EVIDENCE

By ANTONIO V. RAMIL *

I. *INTRODUCTION*

Legal rules and principles do not operate in a vacuum. They become operative only in a given set of facts or circumstances. But men do not always agree on what the facts or the circumstances are in a given case. Men are simply not endowed with the same capacity of perception, with the same memory, with the same power of expression. Some exaggerate what they see, hear, smell or feel. Others lie deliberately.

Through the centuries, men have devised methods of ascertaining the truth. In our own system of adversary proceeding, we have adopted rules of evidence for ascertaining the truth respecting a matter of fact.[1]

II. *WHAT NEED NOT BE PROVED*

In every judicial investigation, some matters are assumed or taken for granted without proof, either because they are of public knowledge, are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.[2] Still, other matters need not be proved because they are admitted by the parties in the pleadings, or in the course of the trial or other proceedings.[3]

1. Judicial Notice

Judicial notice is the cognizance that courts may take, without proof, of facts which they are bound or supposed to know.[4] The matters which may be the subject of judicial notice are mentioned more specifically in Section 1 of Rule 129 of the Rules of Court.[5] Among these are the official acts of the legislative, executive

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* Notes and Comments Editor, *Philippine Law Journal*, 1964-65.

[1] Section 1, Rule 128, New Rules of Court.

[2] Section 1, Rule 129, *ibid.*; V Moran, Comments on the Rules of Court, 1963 ed., p. 31.

[3] Section 2, Rule 129, *op. cit.*

[4] V Moran, *op. cit.*, p. 32.

[5] "The existence and territorial extent of states, their forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the laws of nature, the measure of time, the geographical divisions and political history of the world, and all similar matters which are of public knowledge, or are capable of unquestionable demonstration, or caught to be known to judges because of their judicial functions . . ."

and judicial departments of the Philippines. The courts may, therefore, take judicial notice of the laws of the Philippines.[6]

The courts may not, however, take judicial notice of foreign laws.[7] This is so even if, in previous cases, the existence of a given foreign law was duly established. This is the ruling laid down in *Chua v. Republic*,[8] a naturalization case. The petitioner in that case did not prove that the laws of the country of which he was a national (Chinese Republic) grant to Filipino citizens the right to become citizens of Nationalist China by naturalization.[8a] He, instead, pleaded that prior decisions of the Supreme Court [9] have recognized that Chinese Law granted such right to Filipinos. The Supreme Court, in over-ruling the contention of the petitioner, observed: What this argument overlooks is that the law in 1948 is not necessarily the law in 1961, when applicant's case was tried. Laws are not irrepealable, and it behooved this applicant to fully establish that his nation granted reciprocal rights to our citizens at the time his application was heard.

In the case of *Francisco v. Matias*,[10] the Supreme Court took judicial notice of the general information that the market value of real property in the provinces is usually three or more times the assessed valuation.

2. Judicial Admissions

Admissions made by the parties in the pleadings, or in the course of the trial or other proceedings do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake.[11]

a. *Pleadings*—Facts pleaded in the complaint and answer are deemed admissions of the plaintiff and the defendant, respectively, who are not permitted to contradict them, or subsequently take a position contradictory to or inconsistent with, such admission.[12]

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[6] U.S. v. Clemente, 24 Phil. 178, cited in V Moran, *op. cit.*, p. 32.

[7] In re Estate of Johnson, 39 Phil. 156; Fluemer v. Hix, 54 Phil. 610. Foreign laws must be proved like any other matter of fact, Sy Joc Lieng v. Sy Quia, 16 Phil. 156.

[8] G.R. No. L-19776, September 29, 1964.

[8a] Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof, can not be naturalized as Philippine citizens (Section 4[h] Commonwealth Act No. 473—Revised Naturalization Law).

[9] Yap v. Solicitor General, 46 Off. Gaz. Supp. No. 1, p. 259; 81 Phil. 468; Yee Boo Mann v. Republic, 47 O.G. 176; Go v. Anti-Chinese League, 47 O.G. 716.

[10] G.R. No. L-16349, January 31, 1964.

[11] Section 2, Rule 129, *op. cit.*

[12] Cunanan v. Amparo, 80 Phil. 227, cited in V Moran, *op. cit.*, p. 58.

In *State Bonding and Insurance Co., Inc. v. Manila Port Service, et al.*,[13] appellants claimed that the court *a quo* erred in adjudicating damages to appellee as prayed for in its complaint because appellee allegedly failed to establish certain facts which are necessary to justify its causes of action. The Supreme Court, however, found that the very facts being questioned by the appellants were admitted by them in their answer. As such, the said facts did not need any proof.

Material averments in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied.[14] In *Republic v. Manila Port Service*,[15] the defendant claimed that there was no proof showing that appellee actually received plaintiff's letter of Feb. 13, 1959, containing his last decision on a disputed assessment. The Supreme Court held that the claim was of no moment, it appearing that such matter was alleged in the complaint and the allegation was not denied. The answer merely confined itself to disputing the validity of the assessment on the ground that it was erroneous.

b. *Motion for judgment on the pleadings*—A motion for judgment on the pleadings admits the truth of all the material and relevant allegations of the opposing party and the judgment must rest on those allegations taken together with such other allegations as are admitted in the pleadings.[16] This ruling was reiterated in *Villamor v. Lacson*.[17] In this case, the Supreme Court observed that a party who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all material and relevant allegations of the opposing party, and to rest his motion for judgment on these allegations, taken together with such of his own as are admitted in the pleadings.

c. *Admission by direct appeal to Supreme Court*—in *Nieto de Comilang v. Delenela*,[18] the Supreme Court reiterated its ruling in the case of Jacinto v. Jacinto.[19] The Supreme Court ruled: Where

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[13] G.R. No. L-18754, June 30, 1964.

[14] Section 1, Rule 9, *op. cit.*

[15] G.R. No. L-18208, November 27, 1964.

[16] La Yebana v. Sevilla, 9 Phil. 210, cited in V Moran, *op. cit.*, p. 61. Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of party, direct judgment on such pleading (Section 1, Rule 19, *op. cit.*).

[17] G.R. No. L-19945 November 28, 1964.

[18] G.R. No. L-18897, March 31, 1964.

[19] G.R. No. L-12313, July 31, 1959. Only questions of law which must be distinctly set forth in the petition for certiorari may be raised before the Supreme Court (Section 2, Rule 45, *op. cit.*).

the decision of the trial court is appealed directly to the Supreme Court, all findings of fact made by the trial court are deemed to have been admitted by the appellant and only questions of law may be raised.

III. RULES OF ADMISSIBILITY

Evidence is admissible when it is relevant to the issue and is not excluded by the rules.[20] This rule embodies the two axioms of admissibility which are: first, none but facts having rational probative value are admissible; and, second, all facts having rational probative value are admissible, unless some specific rule forbids.[21] In other words, to be admissible, evidence must be relevant to the issue and competent, that is, it does not belong to that class which is excluded.[22]

Evidence is relevant when it has a tendency in reason to establish the probability or improbability of a fact in issue.[23] In *Pangasinan Transportation Co., Inc. v. Legaspi, et al.*,[24] the Supreme Court upheld the ruling of the trial court that documents, consisting of general ledgers and financial statements of a bus company, are material evidence in an action for compensatory and moral damages. Therefore, the bus company can be compelled by means of a *subpoena duces tecum*, to produce said documents in court. Justice J. B. L. Reyes dissented, observing that compensatory and moral damages can only be awarded to indemnify the victim or his relatives for the prejudice suffered, and the financial standing of the persons responsible is irrelevant to their evaluation.

In *Goduco v. Court of Appeals*,[25] the Supreme Court ruled as irrelevant some evidence presented by appellant of her patriotic achievements as a musical composer, the issue being whether or not she was entitled to a commission for the sale of real estate.

A. REAL EVIDENCE

Whenever an object has such a relation to the fact in issue as to afford reasonable grounds of belief respecting the latter, such

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[20] Section 3, Rule 128, *op. cit.*

[21] V Moran, *op. cit.*, pp. 5-6, citing I Wigmore on Evidence, Sections 9, 10.

[22] V Moran, *op. cit.*, p. 4.

[23] V Moran, *op. cit.*, p. 1, citing I Elliot on Evidence, p. 197.

[24] G.R. No. L-20916-17, December 23, 1964. In support of its ruling, the majority of the Court cited section 1 of Commonwealth Act No. 284 providing that "the civil liability for the death of a person shall be fixed by the competent court at a reasonable sum, upon consideration of the pecuniary situation of the party liable and other circumstances . . ." Justice J. R. L. Reyes considered this law repealed by the New Civil Code (*Author's Note*).

