*[12] where the court held that the accused's weak alibi cannot be allowed to prevail over the testimony of any of the offended parties, who positively identified them, and in *People v. De los Santos*[13] where the alibi of the defense being weak and incoherent further persuaded the court of the truthfulness of the prosecution witnesses who testified to accused's identity.

But the defense of alibi is not altogether useless. Its role is stated in *People v. de los Santos*[14] where the court held that in the face of an air-tight alibi testified to by witnesses whose credibility is apparent and positive, doubt may be engendered to an extent favorable to the accused; but when proof thereof is too general, and incoherent, the result is otherwise, the evidence for the prosecution is re-affirmed and strengthened and the truth of its theory assured beyond moral certainty.

B. JUDICIAL NOTICE

Judicial notice may be discussed under three general headings; namely, matters which are of public knowledge; those of unquestionable demonstration; and those matters which ought to be known by the judges because of their judicial functions,[15] all of which are permitted because of convenience and expediency.[16] The matters now falling within judicial notice tend to extend as knowledge or experience, heretofore unknown, become evident. In three cases the Supreme Court made pronouncements which come as a result of past experiences. In the case of *Jose v. Consolidated Investments Inc. & Nava*[17] it was held that courts can take judicial notice that the preparation of a return to be submitted to the Bureau of Internal

[9] G. R. No. L-4919, January 21, 1953.
[10] G. R. No. L-4497, February 18, 1953.
[11] G. R. No. L-4919, January 21, 1953.
[12] G. R. No. L-4641, May 25, 1953.
[13] G. R. No. L-4880, May 18, 1953.
[14] *Ibid.*
[15] Rules of Court, Rule 123, Section 5.
[16] MORAN, COMMENTS ON THE RULES OF COURT, Vol. III, p. 20.
[17] G. R. No. L-5023, September 18, 1953.

Revenue for tax purposes is a work in which an accountant generally intervenes because of the very nature of his experience and duties. While in *Erlanger & Galinger v. Esconde* [18] the court in granting award for damages took judicial notice of the fact that the price of copra after the liberation compared to that prevailing before the war is higher. In the same case it was also held that where it is proved that there was a certificate of sale executed by the sheriff and satisfied by him and presented to the Register of Deeds who issued certificates of title, there was no need to prove the contents of and every one of the proceedings or documents because the court can take judicial notice of what they contained. While in *Francia v. Hipolito* [19] where the money loaned was alleged to have been made in genuine currency in 1944, again judicial notice was taken of the fact that Japanese currency had then suffered an unparalleled inflation with the result that the value of genuine currency had reached its peak, and that in the mad rush to get rid of Jap currency and to convert it into genuine currency or any other article of value, it would be the height of folly to do away with genuine currency and in the large amount involved. While in *Perkins v. Benguet Consolidated Mining Co.*[20] where an action to establish ownership over shares of stocks were instituted in the Philippines and in the United States was again brought for the third time in the Philippines, the court said that where the same action having been brought in the Philippines successfully and then for reasons all his own was again brought in the United States where the case was decided adversely, the fact of bringing the second action showed that the plaintiff in instituting the second action had abandoned whatever rights he had gained in the first action. And where the question involved is ownership as decided in the U.S. courts is brought for the third time in the Philippines, the decisions of the Court of Appeals of New York and the District Court of Appeals of California are matters within the judicial notice. Hence there is no necessity for a new trial where the alleged newly discovered evidence are the decisions of the said courts. And regarding the jurisdiction of the Courts of First Instance in treason cases, the case of *People v. Pacheco* [21] states that it is of common knowledge that when the Government found it was no longer necessary to maintain one People's Court for the whole Philippines to try treason indictments, the Congress abolished that Court and directed that treason cases pending before it shall be heard by the respective courts of first instance. There is

[18] G. R. No. L-4792-95, September 30, 1953.
[19] G. R. No. L-5530, October 26, 1953.
[20] G. R. No. L-1981-1982, October 30, 1953.
[21] G. R. No. L-4570, July 31, 1953.

nothing to indicate congressional intention to disturb the usual rules on jurisdiction or venue of Courts of First Instance obtaining before the creation of the People's Court.

