EVIDENCE

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I. INTRODUCTION

Any legal system, however crude or sophisticated, sets up as its goal the making of decisions in accordance with the standards of justice as understood in the community. And justice, even in its most rudimentary concept, can be achieved only if the decisions made by the judges are based on facts — on the truth. Bereft of a foundation in truth, a decision becomes a vehicle of tyranny, rather than of justice.

One of the most perplexing problems, however, of any system of law is how to arrive at the facts, how to be able to separate the true from the spurious. For the solution of the problem, our complex rules of evidence have been devised as a "means, . . . of ascertaining in a judicial proceeding the truth respecting a matter of fact."[1] Thus our rules on evidence, concerned with the determination of admissibility, prescribe the requirements which any evidence which is offered must fulfill . . . the requirement of relevancy and that of competency. As relevancy has its basis in logic, it is the human mind which decides whether evidence is relevant or not. On the other hand, as competency is a matter for positive rules to determine, the Rules of Court specifically point out what is incompetent and, therefore, inadmissible.

General guidelines are also laid down to guide judges in the appreciation of evidence.

II. GENERAL PROVISIONS

With the end in view of discovering the truth in the most direct and immediate possible way, the principle has arisen that "the best evidence must be given of which the nature of the thing is capable."[2] With respect to documentary evidence, the effect of this axiom is to disallow the admission of any writing, other than the original writing itself, except in certain recognized instances.[3] With respect, however, to real and oral evidence, the effect of the axiom is the presumption that, if the non-production of the evidence is without justifiable cause, such evidence if presented, would be adverse to the party omitting it. This presumption was applied by

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

[2] Riggs v. Taylor, 9 Wheat. 480 (1824).

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

the Supreme Court in the case of *People v. Evaristo.*[4] In that case, the mayor and the Chief of Police of Bobon, Samar were accused of murder. Both claimed self-defense, and to bolster their claim, they alleged that the deceased was armed with a pistol which they subsequently delivered to one Sgt. Garcia for delivery to the provincial headquarters. Sgt. Garcia, subpoenaed by the defense to appear, showed up in court on the appointed day, but he was not placed on the witness stand. According to the Supreme Court, this created the unfavorable presumption that had he (Sgt. Garcia) testified, his testimony would have been adverse to the defense.

Similarly, in *Sy v. Commissioner of Immigration,*[5] the issue before the Board of Special Inquiry of the Bureau of Immigration was whether petitioner was in fact Chin Wan Hong, a Chinese subject, admitted as a temporary visitor whose right to stay in this country had already expired. The Board held that they were one and the same person on the basis of photographs in its possession. This finding was assailed by the petitioner on the ground that it was based on a comparison between photographs, not with the original subject. In rejecting petitioner's objection, the Supreme Court held that since the petitioner did not appear personally before the Board of Special Inquiry, she made it impossible for the latter to do the very thing she now alleges said body should have done. "It was within petitioner's power," continued the Court, "to refute the accuracy of the conclusion now disputed by her by the simple expedient of her appearance before the Board. It is thus clear that her failure to do so was due to the conviction that such appearance would have confirmed, instead of refuting said conclusion."

The unfavorable presumption arising out of unexplained failure to present the best evidence was applied in the case *Purakan Plantation Company v. Domingo*[6] even to documentary evidence, because there was in that case a failure to present commercial records belonging to the petitioner when such records would have been the most effective means of disproving respondent's contention. The petitioner, a Philippine corporation, cultivated a cassava plantation of about 435 hectares in Lanao del Sur. Out of its cassava products, petitioner manufactured cassava starch or flour. In 1957 the Bureau of Internal Revenue informed petitioner that there was due from it the sum of ₱24,192.52 (later reduced to ₱22,393.52) as sales taxes from 1950 to 1953, plus surcharges and penalties. Petitioner moved for reconsideration but Commissioner Domingo, in denying the motion, stated that since petitioner was manufacturing into flour and starch not only the cassava tubers it produced but also those bought

[4] G.R. No. L-14520, February 26, 1965.
[5] G.R. No. L-21453, November 29, 1965.
[6] G.R. No. L-18571, October 29, 1965.

from other plantations, it was clear that the manufacture of starch and flour, and not the production of cassava tubers, was its primary business. The issue was whether or not petitioner bought cassava tubers from other plantations. If it did, it could not claim exemption under Section 188(b) of the Revenue Code.

In holding against the petitioner, the Supreme Court agreed with the ruling of the Court of Tax Appeals that since, under the law, all corporations, companies, partnerships, or persons required to pay internal revenue taxes are required to keep books and records wherein all transactions are shown and from which all taxes due the government may accurately be ascertained, if it is true that petitioner never bought cassava tubers from other planters, there could be no better evidence thereof other than its records. But it saw fit to withhold such evidence, the implication being, that, if presented, it would be adverse.

A. *Motive*

Motive is the thing that moves a person to the doing of an act.[7] There must be motive but if there is no proof thereof, this does not preclude conviction if there is sufficient proof of guilt.[8] In *People v. Evaristo,*[9] the Supreme Court considered unnecessary the ascertainment of the real motive for the killing. The appellants there took exception to the allegations and the finding that the murder was politically motivated. Dismissing the importance of establishing a motive, the Supreme Court declared that motive or no motive, the fact remained that reliable eye-witnesses testified to the circumstances of the killing. They saw the actual killing and this in itself was sufficient to support a conviction.

Similarly, in *People v. Reyno,*[10] lack of proof of motive did not prevent the Supreme Court from affirming the conviction of the accused, the Court there holding that "lack of motive does not preclude the commission of an offense."

B. *Collateral Matters*

Rule 128, Section 4 provides:

> "Evidence must have such a relation to the fact in issue as to induce belief in its existence or non-existence; *therefore, collateral matters shall not be allowed, except when they tend in any reasonable degree to establish the probability or improbability of the fact in issue.*" (Underscoring supplied)

Among the collateral matters that may establish the probability or improbability of the fact in issue are the so-called concommitant

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[7] V Moran, Rules of Court, 1963 ed., p. 23.
[8] *Ibid.*
[9] *Supra,* note 4.
[10] G.R. No. L-11907, April 30, 1965.

circumstances, or those that occurred during the time when the facts in dispute took place.[11] And among the concommitant circumstances that may prove the improbability or even impossibility of a person's involvement in the occurrence of the fact in issue is the defense commonly known as alibi.

C. *Alibi*

Alibi as a defense is generally weak; it is "one of the weakest defenses that can be resorted to by an accused."[12] To establish an alibi, a defendant must not only show 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.[13] Moreover, the defense of alibi rarely can overcome the positive identification by witnesses.

Clearly illustrating the weakness of alibi as a defense are numerous decisions of the Supreme Court in this survey year rejecting such a defense.

The refusal to entertain the defense of alibi in the cases of *People v. De los Santos*[14] and *People v. Sagario*[15] was based on the finding that there was no impossibility for the accused to be at the scene of the crime at the time the crime took place.

The *De los Santos* case involved the prosecution of fourteen inmates of the New Bilibid Prisons in Muntinlupa for the killings in the course of the 1958 Sigue-Sigue-OXO riots. The accused interposed the defense of alibi, claiming that at the time of the killings, they were in another part of the penitentiary. It was held that in view of the limited distance, which is but a stone's throw from the place where the crimes were committed to the place where the accused claim to have been at the time of commission, their common defense of alibi is incredible.