[25] G.R. No. L-17047, February 28, 1964.

object may be exhibited to or viewed by the court, or its existence, situation, condition, or character proved by witnesses, as the court in its discretion may determine.[26] Under this rule, the judge is authorized to inspect or view the object or matter in litigation outside the courtroom. Such inspection or view is a part of the trial, inasmuch as evidence is thereby being received.[27] And, it is an error for a judge to make the inspection or view alone, without previous knowledge or consent of the parties because the parties are entitled to be present at any stage of the trial.[28]

The foregoing ruling is not, however, applicable to certain tribunals. An example is the Juvenile and Domestic Relations Court with respect to proceedings concerning a "dependent" or "neglected" child. In this specific class of proceedings, the Juvenile and Domestic Relations Court is not bound to follow the technical rules of evidence.[29] Thus, in *Carpio, et al. v. Agrava, et al.*,[30] petitioners claimed that respondent judge committed an abuse of discretion when she denied their petition for removal of a guardian without giving them opportunity to present their evidence to prove their allegation that the guardian did not have the proper understanding of the ward's needs, health or well-being, and that there was intense and unabating animosity between the ward and the guardian. It appeared, however, that the respondent judge had paid a visit to the ward and found that the claims of the petitioners were not true. The Supreme Court observed: Though it would have been more in keeping with due process if petitioners had been given an opportunity to present their evidence as they requested in their petition, this is obviated by the visit paid by respondent judge to the ward which made the hearing unnecessary.

B. DOCUMENTARY EVIDENCE

1. Best Evidence Rule

Subject to certain specified exceptions,[31] there can be no evidence of a writing the contents of which is the subject of inquiry,

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[26] Section 1, Rule 130, *op. cit.*

[27] Sambrano v. Arzaga, 22 Phil. 130; U.S. v. Crame, 30 Phil. 2; Benton v. State, 30 Ark. 329; U.S. v. Valdez, 30 Phil. 293, cited in V Moran, *op. cit.*, p. 71-72.

[28] Denver Omnibus & Cab Co. v. Ward Aviation Co., 47 Colo., 446, 19 Ann. Cas. 577; 107 Pac. 1073, cited in Balon v. Moreno, 57 Phil. 60, and cited in V Moran, *op. cit.*, 73,

[29] Sec. 38-c, Rep. Act No. 1401.

[30] G.R. No. L-20403, November 28, 1964.

[31] The exceptions are: (a) when the original has been lost, destroyed, or can not be produced in court; (b) when the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice; (c) when the original is a record or other document

other than the original writing itself.[32] This is what is known as the best evidence rule.

In *Hodges and Custodio v. Ganzon,*[33] petitioners alleged that Exhibit "E" was not the original of the permit given them by the office of the mayor but only a duplicate copy. They claimed that in the original of the permit, they were not only authorized to repair, but also to construct and reconstruct, a building; that the words "construct" and "reconstruct", which were crossed out in Exhibit "E", were not crossed out in what they claimed to be the original. They asked, therefore, for the production of the alleged original. The trial court, however, on the strength of the mayor's testimony that Exhibit "E" was itself the original, turned down the request of the petitioners for the production of the alleged original, and refused to hear evidence from petitioners in explanation of the elimination of the words "construct" and "reconstruct" in the exhibit on the ground that it was the best evidence and no explanation was admissible to vary its contents. The Supreme Court, in sustaining the ruling of the lower court, observed: There being a finding of fact that Exhibit "E" is itself the original permit issued to petitioners, we believe that the ruling of the trial court against any oral evidence tending to vary its contents, is correct.

2. Secondary Evidence

One of the exceptions to the best evidence rule is that when the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic document, or by the recollection of witnesses.[34]

In *People v. Paz,*[35] appellants, on appeal, objected to the admission of a witness' testimony as to the contents of a letter to prove conspiracy, because, according to them, proof of loss of the letter was not offered. The Supreme Court overruled appellants' objection on the ground that they did not object to the said testimony when

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in the custody of a public officer; (d) when the original has been recorded in an existing record a certified copy of which is made evidence by law; and (e) when the original consists of numerous accounts or other documents which can not be examined in court without great loss of time and the fact to be established from them is only the general result of the whole (Section 2, Rule 130, *op. cit.*).

[32] Section 2, Rule 130, *op. cit.*

[33] G.R. No. L-18086, August 31, 1964.

[34] Section 4, Rule 130, *op. cit.*

[35] G.R. No. L-15052, August 31, 1964.

presented in the trial court.[36] Moreover, evidence was presented showing that the letter was actually delivered by the witness to one of the accused and as the prosecution could not be legally allowed to compel said accused to produce the letter,[37] it was proper for the prosecution to prove the contents of the letter by the recollection of the witness.

The substance of the ruling in *People v. Paz*, seems to be that when the original writing is in the possession of an accused in a criminal case and as the accused cannot be compelled to produce the writing, the situation falls under the exception of "unavailability" of the original writing.[37a] In such case, the prosecution may prove the due execution of the writing and its unavailability, and prove the contents of the writing by secondary evidence.

C. TESTIMONIAL EVIDENCE

1. Admissions and Confessions

a. *Admission of a party*—The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.[38] A man's acts, conduct, and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.[39]

In criminal cases, admissions of guilt may be implied from the conduct of the accused.[40] In *People v. Castelo, et al.*,[41] Ben Ulo's flight while the trial against him and his co-accused was going on, was held to be a betrayal of a guilty conscience.[42]

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[36] A failure to object renders admissible a relevant evidence which is otherwise incompetent. The court can not on its own motion disregard the evidence, Marella v. Reyes, 12 Phil. 1, cited in VI Moran, *op. cit.*, p. 129.

[37] No person shall be compelled to be a witness against himself, Section 1 (18), Article III, Constitution of the Philippines. The constitutional provision that "no person shall be compelled to be a witness against himself," seeks to protect the accused from compulsory disclosure of incriminatory facts. And these facts refer only to testimonial self-incrimination and to the production by the accused of incriminating documents and articles, Wigmore on Evidence, pp. 164-165; Villaflor v. Summers, 4 Phil. 62, cited in IV Moran, *op. cit.*, pp. 160-161.

[37a] The case does not fall under the second exception, i.e., when the original is in the possession of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, because a person can not be said to have failed to produce something when he can not be compelled to produce it in the first place. (*Author's Note*).

[38] Section 22, Rule 130, *op. cit.*

[39] U.S. v. Ching Po, 23 Phil. 573, 583, cited in V Moran, *op. cit.*, 212.

[40] V Moran, *op. cit.*, p. 215.

[41] G.R. No. L-10774, May 30, 1964.

[42] Section 25, Rule 130, *op. cit.*

b. *Admission of conspirator*—The rights of a party can not be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another. This rule embodies what is known as the *res inter alios acta* rule.[43] There are, however, exceptions to this rule. One of them is the admission of a conspirator.[44] The act or declaration of a conspirator 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 such act or declaration.[45]

In *People v. Paz*,[46] the diary of Commander Flower, Huk leader, showing a tie-up between the Huks and the Raytranco, a transportation company, was objected to on the ground that it is hearsay, Commander Flower having been dead and could not be cross-examined. The Court ruled that the diary is admissible as an admission by a co-conspirator and as a link in the chain of circumstantial evidence around appellants.

c. *Confessions*—The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him.[47] A confession is admissible evidence of a high order. There is the strong presumption that no sane person would deliberately confess the commission of a crime unless prompted to do so by truth and conscience.[48] It is, however, a rule that a confession, to be admissible, should be voluntary.[49] But the burden of proving the involuntariness of a confession lies with the accused.[50]

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[43] The Latin maxim is: *res inter alios acta alteri nocere non debet*, which means that a transaction between two parties ought not to operate to the prejudice of a third person, Briones v. Platon, 12 Phil. 275; Aldeguer v. Hoskyn, 2 Phil. 500; Amancio v. Pardo, 20 Phil. 313; Martel Ong v. Jariol, 17 Phil. 244, cited in V Moran, *op. cit.*, p. 228

[44] Section 27, Rule 130, *op. cit.* The other exceptions refer to cases in which, between the party making the admission and the party against whom the admission is offered, there is a peculiar relation of (a) partnership; (b) agency; (c) joint interest; or (d) privity, V Moran, *op. cit.*, p. 228; Sections 26 and 28, Rule 130, *op. cit.*

[45] In order that the admission of a conspirator may be received against his co-conspirator, it is necessary (a) that the conspiracy be first proved by evidence other than the admission itself; (b) that the admission relates to the common object; and (c) that it has been made while the declarant was engaged in carrying out the conspiracy, V Moran, *op. cit.*, 233-34, citing International Bank v. Martinez, 10 Phil. 242; Hitchman Coal, etc. Co. v. Mitchell, 245 U.S. 229; People v. Dagundong, L-10398, June 30, 1960; Jac v. Mutual Reserve Fund L. Assn., 113 Fed. 49; U.S. Bank v. Lyman, 2 Fed. Cas. No. 924; U.S. v. Raymundo, 14 Phil. 416. Note that Section 27 of Rule 130 uses the phrase "during its existence," i.e., existence of the conspiracy. (*Author's Note*).

