

ADMISSION IN EVIDENCE OF CONFESSIONS OBTAINED THROUGH THIRD DEGREE—A VIOLATION OF DUE PROCESS

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An important observation made by not a few is that most often, the safeguards provided by the Constitution and by the laws are good only on paper and are at most unavailing during the crucial moments when due to circumstances, they should enter the picture to rescue the accused. It thus happens that, although the accused may invoke his right against self-incrimination in testimonies made in court, he may indirectly be deprived of this protection by coercing from him confessions whether true or false which later on are admitted to secure his conviction. This is specially true in the Philippines where the rule as to confessions is that they will be avoided only if the accused could convincingly prove that due to force, violence or threats, he was compelled to give a confession, or in short, that he was subjected to "third degree," or undue pressure.¹ Should he fail to prove that the confession was obtained through illegal means and it turns out that he was really innocent, a miscarriage of justice occurs. This particular injustice that repeatedly occurs in not a few jurisdictions is one of those obnoxious things that give a "blackeye" to what seems to be an ideal judicial set-up.

This paper is an examination of the nature of confessions obtained through what is popularly termed as "third degree", its effects and its admissibility in various jurisdictions specially in the Philippines. This paper offers further a recommendation that to live up to the "due process of law" requirement such confessions should not be admitted in evidence against the accused notwithstanding its truth or falsity and notwithstanding its confirmation by subsequent facts.²

* Recent Documents editor, *Philippine Law Journal*, 1962-63.

¹ In the Philippines, the law that originally covered confessions was Act 619. Under Section 4 of this Act, no confession of any person charged with a crime shall be received in evidence against him unless it be first shown that such confession was voluntarily made or was not given as a result of violence or intimidation. The provision was however repealed on July 1, 1916 by the Administrative Code and the effect of the repeal is to establish the admissibility of confession if it appears to have been given under conditions which accredit *prima facie* its admissibility leaving the accused at liberty to show that it was not voluntarily made or was obtained under pressure.

² There exists at present a principle in evidence which is the source of great inequity and topples down whatever little worth remains of the exception made to the exclusionary rule that if the involuntary confessions are true, they

Confessions—Nature, Operation, and Effects

The declarations of an accused expressly acknowledging the truth of his guilt as to the offense charged may be given in evidence against him.³ The nature and effect of confessions are thus given in this terse provision. A confession is therefore a voluntary statement by a person charged with the commission of a crime wherein he acknowledges himself guilty of the crime.⁴ The Philippine Supreme Court explicitly ruled that confessions although apparently involving a declaration against the accused himself does not contravene the constitutional provision against self-incrimination. According to the court, this constitutional provision against self-incrimination does not apply to voluntary confessions. What the prohibition seeks to protect is the compulsory disclosure of incriminating facts.⁵ From this pronouncement, it is clear that confessions made by the accused are taken out of the prohibition only when they are voluntarily made. Once the elements of coercion, threat, force or violence enter, the constitutional inhibition applies and the accused has a right to invoke his privilege against self-incrimination. As a natural course the duty of the court is to exclude the confession already made from being considered as evidence against the accused. No other consideration should enter the picture like the truth or falsity of such confession.

Judicial confessions are admissible evidence of high order.⁶ In fact, they may legally be the sole basis for convicting the accused. The reason is that since they are made in court, they are presumed to have been voluntarily made with all the necessary protections surrounding the accused at the time of the confession. Furthermore, there is a strong presumption that no person of normal mind will deliberately and knowingly confess to the commission of a crime unless prompted by truth and conscience. The Philippine statutory pro-

are admissible. This is the principle of confirmation by subsequent facts which in substance provides that "When in consequence of a confession otherwise inadmissible, search is made and facts are discovered which confirm it in material points, the confession in whole or in part may be accepted."

³ Rule 123, Sec. 14, Rules of Court.

⁴ Chamberlayne, Trial Evidence, Sec. 564.

⁵ People v. Carillo, 43 O.G. (13) 5021.