C. ADMISSIONS

While an accused may give his reasons to explain his attitude as being consistent with his innocence,[22] the courts have invariably regarded with suspicion the fact of flight on the part of the suspect or accused. In the case of *People v. Tidoy & Tidoy*,[23] the court opined that the flight of the accused together with their extrajudicial admissions leave no room for doubt that they are the authors of the crime with which they are charged. It went further to say that their claim of fright when their deceased mistress called their names cannot be reconciled with their flight from the scene of the crime. The same rule was expanded in *People v. Lingcuan* [24] where the rule was advanced that flight need not come immediately after the commission of the crime but even after the case had been dismissed. The flight of the accused almost immediately after the case against him had been temporarily dismissed was viewed as not being without significance as proof of guilt. But then if flight is indicative of guilt, so is voluntary surrender without pursuit. The surrender of the accused to the constabulary in the case of *People v. Segovia & Segovia* [25] when the authorities were not looking for him is clear proof of consciousness of wrong-doing as it would be extraordinary for a man who, in his conscience had done no wrong and for whom there was no order of arrest would give himself up to the police of his own volition.

On the other hand, admissions may also be made in the course of the judicial proceedings [26] and admissions made deliberately and intelligently, in the presence of the court and reduced to writing are the best species of evidence.[27] Therefore when the accused in *People v. Gammuac* [28] admitted of having killed and put up self-defense as his defense, he has to satisfy the court with credible evidence that the killing was justified and unable to do so the court can hardly believe his tale of self-defense.

---

[22] MORAN, COMMENTS ON THE RULES OF COURT, 3d ed., Vol. III, p. 71.
[23] G. R. No. L-4717-4718, February 28, 1953.
[24] G. R. No. L-3772, May 13, 1953.
[25] G. R. No. L-5037, March 19, 1953.
[26] MORAN, COMMENTS ON THE RULES OF COURT, 3d ed., Vol. III, p. 63.
[27] *Ibid.*
[28] G. R. No. L-5197, August 28, 1953.

Another kind of admission may also be inferred from failure to prosecute.[29] Reiterating this doctrine is the case of *People v. Ali Itum* [30] where the child of the victim did not make any formal complaint until six years after. The allegation that the witness was afraid of reprisal was not given much weight considering that she had already made an immediate report to the constabulary commander on the same night, nor did she bring the case to the proper authorities with a view of prosecuting the culprits. However, we find that in *People v. de los Santos* [31] the court held that the failure of one of the witnesses to make disclosures is satisfactorily explained by her fear of reprisal and in the condition of the times (in January, 1950, the HUKS were at the height of their power in the province of Bulacan and fear of their attacks was general among the population). Possible reconciliation of the two cases may be had in the fact that in this case the witness positively testified that she told the chief of police and her children that she knew the robbers, but that she could not tell names for fear they would come back and kill. But in still another case, the court held in *People v. Katangkatang* [32] that the circumstance that the name of the perpetrators were not immediately revealed to the authorities appear to have been due to the survivors' fear of reprisal which made them withhold the information until after the burial and the end of the customary number of days of prayer. How this case differ from the previous case may probably be explained by the difference in the imminence of the danger of reprisal.

D. CONSPIRACY

The testimony of one of the conspirators relating to the conspiracy and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than the declaration.[33] The provision is an exception to the rule of *res inter alios acta alteri nocere non debet.*[34] However, in order to be received, it is necessary that the conspiracy be first proved by evidence other than the admission itself, that the admission relates to the common object and that the declarant was engaged in carrying out the conspiracy.[35] But this rule applies to extrajudicial declaration of a conspirator and not to his testimony by way of direct evi-

[29] Moran, *op. cit.*, Vol. III, p. 76.
[30] G. R. No. L-4881, May 27, 1953.
[31] G. R. No. L-4880, May 18, 1953.
[32] G. R. No. L-5134, May 29, 1953.
[33] Rules of Court, Rule 123, Section 10.
[34] MORAN, *op. cit.*, p. 76.
[35] *Ibid.*, p. 90.

dence.[36] This distinction was observed in the case of *People v. Dacanay* [37] where the testimony of a confederate supported and corroborated by extrajudicial acts and sworn statements of the accused when taken together with the testimony of the victims was sufficient to convict. The court held that the rule on admissibility of an act or declaration of a confederate after the conspiracy is shown by evidence other than such act or declaration is applicable to extrajudicial acts or declarations but not to testimony given on the stand at the trial.

