REMEDIAL LAW—PART TWO

CRIMINAL PROCEDURE AND EVIDENCE

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CRIMINAL PROCEDURE

I. PROSECUTION OF OFFENSES

All criminal actions must be commenced either by complaint or information in the name of the People of the Philippines against all persons who appear to be responsible therefor.[1]

People v. Hong Din Chu[2] reiterates the rule that what determines the offense of which the accused stands charged are the allegations in the information, the actual recital of the facts made therein.[3] The Supreme Court held that, it appearing from the recital of the information that the alleged defamatory remark by the accused specifically imputed upon the offended party the commission of prostitution, which is a public crime that can be prosecuted *de oficio,* the information filed under the signature of the Assistant City Fiscal duly conferred jurisdiction upon the lower court to try the case.[4]

In *People v. Rivera,*[5] the Supreme Court reiterated the rule consistently applied that after the accused's plea is entered, amendments that touch upon matters of substance are not permitted and the information or complaint may be amended only as to formal matters by leave of court and at the latter's discretion, when the same can be done without prejudice to the rights of the accused. Thus, an amendment which neither adversely affects any substantial right of the accused (e.g. does not deprive him of the right to invoke prescription nor affects and/or alters the nature of the offense originally charged nor involves a change in the basic theory of the prosecution so as to require the accused to undergo any material change or modification in his defense) is an amendment as to a matter of form. Applying such rule in the case at bar, the Supreme Court held that the amendment which

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1 RULES OF COURT, Rule 110, sec. 1.

2 G.R. No. 27830, May 29, 1970, 33 SCRA 199 (1970).

3 People v. Cosare, 95 Phil. 656 (1954).

4 People v. Santos, 98 Phil. 111 (1955).

5 G.R. No. 27825, June 30, 1970, 33 SCRA 746 (1970).

sought the correction of an obviously typographical or clerical error in the last digit of the year alleged (from 1965 to 1964, the month and day being left exactly the same) did not affect the nature and essence of the crime as originally charged. Neither did it involve any change in the basic theory of the prosecution so as to cause surprise to respondent and require him to effect any material change or modification in his defense.

The Supreme Court allowed an amendment to conform to evidence in the *Rivera* case. As observed by the Supreme Court, the records in the case fail to show that respondent-accused had opportunely and timely made any objection to the testimony of the complainant at the opening day of trial that the threat was made against him in March, 1964 by reason of the same being at variance with the allegations of the information that the crime charged was committed in March, 1965. The testimony of the complainant is already in the record without objection from respondent-accused, and the prosecution is therefore entitled to effect the amendment to make the information conformable to the testimony presented and the documentary evidence in its possession.

Colmenares v. Villar[6] reiterated the rule that the jurisdiction of the court over a case is determined by the allegations of the complaint or information. The rule is also restated in the same case that to determine the correct venue, the vital point is the allegation of the situs of the offense charged in the complaint or information, and that is satisfied in the case at bar. Under the Rules of Court, criminal actions shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.[7] Where the illegal possession of firearms was committed in the town where the court sits, the fact that the firearms were confiscated from the accused in another town does not affect the jurisdiction of the court. For, being *malum prohibitum*, the crime is consummated by the very fact of its performance — by the firearms being possessed or held by the accused without proper authorization therefor. The place where the said firearms were finally confiscated and taken away from the accused is immaterial; it could not have added anything to the nature of the unlawful act completed and consummated earlier.

Interesting is the trend in *People v. Gutierrez*[8] where it was noted that the Supreme Court has explained in *Beltran v. Ramos*[9] that the purpose of the rule[10] was not to compel the defendants to move to and appear in a different court from that of the province where the offense was committed,

[6] G.R. No. 27124, May 29, 1970, 33 SCRA 186 (1970).
[7] RULES OF COURT, Rule 110, sec. 14(a).
[8] G.R. Nos. 32282-83, November 26, 1970, 36 SCRA 172 (1970).
[9] 96 Phil. 149, 150 (1954).
[10] RULES OF COURT, Rule 110, sec. 14(a).

as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. It was also observed that where the convenience of the accused is opposed by that of the prosecution, it is but logical that the court should have the power to decide where the balance of convenience or inconvenience lies, and to determine the most suitable place of the trial according to the exigencies of truth and impartial justice. Thus, to compel the prosecution to proceed to trial in a locality where its witnesses will not be at liberty to reveal what they know is to make a mockery of the juridical process, and to betray the very purpose for which the courts have been established.