[46] See note 35.

[47] Section 29, Rule 130, *op. cit.*

[48] V Moran, *op. cit.*, p. 241, citing U.S. v. De los Santos, 24 Phil. 329.

[49] V Moran, *op. cit.*, p. 242, citing U.S. v. De los Santos, *supra;* People v. Nishisima, 57 Phil. 26.

[50] People v. Francisco, *et al.*, L-4258, May 15, 1953; People v. Fontavilla, 47 O.G. 1303, cited in V Moran, *op. cit.*, p. 242. The former rule was that no

(1) *"Wheedling" does not invalidate confession.*—In *People v. Castelo, et al.*,[51] Melencio's confession was questioned on the ground that he was "wheedled" by the Police Department to testify for the prosecution. In over-ruling the objection, the Supreme Court held: "Wheedled" means "coaxed by soft words", "flattery", etc. We do not think such "wheedling" could invalidate a confession.

(2) *Claim of involuntariness of confession not believed*—In the following cases, the claim of the accused that their confessions were involuntary, was not believed:

Five of the accused in *People v. Castelo, et al.*,[52] claimed that their confessions were extorted by means of force and violence. Ben Ulo himself, however, testified that he was never subjected to any indignity; on the contrary, he stated that he was even offered ₱10,000 by Mayor Lacson if he would testify against Castelo—which he rejected. He even declined to make any statement before the NBI and the Manila Police—and he was not bothered at all. The Supreme Court observed that Ben Ulo's testimony refuted the claims of his five co-accused. "If torture were the standard police practice in obtaining statements," said the Court, "it surely strikes us why Ben Ulo, the acknowledged leader of the group, should have been spared from such ordeal."

In *People v. Candava and De la Peña*,[53] the Supreme Court did not believe defendants' testimony that duress was employed to secure their respective confessions because, it was uncorroborated; none of the persons who visited them during their detention saw any of the contusions they allegedly sustained in consequence of the terrific beating they claimed to have taken from the peace officers who investigated them, and who even denied the truth of such claim; the confessions of the two accused did not dovetail in a relatively important detail,[54] i.e., De la Peña confessed that Candava wanted to kill the deceased because Candava had lost to the latter in a love affair; Candava, on the other hand, denied this, but stated that he wanted to kill the deceased because of a fist fight they had had before.

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confession of any person charged with a crime shall be received as evidence against him unless it first be shown that such confession was voluntarily made or was not given as a result of violence, intimidation, threat or promise of reward or leniency, sanctioned by Section 4 of Act No. 619. Said legal provision was repealed on July 1, 1916 by the Administrative Code, V Moran, *op. cit.*, p. 241.

[51] See note 41.

[52] *Ibid.*

[53] G.R. No. L-18517, March 31, 1964.

[54] The Court reasoned that had the extrajudicial confessions been obtained thru violence and intimidation, those who prepared said documents would have seen to it that each dovetailed fully with the other. (*Author's Note*).

C. *Confessions: against whom admissible*—A confession made by a defendant is admissible only against him but not against his co-defendants as to whom said confession is hearsay evidence.[54a] But this is not a hard and fast rule. Thus, in *People v. Argana, et al.*,[55] the Supreme Court said: Concededly, the extrajudicial confessions of Argana and Nave are not admissible against the appellants. They however, serve as strong indications that appellants were participants in the crime. Interlocking confessions, as they are, they are confirmatory of the imputable physical facts involved in the present case. There being no proof of collusion, and being identical with each other in their essential details and are corroborated by other evidence of record, the confessions are admissible to prove conspiracy among the appellants and to establish their participation in the crime.[56]

Likewise, where the confession of a defendant is corroborated by the witnesses for the prosecution and by all circumstances of the case as to the guilt of a co-defendant, said confession is admissible against the latter.[57] This ruling was applied in *People v. Paz*,[58] where the accused-appellant questioned the admissibility of the extrajudicial confessions of his co-accused as evidence against him, contending that he had not in any way taken part in their preparation. The Court observed: It is a familiar rule, however, that a vicarious declaration of a conspirator, made after the termination of the conspiracy, may bind his co-defendant; that although a co-conspirator's extrajudicial confession is ordinarily not admissible against his co-defendants, the same becomes admissible against them if corroborated by other evidence.[59]

[54a] V Moran, *op. cit.*, p. 252, citing Snarf v. U.S., 156 U.S. 51; People v. Durante, 47 Phil. 654; U.S. v. Macalalad, 9 Phil. 1; U.S. v. Castillo, 2 Phil. 17; U.S. v. Lim Tico, 4 Phil. 440; U.S. v. Candelaria, 4 Phil. 543; U.S. v. Paete, 6 Phil. 105.

[55] G.R. No. L-19448, February 28, 1964, citing People v. Cariño, *et al.*, G.R. No. L-9580, September 30, 1957; People v. Zipagan, 64 Phil. 757; People v. Serrano, 56 Off. Gaz., 4414.

[56] These confessions are termed by Moran as identical confessions. V Moran, *op. cit.*, p. 254. Other exceptions to the rule that a confession made by a defendant is admissible only against him but not against his co-defendant, according to Moran, are (a) confession on the stand, (b) confession not objected, (c) adopted confession, (d) corroborated confession, and (e) confession by conspirator, V Moran, *p. cit.*, p. 253-257.

[57] U.S. v. Perez, 32 Phil. 163, cited in V Moran, *op. cit.*, p. 255.

[58] See note 35, citing U.S. v. Empeinado, 9 Phil. 613.

[59] The exception is merely apparent, not real, as commented by Moran. If the confession is held admissible against the co-defendant, it is because the facts confessed which implicated him are shown to be true by the testimonial evidence introduced against him, not the confession in question, V Moran, *op. cit.*, p. 255.

2. Testimonial Knowledge—Hearsay Rule

Except as otherwise provided in the rules,[60] a witness can testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception.[61] The testimony of a witness as to facts of which he has no personal knowledge is called hearsay[62] and inadmissible if objection to it is timely interposed.[63]

In *People v. Paz*,[64] the defense claimed that the conversation had between Commander Romy, Villasanta and Villapando, on one hand, and three witnesses for the prosecution, on the other, particularly the instructions given by the Huks to the latter, are hearsay and inadmissible, because the appellants had no opportunity to cross-examine[65] the said Huk leaders. The Supreme Court held that the conversations are not hearsay at all because the witness knew of said facts of their own knowledge. While the defense could not cross-examine Commander Romy and the other Huks, still it did examine and cross-examine the witnesses.[66] Moreover, it was established that the defense did not interpose timely objection to the admission of the testimony regarding said conversation. So that granting that the evidence is hearsay, the failure of the defense to object constituted a waiver of the right to cross-examine and said evidence becomes admissible.

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[60] The following are the exceptions to the hearsay rule: (a) dying declaration, section 31, Rule 130; (b) statements of a deceased person against his pecuniary or moral interest, section 32, Rule 130; (c) statements about pedigree, section 33, Rule 130; (d) family reputation or tradition regarding pedigree, section 34, Rule 130; (e) statements about matters of public or general interest, or common reputation 35, Rule 130; (f) statements as part of the *res gestae*, section 36, Rule 130; (g) entries in the course of business or in the performance of duty, section 37, Rule 130; (h) entries in official records, section 38, Rule 130; (i) commercial lists and the like, section 39, Rule 130; (j) learned treatises, section 40, Rule 130; (k) testimony at a former trial, section 30, Rule 130.

[61] Section 30, Rule 130, *op. cit.*

[62] The testimony of witnesses shall be given orally in open court and under oath or affirmation, Section 1, Rule 132, *op. cit.* Section 8 of the same Rule subjects all witnesses to cross-examination by the adverse party. Under Section 1(17) of Article III of the Constitution, it is provided that in all criminal prosecutions, the accused shall enjoy the right to meet the witness face to face.

