CASE NOTE

THE DEFENDANT AS WITNESS IN A CRIMINAL CASE; THE RIGHT AGAINST SELF-INCRIMINATION

The right against self-incrimination is not a mere technical rule of procedure. It goes to the very heart of certain fundamental rights and its denial could well lead to the denial of these other rights.

In *Chavez v. Court of Appeals*,[1] the prosecution called as its first witness, Roger Chavez, one of the accused. Over the objection of his counsel, the trial judge compelled Chavez to take the stand stating: "What he will testify does not necessarily incriminate him... there is the right of the prosecution to ask anybody to act as witness on the stand including the accused. If there should be any question that is incriminating then that is the time for counsel to interpose his objection and the court will sustain him if and when the court feels that the answer of this witness to the question would incriminate him. But surely, counsel could not object to have the accused called to the witness stand."

After the trial the court freed all the defendants except the accused Roger Chavez. As to him the court said: "Roger Chavez does not offer any defense. As a matter of fact his testimony as witness for the prosecution establishes his guilt beyond reasonable doubt." The court called him a "self-confessed culprit."

The Court of Appeals, having dismissed Roger Chavez's appeal, directed the city warden of Manila to turn him over to the state penitentiary in Muntinlupa pending execution of the judgment. Hence, this petition for habeas corpus seeking the release of Chavez on the ground that in the trial resulting in his conviction he had been deprived of his constitutional right not to be compelled to testify against himself. As alternative remedies the petitioner prayed for certiorari and mandamus.

The Right Against Self-Incrimination

The crux of the controversy in this case hinges on the issue of whether the accused was denied his constitutional right to be exempt from being a witness against himself.

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[1] G. R. No. 29169, Aug. 19, 1968.

Nature and origin

The privilege had its origin in a protest against the inquisitorial methods of interrogating the accused and was established on grounds of public policy and humanity, public policy because if the accused were required to testify he would be placed under the strongest temptation to commit the crime of perjury; humanity because it would prevent the extorting of confessions by duress.[2] The reason for the privilege is evident. It is to avoid the recurrence of the inhuman procedure of compelling a person, to furnish the missing evidence necessary to convict him.[3]

In the present case the Supreme Court discussed the nature of the right saying: " . . . the court may not extract from a defendant's own lips and against his will an admission of guilt. Nor may a court as much as resort to compulsory disclosure, directly or indirectly of facts usable against him as a confession of the crime or the tendency to prove the commission of a crime. Because it is his right to forego testimony, to remain silent, unless he chooses to take the witness stand — with undiluted, unfettered exercise of his own free will."

Wigmore in tracing the history of the right pointed out that it has something more than the ordinary interest of a rule of evidence particularly because the woof of its long story is woven across a tangled warp composed of the inventions of the early canonist, of the momentous contest between the courts of the common law and the church, and of the political and religious issues of the conclusive period in English history, the days of the dictatorial Stuarts.[4]

In the Philippines the rule was formally introduced by virtue of President McKinley's Instruction to the Second (Taft) Commission which provided among others: "Upon every division and branch of the Government of the Philippines, therefore must be imposed these inviolable rules: ...That no person shall... be compelled in any criminal case to be witness against himself."[5] The right was also embodied in the Philippine Bill of 1902 and the

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[2] U.S. v. Navarro, 3 Phil. 143 (1904).
[3] Bermudez v. Castillo, 64 Phil. 483 (1937).
[4] 4 WIGMORE, sec. 2250.
[5] April 7, 1900.