Along the same line of thinking, the Supreme Court ruled in said *People v. Gutierrez*[11] that the accused cannot complain that to transfer the trial to a site where the prosecution's witnesses can feel free to reveal what they know would be equivalent to railroading them into conviction. The reason is that regardless of the place where its evidence is to be heard, the prosecution will always be obligated to prove the guilt of the accused beyond reasonable doubt. Moreover, it was noted that the scales of justice lean in favor of the prosecution being given full opportunity to lay its case before a proper arbiter. For a dismissal of the charges for lack of evidence is a verdict that the prosecution can neither challenge nor appeal.

II. PRELIMINARY INVESTIGATION

The opportunity to enunciate further on the purpose of preliminary investigation presented itself to the Supreme Court in *Bandiala v. Court of First Instance of Misamis Occidental*.[12] In this case, it was held that a preliminary investigation is a practical device created by statute and by mandate of the Rules of Court, principally for the purpose of preventing hasty, malicious and ill-advised prosecutions.

The position taken by the Fiscal in the case at bar that because section 13 of Rule 110 of the Rules of Court authorizes him to amend the information in substance without leave of court any time before the accused pleads, he may therefore change the nature of the offense charged in the amended complaint, which was the subject of a formal preliminary investigation by the municipal court, by raising the category of the crime to a higher one, based on the evidence in his possession, loses sight of the fact that section 13 of Rule 110 was not intended to give a prosecuting official an undue advantage over the accused in the sense that he may withhold evidence at the preliminary investigation conducted by the municipal court only to uncover and reveal it later for the purpose of raising the category of the offense to be charged by him in the information.

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[11] *Supra*, note 8.
[12] G.R. No. 24652, September 30, 1970, 35 SCRA 237 (1970).

It was also noted in said *Bandiala* case that construed in their integrated entirety, the Rules of Court on the matter of preliminary investigation direct that, under the circumstances obtaining, the Fiscal, if he believes that he should raise the category of the offense, must conduct a preliminary investigation anew as to the entire charge. Fundamental principles of fair play dictate this course of action. The Fiscal is not allowed by the Rules of Court to wait in ambush. The role of a Fiscal is not mainly to prosecute, but essentially to do justice to every man and to assist the courts in dispensing that justice.[13]

Bermejo v. Barrios[14] reiterates the rule that in the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of opportunity to be heard. Since in the case at bar, petitioner Bermejo was afforded the opportunity to appear at the preliminary investigation but did not take advantage of it, he has no one to blame but himself. Anyway, said petitioner's rights can still be amply protected in the regular trial of the case against him in the city court where he can cross-examine the witnesses and present his evidence.[15]

In *People v. Baluran*,[16] the Supreme Court found that the contention of the accused that there was no previous valid preliminary investigation is without merit, firstly, because the same was not raised at any stage of the proceedings below; secondly, he and his co-appellant had waived the preliminary investigation in the municipal court.

III. PLEAS

It was ruled in *People v. Espejo*[17] that, considering that the appellant was assisted by counsel and that he was a college student at that time, the explanation made by the court as to the meaning and consequences of a plea of guilty was sufficient, and that he entered his plea with full knowledge of its significance. Furthermore, the plea was made on August 27, 1963, and the sentence was promulgated on August 24, 1966. During the intervening period of three years he could have complained to the court that his plea had been improvidently made. He did not do so. On the contrary, there appears in the record of the case a letter dated November 24, 1964, addressed by him to the Presiding Judge, pleading for a "humanitarian decision" inasmuch as he had pleaded guilty to the charge.

In *People v. Englatera*,[18] the Supreme Court held that, the case being one for murder for which the accused was sentenced to suffer the maximum

[13] This reiterates the rule laid down in *People v. Santos*, G.R. No. 25413, October 31, 1969.

[14] G.R. No. 23614, February 27, 1970, 31 SCRA 764 (1970).

[15] Doce v. Branch II, Court of First Instance of Quezon, G.R. No. 26437, March 13, 1968, 22 SCRA 1028 (1968).

[16] G.R. No. 28582, March 25, 1970, 32 SCRA 71 (1970).

[17] G.R. No. 27708, December 19, 1970, 36 SCRA 400 (1970).