In the Sagario case, accused Luis Gui-e's defense of alibi was not entertained because the place where he claimed he was is a mere half-kilometer away from the scene of the crime.

The other cases rejected alibi because of the positive identification of the accused by eyewitnesses to the crime. These were the

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[11] V Moran, *op. cit.*, p. 18.

[12] V Moran, *op. cit.*, p. 26, citing People v. De la Cruz, 76 Phil. 601 (1946); People v. Bondoc, 47 O.G. 3128 (1951) and many other cases.

[13] V Moran, *op cit.*, p. 27, citing U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Palomos, 49 Phil. 601 (1926).

[14] G.R. Nos. L-19067-68, July 30, 1965.

[15] G.R. No. L-18659, June 29, 1965.

cases of *People v. Paz*,[16] *People v. Libed*,[17] *People v. Asmawil*,[18] *People v. Lumayag*,[19] *People v. Dayday*,[20] *People v. Reyno*,[21] *People v. Valera*,[22] *People v. Asilum*,[23] and *People v. Pasilan*.[24]

In the *Paz* case, accused Sulpicio Tica, charged with the murder of one Tranquilino Dayrit, alleged alibi. Tica claims that he was not present in sitio Pinagsibiran, Tanay, Rizal (the scene of the crime) in the afternoon and evening of 6 December 1956 and the whole morning of 7 December 1956 (the murder having been committed in the morning of 7 December). To support his defense of alibi, he even presented six witnesses, who testified having seen him on the critical day in barrio Aldea, Tanay, Rizal. Prosecution, on the other hand, presented as witnesses the widow and seven-year old son of the victim.

Held: This Court has repeatedly ruled that oral evidence of alibi cannot prevail over positive identification of the accused by witnesses who saw them at the scene of the crime and who could not be mistaken because the accused was well-known to them.[25]

A similar ruling was made for a similar reason in the *Libed* case where, in answer to accused Libed's defense of alibi, it was held that since he was positively identified by eyewitnesses to have hit the deceased with a piece of wood, his defense of alibi cannot prosper.[26]

The Supreme Court in the *Asmawil* case took occasion to cite even more precedents to reject appellant's allegation that at the time of the crime he was four kilometers away from the scene of the crime. Quoting from past decisions, the Court declared that, as a rule, alibi is a weak defense since it is easy to concoct; courts, therefore, view it with caution and accept it only if proved by positive, clear, and satisfactory evidence.[27] Alibi cannot prevail over the clear, explicit, and positive identification of the accused by credible witnesses.[28]

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[16] G.R. No. L-17320, May 31, 1965.
[17] G.R. No. L-20431, June 23, 1965.
[18] G.R. No. L-18761, March 31, 1965.
[19] G.R. No. L-19142, March 31, 1965.
[20] G.R. Nos. L-20806-07, August 14, 1965.
[21] G.R. No. L-19071, April 30, 1965.
[22] G.R. No. L-20286, October 29, 1965.
[23] G.R. No. L-19380, June 30, 1965.
[24] G.R. No. L-18770, July 30, 1965.
[25] Citing People v. Quiatchon, G.R. No. L-1109, June 30, 1958; People v. Sabuero, G.R. No. L-13372, May 20, 1960; People v. Divinagracia, G.R. No. L-10611, April 13, 1959.
[26] Citing People v. Fetalvero, G.R. No. L-16234, April 26, 1961.
[27] Citing People v. Olais, 36 Phil. 828 (1917); People v. Pili, 51 Phil. 965 (1926); People v. Dizon, 76 Phil. 265 (1946); People v. Bautista, G.R. No. L-17772, October 31, 1962.
[28] Citing People v. Palomos, 49 Phil. 601 (1926); People v. Rafanan, G.R. No. L-13289, September 29, 1962.

The other cases cited above are mere reiterations of the ruling already set forth in the foregoing decisions.

III. NEED FOR PROOF

Rule 129, Section 1 enumerates the things of which the Court should take judicial notice. Judicial notice is defined as the cognizance that courts may take, without proof, of facts which they are bound or supposed to know.[29] Judicial notice, therefore, takes the place of proof and is of equal force.[30]

A. *Records of Other Cases*

Among the things the court will take judicial notice of in a case is the record of the case itself.[31] This rule, however, should not be considered as extending to the records of other cases, thus held the Supreme Court in the case of *Prieto v. Arroyo*.[32] The facts of that case are as follows: In 1948, one Ceferino Arroyo, Jr. filed in the Court of First Instance of Camarines Sur, a petition for registration of several parcels of land, including the lot in question. An original certificate of title over said lot was issued in his name. In the same year and in the same court, appellant Prieto filed a petition for registration of an adjoining parcel of land; an original certificate of title over said lot was likewise issued in his name. Upon the death of Arroyo, a transfer certificate of title was issued in the names of his heirs. In 1956 said heirs filed a petition asking that the technical description of the lot be corrected so as to include 157 square meters which were included in the decision of the original registration proceedings. The petition was granted. Eight months later, appellant Prieto filed a petition to annul the order of the court granting the petition for correction. As appellant failed to appear at the hearing, his petition was dismissed. Nearly two years later, he filed another petition for annulment on the ground that the court should not have dismissed his first petition because no parol evidence was necessary to support it, the matters therein alleged being parts of the records of the original registration proceedings which, according to him, were within the judicial notice of the court.

Held: As a general rule, courts are not authorized to take judicial notice in the adjudication of cases pending before them, of the contents of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact

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

[30] *Ibid.*

[31] De Jesus v. Daza, 77 Phil. 152 (1946); De la Rosa v. Director of Public Works, G.R. No. L-6211, February 28, 1955; De los Santos v. Cabahug, G.R. No. L-13126, December 29, 1959.

[32] G.R. No. L-17885, June 30, 1965.

that both cases may have been tried or are actually pending before the same judge.[33] Secondly, if appellant had really wanted the court to take judicial notice of such records, he should have presented the proper request or manifestation to that effect.

B. *Foreign Laws*

Courts do not ordinarily take judicial notice of foreign laws. Such laws must be proved like any other matter of fact.[34] Thus in *Wong v. Vivo*,[35] where the point to be determined was the validity of a marriage celebrated allegedly in accordance with Chinese law, the Supreme Court refusing to take judicial notice of such Chinese law, held that the statutes of other countries or states must be pleaded and proved the same as any other fact because courts cannot take judicial notice of what such laws are.[36]

IV. RULES OF ADMISSIBILITY

A. *Documentary Evidence*

1. *Interpretation of Documents*

The purpose of the rules on interpretation of documents is to enable the court to give effect to the true agreement of the parties. In accordance with this purpose, judges will refuse to give effect to the literal import of documentary stipulations if such will violate, instead of effectuate, what the parties intended to carry out.

Section 11 of Rule 130 is one of such rules of interpretation. It reads:

> "For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown so that the judge may be placed in the position of those whose language he is to interpret."

The Supreme Court in *Bacordo v. Alcantara*[37] had occasion to apply the above-quoted rule by interpreting a contract in the light of antecedent circumstances.