[63] The right of confrontation and the right of a party in general to cross-examine a witness are waivable. When a party fails to object to the hearsay evidence presented by his opponent, his right of confrontation and cross-examination may be deemed waived, and the evidence is admissible, Diaz v. U.S., 223 U.S. 442; U.S. v. Chua Tong, 22 Phil. 562; Allarde v. Abaya, 57 Phil. 909, cited in V Moran, *op. cit.*, p. 270.

[64] See note 35.

[65] The rule which excludes hearsay testimony rests mainly on the ground that there had been no opportunity to cross-examine the declarant, Minea v. St. Louis Corp., 179 Mo. A., 705, 716; 162 S.W. 741 cited in V Moran, *op. cit.*, p. 268.

[66] Apparently, the testimony is intended to establish only the tenor of the conversation, not the truth of the facts therein asserted. These statements are known as "independently relevant statements," see V Moran, *op. cit.*, p. 270.

In *Jueco v. Flores*,[67] portions of the testimony of Felicidad Flores were objected to on the ground that they were hearsay. The Supreme Court held that this fact can not have any material effect on the outcome of the case because what have been disclosed by them, were substantially corroborated by other evidence.

3. Exceptions to the Hearsay Rule [68]

a. *Part of the Res Gestae—Statements by a person while a startling* occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as a part of the *res gestae*.[69]

The foregoing rule, which is one of the exceptions to the hearsay rule, was applied in *People v. Miranda*.[70] On the night of December 28, 1957, Clemente Pastera and his wife, Thelma Castellanes, were returning home from a dance followed by Aquilino Castellanes and Alfredo Castellanes, brothers of Thelma. After the party had covered about fifty meters from the dance hall, the three co-defendants suddenly emerged from a banana grove on the left side of the road. There, Emiliano Dajay, tapped Clemente on the left shoulder and when the latter turned, Emiliano stabbed him in the abdomen with a knife, and then immediately ran away. Thelma shouted for help. And when Alfredo rushed to her aid, Arsenio Miranda approached and slashed Alfredo on the back. Arsenio also ran away. Wounded and bleeding, Alfredo hurried to the door of the dance hall where his wife, Soterania Pastera, was selling soft drinks, bread, cigarettes and other wares. He told her that Emiliano stabbed Clemente and that Arsenio Miranda wounded him (Alfredo). The Supreme Court held that Alfredo Castellanes' revelation to witness Soterania Pastera of the identity of the assailants of Clemente and of himself, was a statement deserving great credibility for being part of the *res gestae*.

b. *Entries in official records*—Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.[71]

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[67] G.R. No. L-19325, February 28, 1964.

[68] For enumeration of the exceptions, see footnote 60, *supra*.

[69] Section 36, Rule 130, *op. cit.* Three requisites must be present in order that the evidence may be admissible: (a) that the principal fact, the *res gestae*, be a startling occurrence; (b) that the statements were made before the declarant had time to contrive or devise; and (c) that the statements must concern the occurrence in question and its immediately attending circumstances, V Moran, *op. cit.*, p. 333.

[70] G.R. No. L-18508-09, February 29, 1964.

[71] Section 38, Rule 130, *op. cit.* In order that a written official statement may be received in evidence as one of the exceptions to the hearsay rule, three requisites must be present, namely: (a) that it was made by a public officer,

In *Qua v. Republic*,[72] a true copy of a confidential report of the chief of the Counter-Intelligence group addressed to the "AC of S, G2, GHQ, AFP, Camp Murphy, Quezon City," on the communistic activities of Romulo Qua, petitioner for naturalization, was presented in evidence by the Legal Officer of the Intelligence of the Armed Forces of the Philippines. It was objected to as hearsay. The report was admitted because the facts therein stated were entered by a public officer in the performance of his duties, an exception to the hearsay rule.

c. *Testimony at a former trial.*—The testimony of a witness deceased or out of the Philippines, or unable to testify, given in a former case between the same parties, relating to the same matter, the adverse party having an opportunity to cross-examine him, may be given in evidence.[73]

As a rule, the decision in a civil case is not admissible as evidence against an accused in a criminal case subsequently filed against him because of the theory that a decision in a civil case is merely based on preponderance of evidence while in a criminal one, on a finding beyond reasonable doubt.[74] However, where the citation of the decision in the civil case, is not to the case as a whole but merely to a material fact which was found to be true not only by the Court of First Instance but even by the Court of Appeals, the appellant in the criminal case having had all the opportunity for examination and confrontation in the civil case, it was held that appellant had no reason to complain. This is the ruling handed down in the case of *De Gracia v. Court of Appeals*.[75] In that case, it appears that in a civil case, the appellant was found to have assigned credits which were no longer outstanding and for which he was held for damages.

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or by another person specially enjoined by law to do so; (b) that it was made by a public officer in the performance of his duties, or by another person in the performance of a duty specially enjoined by law; and (c) that the public officer or the other person had sufficient knowledge of the facts by him stated, which must have been required by him personally or through official information, V Moran, *op. cit.*, p. 368.

[72] G.R. No. L-16975, May 30, 1964.

[73] Section 41, Rule 130, *op. cit.* The requisites, under this exception to the hearsay rule, are (a) that the testimony was rendered in a former case; (b) between the same parties; (c) relating to the same matter; (d) that the adverse party has had an opportunity to cross-examine the witness; and (e) that the witness is dead, out of the Philippines, or unable to testify in the subsequent trial, V Moran, *op. cit.*, p. 395.

[74] De Gracia v. Court of Appeals, G.R. No. L-19298, April 30, 1964. In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence, section 1, Rule 133, *op. cit.* In a criminal case, the defendant is entitled to an acquittal, unless his guilt is shown beyond a reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces conviction in an unprejudiced mind, section 2, Rule 133, *op. cit.*

[75] *Ibid.*

In the subsequent criminal case brought against appellant for *estafa*, the trial court cited the decision in the civil case as to the status of the assigned credits. The Supreme Court found nothing irregular in what the trial court did for the reason mentioned above. Apparently the Court was acting under the authority of Sec. 41 of Rule 130 of the Rules of Court. It seems, however, that there was a deviation considering that, strictly speaking, the parties in a civil case and criminal case are not the same, although the cases may arise from the same facts.

In *Almarinez v. Potenciano*,[76] appellant contended that in finding that he had intentionally damaged the land which he held as tenant for appellee, the court *a quo* relied on his conviction for malicious mischief in a prior criminal case and not on the evidence adduced before it. The record, however, showed that although the lower court made passing reference to the decision convicting the petitioner of malicious mischief, it proceeded to make an independent assessment of the evidence adduced in the case at bar. The lower court was held not to have committed any error.

IV. BURDEN OF PROOF AND PRESUMPTIONS

The Rules of Court establishes three classes of presumptions: conclusive presumptions,[77] quasi-conclusive presumptions,[78] and disputable presumptions.[79] Conclusive presumptions are those which are not permitted to be overcome by any proof to the contrary.[80] Quasi-conclusive presumptions are those which may not be rebutted by any evidence other than those specifically provided by law.[81] Disputable presumptions are those which are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.[82]

1. Presumption of Regularity

One of the disputable presumptions established by the rules, is that official duty has been regularly performed.[83]

In *Alberca v. The Superintendent of the Correctional Institution for Women*,[84] appellant contended that her constitutional right to due process had been violated because in a criminal proceeding

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[76] G.R. No. L-17020, November 17, 1964.
[77] Section 3, Rule 131 of the Revised Rules of Court enumerates instances of conclusive presumptions.
[78] Section 4, Rule 131, *op. cit.*
[79] Section 5, Rule 131, *op. cit.*
[80] VI Moran, *op. cit.*, p. 13.
[81] *Ibid.*
[82] Section 5, Rule 131, *op. cit.*
[83] Section 5(m), Rule 131, *op. cit.*
[84] G.R. No. L-16896, January 31, 1964.

against her, she was not represented by counsel. The Supreme Court held that the presumption is that official duty has been regularly performed, and in appellant's case, that she was duly informed of her right to secure the services of counsel.[85] There was nothing in the record to rebut this presumption. It was not pretended that the information was not duly read to appellant upon arraignment; nor was there any denial that she had committed the crime charged as well as five other offenses of which she had been previously convicted and on which the allegation of habitual delinquency was based. The Court observed: the right to counsel may be waived, as by a plea of guilty voluntarily given.