[18] G.R. No. 30820, July 31, 1970, 34 SCRA 245 (1970).

penalty of death, it is proper to invite the attention of the court *a quo* and of all trial courts in general to what the Supreme Court said in *People v. Apduhan*[19] and *People v. Solacito*[20] on the matter of what the trial court should do upon arraignment of a defendant charged with a capital offense, before he is allowed to enter a plea of guilty.

For the sake of convenience, it may not be amiss to recall the pertinent points in the two (2) aforecited cases.

In the *Apduhan* case, the Supreme Court said:

> "Even as we purge the decision under review of its errors, we must hasten to commend the trial judge, the Hon. Hipolito Alo, for his earnest and patient efforts to forestall the entry of an improvident plea of guilty by the accused Apduhan, notwithstanding that the latter was already represented by a counsel *de oficio* and hence presumed to have been advised properly. Judge Alo made sure that the accused clearly and fully understood the seriousness of the offense charged and the severity of the penalty attached to it. When the accused proposed to confess his guilt, Judge Alo repeatedly warned him that the death penalty might be imposed despite his plea of guilty. As aforementioned, when it appeared that Apduhan's plea of guilty was ambiguous, Judge Alo reopened the case to determine with definitiveness the nature of his plea.
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> The virtue of Judge Alo's efforts in ascertaining whether Apduhan pleaded guilty with full knowledge of the significance and consequences of his act, recommends itself to all trial judges who must refrain from accepting with alacrity an accused's plea of guilty, for while justice demands a speedy administration, judges are duty bound to be extra solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction."

Testing the facts in the *Solacito* case against the guidepost laid down in the *Apduhan* case, the Supreme Court held:

> "In the case at bar, we are not satisfied that His Honor, the trial Judge, had properly discharged such duty. According to his decision, he 'asked the accused whether he understands the meaning of a plea of guilty and whether he is admitting all the material averments in the information' and 'the accused answered in the affirmative.' The foregoing statement does not sufficiently show that the defendant was *well* aware of the import of his plea and *fully* realized the consequences thereof. The questions propounded by the lower court in this case are a far-cry from the precautions taken by Judge Alo, which merited the commendation of this Court, in the Apduhan case x x x."

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[19] G.R. No. 19491, August 30, 1968.
[20] G.R. No. 29209, August 25, 1969.

IV. TRIAL

The Supreme Court observed in *People v. Espejo*[21] that the appellant had more than two days, as provided in the Rules of Court[22] to prepare for trial. His counsel even admitted that he was given fifteen (15) days to study the case. The Supreme Court concluded that, under the circumstances, even if an express request for postponement had been made, the trial court would not have erred in denying the same.

V. JUDGMENT

It was held in *Vera v. People*[23] that, as a rule, a judgment is null and void where the decision was promulgated and read to the accused at a time when the judge who rendered and signed it had ceased to hold office. However, where the adverse party failed at several stages of the proceedings to raise the lack of jurisdiction based on said fact and it was only after an adverse decision was rendered by the Court of Appeals that the party finally woke up to raise the question of jurisdiction, such conduct would cause injustice if the proceeding had were to be set aside. The party would be barred from raising the question of nullity of the judgment thus promulgated as long as the court that rendered the sentence is one of competent jurisdiction, except for the fact that the judge had retired or ceased to be such before the sentence was read to the accused. The petition to set aside said judgment was dismissed.

VI. NEW TRIAL

The Supreme Court held in *Luciano v. Estrella*[24] that the correctness, validity and legality of a grant of new trial in a criminal case do not depend upon the consent of the parties thereto, but upon the grant being made conformably to the prescriptions of the Rules of Court and the applicable jurisprudence.

It was also ruled in the aforecited case that in a charge against a public official under the Anti-Graft Law for entering into a contract disadvantageous to the government, it is not a ground for new trial to produce the testimony of an auditor to the effect that the sad financial condition of the municipality was recently discovered. Such fact is hardly a newly-discovered fact.

Also noted in the same case is that one of the rules made applicable to criminal cases is Rule 53, Section 2 of the Revised Rules of Court which requires that in granting or refusing a new trial the Court of Appeals shall

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[21] *Supra*, note 17.
[22] RULES OF COURT, Rule 119, sec. 1.
[23] G.R. No. 31218, February 18, 1970, 31 SCRA 711 (1970).
[24] G.R. No. 31622, August 31, 1970, 34 SCRA 769 (1970).

consider the new evidence together with that adduced in the court below. According to the Supreme Court, the purpose is clearly to have the new evidence weighed in conjunction with the old, in order to ascertain whether the new proofs tendered would probably change the result, as required by Section 2(b) of Rule 121.