Jones Law of 1916 both of which provided: "No person...shall be compelled to be a witness against himself."[6]

The Constitutional Convention of 1935 related in its discussions the right against self-incrimination with extrajudicial confessions. Thus, several amendments were introduced which sought to include extrajudicial confessions in the constitutional provision. One such amendment presented by Delegate Arellano read:

> "Ninguna persona sera convicta y condenada por delitos a base de una confession extrajudiciales de culpabilidad, a menos que las mismas se hayan hecho en presencia de su abogado o su defensor."[7]

This proposition met stiff opposition and was rejected by the assembly in the final voting. The objection to it may be summed up in the words of delegate Buslon:

> "In opposing the amendment, I do not want to be understood as favoring the abuses reportedly committed in the past. I oppose the amendment because I think it is not a proper thing to be included in the Constitution. The abuses and arbitrariness alleged here by the author of the amendment can be curtailed by legislation. ... Certainly the legislature can enact a law against constabulary or other peace officers who abuse their powers in obtaining confessions from persons accused of crimes. ..."

Later on Delegate Calleja presented what appears to be a revised version of the Arellano amendment, providing:

> ". . . No se obligara al acusado a declarar en contra suya, y su confession o admision no sera admitida como prueba a menos que se haga en corte abierta durante el jucio de la causa."[8]

Again there was a vigorous debate on this point. But as pointed out by Delegate Aruego[9] there was doubt as to the wisdom of the use of the word "admission" in the amendment. There was a suggestion to limit the amendment to confession by striking off the word "admission". But still many were against the amend-

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[6] Philippine Bill of 1902, sec. 5 par. 3; Jones Law, sec. 3 par. 5.

[7] 6 CONSTITUTIONAL CONVENTION RECORD 243 (1966); translation reads: "No person shall be convicted and sentenced for crimes on the basis of an extrajudicial confession of guilt unless the same has been made in the presence of his lawyer or defender."

[8] *Ibid.*, at 289; translation reads: "The accused shall not be required to testify against himself, and his confession or admission shall not be admitted as evidence unless it is made in open court during the trial of the cause."

[9] ARUEGO, FRAMING OF THE CONSTITUTION, 141 (1936).

ment. The serious consequences that may result from the adoption of the amendment was aptly put by Delegate Laurel:[10]

> ". . . [We] are all agreed, and I can more or less size the sentiment of this Convention as regards the third degree practice. I suppose that there is no question that we are all against that practice. . . . But while we must curtail it, while we must show a decisive attitude to achieve that purposes let us not adopt a rule which will be of consequence far beyond what we intend to remedy in this connection.
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> "For instance, and I refer first to confession and admission, a man come to tell me that he has killed someone, his rival in a certain amorous affair. Now, in a situation like that, I am incompetent to go to court to testify to the admission. . . ."
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> ". . . I express the opinion that the matter of conviction and admission be left to the National Assembly, so that the complications, the circumstances and other considerations may be carefully studied, rules laid down for the formulation of the Code of Criminal Procedure or certain rules of evidence. . . ."

By majority vote the Assembly rejected the proposed amendment. The constitutional provision as it reads today[11] is the result of an amendment presented by Delegate Lim. The significance of the change was explained by Delegate Laurel, thus:[12]

> "La enmienda realmente afecta a la disposicion, porque en vez de 'he' que se refiere al acusado, se dice en terminos generales 'no person.' Quiere decir, que el precepto de que ninguna persona debera ser obligada a declarar contra si misma tendra aplicacion no solamente con respecto al mismo acusado sino tambien al mismo testigo o cualquier persona y esto es un principio ya consagrado en nuestro derecho procesal. . . ."

This view is supported by Aruego[13] who pointed out that the reason for this change is to extend the application of the privilege so that it will apply also to witnesses or other persons in criminal cases. It should be noted however that the Constitution of the United States differs from that of the Philippines on this point.[14]

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[10] *Supra*, note 7 at 302-303.

[11] Article III, Clause 18 of the Constitution provides: "No person shall be compelled to be a witness against himself."

[12] *Supra*, note 7 at 288; translation reads: "The amendment truly affects the provision, because instead of "he", that refers to the accused, we say in general terms "no person". Which means, that the doctrine that no person shall be required to testify against himself has application not only with respect to the accused but also to the witness or to any person and this is a sacred principle in our procedural law."