But in *Chua v. Republic*,[86] a naturalization case, the Solicitor General opposed and moved for reconsideration of the decision of the lower court granting the petition for naturalization on the ground that petitioner-appellee failed to comply with the requirement of posting of the notice of hearing in the office of the clerk or in the building where said office is located.[87] The petitioner-appellee invoked the presumption that official duty has been regularly performed, claiming that the duty of posting the notice of hearing as required by the Naturalization Law devolved on the clerk of court. The Supreme Court held: While this rule of evidence is generally true, yet a mere presumption will not suffice where the law specifically requires positive proof of a fact, especially when it constitutes a jurisdictional matter, as is the proof of notice in the case of naturalization proceedings.[88]

2. Presumptions of Law in Special Laws

Presumptions of law are not found in the Rules of Court alone. While presumptions of law in the Rules of Court have been greatly

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[85] If the defendant appears (for arraignment) without attorney, he must be informed by the court that it is his right to have attorney before being arraigned, and must be asked if he desires the aid of attorney. If he desires and is unable to employ attorney, the court must assign attorney *de officio* to defend him. A reasonable time must be allowed for procuring attorney, Section 3, Rule 116, *op. cit.*

[86] G.R. No. L-19695, October 31, 1964.

[87] Under Section 9 of Commonwealth Act No. 473 (Revised Naturalization Law) it would really seem that the duty of having copies of the petition for naturalization and a general notice of the hearing posted in a public and conspicuous place in the office of the clerk of the court or in the building where said office is located, devolves on the clerk of court. The pertinent portion of section 9 reads: "Immediately upon the filing of a petition, it shall be the duty of the clerk of the court . . . to have copies of said petition and a general notice of the hearing posted in a public and conspicuous place in his office or in the building where said office is located . . ." (*Author's note*).

[88] The Court cited its ruling in Co. v. Republic, G.R. No. L-10761, November 29, 1958, as follows: "In short, non-compliance with the requirements thereof, relative to the publication of the petition, affects the jurisdiction of the court. It constitutes a fatal defect, for it impairs the very root or foundation

expanded by the inclusion of the presumptions originally provided in the New Civil Code,[89] there remain presumptions of law in special laws.

One of the more important presumptions of law is that found in section 43 of the Workmen's Compensation Act,[90] which provides that in all compensation proceedings it shall be presumed, "in the absence of substantial evidence to the contrary, that the claim comes within the provisions of this Act." The Supreme Court found occasion to emphasize the existence of this presumption in *Agustin v. Workmen's Compensation Commission.*[91] In that case, the Commissioner rejected the claim of petitioner on the ground that he failed to show that his sickness was due to the nature of his work. Citing the case of Larchituky v. Gotham Folding Box Co.,[92] the Commissioner said:

> "x x x It must again be re-stated that pulmonary tuberculosis is not, *per se*, compensable, even with the type of work claimant was employed to do. He must show beyond conjecture that his sickness can be attributable to, or reasonably traced from, his work.
>
> "And in practice, the claimant does not merely come to the Commission exhibiting a broken arm or other injury and then force the respondent to prove that there was no contradiction between the injury and the employment. The claimant must prove his case beyond speculation and conjecture."

The Supreme Court ruled that the view taken by the Commission does not accord with the presumption established by section 43 of the Philippine Workmen's Compensation Act.

V. PRESENTATION OF EVIDENCE

While the usual procedure in the presentation of evidence is to adduce the same directly before the judge or the court, this is not the only procedure allowed by the rules. The rules specifically authorize the trial of a case with assessors [93] or by commissioner.[94]

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of the authority to decide the case, regardless of whether the one to blame therefore is the clerk or the petitioner or his counsel. Failure to raise this question in the lower court would not cure such defect."

[89] The quasi-conclusive presumptions of legitimacy, section 4, Rule 131, New Rules of Court: disputable presumptions with respect to absentees, section 5(x), *ibid;* status of child born to a mother who contracts a subsequent marriage before the lapse of three hundred days following the death of her husband, section 5(dd), *ibid.;* who died first between persons called upon to succeed each other, section 5(kk), *ibid.*

[90] Act No. 3428, as amended.

[91] G.R. No. L-19957, September 29, 1964.

[92] 230 N.Y. 8, 12; 128; 899.

[93] Rule 32, *op. cit.*

[94] Rule 33, *op. cit.* By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court, Section 1, Rule 33.

In *Wassmer v. Velez*,[95] defendant-appellant claimed that the judgment he sought to be set aside was null and void on the ground that it was based on evidence adduced before the clerk of court. In over-ruling the claim of the defendant-appellant, the Supreme Court pointed out that the procedure of designating the clerk of court as commissioner to receive evidence is sanctioned by Rule 33 of the Rules of Court. As to defendant-appellant's claim that he did not give his consent to said procedure, the Court held that the same did not have to be obtained for he was declared in default and thus had no standing in court.[96]

A. AUTHENTICATION AND PROOF OF DOCUMENTS

1. Private Writing

Before any private writing may be received in evidence, its due execution and authenticity must be proved either by anyone who saw the writing executed; by evidence of the genuineness of the handwriting of the maker; or by a subscribing witness.[97]

In *General Enterprises, Inc. v. Lianga Bay Logging Co., Inc.*,[98] the trial court admitted as part of appellee's evidence two letters over the opportune objection interposed by appellant that they were inadmissible because their execution and authenticity were not proved. In declaring that the court *a quo* erred in admitting said letters as part of appellee's evidence, the Supreme Court observed: There is merit in appellant's contention it appearing that these exhibits were not properly identified and apparently were received after appellee had conceived filing in the instant complaint. Under Section 21 of Rule 132 of our Rules of Court, "before any private writing may be received in evidence, its due execution and authenticity must be proved." And the rule is that when there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document should be excluded.[99]

2. Public Documents

Public instruments are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the

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[95] G.R. No. L-20085, December 26, 1964.

[96] Citing Velez v. Ramas, 40 Phil. 787; Alano v. Court of First Instance, L-14557, Oct. 30, 1959. If the defendant fails to answer within the time specified in the rules, the court shall, upon motion of the plaintiff and proof of such failure, declare the defendant in default, Section 1, Rule 8, *op. cit.*, see also Section 12, Rule 5, *op. cit.* Except as provided in section 9 of Rule 13, a party declared in default shall not be entitled to notice of subsequent proceedings, nor to take part in the trial, Section 2, Rule 18, *op. cit.*

[97] Section 21, Rule 132, *op. cit.*

[98] G.R. No. L-18487, August 31, 1964.

[99] Citing Paz v. Santiago, 47 Phil. 334; Alejandro v. Reyes, 53 Phil. 973.

latter.[100] The books making up the civil register and all documents relating thereto are considered public documents and are *prima facie* evidence of the facts therein contained.[101]

In *Malicdan and Aquino v. Republic*,[102] the Solicitor General contended on appeal that it was error for the lower court to allow testimonial evidence tending to establish that petitioners are Henry's parents. It was the Solicitor General's theory that testimonial evidence can not over-ride the entry in the civil register showing that said minor is the son of Lope and Eugenia Tomelden. In over-ruling the Solicitor General's contention, the Supreme Court held: It is not denied that as recorded in the civil register, Henry appears to be the child of the Tomeldens. Petitioners, however, tried to explain the circumstances leading to such registration which the lower court found to be credible. The action taken by the trial court is not erroneous. While it is true that the civil registry is an official record, it must also be remembered that entries therein are only *prima facie* evidence of the facts so stated. Thus, the correction or cancellation thereof, in proper cases and by judicial order, is allowed.[103]

B. OFFER AND OBJECTION

1. Offer of Evidence

The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.[104] The offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered by the parties at the trial.[105]

In *Yap Bun Pin v. Republic*,[106] a naturalization case, petitioner's income tax returns for 1961 (attached to his brief) and 1962 (attached to a subsequent manifestation) were not considered by the Court since they were not presented at the trial. It is a well-settled rule, said the Court, that, except as otherwise provided by law, new evidence can not be considered on appeal; the appeal must be decided solely on the evidence produced in the court below and shown by the record.

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[100] Section 25, Rule 132, *op. cit.*
[101] Article 410, New Civil Code.
[102] G.R. No. L-19141, October 31, 1964.
[103] No entry in a civil register shall be changed or corrected, without a judicial order, Article 412, *op. cit.*
[104] Section 35, Rule 132, *op. cit.*
[105] U.S. v. Solano, 33 Phil. 582; Dayrit v. Gonzales, 7 Phil. 182, cited in VI Moran, *op. cit.*, p. 124.
[106] G.R. No. L-19577, October 30, 1964.