In *People v. Gensola*,[25] the Supreme Court believed it imperative, in order to assure against any possible miscarriage of justice, to grant a reopening of the trial at which the testimonies of two affiants and such other evidence of both prosecution and defense as the trial court may in the interest of justice allow to be introduced, may be duly presented. It was noted in the case at bar that the affidavits of two persons, whose testimonies on certain crucial matters could not be presented at the trial due to no fault of the accused-appellants, raise grave and substantial doubt that the original judgment imposing the near-extreme penalty of *reclusion perpetua* would have been so rendered, if the material testimonies of these affiants were then introduced and admitted.

VII. APPEAL

It appears in *City Fiscal of Cebu v. Kintanar*[26] that after the prosecution had rested its case, the accused moved for dismissal upon the ground that the prosecution evidence was not sufficient to establish the offense charged in the information. Thereafter, finding the motion for dismissal well taken, the trial court dismissed the case. After the denial of the second motion for reconsideration filed by the petitioner fiscal, he filed the petition for certiorari. The Supreme Court ruled that the petition must be dismissed upon the ground firstly, that whatever error was committed by the respondent judge was not an error of jurisdiction but one of judgment; secondly, the order of dismissal — considering the circumstances mentioned heretofore — amounted to and was, in effect, an acquittal — not reviewable neither by appeal nor by certiorari.

EVIDENCE

I. ADMISSIBILITY

Evidence is admissible when it is relevant to the issue and is not excluded by the Rules of Court.[27]

A. *Relevancy of evidence*

Evidence must be relevant, namely, it must have such a relation to the fact in issue as to induce belief in its existence or non-existence; therefore,

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[25] G.R. No. 24491, August 11, 1970, 34 SCRA 383 (1970).
[26] G.R. No. 31842, April 30, 1970, 32 SCRA 601 (1970).
[27] RULES OF COURT, Rule 128, sec. 3.

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.[28]

In *People v. Jumawan*,[29] the Supreme Court noted that appellant's testimony as to the amounts due him is totally unrefuted. Worse, the main prosecution witness was strangely silent on the remuneration due the appellant, and when this was sought to be brought out by the defense counsel on cross-examination, the trial court blocked it by sustaining the prosecution's increased objection. It was therefore ruled that, surely, in this case for estafa, such evidence is most relevant to the issue, as the appellant could not be expected to work as a commission and collection agent for nothing.

B. *Qualifications of witnesses*

People v. Celis[30] reiterates the rule that unless a child's testimony is punctured with serious inconsistencies as to lead one to believe that he was coached, if he can perceive and make known his perception, he is considered as a competent witness. In the case at bar, it was observed that the witness, who was 11 years old, showed that she was able to relate well her impression of what she had seen despite the rigid cross-examination she was subjected to by the defense. The Supreme Court held that the trial court did not err in giving credence to her testimony.

The aforesaid ruling is in accordance with the provision of Rule 130, Section 18, Revised Rules of Court, to the effect that "Except as provided in the next succeeding section, all persons who, having organs of sense, can perceive, and perceiving, can make known their perception to others, may be witnesses."

C. *Admission*

People v. Sibayan[31] restates the rule that the fact that the accused and his wife left the scene of the crime and allegedly went to Manila to look for work is indicative of flight. The Supreme Court did not believe their pretext of looking for work because the accused was related to the deceased and it is the custom in the rural communities for anyone to attend to the burial of his relatives. Yet, the accused and his wife, instead of attending the burial, left so early for Manila and could not be seen anymore.

D. *Confession*

In *People v. Pingol*,[32] the Supreme Court did not believe the defense of the accused that the extra-judicial confession taken from him should be

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[28] RULES OF COURT, Rule 128, sec. 4.
[29] G.R. No. 28060, February 27, 1970, 31 SCRA 825 (1970).
[30] G.R. No. 26977, September 30, 1970, 35 SCRA 129 (1970).
[31] G.R. No. 25174, January 30, 1970, 31 SCRA 246 (1970).
[32] G.R. No. 26931, May 28, 1970, 33 SCRA 73 (1970).

excluded on the ground that it was taken under duress, because: (1) the accused failed to mention his alleged maltreatment to the authorities and the fiscal who investigated him; (2) the confession was replete with details which could only be given by the very person who experienced the same or took part in the execution of the acts narrated; (3) the truth of the facts contained in the confession had been confirmed by subsequent facts.