The plaintiff in that case mortgaged to defendants on 15 August 1956, in consideration of a loan of ₱1,600.00, a parcel of residential land. The mortgage stipulated that: "Ang sanglaan o hiramang ito ay tatagal ng 9 na taon mula sa petsang ito at pagkatapos ng taning na ito ay ako ay manunubos ng nasabing lupa..."

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[33] Citing Municipal Council of San Pedro v. Colegio de San José, 65 Phil. 318 (1938).
[34] V Moran, *op. cit.*, p. 34.
[35] G.R. No. L-21076, March 31, 1965.
[36] Citing Yam v. Collector, 30 Phil. 46 (1915); Lim v. Collector, 36 Phil. 472 (1917); Miciano v. Brimo, 50 Phil. 867 (1924).
[37] G.R. No. L-20080, July 30, 1965.

On 3 March 1961, for an additional loan of ₱150.00, a second deed of mortgage, covering the same land, was executed to secure the increased amount of ₱1,750.00. It was there stipulated that: "Ang hiramang ito ay tatagal ng siyam na taon mula sa petsang ito, o *babayaran ka sa nalooban ng 9 na taon...*" (Italics supplied)

Two months later, on 26 May 1961, for a further sum of ₱100.00, a third mortgage deed, over the same parcel of land, was executed to secure the aggregate sum of ₱1,850.00. It was this time stipulated that "Ang hiramang ito ay tatagal ng 9 na taon mula sa petsang ito."

On 25 September 1961, plaintiff filed this action praying that he be allowed to redeem, and alleging that their agreement was that the property was redeemable any time within the nine-year period agreed upon in the third deed. Defendants averred that by the terms of the third deed (which they claimed was the only subsisting one) the property could be redeemed only on or after 26 May 1970.

Upholding the decision of the court *a quo*, the Supreme Court held that since the failure of the third deed to truly express the intent of the parties was raised by plaintiff's complaint, the trial court rightly considered the previous mortgage contracts in discerning the real intent. It is settled, continued the court, that previous, simultaneous, and subsequent acts of the parties are properly cognizable indicia of their true intention.[38] The Court thus took into account the terms of the second deed to shed light on the interpretation of the third deed and allowed the plaintiff to redeem even though the nine-year period had not yet expired.

Another rule of interpretation is Rule 130, Section 15, which provides:

> "When the terms of an agreement have been intended in a different sense by the different parties to it, that sense is to prevail against either party in which he supposed the other understood it, and when different constructions of a provision are otherwise equally proper, that is to be taken which is the most favorable to the party in whose favor the provision was made."

In *Solis v. Salvador*,[39] petitioner, a partnership, contracted with respondents to prepare plans and specifications of the proposed residential house of respondents and to supervise the construction thereof. Among the stipulations in the contract was one to the effect that "all works done in the process of construction which are not part of the contract or specifications would be considered extras to be paid for by the owner." The fence was built breast-high, higher than what petitioner claims was agreed upon. Regarding

[38] Citing Velasquez v. Teodoro, 46 Phil. 757 (1923).
[39] G.R. No. L-17022, August 14, 1965.

the fence, the agreement provided only that "these specifications include the fence of the two sides fronting the two streets and one side of the property line only," the height not being fixed. Petitioner's claim is that the agreement was to build a fence of five layers only with a height of 60 centimeters.

In considering petitioner's claim unbelievable, the Supreme Court quoted at length from the Court of Appeals decision of the case, holding that the specifications relating to the fence having been worded by petitioner and to be interpreted by it, the same, being incomplete, vague, and obscure, should be construed against it.[40] There being no specification as to the height, it should be presumed to be of such height as to afford privacy and protection, which are what a fence is for. The petitioner, therefore, according to the Court, was not entitled to the additional costs it was charging for the erection of the fence.

B. *Admissions and Confessions*

1) Section 22 of Rule 130 provides:

> "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

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.[41]

Admissions, however, though receivable against the party who made them, are not receivable in his favor, because then they would be self-serving evidence.[42] But the self-serving evidence that is prohibited must have for its purpose the furnishing of evidence for future litigation. Not every declaration or document of a party which may tend to favor him or support his contention can be considered self-serving evidence. In *Bagano v. Director of Patents*,[43] for example, to prove prior adoption and use of a trademark sought to be registered in petitioner's name, respondent presented as evidence sales invoices proving that the product had been sold under the trademark in question much ahead of its use by petitioner. Petitioner objected to respondent's evidence on the ground that it was self-serving. The Supreme Court allowed it to be presented, declaring that it was not self-serving.

2) *Confessions*

Rule 130, Section 25 establishes the *res inter alios acta* rule:

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[40] Citing Rule 123. Sec. 65, old Rules of Court, now Rule 130, Sec. 15.
[41] V Moran, *op. cit.*, p. 212, citing U.S. v. Ching Po. 23 Phil. 578 (1912).
[42] *Ibid*, citing Richmond v. Anchuelo, 4 Phil. 596 (1905); Lim Chingco v. Terariray, 5 Phil. 120 (1905); People v. Tolentino, 69 Phil. 715 (1940).
[43] G.R. No. L-20170, August 10, 1965.

> "The rights of a party cannot be prejudiced by an act, declaration, or omission of another, and proceedings against one cannot affect another, except as hereinafter provided."

Although, however, one's declaration cannot in itself be admitted against a person other than the one who made it, where the confession of a defendant is corroborated by the witnesses for the prosecution and by all the circumstances of the case as to the guilt of a co-defendant, said confession is admissible against the latter.[44] In *People v. Simbajon*,[45] the Supreme Court stated the principle thus: While it is true that extrajudicial confessions are admissible only against the persons who made them, it is, however, the rule that they may be admitted as corroborative evidence of other facts that tend to establish the guilt of the other defendants. Appellants in that case, Victoriano, Feliciano, and Panfilo, all surnamed Simbajon were convicted of the crimes of murder and frustrated murder, committed against Mayor Sofronio Avanceña of Sinacaban, Misamis Occidental and his companions, respectively. It appears that the deceased and appellant Victoriano were bitter political enemies. The extrajudicial confessions of two of the accused stated that in the evening of 13 November 1959, Victoriano Simbajon and his children Bonifacio, Panfilo, and Feliciano, and his son-in-law, Arturo Yap, met in his (Victoriano's) house and agreed to kill Mayor Avanceña, Bonifacio who was a sharpshooter, having been designated to carry out the killing. It was contended that the extrajudicial confessions should not be admitted against any person other than the ones who made them. In refuting the contention, the Supreme Court held — The following appears to have been conclusively proven: On November 14, 1959 Simbajon and his children, armed with one Browning shotgun, two 22-calibre rifles, and one Winchester shotgun went to the house of Isabelo Plaza (the scene of the crime) where they unloaded the firearms. They then proceeded to the municipal building where Simbajon, in a very friendly manner, asked Avanceña that they be friends again. Simbajon then invited Avanceña to ride with him in the former's jeep — an invitation which Avanceña politely declined. Avanceña, accompanied by the Chief of Police followed the route taken by Simbajon and his companions. In front of Plaza's house, shots were fired, resulting in Avanceña's death and the wounding of two of his companions. It cannot be denied that the Simbajons resented Avanceña's abuses. Neither can it be denied that the eleven rounds of ammunition fired at the victims were bought by Victoriano two days before the shooting. The extrajudicial confessions are merely corroborative of these facts.