E. CONFESSION

When the accused makes a declaration expressly acknowledging the truth of his guilt as to the offense charged it may be given in evidence against him.[38] And a confession is admissible until the accused successfully proves that it was given as a result of violence, intimidation, threat or promise of reward or leniency.[39] This was held to be so in the case of *People v. Libre* [40] where the court held that the confession is to be presumed voluntary until proven otherwise and that the burden is on the accused. In that case the witnesses who allegedly saw the intimidation and force were not presented, nor did accused tell his lawyer, and when he was asked by the Justice of the Peace if he had been intimidated he answered in the negative, so that the confession was held to be voluntary. And that until then, it is considered that the confession is voluntary especially where the alleged torture had no other evidence to support it other than the appellant's assertions at the trials, as held in *People v. Asuncion*.[41] But where the penalty involved is capital punishment, the court held in *People v. Gim Sam* [42] that the accused should not be found guilty on a repudiated confession and it would be a dangerous precedent to pin the liability of an accused convicted of capital punishment on such a weak and inconclusive evidence. Although in *People v. de los Santos* [43] the Supreme Court held that a confession to be repudiated must not only be proved to have been obtained by force and violence, but also that it is false or untrue for the law rejects the confession when by force, violence or intimidation the accused is compelled against his will to tell a falsehood, not when by such force and violence he is compelled to tell the truth. This is in consonance with the

[36] *Ibid.*, p. 91.
[37] 49 O. G. 919, March 28, 1953; G. R. No. L-4838, March 28, 1953.
[38] Rules of Court, Rule 123, Section 14.
[39] MORAN, *op. cit.*, p. 100.
[40] G. R. No. L-5195, May 4, 1953.
[41] G. R. No. L-4258, May 15, 1953.
[42] G. R. No. L-4287, December 29, 1953.
[43] G. R. No. L-4880, May 18, 1953.

principle that the admissibility of evidence is not affected by the illegality of the means with which it was secured. And what facts may negate the assertion that confession was obtained through force was stated in *People v. Asuncion*..[44] where to ratify under oath before the Justice of the Peace their confession and not disavowing them in the preliminary investigation but instead reconstructing the crime in the presence of substantial number of people would tend to show lack of credence to their allegations of torture. Also the fact that two sets of confessions taken by different officers at different places are similar to each other in their essential features as well as the fact that the confession contains statements that are exculpatory in nature and some cite plausible facts which only the actors in the crime could have known, are facts negating compulsion and undue coercion in the making of the confession.

As regards the scope of the admission in the confessions, it is the general rule that a confession is admissible only against him but not against his co-defendants as to whom said confession is hearsay evidence for he had no opportunity to cross-examine the former.[45] But this rule admits of exceptions. In *People v. Ansang*[46] it was held that the extrajudicial confession corroborated by *corpus delicti* could be the basis of conviction.

F. PAROL EVIDENCE

The rule on parol evidence prohibits the use of evidence other than the writing itself as regards the terms of the agreement entered into by the parties. This has been followed in *Infante v. Cunanan*[47] where it was held that the cancellation of the written authority being in writing, parol evidence is not admissible when it does not fall under any of the exceptions. But following the provisions of the Rules of Court, the rule does not apply in case the validity of the instrument is put in issue by the pleadings as held in *Woodhouse v. Halili*[48] where it is said that the principle of integration of jural acts is inapplicable where the purpose of considering the prior draft is not to vary, alter, or modify the agreement but to discover the intent of the parties thereto and the circumstances surrounding the execution of the contract.

---

[44] G. R. No. L-4258, May 15, 1953.
[45] MORAN, *op. cit.*, p. 109.
[46] G. R. No. L-4887, May 15, 1953.
[47] G. R. No. L-5180, August 31, 1953.
[48] G. R. No. L-4811, July 31, 1953.

G. PRIVILEGED COMMUNICATIONS

In case a claim is prosecuted against the estate of a deceased person, parties or assignors of parties to a case, or persons in whose behalf a case is prosecuted against an executor or administrator or other representative of a deceased person cannot testify as to any matter of fact occurring before the death of such person.[49] But as held in the case of *Francia v. Hipolito*[50] the prohibition does not apply to witnesses. It was held that failure of the witness to testify on a point due to the objections of the opposing counsel should be taken against the plaintiff because the objection could be overcome by pointing out that the person testifying was a witness not a party.