The Supreme Court did not also believe appellant's claim in *People v. Baluran* [33] that the confessions were obtained by force and intimidation as against the testimony of a municipal policeman and the municipal judge showing that the confessions were freely and voluntarily made. Moreover, the confessions were in Tagalog, the native dialect of the appellant and the contents tallied substantially in many important respects with the testimony of the appellant during the trial.

E. *Dying Declaration*

The first question raised by the appellants in *People v. Antonio* [34] refers to the admissibility in evidence of the statement made by Semana to Eugenio Angellano concerning the circumstances under which the former had been injured. Appellants maintain that the trial court erred in considering said statement as a dying declaration, for, upon being asked how he felt, Semana answered that he would not die if treated, was then still "strong", according to some witnesses. Said answer of Semana indicated, however, an *awareness* of the danger of death on his part, should he not be seasonably given the necessary medical treatment. Moreover, the records show that he was so weak that several people had to help him, in order that he could ride the sledge that brought him to Baloy. The fact that he expired one hour later strongly indicates the seriousness of his condition when Angellano took his statement. The Supreme Court held that the circumstances pointed out by the defense do not sufficiently show that the lower court had no reasonable ground to conclude that Semana's statement was made under the belief that he was in imminent danger of death in consequence of said injuries — as he died soon thereafter — unless the same were treated soon enough.

However, in *People v. Dominguez*,[35] in agreeing with the appellant that the trial court erred in holding the transcription of Lacson's declarations in the hospital, written down by Major Dawa and thumbmarked by the victim, to be admissible as a dying declaration, the Supreme Court observed that not only was there a long interval (ten months and twelve days) between its execution on July 24, 1956 and declarant's death on June 5, 1957, but

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[33] G.R. No. 28582, March 25, 1970, 32 SCRA 71 (1970).
[34] G.R. No. 25845, August 25, 1970, 34 SCRA 401 (1970).
[35] G.R. No. 22474, November 26, 1970, 36 SCRA 59 (1970).

also the text of the declaration itself shows that the declarant himself was in doubt as to whether he would die or not.

F. *Part of res gestae*

In the face of the objection raised by the defense to the admission of the statement of the victim as a dying declaration, the Supreme Court ruled in *People v. Antonio* [36] that in any event, that statement was made *in the course* of the unfortunate odyssey of Semana that started on December 4, 1962 at about 7:00 p.m., and ended with his death on December 5, 1962, around noon time, and that said statement formed part of the *res gestae* and is competent evidence in the case at bar.

II. BURDEN OF PROOF AND PRESUMPTIONS

Santiago Virginia Tobacco Planters Association, Inc. v. Phil. Virginia Tobacco Administration[37] reiterates the rule that the burden of proof of obligations devolves upon the one who seeks to enforce their performance, and that of their extinction upon the one opposing it.

Referring to petitioner's contention in *Lucman v. Dimapuro*[38] that the respondent may not avail of the presumption of regularity, the Supreme Court pointed out that such argument assumes that the mandatory provisions of the Election Law have not been complied with in connection with the returns for Balabagan; but, this is merely petitioner's contention, which, at best, is debatable. It was held that, as the party asserting that irregularities had been committed in the preparation of said returns, the petitioner had the burden of proving the same and of off-setting the presumption of regularity established by law. The Supreme Court noted in the case at bar that the petitioner, however, failed in both.

People v. Pajenado [39] reiterates the rule that where the lack or absence of a license is an essential ingredient of the offense of illegal possession and the information specifically alleged such fact, the prosecution's duty is not merely to allege that negative fact but also to prove it.

III. PRESENTATION OF EVIDENCE

Concerning the first two assigned errors in *Javellana v. D. O. Plaza Enterprises, Inc.*,[40] the Supreme Court held it to be error on the part of the court *a quo* to reduce the interest stated in its previous decision from 12% to mere legal interest and the attorney's fees from 25% to ₱5,000.00 on

[36] *Supra*, note 8.
[37] G.R. No. 26292, February 18, 1970, 31 SCRA 528 (1970).
[38] G.R. No. 31558, May 29, 1970, 33 SCRA 387 (1970).
[39] G.R. Nos. 27680-81, February 27, 1970, 31 SCRA 812 (1970).
[40] G.R. No. 28297, March 30, 1970, 32 SCRA 261 (1970).

the basis of estoppel, the ground therefor being that the reduced amounts were those alleged, hence admitted, by the plaintiff in his original complaint. It was specifically noted that the original complaint was not formally offered in evidence. Having been amended, the original complaint lost its character as a judicial admission, which would have required no proof, and became merely an extrajudicial admission, the admissibility of which, as evidence, requires its formal offer.