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[44] V Moran, *op. cit.*, p. 255, citing U.S. v. Perez, 32 Phil. 163 (1915).
[45] G.R. Nos. L-18073-75, September 30, 1965.

To the same effect was the ruling in *People v. Santa Maria*,[46] where it was held that although an extrajudicial confession as a rule is evidence only against the person making it, nonetheless, the same may serve as a corroborative evidence if it is clear from other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved.[47]

Claim of Involuntariness of Confession Not Believed

In the Philippines, there does not seem to be a concurrence of opinion on the question whether an involuntary confession should be admitted. There are those who hold that such confessions should be rejected outright on the ground that they are unreliable or that to admit them would violate humanitarian principles which abhor all forms of torture or unfairness.[48] On the other hand, there is a holding that a confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue, for the law rejects the confession when, by force or violence or intimidation, accused is compelled against his will to tell a falsehood, not when by such force or violence, he is compelled to tell the truth.[49]

During this survey year, however, the Supreme Court was not faced with this question because the claims of involuntariness of confession were rejected. In the two cases of *People v. Dayday*[50] and *People v. Egual*[51] great weight was placed by the Court on the fact that the confessions were made and sworn to before the Justice of the Peace.

In the *Dayday* case, the accused, having previously signed written confessions, repudiated their confessions during trial, claiming that they were subjected to torture, force, and intimidation. It was held that the claims of the accused are refuted by the municipal mayor and the Justice of the Peace of Talakag, Bukidnon, who both declared that before the accused subscribed and swore to their affidavits, they were asked whether their statements were voluntarily given. Accused's repudiation cannot prevail over the disinterested testimonies of the municipal mayor and the Justice of the Peace.

To the same effect was the ruling in the *Egual* case.

Voluntariness of Confession Inferred From Contents

The voluntariness of a confession may be inferred from its contents. If upon its face it is replete with details which could possi-

[46] G.R. No. L-19919, October 30, 1965.
[47] Citing People v. Badilla, 48 Phil. 726 (1926).
[48] V Moran, *op. cit.*, p. 242.
[49] People v. De los Santos, G.R. No. L-4880, May 18, 1953; People v. Villanueva, 52 O.G. 5864.
[50] *Supra*, note 20.
[51] G.R. Nos. L-13469, L-14240 and L-14209, May 27, 1965.

bly be supplied only by the accused, it may be considered as voluntary.[52]

In *People v. Mendoza*,[53] the appellants, after surrendering themselves to the authorities of the Muntinlupa National Penitentiary, stated that they had just killed a fellow-inmate. In the inquiry that followed, the appellants executed their respective written statements admitting the killing and relating its circumstances. On trial, however, the appellants repudiated their statements, stating that they were made to sign them without any knowledge of their contents.

The Supreme Court held that the most convincing proof that the documents were voluntarily executed by appellants is that the statements contain details (such as the manner of attack, the things the appellants said to the victim, etc.) which none but the participants to the offense could have provided.

Judicial Confessions — Plea of Guilty

Confessions, which are express acknowledgments by the accused, in a criminal case, of the truth of his guilt as to the crime charged, may be classified as judicial or extrajudicial. Judicial confessions are those made before the trial court.[54]

A judicial confession is conclusive upon the court.[55] A plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction of any offense, even a capital one, without further proof, as the defendant himself supplied the necessary proof.[56] But it lies within the sound discretion of the trial judge to take evidence or not in any case wherein he is satisfied that the plea of guilty has been entered by the accused without a full knowledge of the meaning and consequences of his act.[57]

In *People v. Santa Maria*,[58] the Supreme Court rejected the contention of the appellants Restituto de la Cruz, Alfonso Balinguit, Ruperto Santos, and Juanito de la Cruz that the trial court erred in finding them guilty notwithstanding the fact that there is no evidence that they understood their plea of guilty and its consequences. This contention, it was held, is not supported by the record, because upon being arraigned, each of them was first admonished by the Court that a plea of guilty would bring upon them the penalty of death. Their having pleaded guilty in spite of this admonition was a sufficient basis for the conviction.

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[52] V Moran, *op. cit.*, pp. 248-249, citing People v. Cruz, 73 Phil. 651 (1942).
[53] G.R. No. L-16392, January 30, 1965.
[54] V Moran, *op. cit.*, p. 240.
[55] V Moran, *op. cit.*, p. 261.
[56] *Ibid*, citing U.S. v. Burlado, 42 Phil. 72 (1921); U.S. v. Dineros, 18 Phil. 566 (1911); U.S. v. Jamad, 37 Phil. 305 (1917); People v. Sta. Rosa, G.R. No. L-3487, April 18, 1951.
[57] *Ibid*, citing People v. Palupe, 69 Phil. 703 (1940).
[58] *Supra*, note 46.

C. *Testimonial Knowledge — The Hearsay Rule*

Section 30 of Rule 30 provides:

> "A witness can testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules."

Because of this provision, hearsay evidence, or the testimony of a witness as to what he has heard other persons say about the facts in dispute, is inadmissible.[59] The evidence, however, which falls under the classification of hearsay, is that which is intended to establish the truth of the given statement, not that which is intended to establish only the tenor of the statement. Consequently, the hearsay rule does not apply to independently relevant statements, or those statements which are relevant independently of whether they are true or not true. They may be roughly grouped into two classes:

(a) Those statements which are the very facts in issue, and

(b) Those statements which are circumstantial evidence of the facts in issue.[60]

The distinction between hearsay evidence and independently relevant statements was drawn in the case of *People v. Cusi*.[61] It was a criminal case against seven persons for robbery in band with homicide. One Sgt. Lucio Baño, of the police force of Digos, Davao, testified for the prosecution regarding the extrajudicial confession made to him by one of the accused, Arcadio Puesca. Baño stated that Puesca revealed that other persons conspired with him to commit the offense, and mentioned (i.e. Puesca) each of them. The prosecuting officer then asked the witness to mention in court the names of the alleged co-conspirators. Counsel for three of the accused objected on the ground of hearsay. The trial court directed the witness to answer, but without mentioning the names of those who objected. The prosecuting officer moved for reconsideration, which was denied. The prosecuting officer then filed his petition for certiorari praying that respondent judge be ordered to allow the witness to answer the question in full.

Held: While the testimony of a witness regarding a statement made by another person, if intended to establish the truth of the facts asserted in the statement, is clearly hearsay evidence, it is otherwise if the purpose of placing the statement in the record is merely to establish the fact that the statement was made on the tenor of such statement.[62] In the present case, the purpose of the

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[59] V Moran, *op. cit.*, p. 267.
[60] V Moran, *op. cit.*, p. 271.
[61] G.R. No. L-20986, August 14, 1965.
[62] Citing People v. Lew Yon, 97 Cal. 224; VI Wigmore 177-178.

prosecuting officer is only to establish that Puesca had mentioned to Baño the names of the alleged co-conspirators. The witness must be allowed to answer in full, but his answer should not be admitted to show that the persons named really conspired with him to commit the crime.

