EVIDENCE

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ADMISSIBILITY

Admissibility of Carbon Copy.

Is a mere carbon copy of a post-mortem report admissible in evidence?[1] This issue was resolved by the Supreme Court in the case of *People v. Agustin Mangulabnan*,[2] where the Court held that the fact that it is a mere carbon copy is of no moment for it has been signed by the physician who executed the same and his signature was identified by him at the witness stand. A copy of a public writing, duly certified to be a true copy thereof, is as good evidence as the original writing, hence said copy is admissible in evidence.[3] Furthermore, even granting, that the evidence was not admissible, appellant did not offer any objection to its admission when it was presented in evidence at the hearing. His objection was presented too late.[4]

Admissibility of a copy of the decision to prove subsidiary liability.

A copy of the decision, in the criminal case convicting the driver, for homicide through reckless imprudence, the writs of execution to enforce civil liability, and the returns of the sheriff showing that the writs of execution were not satisfied because of the insolvency of the driver, are admissible in evidence to prove subsidiary liability.[5] In the absence of any collusion between the offended party and the defendant, the judgment of conviction is admissible in evidence and is binding upon the party subsidiarily liable.[6]

Admissibility of sheriffs return.

In order that a sheriff's return may be admissible in evidence, is it necessary to require the sheriff to testify in court as to the facts

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* Recent Legislation and Documents Editor, Student Editorial Board, 1956-57.

1 §3, Rule 123, Rules of Court, provides:
"Evidence is admissible when it is relevant to the issue and is not excluded by this rule."
In order that evidence may be admissible two requisites must concur, namely, (1) that it is relevant to the issue and (2) that it is competent, that is, that it does not belong to that class which is excluded. (III MORAN, COMMENTS ON THE RULES OF COURT, 5. 1952).

2 G.R. No. L-8991, Sept. 28, 1956.

3 §41 of Rule 123.

4 Hodges v. Salas, et al., 63 Phil. 567 (1936); United States v. Ong Shiu, 28 Phil. 242 (1914).

5 Emilio Manalo v. Robles Trans. Co., Inc., G.R. No. L-8171, Aug. 16, 1956. In this case, the driver of the defendant was convicted for homicide through reckless imprudence and was found insolvent, hence an action was instituted against the defendant to enforce subsidiary liability.

6 Martinez v. Barredo, 81 Phil. 1 (1948).

stated in his entry? The case of *Manalo v. Robles Trans. Co., Inc.*[7] answered the foregoing question in the negative. A sheriff's return is an official statement made by a public official in the performance of a duty specially enjoined by law and forming part of official records, and is prima facie evidence of the facts stated therein. In an earlier case,[8] the Supreme Court elucidated the reasons behind the rule. The litigation is unlimited in which testimony by public officials is daily needed; the occasions in which the officials would be summoned from his ordinary duties to declare as a witness are numberless. Were there no exception, hosts of officials would be found devoting the greater part of their time attending as witnesses. The work of administration of government and the interest of the public having business with officials would alike suffer in consquence. The law reposes a particular confidence in public officers that it presumes they will discharge their several trusts with accuracy and fidelity; and therefore whatever acts they do in discharge of their public duty may be admissible in evidence and shall be taken to be true under such a degree of caution as the nature and circumstances of each case may appear to acquire.

Time of objection to admissibility of evidence.

When a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection he cannot raise the question for the first time on appeal.[9] Every objection to the admissibility of evidence shall be made at the time such evidence is offered, or as soon thereafter as the objection to its admissibility shall have become apparent; otherwise, the objection shall be treated as waived.[10]

As the official records[11] sought to be identified were not yet being presented, nor the purpose thereof disclosed, the objection were

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[7] *Supra* note 5.

[8] Antillon v. Barcelon, 35 Phil. 151 (1916).

[9] Asombra v. Dorado, et al., 36 Phil. 883 (1917); Kuenzle & Streif v. Jiongco, 22 Phil. 110 (1912); Geraldo v. Arpon, 22 Phil. 407 (1912); Bersabal v. Bernal, 13 Phil. 463 (1909); Hodges v. Salas, 63 Phil. 567 (1936).

[10] §73, Rule 123, Rules of Court; Abrenica v. Gonda, 34 Phil. 739 (1916); Marsh v. Hand, 35 Md. 123.