⁶ Judicial confessions are those made in conformity with law before the trial judge in the course of legal proceedings such as a plea of guilty as distinguished from extrajudicial confessions which are those made before a magistrate such as in a preliminary investigation or in the trial of another. 2 Wharton's CRIMINAL EVIDENCE (10th ed.), pp. 1275-76. Under Rule 123 Sec. 14 of the Rules of Court judicial confessions are admissible against the accused. Under Sec. 96 of the same Rule, an extrajudicial confession made by an accused shall not be a sufficient ground for conviction unless corroborated by evidence of *corpus delicti*.

vision on this point recognizes such admissibility. Although the provision does not expressly require the confession to be voluntary, an implication to that effect can be reasonably made. Bolstering this conclusion is the nature of confession itself. It is in derogation of the natural order. It is the abnormal product of an abnormal situation and as such is justifiably viewed with suspicion. And when the elements of compulsion or improper inducement enter as ingredients in the manner of extraction, the confession is stripped of all claims of admissibility and is relegated to the category of pernicious cancer which calls for suppression. Extraction of involuntary confession viewed from all angles is morally and legally wrong *per se*. The question of admissibility however seldom arises with respect to judicial confessions. It is with the second class of confessions that the problem of receiving in evidence such confessions comes up. The general and accepted rule is that such extrajudicial confessions are merely evidential and they must be based upon strict compliance with the law or made under circumstances that give them the voluntary character.⁷

The rule as it now stands under the law of the Philippines is that a confession is voluntarily given until the contrary is proved. Hence, a confession is only inadmissible if it is successfully proved to have been extracted by force, violence or intimidation. This, despite the repeal by the Administrative Code,⁸ is good law. However, what darkens the seemingly bright view is the operation of the doctrine laid down in several jurisdictions including the Philippines that if the statements made in the confessions are true, they are admissible even if they were obtained through improper methods including "third degree." By a long series of cases, the Philippine Supreme Court has held that an extrajudicial confession to be admissible must be freely and voluntarily made. But in two cases, the court without expressly acknowledging that it was overruling the old rule made a significant but disturbing turn-about with the observation that an involuntary confession is admissible in evidence as long as it is not proved false. In *People v. De los Santos*,⁹ Justice Labrador citing the leading case of *Moncado v. People's Court*¹⁰ 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

⁷ 2 Wharton's CRIMINAL EVIDENCE, *supra*.

⁸ *Supra*, see note 2.

⁹ G.R. No. L-4880, May 18, 1955.

¹⁰ G.R. No. L-824, Jan. 14, 1948.

accused is compelled against his will to tell a falsehood, not when by such force or violence he is compelled to tell the truth. This is in consonance with the principle that the admissibility of the evidence is not affected by the illegality of the means with which it was secured."

In *People v. Villanueva*,¹¹ the court agreed with the theory of the solicitor general that "affidavits of confession may be rejected only when the affiant is compelled against his will to admit or state something which is against the truth. In other words, the admissibility of that kind of evidence depends not on the supposed illegal manner in which it was obtained but on the truth or falsity of the facts of admissions contained therein." It will be noticed that in these two cases where these pronouncements were made, it was not proven that the accused was subjected to the so-called "third degree," and in fact, the findings were that the confessions were made voluntarily and without the use of undue pressure. Yet the significance of the pronouncement cannot be ignored because it stated in substance that whether the confessions were made voluntarily or not, should the confessions be found to be true, they would be admitted in evidence against the accused. The Supreme Court in short hinted that while it is true that confessions obtained by illegal means including "third degree," go against the due process of law and thus null and void, yet if they later on appear to be nothing but the truth, they should be admitted against the accused. A seeming implication is that only false confessions obtained by illegal means violate the due process clause. Thus, while admitting the illegality of the means used, the court declared the product of such means admissible to convict the defendants. Since the procedure used is not however one sanctioned by law and which violated the due process of law, the violators should face punishment¹² but society should not be punished also by denying it evidence which could convict defendant. It seems to recognize that crimes should not go unpunished simply because the enforcers of law blunder in their application of the proper procedure in seeking confessions. Thus, the accused who protest against shockingly brutal practices, besides bearing the burden of proof now imposed by the Administrative Code of showing

¹¹ G.R. No. L-7472-7477, Jan. 31, 1956.