[13] ARUEGO, *op. cit.*

[14] The fifth amendment of the U. S. Constitution provides: "No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same

Scope

The privilege against self-incrimination is limited to testimonial compulsion.[15] This constitutional right is primarily for the purpose of prohibiting testimonial compulsion by oral examination in order to extort unwilling confessions from prisoners implicating them in the commission of a crime.[16] This view is likewise held by an authority in evidence[17] when he said that the privilege extends to the employment of legal process to extract from the person's own lips an admission of guilt, which will take the place of evidence. For if it protected other than testimonial compulsion, a guilty person will be able to shut himself up in his house with all the tools and indicia of his crime.

Problem of Extrajudicial Confessions

Under Philippine law, the declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him.[18] Generally confessions are admissible as evidence because of reliability. Hence, it has been held that a voluntary confession of the accused with a full comprehension of its significance, is admissible evidence of a high order, and is supported by a strong presumption that no person of normal mind deliberately and knowingly confesses the commission of a crime unless prompted to do so by truth and conscience.[19] The nagging question, however, is whether extrajudicial confessions may be voided on grounds of violation of the right against self-incrimination. The classic stand of the Supreme Court on this point has been this: "The conviction of an accused on a voluntary extrajudicial statement in no way violates the constitutional guarantee against self-incrimination. What the... inhibition seeks to protect is compulsory disclosure of incriminating facts. While there could be some possible objection to the admissibility of a confession on grounds of untrustworthiness, such

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offense to be twice put in jeopardy of life or limb; *nor shall be compelled in any criminal case to be a witness against himself,* nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation. (Emphasis supplied)

[15] People v. Carillo, 77 Phil. 572 (1946).

[16] U.S. v. Ong Siu Hong, 36 Phil. 375 (1917); citing Harris v. Coats 75 Ga 415 (1885).

[17] 4 WIGMORE, sec. 2264.

[18] Rules of Court, Rule 130, Sec. 29.

[19] U.S. v. De los Santos. 24 Phil. 329 (1913).

confession is never excluded on account of any supposed violation of the constitutional immunity of the party against self-incrimination."[20]

In Philippine jurisprudence the rule is that an involuntary confession to be inadmissible must not only be proved obtained by means of force but must be established to be false. Thus, the Highest Tribunal has held:[21]

> "But there is still another reason why the confession must be accepted as evidence against the appellant. Neither the appellant nor his counsel has ever claimed that the confession is false. A confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false and untrue for the law rejects the confession when, by force or intimidation the accused is compelled against his will to tell a falsehood, not when by such force and violence is compelled to tell the truth. This is in consonance with the principle that the inadmissibility of evidence is not affected by the illegality of the means by which it was secured."

At least two authors[22] have posited their view as to the harshness of the rule. It should be noted however that under the old rule[23] an extrajudicial confession must be proven voluntary before it can be admitted in evidence. This has however been repealed by the Revised Administrative Code of 1916 which shifted the burden of proof upon the accused to show that the confession was given involuntarily.

Up to the present the Court has not relented on its rule as to the admissibility of confessions. Thus, in the recent cases of *People v. Pereto*[24] and *People v. Fontanosa*[25] the court admitted extrajudicial confessions in the absence of sufficient proof that they were given involuntarily. Furthermore, no case has been decided by courts voiding extrajudicial confessions on the ground of self-incrimination. It would seem therefore, that in our jurisdiction the privilege is inapplicable to statements made outside of court.

It is however submitted that in the light of the recent cases of *Escobedo v. Illinois*[26] and *Miranda v. Arizona*[27] the view to which

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[20] People v. Carillo, *supra*, note 15.

[21] People v. de los Santos, 93 Phil. 83 (1953); citing Moncado v. People's Court, 80 Phil. 1 (1948); see also People v. Villanueva, 98 Phil. 327 (1956).

[22] 5 MORAN, COMMENTS ON THE RULES OF COURT 244-245; SALONGA, EVIDENCE 330.