In *People v. Pacomio, et al.*,[107] appellant sought a reversal of the order of the lower court declaring forfeited the bond filed for the temporary release of the accused. Appellant's reason was that the body of the defendants had already been surrendered to the lower court. In support of its pretense, appellant quoted in its brief a motion, allegedly filed with the said court by the accused, alleging that their failure to appear before the lower court when required was due, not to a desire to disobey the orders of said court or to jump bail, but to the fact that they were then "at sea fishing for their livelihood" and that it was only upon their return that they learned, through appellant's agents, of the court order setting the case for hearing. The Supreme Court ruled that the appeal was devoid of merit, observing that said motion was not part of the record of the appeal. It was not introduced in evidence in connection therewith.

2. Objection

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.[108] A failure to object renders admissible a relevant evidence which is otherwise incompetent.[109]

"They told me they scattered this poster"; "Villasanta told me that he gave the pickmattock to Emilio Quitalig"; "He said: 'We distributed posters' "; "He answered that Juaning promised to give those carbines." These statements, although conceded to be hearsay, were admitted in *People v. Paz*,[110] because they were not objected to at the trial.

VI. WEIGHT AND SUFFICIENCY OF EVIDENCE

1. Degree of Proof

In civil cases the party having the burden of proof must establish his case by a preponderance of evidence.[111] In criminal cases, the prosecution must establish the guilt of the accused beyond reasonable doubt.[112] Degree of proof is not, however, limited to either preponderance of evidence or proof beyond reasonable doubt. There are certain cases which require proof by substantial evidence. This quantum of proof is all that is required for instance in cases submitted before the Court of Agrarian Relations. Quoting previous

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[107] G.R. No. L-20077, September 30, 1964.
[108] Section 36, Rule 132, *op. cit.*
[109] VI Moran, *op. cit.*, p. 128, citing Marella v. Reyes, 12 Phil. 1.
[110] See note 35.
[111] Section 1, Rule 133, *op. cit.*; see footnote 74.
[112] Section 2, Rule 133, *op. cit.*; see footnote 74.

rulings,[113] the Supreme Court, in *Lustre v. Court of Agrarian Relations*,[114] defined substantial evidence as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

2. How to Weigh Evidence

The rule for determining the weight of evidence in civil cases, are also applicable in determining the weight of evidence in criminal cases.[115] The court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their testimony, their interest or want of interest and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greatest number.[116]

a. *Witnesses are to be weighed not numbered*—The testimony of only one witness, if credible and positive; an unsupported evidence of an accomplice, if it satisfies the court beyond reasonable doubt, is sufficient to convict. Granting for purposes of argument that Argana's testimony, was not corroborated, as contended, still the same is sufficient to convict his co-accused, if and when the court gives it full faith. In the determination of the values and credibility of evidence, witnesses are to be weighed and not numbered. This is the holding of the Court in *People v. Argana*,[117] a reiteration of previous rulings.

In *People v. Simon*,[118] the Supreme Court found nothing incredible in the testimony of the witness Chua Sam, although it was uncorroborated. He came face to face with the assailants when he was pulled inside the store where the crime was committed. The place was a large establishment and was lighted with four fluorescent lamps set in a row. The trial court even remarked the witness' sincerity and straightforward manner of giving his testimony.[119]

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[113] Ang Tibay v. CIR, 69 Phil. 635, 642; Saingco v. CAR, G.R. No. L-13120, November 20, 1957; Chavez v. CAR, G.R. No. L-17814, October 31, 1963.

[114] G.R. No. L-19654, March 31, 1964.

[115] U.S. v. Claro, 42 Phil. 413, cited in VI Moran, *op. cit.*, p. 138.

[116] Section 1, Rule 133, *op. cit.*

[117] See note 55, citing People v. Marasigan, G.R. No. L-2235, January 31, 1950; 47 Off. Gaz. No. 7, p. 2529.

[118] G.R. No. L-18035, February 28, 1964.

[119] The findings and conclusions of the trial court on the question of credibility of witnesses command great respect before the appellate courts, People v. Paz, note 35, *supra*. It has repeatedly been held that the judge who tries a case in the court below has vastly superior advantages for the ascertainment

b. *What is not ordinary is not necessarily incredible.*—In *People v. Raquel*,[120] it was argued that for Julita Arboso to take a flashlight and courageously go out to seek help from the police upon seeing her wounded husband is against the natural and ordinary course of things and thus incredible. Appellant contended that her natural reaction should have been to come to the side of her husband. The Court held: The contention would ignore the fact that different persons respond to crisis differently. The impulse to call the police upon the occurrence of an incident like the one described above is, rather than extraordinary, quite natural. Needless to add, we can not agree with appellant's view which would find it difficult to concede acts of valor and courage on the part of women in the face of crisis. We can not, therefore, subscribe to appellants' reasoning that what is not ordinary is not credible.

c. *Previous conviction for estafa affects one's credibility.*—In *Coleongco v. Claparols*,[121] the Supreme Court ruled that the credibility of Coleongco is affected by his own admission of his having been previously convicted of estafa, a crime that implies moral turpitude.

d. *A man, violating family ties and affection, must be telling the truth when he testifies against the interest of wife and children.*—In *Lopez, et al. v. Gonzaga*,[122] the Supreme Court, in upholding appellee's claim, observed: We can not fail to be impressed by the statements of Attorney Francisco Hortillas, averring under oath in clear and unmistakable terms, not only once but twice, before the Courts of First Instance of Iloilo and Negros, that the deceased Doña Soledad, in her probated will, made Luis Gonzaga y Jesena the sole heir

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of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye the cold words of the witness as transcribed upon the record, knowing at the same time, from actual experience, that more or less of what the witness actually did say is always lost in the process of transcribing. But the main difficulty does not lie here. There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court, VI Moran, *op. cit.*, p. 149-150, citing Calvert v. Carpenter, 96 Ill. 63, 67; Keyes v. Kimmel, 186 Ill., 101; 57 N.G. 851; People v. Francisco, L-5900, May 14, 1954; People v. Manasa, L-6473, May 26, 1954; Quiambao v. Mora, L-12690, May 25, 1960; People v. Rodriguez, L-10046-47, May 23, 1960; People v. Castro, L-12789, May 30, 1960; People v. Alban, L-15023, March 9, 1961; People v. Berganio, L-10121, Dec. 29, 1960; People v. Agarin, L-12298, Sept. 29, 1960; People v. Lilaon, L-12406, June 30, 1961.

[120] G.R. No. L-17401, November 28, 1964.

[121] G.R. No. L-18616, March 31, 1964.

[122] G.R. No. L-18788, January 31, 1964.

to her properties. These manifestations are nigh conclusive, for the reason that Attorney Hortillas himself was married to Monserrat Gonzaga, a sister of Soledad, who would have been one of the latter's heirs intestate had it not been for the testament in favor of the appellee. It taxes credulity beyond all reason to imply (as the appellants do) that Attorney Hortillas, violating family ties and affection, conspired with appellee to deprive his own wife and children (now some of the present appellants) of the lawful share by intestacy in the properties left by Doña Soledad if it were untrue that the latter had duly and properly bequeathed all her property to appellee Luis Gonzaga.

e. *It is not unnatural for the memory of a man over 70 years old to display inconsistencies.*—We cannot give much weight to the fact that appellee Lednicky gave two different versions of how he acquired his 3/10 interest in the mining claims at issue from Philip C. Whitaker. It is not unnatural for the memory of a man over 70 years old to display inconsistencies. This was the observation of the Supreme Court in *Wright, Jr. v. Lepanto Consolidated Mining Co.*[123]

f. *Witnesses who served as contact and errand boys for the accused should know whereof they speak.*—In *People v. Paz,*[124] the Supreme Court put great weight to the testimony of state witnesses Vidanes, Quitalig and Miranda because they were participants in the preliminary activities of the appellants. In fact they had served as contact and errand boys for the Huks. They testified in a direct, clear and straightforward manner; so sincere and convincing were their testimonies that the trial court, notwithstanding the intensive and extensive cross-examination by the defense, had given them faith and credence.