The right to object is a privilege which the party may waive; and if the ground of objection is known and not seasonably taken, by implication of law it is waived. This proceeds upon two grounds: (1) that if the objection is intended to be relied on, and is seasonably taken, the omission may be supplied, or the error corrected, and the rights of all parties saved; (2) that it is not consistent with the purpose of justice for a party, knowing of a secret defect, to proceed and take his chance for a favorable verdict, with the power and intent to annul it as erroneous and void, if it should be against him. (Moran, op. cit. *supra* note 1 at 555, citing Chief Justice Shaw of Mass. in Cady v. Norton, 14 Pick, 236).

[11] The official records or the evidence involved here were the certified true copy of the service record of the defendant, Angudong, in the Bureau of Civil Service, and in the Bureau of Health.

both premature. Thus, the Supreme Court ruled in the case of *People v. Hon. Jose Teodoro.*[12] It must be noted that in this case, the Fiscal was only identifying the official records of service of the defendant preparatory to introducing them as evidence. The time for the presentation of the records had not yet come; presentation was to be made after their identification.

Admission by silence; rule when a person is under arrest or custody.

Any act or declaration made in the presence and within the observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, may be given in evidence against him.[13] The rational foundation of the rule is the maxim *qui tace consentire videtur* (silence means consent). An application of the foregoing rule is not found wanting in the case of *People v. Tia Fong,*[14] where the Court held, that while the rule varies whether the silence of an accused under arrest or during an official investigation may be taken as evidence of his guilt, the better rule is to consider the circumstances in each case and decide the admissibility of the silence accordingly.[15] The circumstances taken into consideration by the Court were, that if appellant had not really taken part in the commission of the crime, his immediate reaction when he became aware that the crime was to be re-enacted, should have been to protest against the implication of re-enactment or to refuse his indicated participation therein. Far from doing so, he acquiesced and willingly took part in the re-enactment[16] as directed. More than mere silence, appellant committed positive acts without protest or denial when he was free to refuse.

Probative value of clearances.

It is true that ordinarily clearances from the proper authorities are presented in evidence, but there is no law to that effect, with the result that the uncontroverted evidence presented by the petitioner on the point has to be given weight. Clearances, therefore, cannot be legally considered as formal evidence. Thus, the Court ruled in *Li Kuwong v. Republic,*[17] in holding as untenable the conten-

[12] G.R. No. L-8079, Feb. 29, 1956.

[13] §8, Rule 123, Rules of Court.

[14] G.R. No. L-7615, March 14, 1956. In this case, the defendant was convicted of murder of one Lian Kao, the son of Wong Kiat. The evidence mainly relied upon for conviction was the silent participation of the accused in the re-enactment of the crime by his three co-accused. In all the important incidents and details of the crime, the accused participated. On one occasion, he corrected the position of his co-accused as they were re-enacting their corresponding participation.

[15] IV WIGMORE ON EVIDENCE 80-81 (1940).

[16] The purpose of re-enactment is to test the truthfulness of the statements of the witnesses who had confessed the commission of the offense.

[17] G.R. No. L-7956, June 27, 1956.

tion of the Solicitor-General, which was sustained by the trial court, that clearances were not presented to prove that the petitioner has not been convicted of any crime involving moral turpitude.

Confession.

The admissibility of a confession depends not on the supposed illegal manner in which it is obtained but on the truth or falsity of the facts or admission contained therein. This was the ruling of the Court in *People v. Villanueva, et al.*[18] This holding finds support in the case of *People v. De los Santos, et al.*,[19] where the 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 or 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 ruling is in consonance with the principle that the admissibility of evidence is not affected by the illegality of the means with which it was secured.[20]

Hearsay evidence.

In the case of *Ngo Seng, et al., v. Fernandez, et al.*,[21] the main issue raised by Quisumbing was the failure of the Court of Appeals to take into consideration the report of a certified public accountant in which it appeared that the balance of collections for which Quisumbing was responsible was ₱63.69 only. The Court held that the evidence was hearsay.[22] The Commissioner who submitted the statement of accounts was not designated for the purpose of trying or considering an issue in a case and was only asked to examine all the records relevant to the case in the custody of the Anti-Usury Board.

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[18] G.R. Nos. L-7472-7477, Jan. 31, 1956.

[19] G.R. No. L-4880, May 18, 1953.

[20] Moncado v. People's Court, et al., G.R. No. L-8224, Jan. 14, 1948.