H. HEARSAY EVIDENCE

Rule 123, Section 27 of the Rules of Court states the general rule on hearsay evidence. In this connection, the court held in *People v. Caggauan*[51] that statements in the complaint are inadmissible *per se* as hearsay. Still, while the information is not conclusive as to the death of the person, the making of the statement in the complaint or its presentation is circumstantial evidence that the aforesaid person is already dead. But in the same case, the court held that while an affidavit is admissible as a public record, the statements contained therein are hearsay because the declarants were not subjected to the test of cross-examination.

I. EXCEPTIONS TO HEARSAY EVIDENCE

While a witness can only testify to those facts which he knows of his own knowledge[52] this admits of certain exceptions. The first exception is dying declaration,[53] while another is *res gestae*.[54] The Supreme Court in *People v. Avila*[55] had occasion to pass upon both of these exceptions. It held that statements to the chief of police by the victim while in a critical condition by reason of the nature of the wounds and loss of blood and with the realization that he was going to die may be regarded as dying declaration. While that where the victim while calling for help and also after assistance had arrived said that he had been attacked and shot by the accused, the spontaneous declarations made before the victim (declarant) had had time

[49] Rules of Court, Rule 123, Section 26(c).
[50] G. R. No. L-5530, October 26, 1953.
[51] G. R. No. L-5385, December 28, 1953.
[52] Rules of Court, Rule 123, Section 27.
[53] MORAN, *op. cit.*, p. 310.
[54] *Ibid.*
[55] G. R. No. L-4640, March 23, 1953.

to think and make up a story may well be considered as part of the *res gestae* and therefore admissible as evidence.

J. SECONDARY EVIDENCE

Generally, there can be no evidence of a writing other than the writing itself the contents of which is the subject of inquiry.[56] However, when the original has been destroyed, upon proof of its execution and destruction, its contents may be proved by a recital of its contents in an authentic document.[57] In applying Rule 123, Section 51, the Supreme Court in *Felix de Villa v. Fabricante* [58] in ruling on the allegation of the defendant that the complaint be dismissed on the ground that the mortgage instrument had been destroyed during the war and had not been reconstituted, held that the lower court erred in dismissing the action and that a mortgage and its registration may be shown upon proof of their execution and loss or destruction by a recital of their contents in some authentic document or by recollection of witnesses, and this the plaintiff had offered to do with a copy of the deed of mortgage retained by the notary public. But in *Erlanger & Galinger v. Exconde* [59] where it was proved that there was a certificate of sale executed by the sheriff and ratified by him and presented to the Register of Deeds who issued a certificate of title, there was no further need of proving the contents of each and everyone of the proceedings or documents because the court can take judicial notice of what they contain being in official forms.

K. CONSTRUCTION OF INSTRUMENTS

Sections 58 to 67 of Rule 123 give us the rules for the construction and interpretation of instruments. The case of *Woodhouse v. Halili* [60] applies Section 65. In that case, where the plaintiff represented to be the owner or about to be the owner of an exclusive bottling franchise, on which representation the defendant gave his consent to the contract, the court held that as the plaintiff knew what the defendant believed about his (plaintiff's) exclusive franchise, as he induced him to that belief, plaintiff may not be allowed to deny that the defendant was induced by the belief. And that the principle of integration of jural acts is inapplicable where the purpose of considering the prior draft is not to vary, alter or modify the agreement, but to discover the intent of the parties thereto and the circumstances surrounding the execution of the contract.

[56] Rules of Court, Rule 123, Section 46.
[57] *Ibid.*, Section 51.
[58] G. R. No. L-5531, June 30, 1953.
[59] G. R. Nos. L-4792, 4793, 4794, September 30, 1953.
[60] G. R. No. L-4811, July 31, 1953.

L. DISPUTABLE PRESUMPTIONS

Among the disputable presumptions given in Section 69 is the disputable presumption of survivorship,[61] where two persons perish in the same calamity and it is not shown who died first and there are no particular circumstances from which it can be inferred. The Supreme Court in *Ramon Joaquin v. Navarro* [62] held that the use of this presumption cannot be made in case there are facts from which the survivorship is shown. It may be availed of only when there are no facts.