g. *A provincial assessor's estimate as to the current market value of an estate deserves great weight and reliability.*—Appellant claimed in *Francisco v. Matias,*[125] that the market value of the decedent's estate did not exceed ₱264,329.25 and to prove his claim he presented the appraisal for tax purposes of the estate of the deceased by Internal Revenue Examiner Florencio M. Alfonso in addition to a certificate of the assessed value of such properties in several municipalities of Cavite. Appellee, *per contra,* substantiated his valuation of the estate at ₱1,236,993 with official statements of the provincial assessors, and deed of sale of neighboring realty or of lands similarly situated. The Supreme Court held: We find no reason

[123] G.R. No. L-19904, July 11, 1964.
[124] See note 35.
[125] G.R. No. L-16349, January 31, 1964.

to overrule the opinion of the trial judge that the current market value is that reflected in the estimate of the provincial assessors, whose judgment, by reason of their official work and wide experience in such particular line deserves great weight and reliability.

h. *The spontaneous declaration of a witness right after the incident throws a serious doubt upon his declaration in court.*—The Supreme Court, in *People v. Tiongson*,[126] made the following observation: The spontaneous declaration of Ramon Lopez right after the incident that only two soldiers were involved in the shooting throws a serious doubt upon his subsequent declaration in court when he tried to incriminate all the four appellants, especially in the light of the established fact that the firearms of Yacat and Antonio did not fire any of the bullets retrieved and submitted for ballistics examination.

i. *That the protegé of defendants threatened them of implication should they talk about the crime, is hard to believe.*—In *People v. Navarro*,[127] the two defendants pointed to Ricardo Arroyo as the perpetrator of the crime charged against them. Their testimony was not, however, believed. It is unbelievable that Arroyo threatened them of implication should they tell anybody about the crime because Arroyo was a sort of a protegé of the two defendants. He came to live in the house where the defendants lived on the promise that they were to find for him employment and to sponsor him to be a member of a labor union, showing that he was by far lower in economic standing than the two defendants.

j. *A corroborated testimony, other things being equal, carries greater weight than an uncorroborated one.*—Where the testimony against accused Conde by his co-accused Bermudez, was corroborated by another, while Conde's testimony in his favor that he did not take part in the commission of the crime either by induction or cooperation was not corroborated, the Court believed the testimony against Conde.[128]

k. *Affirmative testimony is stronger than negative testimony.*—In *Lu Do and Lu Ym Corp. v. PLASLU and PELU*,[129] the company admitted that the mark "x" meant eight hours work in the case of guards. But it introduced testimony which was described as "positive, firm and uniform" by the trial court, that "x" meant six hours

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[126] G.R. Nos. L-9866 & 9867, November 28, 1964.
[127] G.R. No. L-20860, November 28, 1964.
[128] People v. Conde, G.R. No. L-18777, May 29, 1964.
[129] G.R. No. L-18450, May 29, 1964, citing VI Moran, *op. cit.* p. 146-147; see People v. Borbano, 76 Phil. 702; People v. Osi, 47 O.G. 4144; People v. Velayo, L-7257, February 8, 1955; People v. Bolivos, L-12450, December 29, 1960.

work with respect to the other employees. The court examiner, one of the witnesses for the unions, stated that he took "x" to mean eight hours work for all because he found no evidence that the mark stood for six hours. The Supreme Court placed greater weight on the testimony for the company, stating that affirmative testimony is stronger than negative testimony.

l. *Inherent improbability of testimony*—When the testimony of a witness is inherently improbable, inconsistent with human experience, or against the natural course of things, it will not be credited.[130]

Where two witnesses testified that through a small opening on the window, they saw one Ricardo Arroyo struck the deceased with a blunt object and the latter fell to the ground, after which they returned to their bed and after commenting lightly on the occurrence they slept; that early in the following morning they left the house where they slept and went to their farm without even thinking of the incident they have seen the previous night; that they did not even have the curiosity to find out what became of the man who fell after receiving a blow on the head, before they proceeded to their farm, the Supreme Court observed that the behaviour of the two witnesses was not humanly natural and can not be believed.[131]

In *People v. Indic*,[132] the defense of appellant Cabias was described as "unusual and inconsistent with human experience" and was not given credence. He claimed that he was present when Estaco attacked and assaulted Bernardo, that he even pleaded with Estaco not to harm Bernardo because Estaco was armed while Bernardo was not and had been wounded, but that he went to sleep after the incident. It is strange, observed the Court, that he would not have rushed to his uncle's (Bernardo's) side after Estaco had left, to see how he was wounded or give him medical succor or report the crime to the authorities; instead, he was unconcerned; he slept peacefully that night and very early the next morning (3:00 o'clock), he went to the remote barrio of Tanghas to fish, as if nothing had happened the previous night. There is really something fishy in connection with the fish story, for the truth of the matter is that on the very evening of September 28, 1958, police officers went to the house of

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130 VI Moran, *op. cit.*, 145, citing U.S. v. Sta. Cruz, 1 Phil. 726; Yu Hun & Co. v. British Traders Inc. Co., *et al.*, Nos. L-5719-25, May 18, 1954; People v. Unciano, *et al.*, L-6643, April 29, 1954; People v. Polutan, L-6195, June 30, 1954; People v. Davis, L-13337, Feb. 16, 1961; U.S. v. Sison, 18 Phil. 557; Arroyo v. Hospital de San Pablo, 81 Phil. 333; People v. Fernandez, *et al.*, 50 O.G. 1061; People v. Ananias, L-5591, March 28, 1955; People v. Dino, 46 Phil. 385.

131 People v. Navarro, *supra*.

132 G.R. Nos. L-18071-72, January 31, 1964.

Cabias and did not find him there, for he had already taken flight to barrio Tanghas where he was arrested two days after.

m. *Manner of testifying of witnesses*—Where the trial court observed that the witnesses for the prosecution testified in a clear-cut and positive manner while the accused and his lone witness were fidgety and uncertain in their answers to the questions propounded to them, the Supreme Court found no reason to disturb the decision of the lower court.[133]

2. Recantation of Witness

The attitude of the courts with respect to the recantation of witnesses after a judgment of conviction is one of wariness and skepticism.[134] In *People v. Castelo, et al.*,[135] the Supreme Court held as mere afterthought the recantation of state witness Robles, designed to rescue his former co-defendants and to deliver Castelo from the hands of the law. Not only was Robles' allegation of mistreatment and coercion rebutted completely but also during the several weeks that he was subjected to searching and unrelenting cross-examination by the several defense lawyers, he stood firm and steadfast in his assertions and answered his questioners with straightforward alacrity and apparent spontaneity.

In *People v. Torino*,[136] the Supreme Court reiterated its ruling [137] that an affidavit of recantation made by a witness after the conviction of the accused is unreliable and deserves scant consideration.

3. Circumstantial Evidence

Circumstantial evidence is the evidence of collateral facts or circumstances from which an inference may be drawn as to the probability or improbability of the facts in dispute.[138] Circumstantial evidence may consist of antecedent, concomitant or subsequent circumstances, according as to whether they occurred before, during or after the facts in dispute took place.[139]

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[133] People v. Romawak, G.R. No. L-19644, October 31, 1964.

[134] U.S. v. Valdez, 30 Phil. 293; U.S. v. Cu Unjieng, 61 Phil. 906; U.S. v. Dacir, 26 Phil. 503, cited in People v. Castelo, *et al.*, G.R. No. L-10774, May 30, 1964.

[135] G.R. No. L-10774, May 30, 1964. Robles' testimony was the only direct testimony against Castelo. The other evidence against him were circumstantial.

[136] G.R. Nos. L-18767-18789-18790, May 30, 1964. In this case, the testimony of the recanting witness was merely corroborative, the identity of appellant having been sufficiently established by other witnesses.

[137] People v. Manigbas, *et al.*, G.R. Nos. L-19352-53, September 30, 1960; People v. Tiongson, *et al.*, L-15201-02, October 31, 1962.

[138] V Moran, *op. cit.*, p. 17.

[139] V Moran, *op. cit.*, p. 17-18.

a. Antecedent circumstances:

(1) *Motive*—Motive is the thing that moves a person to the doing of an act.[140] While proof of motive is not indispensable where the accused has been directly identified,[141] it becomes necessary where there is doubt as to the identity of the offender.[142] In *People v. Indic*,[143] and *People v. Raquel*,[144] no motive was shown. But the Court held this circumstance can not affect the judgment of conviction because the accused were identified by witnesses whose testimony there was no reason to disbelieve.

In *People v. Contante*,[145] it was established that Tomas Garchitorena decided to have Anatolio Adayo killed because he wanted the latter's wife, with whom he maintained illicit relations, exclusively for himself. Contante, on the other hand, agreed to kill Anatolio Adayo in consideration of ₱500.00.