It was ruled in *Vda. de Bonifacio v. B.L.T. Bus Co., Inc.*[41] that by resorting to documentary alterations, the company indicated its awareness that its case is weak or unfounded and from that may be inferred that its case as appellant lacks truth and merit. The Supreme Court further noted that the claim on appeal that the alteration in the writing was innocent, or that the company should have been given an opportunity to explain because it was caught unaware that the court below would take the incident against them as it did, is untenable. The rule requires that a party, producing a writing as genuine but which is found altered after its execution, in a part material to the question in dispute, should account for the alteration, and if "he do that, he may give the writing in evidence, but not otherwise." [42] In other words, the company should have accounted for the alteration when it introduced the job sheet in evidence, and not endeavor to explain the alteration afterwards.

IV. WEIGHT AND SUFFICIENCY OF EVIDENCE

A. *Weight of evidence in Appellate Courts*

People v. Espejo [43] reiterates the well-settled rule that where the issue is one of credibility of witnesses, the appellate courts will generally not disturb the findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial, unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case.

People v. Manos [44] and *Simeon v. Peña* [45] also reiterate the rule on findings of fact made by trial courts on credibility of witnesses.

But the above is subject to certain exceptions. While appellate courts would normally not disturb the findings of the trial courts on the credibility of witnesses in view of the latter's advantage of observing at first hand their demeanor in giving their testimony, the Supreme Court recalled that it has

[41] G.R. No. 26810, August 31, 1970, 34 SCRA 618 (1970).
[42] RULES OF COURT, Rule 132, sec. 32.
[43] G.R. No. 27708, December 19, 1970. 36 SCRA 400 (1970).
[44] G.R. No. 27791, December 24, 1970, 36 SCRA 457 (1970).
[45] G.R. No. 29049, December 29, 1970, 36 SCRA 610 (1970).

consistently held that this rule of appreciation of evidence "must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt, because the law presumes that a defendant is innocent and this presumption must prevail unless overturned by competent and credible proof." [46] Along this line, the Supreme Court held that, even if it were to be conceded that the prosecution witnesses testified credibly and truthfully, the circumstances testified to by them — as against the admitted absence of conspiracy and actual and direct participation on the part of the appellant — can by no measure be held to have overcome the presumption of innocence in appellant's favor.[47]

B. *Credibility*

Vda. de Bonifacio v. B. L.T. Bus Co., Inc.[48] restates the rule that evidence, to be believed, must not only proceed from the mouth of a credible witness, but it must be credible in itself.[49] In the case at bar, it was considered as incredible and contrary to common experience and observation that the bus, admittedly three (3) times bigger than the car, and loaded with about forty (40) passengers, could be turned around while standing still by the impact of the much smaller car. Nor was his swerving to the left justifiable if he were in control of his vehicle, since he had a clear view of the left lane and the oncoming Mercedes Benz from the driver's seat of the bus.[50]

Santiago Virginia Tobacco Planters Association, Inc. v. Phil. Virginia Tobacco Administration [51] also reiterates the rule that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct, is receivable against him as an indication of his consciousness that his case is weak or unfounded, and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit.[52]

In *People v. Alcantara,*[53] the Supreme Court held that at all events, it is convinced, after a searching analysis and scrutiny of the testimony of Lydia Avendaño *vis-a-vis* her affidavit, that the contradictions in her declaration are trivial which cannot be ascribed to an insidious attempt to distort the truth. It is truism that the most candid witness oftentimes commits mistakes and incurs in inconsistencies in his declarations, but such honest lapses do not necessarily impair his intrinsic credibility. Far from being evidence of