M. INCRIMINATING QUESTIONS

While a witness must answer questions pertinent to the matters at issue, he need not, unless otherwise provided by law, give an answer which tends to subject him to punishment for an offense.[63] But what may be refusal is stated by the Court in *Isabela Sugar Co. & Montilla v. Macadaeg et al.*[64] There the prosecution contended that the witness waived his right when he answered the questions, but the court held that the invariable answer of the witness to questions which tended to incriminate him being "I do not remember", the statement is clearly a refusal to answer the queries and the privilege is not waived. The questions revolved around the amount paid for the purchase and sale of a piece of land during the Jap occupation and to answer any would tend to incriminate the witness under the War Profit Tax Law. He had already declared that he sold a certain property for ₱200,000.00 and if he had to answer that he purchased for ₱65,278.50, he would admit a profit which is one of the elements of the offense under the War Profit Tax Law.

N. DIRECT EXAMINATION; LEADING QUESTIONS

On direct examination, leading questions are not allowed except on preliminary matters, when there is difficulty in getting direct and intelligible answers from the witness who is ignorant, or a child of tender years, or is feeble minded, or is a deaf mute.[65] And a question which suggests to the witness the answer which the examining party desires is a leading question.[66] An example of a leading question is mentioned in *People v. Dasig* [67] where the question "How many days

[61] Rules of Court, Rule 123, Section 69(ii).
[62] G. R. No. L-5426-5428, May 29, 1953.
[63] Rules of Court, Rule 123, Section 79.
[64] G. R. No. L-5924, October 28, 1953.
[65] Rules of Court, Rule 123, Section 82.
[66] *Ibid.*
[67] G. R. No. L-5275, August 25, 1953.

previous to that trip of yours on December 24, 1949? Was it the day previous?" was considered a leading question.

O. PREPONDERANCE OF EVIDENCE

The requirement of preponderance of evidence is the equivalent of proof beyond reasonable doubt in criminal cases. By preponderance of evidence is meant that the evidence as a whole adduced by one side is superior to that of the other.[68] One of the means of determining preponderance of evidence is the credibility of the witnesses.[69] In the case of *Erlanger & Galinger v. Exconde*[70] it was held that when the witness testified giving specific and detailed facts on even minor incidents but testified in generalities about the alleged *ex parte* motion for the annulment of sale, mentioning no specific document or fact upon which he based it nor the circumstances and incidents connected therein that would confirm the fact of its having been presented or which will give rise to it, from experience this lack of definiteness and concreteness as to facts is a badge of fabrication and falsity. It was also held that the testimony of disinterested witnesses regarding a sale may not be ignored unless some more credible evidence, like a public document, the authenticity of which is unquestioned or unquestionable, can be presented to overcome their import. In the very same case the Court, in passing over the testimony which is direct evidence of the supposed order of annulment of sale, said that no court would give it credence if the surrounding circumstances, instead of corroborating it, belie its existence. And as regards the testimony of the witness, it was held in the case of *Leoncio Ho Benluy v. Republic of the Philippines*[71] that where the law prohibits foreigners from taking part in any election and the petitioner in applying for naturalization presents a character witness and the witness in his enthusiasm to prove that the applicant had identified himself with the Filipinos states that the petitioner took part in election campaigns in his province should be given credence, since "in all likehood the witness gave it in good faith and in all friendship to the applicant to bolster the latter's application for naturalization without realizing that by the declaration he was forever closing the door to Benluy's ever becoming a Filipino citizen."

Another way of determining preponderance of evidence is the determination of the nature of the facts and the probability and improbability of their testimony.[72] In the case of *Mercado & Mercado*

[68] MORAN, *op. cit.*, p. 603.
[69] Rules of Court, Rule 123, Section 94.
[70] G. R. Nos. L-4792, 4795, September 30, 1953.
[71] G. R. No. L-5522, December 21, 1953.
[72] Rules of Court, Rule 123, Section 94.

v. Go Bio [73] the Court held that a refusal of an offer or tender of payment is unbelievable where aside from being denied by the other party, it appears that no consignation of the amount has been made to the Court although the supposed offeror had the advice of counsel. And in *Francia v. Hipolito* [74] in considering contradictions between two witnesses, where the testimony of one of the witnesses contains flaws and inconsistencies and material contradictions which creates in the mind serious doubts as to its trustworthiness, it cannot be given much weight especially after showing that the witness was most vehement, persistent and sensitive, giving the impression that she had embraced the cause of the claimant as her own.