[21] G.R. No L-7086, Jan. 20, 1956. The defendant Paz Fernandez and Guadalupe Daynan, were proprietors and operators of a carpentry shop for the construction of bus bodies. Through the intervention of Norberto Quisumbing, funds needed by them were secured from Ngo Seng and Go Pin, and mortgages were executed. Quisumbing was also authorized by the proprietors of the shop to purchase materials and pay the laborers and to collect the accounts due said proprietors. The creditors brought this action to recover the mortgage debt. Quisumbing intervened, demanding accounting of the sums received by Fernandez in payment of construction buses and his share of the profits. The Court of Appeals did not give credit to the expenses incurred by Quisumbing, and so decided against Quisumbing for ₱5,069.15 which represented the one-half profit due to Fernandez from Quisumbing.

[22] The rule on hearsay evidence is found in §27, Rule 123, which provides: "A witness can testify to those facts only which he knows of his own knowledge; that is which are derived from his own perception, except as otherwise provided in this rule".

The rule rests mainly on the ground that there had been no opportunity to cross-examine the declarant.

The papers examined were most probably, statements prepared by Quisumbing himself, and said documents were never presented in court. The opposite party never had the opportunity to question them, therefore they were hearsay as regards other persons. In short, the doctrine enunciated by this case is that documents not made during the performance of a duty required by law constitute hearsay evidence as to third persons.

In American jurisprudence,[23] quoted with approval by the Supreme Court, a mere ex parte memorandum of transaction or occurrence, is not ordinarily admissible as evidence thereof against a third person, unless prepared in the discharge of some public duty or of some duty arising out of the business relations of the person making it with others, or in the regular course of his own business, or with knowledge and concurrence of the party to be charged and for the purpose of charging him.

Alibi.

The defense of alibi cannot overcome the weight of the positive testimony, which was so natural, so clear and so convincing, of the prosecution witnesses, especially more so because no motive has been shown on the part of said prosecution witnesses that would have prompted them to testify falsely. The foregoing rule has been the consistent holding of the Supreme Court in the cases of *People v. Juanito Baltazar, et al.;*[24] *People v. Moro Sarabi;*[25] *People v. Balines, et al.;*[26] *People v. Conrado Salimbagat;*[27] *People v. Epifanio Manahat;*[28] *People v. Verzo;*[29] *People v. Sarmiento;*[30] *People v. Umali;*[31] *People v. Collado;*[32] and *People v. Rafael Aranua, et al.*[33]

As it is known, the defense of alibi is the weakest that an accused can avail of. It should be proved by proper evidence which would reasonably satisfy the court of the truth of such defense.[34] Oral proof of alibi must be clearly and satisfactorily established because it is so easily manufactured and usually so unreliable that it cannot be given credit.[35]

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23 20 AM. JUR. §942.
24 G.R. No. L-5850, Jan. 4, 1956.
25 G.R. No. L-8054, Sept. 21, 1956.
26 G.R. No. L-9045, Sept. 28, 1956.
27 G.R. No. L-7012, Nov. 12, 1956.
28 G.R. Nos. L-8904-5, Dec. 28, 1956.
29 G.R. No. L-4913, Aug. 28, 1956.
30 G.R. No. L-7842, Aug. 30, 1956.
31 G.R. No. L-8399, May 11, 1956.
32 G.R. No. L-8483 ,March 23, 1956.
33 G.R. No. L-5510, April 28, 1956.
34 United States v. Oxiles, 29 Phil. 587 (1915).
35 People v. Badilla, et al., 48 Phil. 718 (1926).

Credibility of witnesses.

In the cases of *People v. Balines*,[36] and *People v. Lardizabal*,[37] the Court made a re-statement of the rule that the question of the crediblity of witnesses depends to a large measure on the sound discretion of the trial court. Hence, the appellate court will not disturb the findings of fact made by the trial court as to the credibility of witnesses, in view of its opportunity to observe their demeanor and conduct while testifying and that the said findings will generally be accepted and acted upon.[38] Nor will the appellate court reverse any findings of facts by the trial court made upon conflicting testimony and dependent solely upon the credibility of witnesses, unless the court below failed to take into consideration some material fact presented to it for consideration.[39]

Circumstantial evidence.

In *People v. Maximino Viernes*,[40] the accused was convicted for the murder of Claro Gavina, committed in the evening of November 28, 1948, because of the following circumstantial evidence:[41] firstly, that appellant had the opportunity to perform the act is established by the testimony of a Rural Transit driver, who met and recognized appellant in the early evening of November 29, 1948 and whom appellant requested to keep his presence a secret; secondly, that appellant did not take easily to the engagement of his former sweetheart to the deceased; thirdly, that the paraffin test showed positive results for gun powder residues on the dorsal of the right hand, between the index and the middle finger; fourthly, that it is extraordinary that the defendant, sick as he claimed to be, should have left his house and proceeded to that of Sierra, one kilometer away, to write

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[36] *Supra*, note 26.