¹² Art. 235 of the Revised Penal Code holds criminally liable any public officer or employee who maltreats a prisoner or detention prisoner under his charge for the purpose of extorting a confession or obtaining some information from him. Art. 236 of the same Code provides that any other compulsion by means of violence or such display of material force as would control the will of the accused in order to make him confess against his will amounts to grave coercion and is punishable.

duress, violence or force, must also bear the additional burden of showing that the confession is false.¹³ If he proves the first but fails in proving the second, the confessions taken from him are admissible in evidence. He cannot take refuge in the due process of law clause which prohibits "whimsical methods repugnant to the sense of justice of the community."¹⁴ All these implications and interpretation of the pronouncements in these two cases may be diminished and dismissed on the ground that these pronouncements were mere dicta. But dicta or not, they seem to predict what the court will do in case such a situation does come before it.

However, in various cases which came before the court subsequent to the abovementioned two cases, the court in each and everyone tried to determine whether the confession was made voluntarily or not. An inference can be made that the court still considers voluntariness an important factor in determining its admissibility in evidence. This is so because where the truth or falsity is the only determining fact, there would be no necessity of examining the voluntariness altogether.¹⁵

Analogy with the Rule on Illegal Seized Articles and Documents—Unjustified

Most courts, including the Philippines, in formulating and subscribing to the theory of admissibility of involuntary confessions, cite the reasons supporting the admissibility of illegally seized documents and papers. Is the analogy valid? The answer is in the negative. An irreconcilable mile separates one from the other. An illegally seized article does not have the intrinsic infirmity that an involuntary confession contains. The document or paper does not change, its quality is still intact. The force used in seizing it does not alter its inherent characteristic. In other words, unlawfulness in the acquisition of a paper or document does not ordinarily detract from its reliability. But a confession that has been extracted by force or threat contains infirmities which make it intrinsically untrustworthy; the force or threat go to the very substance and nature of the evidence. The gravest special danger of untrustworthiness in the use of confessions, as one authority points out, is the danger of duress, of such pressure that the victim's reluctance to make a confession, which in the long run will lose him his life or liberty, is

¹³ SALONGA, PHILIPPINE LAW ON EVIDENCE (2d ed.), p. 160 (1958).

¹⁴ SINCO, PHILIPPINE POLITICAL LAW (11th ed.), p. 562 (1961).

¹⁵ SALONGA, *supra*, note 15.

converted to a willingness to accept this hazard whose consequence is deferred in order to escape a more terrifying immediate evil. Again, in case of illegally seized articles one is not coerced to convict himself by his own lips whereas in involuntary confession he is and that makes it detestable.¹⁶ Here then is an invasion of the worth and sanctity of one's own person, respect for which spells the difference between a free society and a garrison state consisting of physical brutality or threats of bodily manhandling until and unless the defendant condemns himself by his own lips, a circumstance not present in illegal search and seizure of articles however condemnable this may otherwise be.¹⁷ With these distinctions pointed out, the analogy made between the two is unfair and unreasonable. It is worthy to note that in the United States, the states that do not follow the Federal Rule in that they admit in evidence illegally seized articles or documents do not on the other hand hesitate to rule out confessions that are shown to have been improperly obtained. The exclusionary rule should be applied to coerced confessions even in the same jurisdictions where this rule do not apply to illegally seized articles and documents. After all, no reason exists why the same rule should apply to two different situations.

However, the reasons made in support of the inadmissibility of evidence acquired by illegal search and seizure can be given with the same validity to the theory excluding involuntary confessions.

"The philosophy behind the decision to exclude such evidence is the realization that it is a mockery to grant a constitutional protection on the one hand and then take it away on the other. It is naive to expect officials to refrain from being overzealous in their efforts to obtain evidence when they know no matter how reprehensible their acts that the evidence will be acceptable to the court. They will be deterred however if they know it is inadmissible unless obtained in a lawful manner."¹⁸

For the above reasons, it would be wise for the courts which disregard the exclusionary rule as to illegally seized articles and

¹⁶ WIGMORE'S EVIDENCE, secs. 823, 2266, 2270.