P. PROOF BEYOND REASONABLE DOUBT

In criminal cases, the guilt of the accused must be proved beyond reasonable doubt, and proof beyond reasonable doubt does not mean such degree of proof as, excluding the possibility of error, produces absolute certainty. Moral certainty only is required or that degree of proof which produces conviction in an unprejudiced mind.[75] In the case of *People v. Mahlon* [76] in interpreting the meaning of reasonable doubt, the Supreme Court said that the doubt which entitles the accused to acquital is reasonable doubt, not whimsical or capricious doubt based on probabilities unsupported by evidence.

And in seeking reasonable doubt the mere denial of a crime by the accused is not sufficient especially where the prosecution positively shows his guilt. In *People v. Ilustre* [77] the court held that the defense of the accused consisting mainly of denials cannot prevail over positive testimony of the prosecuting witnesses. The same is said in *People v. Caggauan* [78] where the Court held that mere protestations of denial can avail nothing against the direct and positive evidence submitted by the prosecution. Again in *People v. Peralta* [79] it was held that the defense of the appellant merely consists of negative testimony, his witnesses merely denied the imputation made against him by witnesses for the prosecution. Obviously, such negative testimony cannot prevail over the clear and positive testimony of the prosecution witnesses. And in *People v. Pacheco* [80] where the defendant was accused of treason and in the arrest and killing of one of his victims

---

[73] G. R. No. L-1183, October 19, 1953.
[74] G. R. No. L-5530, October 26, 1953.
[75] Rules of Court, Rule 123, Section 95.
[76] G. R. No. L-5198, April 17, 1953; citing *U. S. v. Brobst*, 14 Phil. 310.
[77] G. R. No. L-4082, January 30, 1953.
[78] G. R. No. L-5385, December 28, 1953.
[79] G. R. No. L-4497, February 18, 1953.
[80] G. R. No. L-4570, July 31, 1953.

his participation was positively stated by five witnesses, his mere denial cannot overcome the positive assertion of the witnesses.

In considering the testimony of witnesses to arrive at proof beyond reasonable doubt, it is said that the testimony of a boy is one of the best evidence.[81] The Supreme Court in *People v. Simbula & Isip* [82] stated that, in considering the testimony of a child eleven years of age who recognized them at close range and had known them intimately for a long time, the speculation that he could have seen other men but falsely pinned the crime on the defendants for reasons of his own is precluded by the fact of his spontaneous mention of the appellants to his mother and the Philippine Constabulary soon after the killing at a time and under circumstance when no thought of prejudicing any particular innocent persons could have entered his youthful mind.

In considering the testimony of different witnesses, contradictions may affect their credibility. But where the contradictions refer to mere details, they will be disregarded. This rule is mentioned in *People v. Cadiz* [83] where it is said that the contradictions in the testimony of the witnesses with reference to mere details do not affect their veracity. And while it is true that due to lapse of time some of the witnesses were not able to give the exact date of the incident, nevertheless, its occurence cannot be doubted having been admitted by the defendant. And in *People v. Pascual* [84] the Court in going over the transcript of the oral testimony noticed difference in some details but said that some of these were due to the fact that the question were not well understood and the answers were corrected after the questions were understood and the other difference instead of being badges of untruthfullness constitute signs of veracity. It is said that witnesses react differently on what they see and hear depending upon their situation and state of mind. On the other hand, uniformity in details is a badge of untruthfulness.

Contradictions between the testimony of a witness for the prosecution in open court and his affidavit may serve as a basis for acquital especially where the witness is of doubtful credibility and where a careful study of the evidence submitted by the prosecution reveals that the testimony of the principal witness, upon which the finding of guilt of the appellants is predicated, is absolutely without corroboration of any kind in any of its important parts, as held in the case of *People v. Lanas*.[85]

---

[81] MORAN, *op. cit.*, p. 615, citing *People v. Bustos*, 45 Phil. 9, 35.
[82] G. R. No. L-5299, June 30, 1953.
[83] G. R. No. L-5039, March 19, 1953.
[84] G. R. No. L-4801, June 30, 1953.
[85] G. R. No. L-5086, May 25, 1953.