Exceptions to the Hearsay Rule

The prohibition contained in Rule 130, Section 30 is, as the section itself provides, not absolute. The following sections; to wit, Sections 31 — 41 establish the exceptions to the hearsay rule. Any testimony, falling under any of the exceptions, may, notwithstanding its being hearsay, be admitted in evidence.

(a) *Dying Declarations*

1) The first of these exceptions is what is known as dying declarations, the admissibility of which is established by Section 31 of Rule 130. There are four requisites for a statement to be classified as a dying declaration, all of which are cited in the case of *People v. Sagario.*[63] The facts of that case are as follows: At about 12:00 midnight of 4 September 1956, at the municipal building of Molave, Zamboanga del Sur, twelve persons, riding in a car and a jeep, arrived and shot two policemen on guard duty. One of them, Pat. Paulino Ursais, died on the spot; the other, Pat. Jose Gomez, was critically wounded. The Chief of Police, by means of questioning, obtained a declaration from Gomez identifying two of the killers as Antipas Sagario and Luis Gui-e (the latter being the appellant in this case; the former had since died). Gomez was asked by the Police Chief whether he believed he would die, and he answered in the affirmative. The following morning, another declaration was elicited from the victim by Governor Bienvenido Ebarle. Both of the declarations were thumbmarked as Gomez was too weak to sign. Three days later, Gomez died. He had sustained two bullet wounds, one on the lower side of the abdomen and another on the right upper chest. At the trial of the accused, the dying declarations of Gomez were presented to establish the identity of the accused. The admissibility of the declaration is impugned.

In admitting the declarations, the Supreme Court held: There are four requisites which must concur in order that a dying declaration may be admissible, to wit:

(a) That the declaration must concern the cause and surrounding circumstances of the declarant's death;

(b) That at the time the declaration was made, the declarant was under a consciousness of an impending death;

(c) That the declarant is competent as a witness; and

[63] G.R. No. L-18659, June 29, 1965.

(d) That the declaration is offered in a criminal case for homicide, murder or parricide in which the declarant is the victim.[64]

Re: (a) The first requisite is present in the *ante-mortem* statements of deceased Gomez. Certainly, the narration made by Gomez before the Police Chief and at the hospital before the Governor, concerned the caused and surrounding circumstances of the declarant's death. The two government officials heard from the declarant's own lips his description of the circumstances which brought about his injuries and subsequent tragic death.

Re: (b) The declarant at the time he gave the dying declaration was conscious of his impending death. Pat. Gomez knew at the time he was being questioned that chances of his recovery were nil and this fact was corroborated by the statement of the doctor who attended him, to the effect that the victim would not recover from his wounds. One of the questions posed at Gomez by Chief Turado was: "...Do you think you will die?" The victim answered, "Yes, sir." Moreover it must have been obvious to Gomez that death was fast approaching because the bullet perforated his internal organs which he must have surely felt. The nature of the wounds justified the apprehension of a mortal danger to his life.

Re: (c) That Pat. Gomez, at the time he gave the dying declarations, was competent as a witness, is too obvious to warrant further discussion.

Re: (d) The dying declarations of Gomez were offered as evidence, in a criminal case for murder in which the declarant was one of the victims.

Having found all the requisites for admissibility of the dying declarations, the Supreme Court had them admitted and received as evidence.

The case of *People v. Enriquez*[65] also involved the admissibility of a statement made shortly before the death of the declarant. The accused in that case entered the house of one Siaba in Zamboanga del Sur and inflicted upon him and his two housemaids severe injuries in different parts of the body. Having been hacked several times on the face and back, Siaba asked that he be taken to Margosatubig for medical treatment. On the way, he confided to one of those who were carrying him that the person who had wounded him was in the group, which had in the meantime been joined by the accused. A little afterwards, upon being asked whom he was referring to, Siaba replied that it was the accused. Later, Siaba, no longer being able to endure the pain and feeling that he could not reach Margosatubig alive, requested that he be brought back to his

[64] Citing III Moran, *op. cit.*, 1952 ed., p. 311.
[65] G.R. No. L-17388, October 30, 1965.

house, where he died. On trial, it was urged by the accused that the statement of the deceased regarding the identity of the assailant was not in the nature of an *ante-mortem* statement. The Supreme Court held that such an allegation was untenable not only because the condition of the deceased was actually serious but also because, soon thereafter, he expressed the belief that he could not reach his destination alive. The *ante-mortem* statement was, therefore, admitted in evidence.

(b) *An Additional Way of Proving The Facts In Issue*

It is to be borne in mind that Sections 31-41 of Rule 130, establishing the exceptions to the hearsay rule are merely permissive provisions. They do not by any means lay down exclusively the means to prove the facts in dispute. Whatever may be proved by any of these exceptions may likewise be proved by evidence derived from personal knowledge (assuming such evidence is available), which is in reality the more usual and the more direct method of proof.

This clarification was made by the Supreme Court in the case of *Navarro v. Bacalla,*[66] which originally was an action by the minor Benjamin Navarro, represented by his mother, against the defendant to compel the latter to recognize the former as his natural child. The paternity of the defendant was proved by the testimony of plaintiff's mother that "he (defendant) impregnated me (plaintiff's mother)," and that at the time before, and during plaintiff's conception she had no affair with any man other than the defendant. The trial court considered as proved the paternity of the defendant but ruled that defendant could not be compelled to acknowledge plaintiff as his natural child, upon the reasoning that the evidence of paternity was not of the kind stated in Article 283 of the Civil Code as grounds for compulsory recognition of a natural child (particularly paragraph 4 thereof, which states: "When the child has in his favor any evidence or proof that the defendant is his father"). The court *a quo* held that paragraph 4 of said Article 283 refers to evidence to establish pedigree as provided under Sections 30, 31, and 32 of Rule 123.[67] Upon appeal, the Supreme Court, in overruling the court *a quo,* held that although it is true that Sections 30, 31, and 32 of the old Rules of Court laid down means of proving relationship or pedigree, such provisions were set forth merely by way of exceptions to the hearsay rule. They were, in other words, means of proving relationship through hearsay evidence. But the Rules of Court by no means preclude the proof of relationship by testimonial evidence based on personal knowledge; i.e. under Section

[66] G.R. No. L-20607, October 14, 1965.
[67] Now Sections 32, 33, and 34 of Rule 130.

27 of Rule 123.[68] From the fact that the Rules of Court allow relationship to be proved by hearsay evidence such as an act of declaration about pedigree, family reputation regarding pedigree, and common reputation, it does not follow that evidence based on personal knowledge cannot prove the same.

V. BURDEN OF PROOF

Section 2 of Rule 131 reads:

> "In criminal cases the burden of proof as to the offense charged lies on the prosecution. A negative fact alleged by the prosecution need not be proved unless it is an essential ingredient of the offense charged."