¹⁷ *Ibid.* A recent development in the field of admissibility of illegally obtained document of papers is worth mentioning. In *Mapp v. Ohio*, 8 S.Ct. 1684 (1961) the U.S. Supreme Court held that all evidence obtained by searches and seizures in violation of the constitution by the same authority is inadmissible in state court. With this pronouncement, the Federal Court has extended the protection of the fourth amendment which is against unreasonable searches and seizures to all persons standing trial, state or federal. For comments on the specific overruling of the old case of *Wolf v. Colorado*, by the *Mapp* case, see Provost, *The Fed. Exclusionary Rule—Application to the States*, 2 LAW REVIEW, 53 *et seq.* (1962).

¹⁸ SCHWARTZMAN AND STEIN, LAW OF PERSONAL LIBERTIES, 48-49 (1955).

documents to adopt this rule to coerced confessions. This ideal situation we believe exists in the Philippines despite the unfortunate pronouncement in *People v. De los Santos* and *People v. Villanueva*. Until and unless the court makes a definite pronouncement that the truth or falsity of the confession is what governs its admissibility, we believe that the express rulings made by the court in cases before and after the two abovementioned cases that the confession to be admissible must be voluntary still applies.

Voluntariness of the Confession

A confession is said to be involuntary if made by (1) physical violence or threats of physical violence on the defendant, (2) conduct which constitutes mental torture of the defendant, (3) promises or threats concerning future official treatment of the defendant made by a person having authority to secure the execution of the promises or threats.¹⁹ There are, as ably pointed out by one writer, three considerations that are relevant in ruling out involuntary confessions: (1) exclusion on the basis of unreliability, the governing policy being the search for truth; (2) exclusion of it even if reliable on the theory that violence or threats are so abhorrent to the concept of human rights that it is unseemly to use the confession; (3) exclusion because by denying the police the right to use the direct fruits of the coercion, it is hoped to deter them from engaging in the prohibited practices.²⁰ Whatever the theoretical aspects may be, in practice, at least many judges in their discretion exclude such evidence for fear that nothing less than the exclusion of all such statements can prevent improper questioning of prisoners by removing the inducement to it. This is due to the world-wide aversion against oppressive, brutal investigative processes not uncommon in many jurisdictions.

While the fundamental principle of exclusion is that the confession may be false and thus untrustworthy, the determination of the nature of confession is comprehended in the word "voluntary." Having reference to the exact application of the principle of exclusion, it does not matter how the confession was obtained if the confession is a true one. Thus, if the accused was severely beaten or tortured and he made a confession which was true as a matter of fact, such confession would be admissible in evidence. This is the result when one confines himself to the reliability of the testimony,

¹⁹ MORGAN, BASIC PROBLEMS OF EVIDENCE, 246.

²⁰ SALONGA, *supra*, note 17.

that is, to its truth or falsity. But this is so abhorrent in the sense that any person should be made to disclose anything by threats or by punishment that the courts solely on the questions of the voluntary character of the confession proceed under the assumption that confessions which are not voluntary are not true and hence inadmissible. With or without this assumption, the rule that would be wise to adopt however is that once the confession is found out to have been extracted through "third degree" it should be rejected in evidence considering that the method used violates the due process of law and is not sanctioned by law, regardless of the reliability of the evidence. The distrust attaching to confessions is based on experience. "If the accused person be asked to explain his apparent connection with a crime under investigation, the ease with which the questions put to him assume an inquisitorial character, the temptation to press the witness unduly, to browbeat him if he be timid or reluctant, to push him into a corner and entrap him into fatal contradictions is so plainly evident in many of the earlier trials that it made the system so odious as to give rise to a move for its total abolition."²¹ This temptation which existed in the past still exists and with more intensity considering that police officers are becoming more and more concerned not only with the need to protect society but to earn for themselves the glory of having obtained the most number of convictions. If the conditions of the past were considered sufficient to overrule the theory of admissibility of such confessions, the present conditions would more than justify the adoption of the exclusionary rule by those jurisdictions which have not accepted them and the reversal to this rule by the jurisdictions which have adopted the opposite rule.