In *People v. Cañada*,[146] the accused bore deep ill-feeling and resentment against Felicito Escobido on account of the latter's opposition to the marriage of the accused to Escobido's niece who unceremoniously refused the accused for marriage.

In *People v. Castelo, et al.*,[147] Castelo wanted Monroy killed because the latter was a principal witness against him in a Senate investigation.

b. *Concomitant circumstances:*

(1) *Alibi*—When the concomitant circumstances are incompatible with the doing of an act by a person, they may be proved to show that such person is not the author of the act.[148] But alibi is one of the weakest defenses that can be resorted to by an accused.[149] It has been held that to establish an alibi, a defendant must not only show

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[140] V. Moran, *Ibid.*, p. 23, citing U.S. v. Carlos, 15 Phil. 47; U.S. v. Esmundo, 27 Phil. 554.

[141] People v. Indic, *supra*; People v. Raquel, *supra*.

[142] U.S. v. McMann, 4 Phil. 561; People v. Zamora de Cortez, 59 Phil. 568, cited in V Moran, *op. cit.*, p. 23.

[143] See note 133.

[144] See note 120.

[145] G.R. No. L-14539, December 28, 1964. Tomas Garchitorena was not, however, included in the information which fact prompted the Supreme Court to comment, in concurrence with the observation of the Solicitor General's Office, that there seems to have been allowed in this case a "travesty of justice".

[146] G.R. No. L-19132, September 26, 1964.

[147] See note 41.

[148] V Moran, *op. cit.*, p. 26.

[149] *Ibid.*, citing People v. De la Cruz, 76 Phil. 601; People v. Bondoc, 47 O.G. 4128; People v. Zapata, L-11074, Feb., 1960; People v. Moquadi, L-9759-61, February 25, 1960; People v. Volpani, L-13973, April 29, 1960; People v. Ambabang, L-12907, May 30, 1960; People v. Sabuero, L-13372, May 20, 1960; People v. Naranja, L-19288, June 30, 1960.

that he was present at some other place about the time of the alleged crime, but also that he was at such other place for so long a time that it was impossible for him to have been at the place where the crime was committed, either before or after the time he was at such other place.[150]

In the cases of *People v. Argana,*[151] *People v. Raquel,*[152] and *People v. Castelo, et al.,*[153] the defense of alibi was not believed.

In the *Argana* case, appellants Tansianco and Samiano claimed that they were in Ambulong, Tanauan, Batangas, to visit a girl and went home to Barandal, Calamba, at midnight, on July 21, 1960 when the crime of which they were charged was committed. They, however, failed to present credible and tangible evidence that it was physically impossible for them to be in Kalayaan, the place where the crime was committed, at the time of the commission of the offense.

In the *Raquel* case, the distance between the place where the crime was committed and the place where the appellant claimed he was at the time of the commission of the crime, is about four and one-half kilometers. There was, therefore, no physical impossibility for accused to be at the scene of the crime at the time of its commission.

In the *Castelo* case, the place where some of the appellants allegedly were at the time of the commission of the crime is only 15 minutes drive to the scene of the crime.

c. *Subsequent circumstances*

In the 1964 cases surveyed, some of the circumstances subsequent to the fact in dispute which the Court took into account to shed light on the disputed fact are: that accused was seen three minutes after the shooting on the road about one hundred meters from the house where the deceased was shot, walking hurriedly and carrying a double-barrel shotgun;[154] that the accused never took interest in locating the deceased;[155] that the accused tried to evade

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[150] *Ibid.*, p. 26-27 citing U.S. v. Oxiles, 29 Phil. 587; People v. Palomos, 49 Phil. 601; People v. Resabal, 50 Phil. 780; People v. Sulit, *et al.*, L-4919, Jan. 21, 1953; People v. Venegas, *et al.*, L-4928, June 11, 1954; People v. Galamiton, L-6302, Aug. 25, 1954; People v. Cabang, L-7258-59, Sept. 28, 1964; People v. Balaclaot, L-6586, Oct. 29, 1954; People v. Escares, L-5562, April 29, 1954; People v. Justiado, L-5478, April 29, 1954; People v. Guzman, L-13340, April 30, 1960.

[151] See note 55.

[152] See note 120.

[153] See note 41.

[154] People v. Contante, *supra.*

[155] People v. Cañada, *supra.*

arrest;[156] that the fountain pen of the accused was found near the body of the deceased;[157] that the accused was nervous when he learned that the mayor of the City of Manila and some city policemen were shadowing him.[158]

4. Sufficiency of Circumstantial Evidence

No general rule has been formulated as to the quantity of circumstantial evidence which will suffice for any case. But it is required that the circumstances proved 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, and with every other rational hypothesis except that of guilt.[159] Circumstantial evidence is sufficient for conviction if there is more than one circumstance, the facts from which the inferences are to be derived are proven and the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[160]

The accused in *People v. Cañada*,[161] was convicted by means of circumstantial evidence. The circumstances found are: that the accused bore deep ill-feeling and resentment against Felicito Escobido, the deceased, on account of the latter's opposition to the marriage of the accused to Escobido's niece who unceremoniously refused the accused for marriage; that the accused on the night the crime was committed, engaged the deceased in a drinking spree and when already drunk he insisted on inviting the deceased to serenade; that accused and three other companions went to the house of the rural policeman and there drank again; that the accused never took interest in locating the deceased after he noticed his absence; that near the body of the deceased was found the fountain pen of the accused; that there were frequent fights between the two, the deceased and the accused, prior to the incident.

5. Power of the Court to Stop Further Evidence

The court may stop the introduction of further testimony upon any particular point when the evidence is already so full that more witnesses on the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with

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156 People v. Indic, *supra;* People v. Castelo, *et al.*, *supra.*

157 People v. Cañada, *supra.*

158 People v. Castelo, *et al.*, *supra.*

159 People v. Ludday, 61 Phil. 216 cited in People v. Contante, *supra;* see also U.S. v. Levente, 18 Phil. 439; People v. Chan Uh, 51 Phil. 523; People v. Mahlon, Moro Saan and Moro Muntacal, L-5198, April 17, 1953; People v. Tanchoco y Marcelo, 76 Phil. 463, cited in VI Moran, *op. cit.*, 163.

160 Section 5, Rule 133, *op. cit.*

161 See note 146.

caution.[162] Since, as a general rule, there is no logical requirement as to the number and kind of witnesses to prove a material fact, the parties are free to call as many witnesses as they may deem convenient to their own interests. It is, however, well-settled that the court may limit the number of witnesses upon the main or collateral issue, but its discretion must be exercised with caution considering the nature of the case, the character of the witnesses, and the state of the proof.[163]

The foregoing rule was applied in *Sta. Iglesia, et al. v. Sy Indong Rice and Corn Mill*,[164] an unfair labor practice case. In that case one of the issues raised before the Supreme Court was whether a hearing judge of the Court of Industrial Relations, in an unfair labor practice case, may stop the introduction of further testimony upon any particular point when the evidence is so full that more witnesses to the same point can not be reasonably expected to be additionally persuasive. The majority of the Court of Industrial Relations, sitting in *banc*, ruled, over-ruling the ruling of one of its hearing judges, that a hearing judge may not, the reason being that an unfair labor practice case has no segment of a class suit. The Supreme Court upheld the ruling of the hearing judge who dissented from the decision of the majority of the Court of Industrial Relations. The Supreme Court found as meritorious the observation of the hearing judge that it is common knowledge that in unfair labor practice cases there are more complainants involved than in ordinary ones. If the majority view that in an unfair labor practice case all the complainants should testify, were adopted, time will come when the Court of Industrial Relations will be fully loaded with unfinished business.

VII. CONCLUSION

The importance of Evidence to the law student and to the practicing lawyer is one matter that would rather be over-emphasized than under-estimated. This becomes readily apparent when it is considered that the law springs from the facts and that the truth respecting a matter of fact is ascertained by means of evidence. The 1964 rulings of the Supreme Court on Evidence are, in the main, reiteration of the past rulings. But their significance is not thereby lessened, for they can always serve as reminders and the cases in which they were applied, as further illustrations of how the rules operate.

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[162] Section 6, Rule 133, *op. cit.*

[163] VI Moran, *op. cit.*, citing Frank & Co. v. Clemente, 44 Phil. 30, 36; State v. Whiton, 68 Mo., 91, 92.

[164] G.R. No. L-18476, May 30, 1964.