[23] Act No. 619, Sec. 4 (1903).

[24] G.R. No. 20894, Dec. 29, 1967.

[25] G.R. No. 19421, May 24, 1967.

[26] 378 U.S. 478 (1964).

[27] 16 L. Ed. 2d 694 (1966).

the court has been hitherto tenaciously clinging needs reexamination. It should be noted that these two cases involve extrajudicial confessions. In the *Escobedo* case, Danny Escobedo a prime suspect in a murder case gave a confession admitting the commission of the crime while he was in the interrogation room. His lawyer was not allowed to see him. The court in voiding the confession held that "when the process shifts from investigatory to accusatory; when its focus is on the accused and the purpose is to elicit a confession...the accused must be permitted to consult his lawyer." Since no one warned Danny of his right to silence and to counsel, the incriminating statements he made during the police interrogation are inadmissible as evidence because in effect he was compelled to produce evidence that would convict him.

In the *Miranda* and its companion cases, kidnapper-rapist Ernesto Miranda, stickup man Michael Vignera, mugger Roy Stewart and bank robber Carl Westover were convicted on the basis of their confessions. In their appeal to the Supreme Court they asked for the reversal of these convictions on the ground that their confessions were obtained in violation of their constitutional right to counsel and privilege not to testify against themselves. The court in applying the right against self-incrimination to in-custody interrogation ruled that the "prosecution may not use statements, whether inculpatory or exculpatory, stemming from custodial interrogation of the defendant unless the prosecution demonstrates the use of procedural safeguards effective to secure the privilege...". To this end the Court laid down certain specific rules.[28]

As may be gleaned from these two cases, the privilege of immunity from self-incrimination has been applied to extrajudicial confessions. There seems to be no good reason why the same should not be adopted in our jurisdiction. In the first place as already noted the Philippine provision is of American origin. Thus it should be

[28] The specific rules laid down are the following:

1. A person under custody to be subjected to interrogation must be informed in clear and unequivocal terms that he has a right to remain silent. This must be accompanied by an explanation that anything said can be used against him. He has a right to presence of counsel.
2. Defendant may however waive these rights. If he wishes to see his counsel at any stage of the investigation before giving any statement, no questioning can be made.
3. The fact that defendant has answered some questions does not deprive him of the right to refrain from answering other questions until he has consulted his counsel.

interpreted in the light of American authority. Furthermore, the case of *Moncado v. People's Court*,[29] the case cited by the court in its classic stand against the admissibility of evidence unless it is proved false has already been abandoned by the Supreme Court in the case of *Stonehill v. Diokno*.[30] In the latter case the Court adopted the exclusionary rule which it believed was the only practical means of enforcing the constitutional provision against unreasonable searches and seizures.

The framers of the Constitution as already pointed out, were against the practice of extorting confessions from an accused by so-called "third-degree" methods. But what happens is actually the contrary. The burden of proof is upon the accused to show not only that his confession was given involuntarily but that it was not true. Indeed this has a serious effect on the right of the accused to be presumed innocent unless proven guilty.[31] It is perhaps the right time for the Court to abandon its old ruling on the matter of confessions. Since it is only in this way that the right against testimonial compulsion and the presumption of innocence could be made effective.

Personal right

The privilege against self-incrimination is a personal one. It is an option of refusal not of inquiry. When an ordinary witness is on the stand and a self-incriminating statement relevant to the issue is sought from him, the question may be asked and then it is for the witness to say whether he will answer it or claim its privilege, for it cannot be known before hand.[32] In the case under discussion the court made a distinction between an ordinary witness and one in a criminal case:

> "Petitioner as accused, occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him, an accused may *altogether* refuse to take the witness stand and refuse to answer any and all questions." (Emphasis supplied)

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[29] 80 Phil. 1 (1948).
[30] G. R. No. 19550 June 19, 1967.
[31] Const. Art. III, 18.
[32] Bermudez v. Castillo, *supra*, note 3; citing in re Mac-Kenzie 100 Vt. Rep. 325; Suarez v. Tengco, 59 O.G. 6260 (1961); 6 Jones on Evidence p. 4926.