The aforequoted provisions is in accordance with the principle enshrined in the Constitution that the accused is presumed innocent until the contrary is proved. The rule, however, that each party must prove his own affirmative allegations[69] applies to criminal cases.[70] Matters of defense should be proved by the accused. Consequently, in a case where the accused claimed self-defense as a justification for the killing, it was held by the Supreme Court that it is incumbent upon the accused to prove, by clear and convincing evidence, his plea of self-defense.[71] Similarly, in the case of *People v. Evaristo*,[72] appellant Agustin Miano, having admitted that he fired two mortal shots at the victim Pastor Moyot, on trial claimed justification on the grounds of self-defense and defense of stranger. The Supreme Court, in rejecting Miano's defenses held that it is incumbent upon the accused to adduce by clear and positive proofs that he acted in his own defense and in the defense of a stranger.[73] The accused in the *Evaristo* case, in the opinion of the Supreme Court, failed to prove his defenses.

VI. PRESUMPTIONS

One of the things that do not have to be proved is a presumption. A presumption is defined as an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known.[74] In Philippine procedural law, there are three classes of legal presumptions: (a) conclusive presumptions or presumptions *juris et de jure;* (b) disputable presumptions or presumptions *juris tantum*; and (c) quasi-conclusive presumptions.

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[68] Now Section 30, Rule 130.
[69] Rule 131, Section 1.
[70] VI Moran, *op. cit.*, p. 6.
[71] People v. Libed, *supra*, note 17; citing People v. Bauden, 77 Phil. 105 (1946); People v. Cabrera, G.R. No. L-6197, March 18, 1957.
[72] *Supra*, note 4.
[73] Citing People v. Ansoyon, 75 Phil. 722 (1946).
[74] VI Moran, *op. cit.*, p. 12.

Conclusive presumptions or absolute presumptions of law are those which are not permitted to be overcome by any proof to the contrary. Disputable presumptions are those which admit of contradiction. Quasi-conclusive presumptions are those which may not be rebutted by any evidence other than those specifically provided by law.[75]

Rule 131, Section 5 enumerates the disputable presumptions recognized in our law on procedure. Some of them were cited in Supreme Court decisions during this survey year:

(1) That a person takes ordinary care of his concerns;[76]

(2) That an obligation delivered up to the debtor has been paid;[77]

(3) That the ordinary course of business has been followed;[78]

The three foregoing presumptions were applied in the case of *Solis v. Salvador.*[79] The petitioner in that case sought to have respondents pay for the alleged extras in the construction of the latters' house. According to the petitioner, it surrendered the list of extras to respondents only for verification and checking, but no counter-receipt or writing to show the nature of such surrender was presented. The Supreme Court adopted the ruling of the Court of Appeals that the circumstances constitute a strong indication that the costs of said items were already reimbursed, else the receipts would not have been given to respondents without a counter-receipt. It is presumed that obligations delivered up to the debtor have been paid. Petitioner, in delivering the receipts, is likewise presumed to have taken ordinary care of his concerns and that he has followed the ordinary course of his business.

(4) That evidence wilfully suppressed would be adverse if produced;[80]

This disputable presumption was applied in the above-cited cases of *People v. Evaristo,*[81] *Sy v. Commissioner of Immigration,*[82] and *Purkan Plantation Company v. Domingo,*[83] in all of which it was held that the failure without a reasonable explanation, to present certain evidence gave rise to the presumption that such evidence, if presented, would have been unfavorable to the party who failed to present it.

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[75] VI Moran, *op. cit.*, p. 13.
[76] Rule 131, Sec. 5, par. (d).
[77] Rule 131, Sec. 5, par. (h).
[78] Rule 131, Sec. 5, par. (q).
[79] *Supra*, note 39.
[80] Rule 131, Sec. 5, par. (e).
[81] *Supra*, note 4.
[82] *Supra*, note 5.
[83] *Supra*, note 6.

(5) That official duty has been regularly performed;[84]

In *Guevara v. Jimenez*,[85] the District Engineer of Sorsogon prepared a program of work and detailed estimate for the reconstruction of the Sorsogon Central School. The cost of painting was left out in the estimate and specifications. The papers were submitted to the Division Engineer who approved them "provided that painting shall be included". The specifications for painting were accordingly made and appended to the specifications. Petitioner, being the lowest bidder, was awarded the contract. After the construction was completed and the final payment made, petitioner filed a claim for ₱4,620.00, representing painting costs, contending that the bidders were not aware of the inclusion of painting because the District Engineer did not add painting to the plans and specifications furnished them prior to the bidding. To support his contention, petitioner presented the affidavits of two other bidders. The testimonies of the senior carpenter, general foreman, and clerk of the District Engineer's Office, however, taken together, show that the specification for painting was included in the specifications distributed to the prospective bidders.

Held: The government employees testified as to what transpired in the performance of their duties. The presumption is that official duty has been regularly performed. Aided by this presumption, the testimony of the three government employees should be preferred to that of petitioner's colleagues.

(6) That a letter duly directed and mailed was received in the regular course of the mail[86] — requisites for applicability;

The Supreme Court, after giving the requisites of this presumption, held it inapplicable to the case of *Nava v. Commissioner of Internal Revenue*.[87] The facts of that case are as follows: On 30 March 1955, after investigation of petitioner's 1950 income tax return, respondent issued a deficiency income tax assessment notice requiring petitioner to pay not later than 30 April 1955 the sum of ₱9,124.50. Petitioner claims to have learned of it for the first time only on 19 December 1956, more than five years since the original tax return was filed, and claims prescription. Respondent's witness, a BIR clerk, who attempted to establish that the original copy of the notice was actually sent on 30 March 1955, disclaimed having personal knowledge of its issuance on said date. Nor is there any notation in the file copy of the notice to show that the original copy of said notice was ever actually issued. The Supreme Court held that respondent utterly failed to prove by substantial

[84] Rule 131, Sec. 5, par. (m).
[85] G.R. No. L-17171, January 30, 1965.
[86] Rule 131, Sec. 5, par. (v).
[87] G.R. No. L-19470, January 30, 1965.

evidence that the assessment notice dated 30 March 1955 was in fact sent to petitioner. The Court stated that the presumption that a letter duly directed and mailed was received in the regular course of mail cannot be applied, because, quoting Moran, it stated that the facts to be proved to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b) that it was mailed.[88] As to the second requisite, the Court held that it was not shown, and that, therefore, the presumption was inapplicable.[89]

(7) Presumption as to foreign law;

Although everyone is presumed to know the laws of the land, nevertheless, as to foreign laws, in the absence of pleading and proof of the contrary, the laws of a foreign state will be presumed to be the same as our own.[90] This principle was reiterated in the case of *Wong v. Vivo*,[91] the issue in which was whether a marriage celebrated in China in 1929 before a village leader is valid in the Philippines. On 28 June 1961, the Board of Special Inquiry of the Bureau of Immigration found petitioner legally married to one Perfecto Blas and admitted her into the country as a non-quota immigrant. After first affirming this decision, the Board of Commissioners on 28 June 1962 reversed it and ordered petitioner to be excluded from the country. On appeal the Supreme Court declared that according to Public Act 3412, in force in 1929, the year the marriage was allegedly celebrated in China, a marriage to be valid must be solemnized by a judge of any court inferior to the Supreme Court, a justice of the peace, or a priest or minister of the gospel of any duly registered denomination. Though it is true that a marriage contracted outside the Philippines which is valid under the law of the country in which it was celebrated is also valid in the Philippines, proof must be presented relative to the law of marriage in China. In default thereof, the general rule is that the foreign law should be presumed to be the same as our own.