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[46] People v. Alto, G.R. Nos. 18660-61, November 29, 1968, 26 SCRA 342 (1968).
[47] People v. Pagkaliwagan, G.R. No. 29948, November 26, 1970, 36 SCRA 113 (1970).
[48] *Supra,* note 15.
[49] People v. Baquiran, G.R. No. 20153, June 29, 1967, 20 SCRA 451 (1967).
[50] *Supra,* note 15.
[51] *Supra,* note 11.
[52] De Leon v. Juyco, 73 Phil. 588, 595 (1942) citing 1 WIGMORE OF EVIDENCE, sec. 277, pp. 566-568.
[53] G.R. No. 26867, June 30, 1970, 33 SCRA 812 (1970).

falsehood they could justifiably be regarded as a demonstration of good faith and, in this case at bar, a confirmation of the fact that Lydia Avendaño was not a rehearsed witness. Moreover, there is no showing of improper motive on the part of witnesses for testifying against the accused, the fact that they are related to the victim does not render their clear and positive testimony less worthy of full faith and credit.

It was held in *People v. Cruz* [54] that the manner by which the witnesses were made to identify the accused at the police station rendered the identification made unreliable. After the accused was picked up by the police, he was made to walk and turn around in the presence of the identifying witnesses instead of being placed in a police lineup which is the standard stationhouse verification procedure to test the accuracy of the witnesses' memory and to afford a mere suspect a fair chance of early relief from the inconvenience inflicted on one who is mistakenly identified. Moreover, the accused was pointed out to the identifying witnesses as one of the persons suspected by the police as the perpetrators of the crime in question. The identification at the police station was attended to by a great deal of whispered conversations as well as by at least one unexplained conference elsewhere in the municipal building prior to the identification of the accused.

C. *Proof beyond reasonable doubt*

In acquitting the accused in *People v. Lacsamana,*[55] the Supreme Court ruled that the inconsistency in the accounts made by two alleged eyewitnesses of the incident cannot but create doubt as to their truthfulness and sincerity. And such conflicts in their court versions cannot just be dismissed as natural or trivial. It was particularly observed that the flaws in the evidence of the prosecution that make such evidence weak and incredible sufficiently raise a reasonable degree of doubt as to the probability of the occurrence of the incident in question.

In *People v. Antonio,*[56] the Supreme Court entertained doubts on the sufficiency of the proof against appellant Alfonso Dasalla. According to the record of the case, the only evidence against said accused is the statement of Semana about the former's participation in the beating administered to him. In the absence of any corroboration of said statement, the Supreme Court did not believe that his guilt has been established beyond reasonable doubt.

D. *Evidence of conspiracy*

People v. Alcantara [57] reiterates the rule that while conspiracy to commit a crime must be established by positive evidence, direct proof is not

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[54] G.R. No. 24424, March 30, 1970, 32 SCRA 181 (1970).
[55] G.R. No. 29061, October 29, 1970, 35 SCRA 512 (1970).
[56] *Supra*, note 10. Also *infra*, notes 40 & 41.
[57] *Supra*, note 27. Also *infra*, note 41.

essential, since by its nature it is planned in utmost secrecy. Consequently, competent and convincing circumstantial evidence will suffice to establish it.[58]

E. *Evidence to overcome notarial document*

The Supreme Court held in *Palanca v. Cusi, Jr.*[59] that the testimonial evidence for the petitioners, concerning the alleged "personal" character of their guaranty and the right of excussion they claim to have, are unworthy of credence, because: (1) they are inconsistent with the clear tenor and the nature of the deeds of mortgage; (2) petitioners' contention is based upon assurances allegedly given by Calinawan, who did not reperesent the Bank and by mere appraisers of the latter, who could neither give such assurances nor bind the Bank thereby; (3) had petitioners really labored under the impression that they were no more than personal guarantors who were entitled to excussion, they would have said so in their original complaint, and their first amended complaint, instead of merely asking that *a period be fixed for the payment of their obligation* under said deeds of mortgage, thereby admitting impliedly, but necessarily, that the Bank had a real right over the mortgaged properties and was not bound to make said excussion; (4) failure to include Calinawan among the defendants in Case No. 4716 is strongly indicative of the infirmity of petitioners' theory; and (5) the principal obligation guaranteed by the mortgage inured to the benefit of Ricorn, a corporation of which petitioners — except Quintin Garcia and Chu Tiong, who is, however, related by affinity to the petitioners — are stockholders and some are even directors.