The trial court was in error when it said: "If there should be any question that is incriminating then that is the time for counsel to interpose his objection and the court will sustain him if and when the court feels that the answer of his witness to the question would incriminate him." There are valid reasons for distinguishing between the accused in a criminal case and an ordinary witness. Under the Rules of Court[33] the accused has the right to testify in his own behalf. But if a defendant offers himself as a witness he may be cross-examined as any other witness. His neglect or refusal to be a witness shall not in any manner prejudice or be used against him. The reason for this rule is that while an ordinary witness is not necessarily subject to criminal liability the accused is. A defendant in a criminal action occupies a different "tier" of protection because if he is compelled to testify against himself in effect he may be deprived of life, or liberty without due process of law. The privilege has been devised to prevent the extortion of unwilling confessions from the lips of the accused. Furthermore, it should be noted that the right may be invoked only if the witness will be subject to criminal liability not when what results is merely civil liability. To apply the privilege to an ordinary witness to such an extent that he may altogether refuse to take the stand would paralyze the administration of justice. For indeed witnesses could shirk their responsibility to expose illegal acts and refuse to affirm the existence of valid obligations by the simple expedient of refusing to take the stand, if they are given the same degree of protection as the accused in criminal cases.

This distinction is further enforced by the Rules of Court which provides: "A witness must answer questions pertinent to the matters at issue, though his answer may tend to establish a claim against him; but, unless otherwise provided by law, he need not give an answer which will have a tendency to subject him to punishment for an offense..."[34] The difference therefore depends to a large extent upon the kind of liability the person testifying may be subject to. Thus, it has been held that except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness, subject to the constitutional injunction not to compel any person to testify against himself.[35]

[33] Rule 115, Sec. 1 (d).
[34] Rule 132, Sec. 3.
[35] Gonzales v. Secretary of Labor, 94 Phil. 325 (1954).

Extent of testimonial compulsion

One problem in enforcing the right against self-incrimination is the interpretation to be given to the phrase "testimonial compulsion". In many cases the privilege has been invoked in instances where other than oral testimony is involved.

In the case of *U.S. v. Ong Siu Hong*[36] the court held that forcing an accused to discharge morphine from his mouth is not compelling him to be a witness against himself. In another case[37] at the time of the arrest of the defendant it appeared that he was suffering from some private disorder. So a portion of the substance was taken from his body and scientifically examined. The result was offered in evidence during the trial but was objected to on grounds of self-incrimination. The court ruled that the privilege against self-incrimination was not violated.

Upon petition of the assistant City Fiscal of Manila, the trial court ordered the defendant, a woman charged with the crime of adultery, to submit to a physical examination by one or two competent doctors to determine whether she was pregnant. The defendant invoked the privilege against self-incrimination. The court in holding that the physical examination of the accused was permissible underscored the fact that the right is limited to testimonial self-incrimination.[38]

In *U. S. v. Zara*[39] a bloody foot print was found near the body of a person who had been robbed and killed. A suspect upon being arrested was taken to the scene and made to place his foot on the impression on the floor. It was found that his foot matched the print. The question was whether such proof was admissible as evidence against him notwithstanding his contention that his right against self-incrimination had been violated. The Court held that the evidence was admissible there being no transgression of the privilege. The scope of the right was further limited when in another case[40] the court citing Wigmore held that "measuring or photographing the party is not within the privilege against self-incrimination. Nor is the removal or replacement of his garments and shoes.

[36] Supra, note 16.
[37] U.S. v. Tan Teng, 23 Phil. 145 (1912).
[38] Villaflor v. Summers, 41 Phil. 62 (1920).
[39] 42 Phil. 308 (1921).
[40] People v. Otadora, 86 Phil. 244 (1950).

Nor is the requirement that the party move his body to enable things to be done."