Necessity of Cross-Examination

Section 8 of Rule 132 provides:

> "Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fulness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue..."

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[88] VI Moran, *op. cit.*, pp. 55-57.
[89] Citing Enriquez v. Sun Life Assurance of Canada, 41 Phil. 269 (1920).
[90] VI Moran, *op. cit.*, p. 35, citing Yam v. Collector, 30 Phil. 46 (1915); Lim v. Collector, 36 Phil. 472 (1917); Miciano v. Brimo, 50 Phil. 867 (1924).
[91] *Supra*, note 35.

The power of cross-examination has justly been said to be one of the principal, as it certainly is one of the most efficacious tests which the law has devised for the discovery of truth.[92] The vital importance of cross-examination was given express recognition by the Supreme Court in the case of *Free Employees and Workers Association v. Court of Industrial Relations*,[93] where it held that the rule on cross-examination applied to the Court of Industrial Relations, even though the CIR is only an administrative tribunal. The petitioner in that case invoked its right to conduct cross-examination in proceedings instituted in the CIR. The claim of the CIR, on the other hand, was that since it was only a quasi-judicial body, the right of cross-examination may be dispensed with. The Supreme Court, in repudiating the CIR's claim, declared that the quasi-judicial character of the CIR and the fact that it was not bound by strict rules of evidence, does not mean that it can dispense with any and all rules, even the most substantial, and those shown by experience to be essential in arriving at the truth.

Due Execution and Authenticity of Notarized Document Need Not Be Shown

Section 20 of Rule 132 provides:

> "The following writings are public —
>
> (a) The written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial and executive, whether of the Philippines, or of a foreign country;
>
> (b) Public records, kept in the Philippines, of private writings.
>
> All other writings are private."

A notarized instrument has been held to be a public document. As such, its due execution and authenticity need not be shown.[94] This was the ruling in the case of *Suarez v. Republic*,[95] where petitioner, in a petition for the adoption of the minor, Engracio Guligado, Jr., presented a statement, subscribed and sworn to before a notary public, by the minor's parents, expressing their conformity to the adoption. However, no testimonial evidence, identifying the signatures on said statement, was introduced by petitioner. Hence, the oppositor objected to the admission of said statement when petitioner offered it as part of her evidence.

Held: The lower court did not err in overruling said objection, admitting said statement in evidence, and considering as a proven

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[92] VI Moran, *op. cit.*, p. 83.
[93] G.R. No. L-20862, July 30, 1965.
[94] Rule 132, Sec. 21, *op. cit.*
[95] G.R. No. L-20914, December 31, 1965.

fact that the natural parents of the minor being adopted had given their written consent to the adoption. Said statement was duly authenticated by a notary public.

VII. WEIGHT AND SUFFICIENCY OF EVIDENCE

Section 1 of Rule 133 lays down some of the circumstances that are to be taken into account in appreciating evidence. It provides:

> "In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issue involved lies, 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 testify, the probability or improbability of 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."

A. *Appreciation of Evidence*

(1) *Testimony of Party's Employee Does Not Carry Much Weight.*

When a witness is the retained physician of a corporation belonging to the family of the person in whose favor he testifies, he is in effect in the employ of that corporation; consequently, his testimony does not carry much weight.[96]

(2) *"Professional Witness" Not Given Much Credibility in Naturalization Cases.*

In the *Lu* case,[97] the factor which made the Court give but little weight to the witness' testimony was that he had testified as much as seven times in similar naturalization cases. He was considered a "professional witness."

Though Rule 133, Section 1 refers expressly only to civil cases, it has been held that it is also applicable in determining the weight of evidence in criminal cases.[98]

(3) *Concert of Witnesses*

The prosecution in *People v. Macatembal*[99] offered as evidence the death certificates of the two victims, the medical certificates as to the serious wounds of the two injured and the testimonies of four

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[96] Lu v. Republic, G.R. No. L-20915, November 27, 1965.
[97] *Supra*, note 96.
[98] VI Moran, *op. cit.*, p. 138; citing U.S. v. Claro, 42 Phil. 413 (1921).
[99] G.R. Nos. L-17486-88, February 27, 1965.

witnesses. The evidence of the witnesses, three of whom were eyewitnesses, established: (a) an ambush; (b) that the jeep of the victims was stopped and fired at; (c) the killing of the two victims; (d) the serious wounding of the two injured; (e) that the volley of gunshots came from all directions; (f) the presence of a number of unidentified people at the scene of the crime; and (g) the commission of the crime by several outlaws. It was held that the concurrence of the testimonies proved the offenses beyond reasonable doubt.

(4) *Effect of Explainable Failure to Name the Accused in a Prior Sworn Statement*

In the aforecited case of *People v. Macatembal*,[210] it was alleged that in a sworn statement made by one of the injured persons one day after the ambush, no mention is made of the accused as one of the ambushers. But in the preliminary investigation and in open court, said witness positively identified the accused.

Such failure on the part of the witness to mention the accused in the sworn statement was attributed by the Supreme Court to the fact that the witness, at the time he executed the statement, was not feeling very well because of the wounds and the shock he had sustained. Such failure, therefore, did not adversely affect his credibility.

(5) *Minor Discrepancies in Witnesses' Testimonies*

In the case of *People v. Paz*,[101] the testimonies of the widow and the seven-year-old son of the victim contained minor discrepancies. The Supreme Court, however, in giving great weight to said testimonies, said that the minor discrepancies in the testimonies of the two prosecution witnesses, coupled with their lack of education, heighten their credibility rather than otherwise, and show that the testimony was neither coached nor rehearsed.[102] Such differences are due to individual variations in observation and memory, and do not necessarily indicate falsehood.[103]

(6) *Inherent Improbability of Testimony*

The claim of each of the six defense witnesses, with the exception of one, in the *Paz* case,[104] that he had seen the accused at least three times in less than twenty-four hours, was considered by the Court as inherently improbable, and, therefore, not worthy of credence.

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[100] *Supra*, note 99.
[101] *Supra*, note 16.
[102] Citing People v. Selfaison, G.R. No. L-14732, January 28, 1961.
[103] Citing People v. Tuason, G.R. No. L-1733, March 4, 1950; People v. Calleja, G.R. No. L-2264, December 27, 1950.
[104] *Supra*, note 16.

In the case of *Perez v. Court of Appeals*,[105] the evidence for the defense was likewise held to be inherently improbable. The petitioner in that case had, upon a complaint filed for *lesiones leves*, been found guilty by the Cebu City Municipal Court.

The evidence for the prosecution was as follows: Complainant Isidoro Macasero went to petitioner's house. He knocked at the door and when petitioner opened it he (complainant) greeted petitioner. Immediately, petitioner struck him at the left eyebrow with a wooden rod. Complainant turned his back and ran towards his house, but appellant ran after him and struck him again at the back of the head.

The evidence for the defense: Complainant went to petitioner's house. Complainant forcibly opened the door by pushing and kicking it. Upon seeing petitioner's wife, complainant rushed at her and tried to choke her. She shouted to petitioner, who was sleeping. He woke up, rushed downstairs, and shouted at complainant. As complainant would not release petitioner's wife, petitioner hit him with a rod at the backabout the waist. Complainant boxed (sic) petitioner, who hit complainant again.