No hard and fast rule has so far been formulated by the Philippine Supreme Court and the Federal Court to gauge the voluntariness of the confession and it is safe to conclude that there will not be an iron-clad standard for all cases even in the near future.²²

²¹ Justice Brown in *Brown v. Walker*, 161 U.S. 501.

²² Formerly, forced confessions were treated in the U.S. as an aspect of the law of evidence until recently when the emphasis is turning to constitutional rights, to a denial of the due process of law in the use of forced confessions. What kind of conduct on the part of the police will result in the reversal of the conviction on grounds of denial of due process? Physical torture is prohibited. In the first cases before the U.S. Supreme Court, police had used methods reminiscent of the Middle Ages. For whatever reason, the cases now coming before the Supreme Court rarely involve physical brutality. The court recognized that the coercion need not be physical, that a person can be broken down as much by long questioning, by harassment, by the use of hypnotism as by the more obvious means of physical torture. In considering whether a confession was unconstitutionally coerced, the Supreme Court takes into account the totality

All courts however agree on one point: that there must be a causal relation between the confession and the force or violence. If there is such a relation, the confession must be excluded. Otherwise, it will be received.

Problems Presented

The rule admitting coerced confessions in evidence is a clear deviation from the common law doctrine which excluded two kinds of illegally secured evidence from the rule that "the illegality of the means by which the evidence was procured is no ground of objection to its admission." This common law rule admitted of two exceptions namely involuntary confessions and testimony secured in violation of the self-incrimination privilege as to which the approach of admissibility has not so far been observed. The questions therefore are: Do strong reasons exist to abandon the common law doctrine excluding involuntary confessions from evidence? Will not their admission contravene the due process of law clause?

Pro and Con of Admissibility

Some of the considerations which favor the common-law doctrine of exclusion are that it avoids the oppressive and brutal abuses of power which are thought likely to attend compulsion and prevent the prosecutors and policemen from relying on the compulsory testimony of the accused instead of engaging in the thorough search for evidence. The exclusion also eliminates an influence that would tend to suppress the sources of truth by freeing a potential witness with no stake in the case but who can furnish help in its investigation from the danger of self-betrayal in other matter. Likewise, it protects the innocent from being compelled to disclose supposed offenses before there has been an opportunity to be in-

of the circumstances which include the age, the sex, the race, intelligence of the accused as well as whether he was held incommunicado. Some of the justices are of the opinion that as a matter of right guaranteed under the due process clause a suspect being examined by the police is entitled to have the assistance of counsel if he so requests. The reaction of most peace officers is that the presence of counsel makes the obtaining of confession utterly impossible. It would substantially eliminate the use of "third degree methods." Scurlozk, J. *Procedural Protection of Individuals Against the State*, KANSAS LAW REVIEW (1962). In the Philippines, in the early case of *U.S. v. Baluyot*, 1 Phil. 481, the court made the following pronouncement indicative of its stand. "That confession may have any weight whatever with the courts of justice as legal proof, it is absolutely necessary that they should be freely and voluntarily made. If they are brought about by menace, threat or intimidation or by a promise of reward or leniency they are stripped of the elements which make them valuable to courts in determining the truth."

formed of the charges.²³ Other reasons given for its exclusion are based on humanitarian reasons and on the sentimental feeling against causing an individual to convict himself. Some of the arguments against the privilege are that it makes more difficult to detect and prosecute crimes and enables the guilty to escape punishment and that today unlike the past the rights of the accused are protected by many other means, and torture and brutality and government viciousness are no longer threats to the individual. Furthermore, they allege that the existence of the privilege of exclusion has led to the widespread enactment of statutes granting immunity from prosecution in order to obtain evidence, thereby enabling the guilty persons to escape punishment.²⁴ The arguments for and against the exclusionary rule may be summarized as follows: One side espouses the serious need that crime shall be repressed and the other supports the view that the law specially the due process clause shall not be flouted by the insolence of the enforcing officers. The stand of the Federal Supreme Court in these contending views was well expressed by Justice Holmes who said that "it is desirable that criminals should be detected and to that end that all available evidence should be used. We have to choose and for my part, I think it is a less evil that some criminal should escape than that the government should play an ignoble part." In the very same case,²⁵ the court said:

"When these unlawful acts were committed, they were the crimes only of the officers individually. The government was innocent in legal contemplation for no federal officer is authorized to commit a crime on its behalf. When the government having full knowledge sought through the department of justice to avail itself of the fruits of these acts in order to accomplish its own ends, it assumed moral responsibility for the officers' crime. x x x And if this court should permit the government by means of its officers' crime to effect its purpose of punishing the defendants, there would seem to be present all the elements of ratification. If so, the government itself would be a lawbreaker."

Considering that the stand of the Federal Supreme Court as to illegally seized documents and articles is that they should be excluded, its stand as to coerced confessions is to be expected. The Philippine Supreme Court itself seems to have adopted the exclusionary rule despite the *Moncado* case and despite its dicta in *People v. De los Santos* and *People v. Villanueva*.

²³ SCHWARTZMAN AND STEIN, *supra*, pp. 58-60.

²⁴ *Ibid.*

²⁵ *Olmstead v. U.S.*, 277 U.S. 438.

Conclusion

The purpose of the due process requirement was said to be not to exclude presumptively false evidence but to prevent fundamental unfairness in the use of evidence whether true or false. Justice Byrnes in *Ward v. Texas*²⁶ said:

"x x x The court has set aside convictions based on confessions extorted from ignorant persons who have been subjected to persistent and protracted questionings or who have been threatened with mob violence or who have been held unlawfully incommunicado without the advice of friends or counsel or who have been taken at night to lonely places for questioning—any one of these grounds would be sufficient for a reversal. The use of confession obtained under such a circumstance is a denial of due process."

In almost every case where the due process is called to bear on the procedure followed in the administration of criminal law, there exist conflicting interests of the need to protect the innocent who may be trapped by such police methods of "third degree" and the state's interest to protect society from criminals. This conflict is however more apparent than real in the sense that the two are not mutually exclusive. These two interests are reconcilable and should be reconciled. There is no need to subject either the guilty or the innocent to barbaric methods of extracting confessions of guilt nor is it logical to give up the worthy aim of protecting society from criminals. The application of the due process clause is the chief weapon in support of both interests. The extraction of confessions is not the only means and mode of enforcing the law for crime detection. The full use of resources for detection of crimes to shield society can only be accomplished by well-selected, professionally trained body of law enforcement officers. Notable examples prove that such a service can furnish a career attractive to young men of integrity, talent and public spirit. A general demand for higher standards of personnel and more humane treatment and methods of interrogation for officers who can respect individual rights and at the same time defend the community will come with the widening of the popular understanding of the problem. All these reasons put together more than support the demand to revert back to the exclusionary rules of the Common Law. The arguments posited against the rule are not sufficiently strong to overthrow the reasons supporting them. The problem thus is not actually whether a criminal should go free because the police have broken the law as some argue because the criminal does not go scot free. If his con-

²⁶ 336 U.S. 555.

viction be reversed for denial of his constitutional rights, he remains liable for another and fair trial. Actually a reversal of the conviction occurs only where the evidence against the defendant consists wholly of the extracted confession which is seldom the case because usually convictions are supported by other stronger and better evidence. The extracted confession may be excluded and yet the conviction may stand.

For the above considerations, the courts should have no other alternative than to exclude from evidence all confessions extracted through the process of "third degree." Reliability and trustworthiness should not be the sole considerations for exclusion. Foremost should be the consideration of due process which stands as a glowing symbol of the victory over inhumane and barbaric treatment of accused persons and symbolizes the true emergence of a civilized society governed by law, order and justice.