It should be noted however, that testimonial compulsion is not absolutely limited to oral testimony. There is authority[41] that the privilege extends to the production of chattels. Furthermore, in one case[42] it was held that writing is something more than moving the body or the hand, or the fingers. A person ordered to write furnishes a means to determine whether or not he is the falsifier. This cannot be done without violating the privilege against testimonial compulsion.

In *Rochin v. California*[43] a doctor at the direction of one of the sheriffs forced an emetic solution through a tube into the suspect's stomach against his will. Consequently he vomitted two capsules which proved to contain morphine. He was convicted of possession of a preparation of morphine. On appeal, the Federal Supreme Court, reversed the conviction of the accused. The court held that the forcible extraction of the capsules from the accused's stomach was shocking to the conscience. The method employed was too close to the rack and screw and therefore a violation of the due process clause. Although strictly speaking the privilege against testimonial compulsion was not directly involved here, still it is submitted that if it were invoked the court would have ruled that the right had been violated. However, in the case of *Breithaupt v. Abram*[44] after a vehicular accident a physician took samples of the suspect's blood and found that it contained 17% alcohol. In a charge of involuntary manslaughter this was offered as evidence. The accused opposed on the ground that the blood test was conducted in violation of his constitutional rights. The court held that there was no violation since blood tests have become routine in modern life, and there was nothing "brutal" or shocking to the conscience about it. This ruling is still good law in view of a recent U.S. Supreme Court ruling upholding the same. In that case[45] the Court held that the fifth amendment prohibits the compulsion of evidence only of a testimonial or communicative nature, and the

41 4 WIGMORE, sec. 2264.
42 Beltran v. Samson, 53 Phil. 570 (1929).
43 342 U.S. 165 (1952).
44 352 U.S. 432 (1957).
45 Schmerber v. California 86 Sup. Ct. 1826 (1966) as commented on 52 Ia. L. Rev. 344 (1966).

seizure of blood from the accused was not unreasonable within the meaning of the fourth amendment.

In the light of these cases the problem of what can be considered testimonial evidence and therefore protected and what is not becomes quite confusing. But a distinction is really possible. The privilege is not limited to testimonial compulsion as can be noted in the cases cited above. While as a general rule the privilege extends to oral evidence it may be invoked if the act sought to be protected requires the creating of evidence or a "positive act". Moreover, a distinction should be made as to the means employed in procuring evidence. While forcing morphine from the mouth of the accused involves no violation of the right, forcing capsules from the stomach is shocking to the conscience and is therefore a transgression of the immunity provided by the due process of law clause and possibly of the right against self-incrimination.

The line drawn between testimonial and non-testimonial evidence was well drawn by the U. S. Supreme Court in the *Schmerber*[46] case, in this manner:

> "...both federal and state courts have usually held that it offers no protection against compulsion to submit to fingerprinting, photographing or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk or to make a particular gesture. The distinction which emerged... is that the privilege is a bar against compelling 'communications' or 'testimony', but that compulsion which makes a suspect or accused the source of 'real or physical evidence' does not violate it."

Proceedings involved

The provision that "no person shall be compelled to be a witness against himself" has been applied to cases other than criminal. In *Beltran v. Samson*[47] it was extended to fiscals' investigation. In another case[48] a person was punished for contempt by the Senate for refusing to answer a question. In seeking freedom from detention he invoked the right against self-incrimination. On this point the Court said: "Once an inquiry is admitted or established to be within the jurisdiction of a legislative body to make we think the investigating committee has the power to require a witness to answer

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[46] *Ibid.* at 1832 commented on 43 Denver L. J. 507 (1966).
[47] *Supra*, note 42.
[48] Arnault v. Nazareno, 87 Phil. 29 (1950).

any question pertinent to that inquiry subject of course to his constitutional right against self-incrimination."