[37] G.R. No. L-8944, May 11, 1956.

[38] People v. Borbano, 76 Phil. 702 (1946) citing People v. De Asis, 61 Phil. 384 (1935); People v. Garcia, 63 Phil. 296 (1936); People v. Maasim, 64 Phil. 757 (1937).

[39] United States v. Ambrosio, 17 Phil. 295 (1910); United States v. Milad, 27 Phil. 488 (1914); Baltazar v. Alberto, 33 Phil. 336 (1916); Melliza v. Towle, 33 Phil. 345 (1916); United States v. Remigio, 37 Phil. 599 (1918); People v. Cabrera, 43 Phil. 64 (1922); Carazay v. Arguiza, 53 Phil. 72 (1929), and Garcia v. Garcia, 63 Phil. 419 (1936).

[40] G.R. No. L-9326, June 18, 1956.

[41] Circumstantial evidence is the proof of fact or facts from which, taken either singly or collectively, the existence of the particular fact in dispute may be inferred as a necessary or probable consequence. (MORAN, *supra* note 1, at 2. citing State v. Avery, 113 Mo. 475, 494, 21 S.W. 193; Reynolds Trial Ev., §4 p. 8).

Three requisites are necessary in order that circumstantial evidence may be sufficient for conviction in criminal cases: (a) there must be more than one circumstance; (b) the facts from which the inferences are devired are proven; and (c) the combination of all the circumstances is such as to produce a conviction bevond a reasonable doubt. (§98, Rule 123, Rules of Court; United States v. Rosal, 12 Phil. 135 [1910].

out a slip for sick leave since such leave applications to excuse a day's absence are usually filed after return to office.

However, in *People v. Labite, et al.*,[42] the rule on circumstantial evidence was not satisfied. Defendant, who was a policeman, was accused for the killing of the spouses Manlawe and Bowalat. The only circumstance proved against the defendant was that he had the revolver at his disposal on the day when the offense was committed. On the basis of this circumstance, was the convicition by the trial court justified? The Court held that it was not so justified. Although no general rule can be laid down as to the quantity of circumstancial evidence necessary for a conviction,[43] it is a well settled rule that there must be more than one circumstance in order that circumstantial evidence may be the ground for conviction.[44] At any rate, all the circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent.[45] In the case at bar the circumstantial evidence does not constitute an unbroken chain leading to the fair and reasonable conclusion that appellant, to the exclusion of all others, is the guilty person.[46]

Rule as to the presence of the accused at the scene of the crime.

It is true that mere presence of a party beside a murdered person does not in any way prove that he had committed, or had taken direct part in the commission of the crime. But it is the circumstances under which the party was found and his conduct, which taken together can produce moral conviction that the accused must have participated in the commission of the offense. Such was the ratio decidendi of the case of *People v. Guilalil Kamad.*[47] In this case the circumstances considered were abrasion found near the back of the neck, which was produced by a blunt instrument which must have been caused by the piece of wood which defendant was holding at the time he was discovered near the body; the conduct of the accused in running away from the scene upon being seen by the witnesses, is positive and convincing evidence of consciousness of guilt;[48] just after the defendant was seen beside the deceased, the

[42] G.R. No. L-8481, Sept. 15, 1956.
[43] People v. Ludday, 61 Phil. 216, 221 (1935).
[44] United States v. Idira, et al., 17 Phil. 325 (1910); United States v. Aquino, 27 Phil. 462 (1914).
[45] United States v. Levante, 18 Phil. 439 (1915); People v. Tan Choco and Marcelo, 76 Phil. 463 (1946).
[46] United States v. Villos, 6 Phil. 510 (1906); People v. Subano, 73 Phil. 692 (1942).
[47] G.R. No. L-6584, Nov. 29, 1956.
[48] Flight from justice, and its analogous conduct, have always been deemed indicative of a consciousness of guilt. "The wicked flee, even when no man pursueth; but the righteous are bold as a lion." (*Wigmore, op. cit*, at 111; United States v. Alegado, 25 Phil. 510).

defendant was seen by his employer as pale, sweating and restless; three or four days after the incident, he disappeared from work for no cause for escaping to a nearby province; and the fact that he has not been able to give any positive evidence of his innocence. Under the law,[49] the evidence is sufficient for the law does not require absolute certainty in order that a person accused of a crime may be convicted of an offense.

[49] §98, Rule 123, Rules of Court.