The courts often take the view that when the testimony of the witness if false in one respect it must also be so as a whole. But this rule admits of exceptions. In *People v. Dasig* [86] the court said that the rule of *falsus in uno, falsus in omnibus* is not a mandatory rule of evidence, but rather a permissible one, which allows the jury or the court to draw the inference or not to draw it as circumstance may best warrant. The rule has its limitations; when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted.[87] There are, therefore, these requirements for the application of the rule, i.e. that the false testimony is as to a material matter, and there should be a conscious and deliberate intention to fasify.[88] Continuing, the Court said that the said rule should not apply in the particular case where there is sufficient corroboration on many grounds of the testimony; where the mistakes are not on the material points; where the error do not arise from an apparent desire of the witness to exculpate himself though not completely.

Nor will inability to testify correctly on certain points affect the testimony of the witness especially where the failure is a result of lapse of time. In *People v. Peralta* [89] the Court, in passing upon the failure of the witness to tell the year he was arrested as well as when he saw one of the victims with his hands tied, limiting his statement to the laconic assertion that it may have been in 1942 or 1944, said that since eight years had elapsed since the time, it is not strange that the witness should commit some lapse of memory.

But will the testimony of accomplices suffice to warrant a conviction? It is said that the testimony coming as it does from a polluted source should be scrutinized with care.[90] In *People v. Dasig* [91] the court said that "the true doctrine which should govern the testimony of accomplices, or what may be variously termed principals, confederates, or conspirators, is not in doubt. The evidence of accomplices is admissible and competent. Yet such testimony comes from a polluted source". Consequently, it is scrutinized with care. It is properly subject to grave suspicion. If not corroborated, credibility is affected. Even then, however, the defendant may be convicted upon

[86] G. R. No. L-5275, August 25, 1953.

[87] *Ibid.*, citing III WIGMORE, Sections 1009-1015, pp. 674 683.

[88] *Ibid.*, citing *Lyric Film Exchange, Inc. v. Cowper*, 36 O. G. 1642 (1939).

[89] G. R. No. L-4497, February 18, 1953.

[90] MORAN, *op. cit.*, p. 620.

[91] G. R. No. L-5275, August 25, 1953; 49 O. G. 3338. The court cited the cases of *U. S. v. Ambrosio & Fulsario*, 17 Phil. 295; *U. S. v. Remigio*, 37 Phil. 599; *People v. Asinas*, 53 Phil. 59; and *People v. Bumanlag*, 56 Phil. 10.

the unsupported evidence of an accomplice. If corroborated absolutely or even to such an extent as is indicative of trustworthiness, the testimony of the accomplice is sufficient to warrant a conviction. This is true even if the accomplice has made previous statements inconsistent with his testimony at the trial and such inconsistencies are satisfactorily explained.

Also to be considered is the probability or improbability of the testimony of the witnesses. In *People v. Katangkatang* [92] regarding the identification of the accused, the court held that although their faces were partly covered, where there was light in the house and the accused-appellants were familiar figures to the witnesses, living as they did, not far from them and having been known to them for a long time, the identification of the appellants is not improvable. And in *People v. de los Santos* [93] the court said that where the robbery was perpetuated in a small room and further, when the accused came up, the light from the lamp on the wardrobe illuminated their faces, it is not improvable for the witnesses to see the faces of the accused. And also there was a full and complete opportunity for the witnesses to identify the accused specially considering that the taking of the valuables and the loot must have taken place many minutes and in so doing the accused must have been clearly lighted since they needed light to be near or enable them to pick the small objects of jewelry from their places in the wardrobe. It is true that the hut was not lighted, but the malefactors used a flashlight and unlike their companions did not have their faces covered. Besides knowing them well, the offended parties had full opportunity to observe them at close range in the light of the moon. But we find that in the case of *People v. Viray,* [94] the court said that where the witness viewed the accused from a distance of four or five meters, under the light of a half moon which is doubtful whether one could recognize a man whose face was then covered with a handkerchief, the identification being based mainly on the black hat worn by the man, and the place being surrounded on all sides by banana, papaya and Sta. Elena trees, the witness must have hidden behind one of the trees and there is reason to believe the distance was more than 5 meters. The best evidence for identification should have been the woman then being held by the man sought to be identified, especially where in an affidavit she claimed that she could identify him if presented to her. And regarding the fact that the offended party recognized one of the accused he held the flashlight to his chin, the court said that it would be the height of folly for one who

[92] G. R. No. L-5134, May 29, 1953.
[93] G. R. No. L-4880, May 18, 1953.
[94] G. R. No. L-3773, January 2, 1953.

did not want to reveal his identity to sit down at the very feet of the offended party so that the latter could take a look in his direction, and it would still be more incredible for this visitor to hold his flashlight near his face and then train it on the ceiling so that the reflection would reveal his face.