In *Bermudez v. Castillo*[49] the privilege was invoked in an administrative proceeding. The Court held that the complainant is entitled to the privilege which is applicable to all cases be they criminal, civil, or administrative. In *Cabal v. Kapunan*[50] the High Tribunal stated that forfeiture proceedings are in the nature of criminal actions and that therefore the privilege can be invoked therein. And in *Isabela Sugar v. Macadaeg*,[51] the privilege was also applied in a a civil case.

Waiver of the right

The right against self-incrimination while fully protected may be waived by the person having such right. In the present case one of the questions to be resolved was whether the accused waived his right when he answered the questions propounded by the fiscal. The Court in finding that there was compulsion said:

> "The judge's words... 'But surely, counsel could not object to have the accused called on the witness stand' — wielded authority. By these words, petitioner was enveloped by a coercive force; they deprived him of his will to resist; they foreclosed choice; the realities of human nature tell us that as he took his oath to tell the truth, the whole truth and nothing but the truth, no genuine consent underlay submission to take the witness stand. Constitutionally sound consent was absent."

Since there was no consent from the accused there could have been no valid waiver. On this point the court said:

> "It matters not that, after all efforts to stave off petitioner's taking the stand became fruitless, no objections to questions propounded to him were made. Here involved is not a mere question of self-incrimination. It is the defendant's constitutional immunity from being called to testify against himself. And the objection made at the beginning is a continuing one."

A distinction should be made between an ordinary witness and the accused in a criminal case with regards to waiver. An ordinary witness waives his right by taking the stand[52] or by answering freely questions as they are propounded to him.[53] The case of an

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[49] Supra, note 3.
[50] G. R. No. 19052, Dec. 29, 1962.
[51] G. R. No. 5924, Oct. 28, 1963; 93 Phil. 995 (1953).
[52] U. S. v. Grant, 18 Phil. 122 (1910).
[53] U. S. v. Rota, 9 Phil. 426 (1907).

accused who voluntarily takes the stand is different. Here the privilege has protected him from being asked even a single question for the reason that any relevant fact which could be inquired about would tend to incriminate him. His voluntary offer to testify upon any fact is waiver as to all other relevant facts, because of necessary connection between them all.[54]

Discharge of the Accused

In a concurring opinion Justice Castro citing the case of *Cabal v. Kapunan*[55] stated that the accused in a criminal case cannot be required to give testimony and if his testimony is needed at all against his co-accused he must first be discharged. This is only in consonance with the doctrine laid down in the case that the accused can not be compelled to be a witness against himself without his consent. In the present case, the trial judge erred in allowing the fiscal to call the accused as his first witness for the prosecution and in convicting him on the basis of his own testimony. The Supreme Court was quite right in reversing the conviction of the accused Chavez and granting the petition for habeas corpus.

The court observed that: "The decision convicting Roger Chavez was clearly of the view that the case for the People was built primarily around the admissions of Chavez himself. The trial court described Chavez as the 'star witness for the prosecution'. Indeed, the damaging facts forged in the decision were drawn directly from the lips of Chavez as a prosecution witness . . . that Chavez's 'testimony as witness for the prosecution establishes his guilt beyond reasonable doubt'; and that Chavez is a 'self-confessed culprit' ". All these amount to the violation of Chavez's right not to be compelled to testify against himself. The only way to make him testify for the prosecution is to discharge him and make him a state witness, which the fiscal failed to do in this case.

CONCLUSION

The *Chavez* case once again brings into focus the right against self-incrimination. Although it is more of a clarification of an existing rule it serves as a stern warning that the Court will not hesitate to declare proceedings void if the accused is denied this right.

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[54] 4 WIGMORE, sec. 2273.
[55] *Supra*, note 50 (citing 4 MORAN 1960).

In the matter of extrajudicial confessions, it is time for the Court to reexamine its stand favoring admissibility of evidence unless it is proved false.

Thus, while the case clarified the extent of the right it has left several questions unresolved. Perhaps one of these days we shall have a more far-reaching pronouncement on this aspect of the bill of rights.

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