It was held in *Sinsuat v. Pendatun*[60] that the fact that the affidavits offered by a party are of one style or wording is nothing unusual, since in actual practice, the words of an affidavit are not necessarily those of the affiant and when the same matter is to be attested to, almost invariably, the affidavits of several persons appear to be identical *mutatis mutandis,* without minimizing in any significant degree their intrinsic worth for the purpose for which they have been prepared. That the affidavits seem to be irregular because of the abnormalities in the data regarding the residence certificates of the affiants and the number of entries in the notarial registers of the notaries public before whom they are supposed to have been subscribed and sworn to, and even the fact that copies thereof were served late upon the other party's counsel, do not really affect their inherent veracity.

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[58] People v. Peralta, G.R. No. 19069, October 29, 1968, 25 SCRA 759 (1968).
[59] G.R. No. 26494, August 31, 1970, 34 SCRA 415 (1970).
[60] G.R. No. 31501, June 30, 1970, 33 SCRA 630 (1970).

F. *Alibi*

In *People v. Dominguez*,[61] the Supreme Court held that aside from the weakness of the defense of alibi, appellant's version of his whereabouts has wide-open leaks that discredit it. For Ilano's house was only about a kilometer away from the scene of the crime. There is no certainty that when Ilano heard the closing of the door at the ground floor Dominguez was inside the room, for the sound of a closing door is consistent with the possibility that he had left the house thereafter to proceed to Camerino's house.

The defense of alibi put up by the accused in the case of *People v. Pingol* [62] was rejected because the distance between the place of the crime and the place where the accused allegedly was at the time, was only sixty kilometers and could be negotiated by car a little more than an hour.

People v. Alcantara [63] also reiterates the rule on alibi.

People v. Cruz [64] restates the rule that although alibi is the weakest defense that an accused can avail of, it acquires commensurate strength where, as in the case at bar, no positive and proper identification has been made by the witnesses of the offender.

People v. Gande [65] is along the general rule on alibi, and in the case at bar, the defense of alibi was not believed because the statements of the supporting witnesses were vague and uncertain, and cannot prevail over the positive identification of the accused by the witness as the one who cut the neck of the victim.

G. *Circumstantial evidence*

In *People v. Madarang*,[66] the Supreme Court held that it could not bring itself to a conviction that the prosecution had proven the guilt of the appellant beyond reasonable doubt. The reason is that even on the assumption that the statements attributed to the appellant were true, such evidence does not arise above the level of mere conjecture or suspicion of guilt. Appellant's liability has not been satisfactorily shown. His innocence could be doubted, it is true. But this does not exclude another or others as the author or authors of the crime. Worthwhile it is to recall that in order that circumstantial evidence may bring about conviction, all the circumstances must be consistent with the hypothesis that the accused is guilty and at the same time inconsistent with the hypothesis that he is innocent. Pertinent, too, is

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[61] *Supra*, note 9.
[62] *Supra*, note 6.
[63] *Supra*, note 27.
[64] *Supra*, note 28.
[65] G.R. No. 28163, January 30, 1970, 31 SCRA 347 (1970).
[66] G.R. No. 22295, January 30, 1970, 31 SCRA 148 (1970).

a reaffirmation of the other precept that when inculpatory facts and circumstances are capable of two explanations, one consistent with innocence and the other with guilt, such evidence would not meet the test of moral certainly and would not support conviction. Given the moral twilight between guilt and innocence, the Supreme Court saw its duty plain; it acquitted the accused.

In *People v. Pagkaliwagan,*[67] in the face of the admitted void of evidence to prove conspiracy and that the appellant had any actual and direct participation in the killing, the trial court relied simply on two links which it considered as sufficient chain of circumstantial evidence to warrant the appellant's conviction as principal in the crime of murder. These two links were: (1) that appellant helped Alas chase the deceased Cabaña, after Cabaña had first treacherously stabbed Alas in the back, based on the testimony of prosecution witness Segundo Balsomo; and (2) that appellant stood by the side of Alas with a bolo in hand while Alas was stabbing the deceased to death as testified by another prosecution witness Pepito Soria. The Supreme Court found these circumstances, assuming them to be proven, insufficient to sustain a conviction for conspiracy. Furthermore, the Supreme Court ruled that they failed to satisfy the test for accepting circumstantial evidence as proof of guilt beyond reasonable doubt — that the series of circumstances duly proved must be consistent with each other and that each and every circumstance must be consistent with the accused's guilt and inconsistent with his innocence.[68]

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[67] G.R. No. 29948, November 26, 1970, 36 SCRA 113 (1970).
[68] RULES OF COURT, Rule 133, sec. 5.