Q. EXTRAJUDICIAL CONFESSION

The rule states that an extrajudicial confession made by an accused shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*.[95] And in the case of *People v. Gim Sam*[96] the Court said that where none of the witnesses for the prosecution ever linked the name of one of the accused and pointed to him as one of those who took part in the kidnapping in one way or another and there is no evidence in support of his conviction except a written confession that he had acted as guard of the victim, a confession which was repudiated, it would be a dangerous precedent to convict him to capital punishment on such a weak and inconclusive evidence. The Court also held that he was likewise implicated in some extrajudicial confessions of his co-accused, but these again were repudiated, and there are clear indications that they have been extorted through the application of third degree. While in *People v. Ansang*[97] to show what was the *corpus delicti* needed to convict upon and extrajudicial confession these facts are given: where *J* the foster son of *A*, who had a grudge against *B*, *J* and *J* were seen by two witnesses sailing from the shore, *J* carrying three hand granades. When asked where they were going, *J* answered that they were going to fish. *B* and his companions have never been seen or heard of by anybody. When *J* and *J* returned, they no longer had hand granades nor did they bring any fish. The pieces of the wreckage of *B*'s vinta were seen on the shore of a nearby island. *B* and his companion must have met a violent death due to the commission of a crime. It held that this is the *corpus delicti* which may corroborate a co-conspirator's extrajudicial confession.

R. CIRCUMSTANTIAL EVIDENCE

Circumstantial evidence may be sufficient to convict the ascused but in order to do so there should be more than one circumstance; the facts from which the inference is derived are proven; and the combination of all the circumstances is such as to produce a convic-

[95] Rules of Court, Rule 123, Section 96.
[96] G. R. No. L-4287, December 29, 1953.
[97] G. R. No. L-4847, May 15, 1953.

tion beyond reasonable doubt.[98] In the case of *People v. Mahlon*[99] the Court held that the circumstantial evidence must be deemed to be proved beyond reasonable doubt, and in order that circumstancial evidence may constitute proof beyond doubt, there must be a series of circumstances satisfactorily proved, that the circumstances are consistent with each other, and that each and every one of them is consistent with the defendant's guilt and inconsistent with his innocence. But the position of the weapons and the appellants' being with the triggerman just before and after the killing are inconsistent with the assumption that the former were present only as curious onlookers. On the other hand, these circumstances are not consistent with innocence.

Motive is the purpose which leads a person to the doing of an act. Men do not act wholly without motive.[100] However, in the case of *People v. Caggauan*[101] the Court held that assuming that the existence of the motive testified to is not to be believed, this circumstance is no reason for not finding the appellant guilty. Proof of motive is necessary when doubt exists as to whether a crime has been committed by a person, or by another, or not; but it is not necessary when, as in this case, three eyewitnesses declare to have actually witnessed the commission of the offense. Whatever the cause of the killing, it is not absolutely necessary to find a motive therefor. The question of motive is of course very important in cases where there is doubt as to whether the defendant is or is not the person who committed the act, but when there is no doubt, as in the case at bar, that the defendant was the one who caused the death of the deceased, it is not so important to know the exact reason for the deed.

And regarding the value of circumstantial evidence the statement comes from *Erlanger & Galinger v. Exconde*.[102] The evidence which is submitted by the plaintiff, which is all circumstancial and therefore less susceptible to fabrication, constitutes an unbroken chain of natural and rational circumstances corroborating each other, and it certainly can not be overcome by the inconcrete and doubtful evidence submitted by the defendants.

---

[98] Rules of Court, Rule 123, Section 96.

[99] G. R. No. L-5198, April 17, 1953.

[100] MORAN, *op. cit.*, p. 634.

[101] G. R. No. L-5385, December 28, 1953.

[102] G. R. No. L-4792, 4795, September 30, 1953.

Example of circumstantial evidence is mentioned in *People v. Lingcuan*[103] where the accused told the witness that he was going to kill the deceased, not with cool deliberation, but in a sudden impulse or burst of anger as he unburdened himself of his grievance. And in *People v. Caggauan*[104] the making of the statement in the complaint or its presentation was held to be circumstantial evidence that the person was already dead.

[103] G. R. No. L-3772, May 13, 1953.
[104] G. R. No. L-5385, December 28, 1953.