Held: In giving credence to the evidence for the prosecution, the Court of Appeals rightly took into account the personal circumstances of the parties as well as their relationship with each other. Complainant was a barber, a younger cousin of petitioner's wife, and the *encargado* of petitioner's properties during the Japanese occupation. Petitioner is intelligent, a law graduate, a BIR employee, and chief of the treasury agents of the Department of Finance. Complainant looked upon petitioner with respect. It is, therefore, difficult to believe the version of the petitioner. It is incredible that a person in complainant's position would forcibly gain entrance into the house of one whom he looked up to and commit the acts imputed to him, unless he had been so seriously aggrieved. Secondly, if there truly was an assault upon petitioner's wife, as he claims, it is quite strange why the petitioner, who is supposed to know his law, did not file a criminal complaint for assault against complainant. The evidence offered by the petitioner was, therefore, not given weight on account of its inherent improbability.

(7) *Relatives' Testimony*

The weight of the testimony given by relatives of anyone involved in litigation, be he the accused or the victim, is determined in accordance with the circumstances of the case.

In *People v. Asmawil*,[106] the appellant would impugn the credibility of deceased's daughter and relative, stating that, being blood

[105] G.R. No. L-13719, March 31, 1965.
[106] *Supra*, note 18.

relatives of the deceased, they were interested in the success of the prosecution. In turning down appellant's contention, the Supreme Court held that it was an established rule that where no improper motive — such as personal grudge against the accused — has been shown, relationship to the victim does not render the clear and positive testimony of witnesses less worthy of full faith and credit.[107]

A similar ruling was laid down in *People v. Libed*,[108] where the prosecution in a murder case offered as witnesses the deceased's son and two men who were suitors of daughters of the deceased. It was there held that the relationship to the victim does not destroy a witness' credibility. It is not to be lightly supposed, according to the Court, that the relatives of the deceased would callously violate their conscience to avenge the death of a dear one by blaming it on persons whom they know to be innocent thereof.[109]

In *People v. Calacala*,[110] the Supreme Court chose to give but little credence to the prosecution witness, a first cousin of the victim, because of the fact that, of the many people present at the scene of the crime (which took place during a dance), it was only the victim's first cousin whom the prosecution presented.

(8) *Recanting Testimony*

As in past years, the Supreme Court, during this survey year, gave very little, if any, weight to recanting testimony. This is especially true when the recanted testimony was clear and coherent or when there is a probable motive for the recantation.

In the case of *People v. de los Santos*,[111] fourteen inmates of the New Bilibid Prisons were found guilty of the crime of multiple murder. The murders were committed in the course of the February 1958 riots generated by intense rivalry between the Sigue-Sigue and OXO gangs. The only issue was the credibility of the prosecution's witnesses, particularly Leon Catbagan, an inmate of the penitentiary Catbagan's testimony is assailed because when he was presented as a defense witness about six months after he testified for the prosecution, he recanted his previous testimony against the accused, on the excuse that he was maltreated by prison authorities. The Supreme Court refused to believe the recantation and the excuse, holding that his sworn testimony as a prosecution witness remained clear and straightforward for four session days, without detectable hint of untruth or fabrication, or lack of voluntariness. On the other hand, the Court held, when much later he recanted his previous statements, he was vague.

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[107] Citing People v. Valera, G.R. No. L-15662, August 30, 1962.
[108] *Supra*, note 17.
[109] Citing People v. Fetalvero, G.R. No. L-16234, April 26, 1961.
[110] G.R. No. L-18348, May 31, 1965.
[111] Supra, note 14.

In *People v. Pasilan*,[112] witness Justina Miguel unhesitatingly named accused Eugenio Pasilan as the killer. Upon cross-examination, however, she recanted her former pronouncement and testified that she was not so sure it was the accused who stabbed the victim. The Supreme Court held that recanting testimony is exceedingly unreliable.[113] The Court considered that a possible motive for the recantation was Justina's blood relationship with the wife of the accused.

B. *Weight of Lower Court's Appreciation of the Evidence*

It has repeatedly been held that the judge who tries a case in the court below has vastly superior advantages for the ascertainment of truth and the detection of falsehood over an appellate court sitting as a court of review.[114]

Thus, as a general rule, the Supreme Court has been extremely loath to reverse findings of fact by lower courts. As stated in the case of *Luzon Stevedoring Corporation v. CIR*,[115] credibility of witnesses is left to the judgment of the trial court, for the trial court had the opportunity to actually observe the witness during his examination.[116]

In the absence of a showing that some fact or circumstance of weight and influence in the record was overlooked or misapplied, or its significance misunderstood by the lower court, the Supreme Court will not interfere with the conclusion of the trial court concerning the credibility of witnesses.[117]

To the same effect were the holdings in *People v. Evaristo*[118] and *People v. Lumayag*.[119]

C. *Circumstantial Evidence*

Section 5 of Rule 133 reads:

> "Circumstantial evidence is sufficient for conviction if:
>
> (a) There is more than one circumstance;
>
> (b) The facts from which the inferences are derived are proven; and
>
> (c) The combination of all the circumstances is such as to produce a conviction beyond a reasonable doubt."

The Supreme Court in *People v. Alipis*[120] found that the third requirement established by the above provision was missing. The

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[112] *Supra*, note 24.
[113] Citing People v. Follantes, 64 Phil. 515 (1937).
[114] VI Moran, *op. cit.*, p. 149.
[115] G.R. Nos. L-17411, L-18681 & L-18683, December 31, 1965.
[116] Citing PAL v. PALEA, G.R. No. L-8197, October 31, 1958.
[117] People v. Asmawil, *supra*, note 18, citing U.S. v. Ambrosio, 17 Phil. 295 (1910); U.S. v. Estrada, 24 Phil. 401 (1913).
[118] *Supra*, note 4.
[119] *Supra*, note 19.
[120] G.R. No. L-17214, June 21, 1965.

accused in that case was convicted by the Court of First Instance of the crime of murder. No direct and positive evidence was shown that the accused, alone or with others, killed the victim. The lower court premised the conviction on what it considered "a series of circumstances," totalling ten in all. After sifting and weighing the ten pieces of circumstantial evidence, the Supreme Court considered only five as duly proven, to wit:

(a) accused (a sergeant) was the first to report that the victim (Captain Pagsuberon) was not in camp;

(b) accused went alone to a house of ill repute (to which the victim had earlier in the night gone) at 4:00 A.M. of the day of the crime;

(c) after 4:00 A.M. of the same day, accused, at the camp's kitchen, asked the mess sergeant if he heard a shot;

(d) shortly afterwards, a companion of the accused came, embraced the accused, said "Peacetime" and talked about women;

(e) accused's pants were stained with human blood.

The Supreme Court did not find the foregoing set of circumstances inconsistent with the innocence of the accused, taken singly or collectively. It did not consider the circumstantial evidence an unbroken chain leading to a fair and reasonable conclusion that the appellant, to the exclusion of all others, is guilty of shooting Captain Pagsuberon. Accordingly, the appellant had to be acquitted.[121]

[121] Citing U.S. v. Villos, 6 Phil. 518 (1906); People v. Subano, 73 Phil. 692 (1942); People v. Labito, G.R. No. L-8481, September 15, 1956.