

said section, the court can only authorize an alteration which may not impair the rights recorded in the decree, or one which will not prejudice such rights, or one which is consented to by all parties concerned, or can authorize the correction of any error or mistakes which would not involve the reopening of the original decree of registration. Here the petition will have such effect, for it will involve the correction of the technical description of the land covered by the certificate of title in question, segregating therefrom the portion alleged to have been erroneously included, which eventually will cause the amendment of the original decree of registration. This cannot be done at this stage after the lapse of 23 years from the issuance of the certificate of title.

After hearing both parties, the court *a quo* issued an order denying the motion to dismiss and requiring Navera to answer the petition within the reglementary period. After this motion for reconsideration was denied, Navera filed the present petition for certiorari disputing the jurisdiction of the court *a quo*.

It is alleged by the municipality of Ligao that in the course of the construction or repair of Natera street of said municipality it was ascertained by a duly licensed surveyor that Lot No. 2793-A of the cadastral survey of Ligao has encroached upon said street by depriving the street of an area amounting to 123 sq. m. which was erroneously included in Lot No. 2793-A now covered by Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera. Hence, the municipality prays for the correction of such error in the technical description of the lot, as well as in the certificate of title, with a view to excluding therefrom the portion of 123 sq. m. erroneously included therein.

The court *a quo*, over the objection of Navera, granted the petition even if the same was filed under Section 112 of Act No. 496. The court predicates its ruling upon the following *rationale*:

"It is a rule of law that lands brought under the operation of the Torrens System are deemed relieved from all claims and encumbrances not appearing on the title. However, the law excepts certain rights and liabilities from the rule, and there are certain burdens on the lands registered which continue to exist and remain in force, although not noted on the title, by express provisions of Section 39 of Act No. 496, as amended. Among the burdens on the land registered which continue to exist, pursuant to said Section 39, is 'any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.' The principle involved here is that, if a person obtains a title under the Torrens System which includes by mistake or oversight a land which cannot be registered, he does not by virtue of such certificate alone become the owner of the land illegally included therein. In the case of Ledesma vs. Municipality of Iloilo, 49 Phil. 679, the Supreme Court laid down the doctrine that 'the inclusion of public highways in the certificate of title under the Torrens System does not thereby give to the holder of such certificate said public highways.'"

Petitioner Navera does not agree with this ruling, invoking in his favor what we stated in a recent case to the effect that, "the law authorizes only alterations which do not impair rights recorded in the decree, or alterations which, if they do not prejudice such rights, are consented to by all parties concerned, or alterations to correct obvious mistakes, without opening the original decree of registration" (Director of Lands v. Register of Deeds, G. R. No. L-4463, promulgated March 31, 1953). Navera contends that the purpose of the instant petition is not merely to correct a clerical error but to reopen the original decree of registration which was issued in 1937, and this is so because the petition seeks to direct the register of deeds to make the necessary correction in the technical description in order that the portion erroneously included may be returned to the municipality of Ligao. In effect, therefore, the petition does not seek merely

the correction of a mistake but the return or reconveyance of a portion of a registered property to respondent. This cannot be done without opening the original decree of registration.

The theory entertained by the court *a quo* that if the portion to be segregated was *really* erroneously included in the title issued to petitioner because it is part of the Nadera street which belongs to the municipality of Ligao that portion may be excluded under Section 112 of Act 496 because under the law¹ any public highway, even if not noted on a title, is deemed excluded therefrom as a legal lien or encumbrance, is in our opinion correct. This is upon the principle that a person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein.² But this theory *only* holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle *only* applies if there is unanimity as to the issue of fact involved.

Here said unanimity is lacking. The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

"We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496. While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title 'upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased, and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. *x x x*" (Tangunan, et al. v. Republic of the Philippines, G. R. No. L-5545, December 29, 1953; See also Jimenez v. De Castro, 40 O.G. No. 3, 1st Supp. p. 80; Government of the Philippines v. Jalandoni, 44 O. G., 1837)

Wherefore, petition is granted. The order of respondent court dated March 8, 1961, as well as its order dated March 25, 1961, are hereby set aside. No costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredez, Dizon, Regala and Makalintal, JJ., concurred.

IX

People of the Philippines, Plaintiff-appellee vs. Euterio Vilanueva, Pedro Peral and Felix Jasmilona, Defendants-appellants, G.R. No. L-12687, July 31, 1962, Bengzon, C.J.

1. CRIMINAL LAW; CONSPIRACY; WHEN MAY EXTRA-JUDICIAL CONFESSION OF ONE CONSPIRATOR BE CONSIDERED AS PART OF THE EVIDENCE AGAINST PARTIES CONCERNED.—The rule is that where the recitals in the extra-judicial confession of one of the conspirators are corroborated in its important details by other proofs in the record, it may be considered as part of the evidence against the parties concerned.
2. ID.; CONFESSION; AS EVIDENCE AGAINST THE ACCUSED MAKING THE CONFESSION; HEARSAY EVIDENCE AGAINST HIS CO-DEFENDANTS; EXCEPTIONS.—While a confession is against him but not against his co-defend-

¹ Section 39, Act 496.

² Ledesma v. Municipality of Iloilo, 49 Phil. 709.

ants to whom said confession is hearsay evidence, the rule, however, admits of certain exceptions. One of them is when a defendant, who made the confession, is called to testify as a witness for his co-defendants, his confession then becomes competent evidence for the purpose of contradicting his testimony in behalf of his co-defendants (People vs. Manalo, 46 Phil. 573). This was what happened in this case because Emerico Villanueva and Pedro Percal adopted as part of their defense not only the testimony of Felix Jasmilona but also the statement given by him before the Justice of the Peace of Calamba on March 10, 1956.

DECISION

This case began with the filing of an information charging the above defendants with the murder of Loreto Estacio, committed in the municipality of Calamba, province of Laguna.

After trial, the court of first instance held that their guilt had been proven beyond reasonable doubt; and there being no circumstances modifying the commission of the crime, each of the said accused was sentenced to "cadena perpetua", to indemnify jointly and severally the heirs of the victim in the sum of P6,000 without subsidiary imprisonment in case of insolvency, and to pay a proportionate part of the costs.

From such convictions the three defendants appealed to this Supreme Court, raising the usually basic question whether or not the evidence for the prosecution shows beyond reasonable doubt that all of them are guilty as charged.

Appellants were convicted partly on the strength of the extrajudicial confession of the accused Felix Jasmilona which appears to be corroborated by circumstantial evidence.

Such extra-judicial confession written down by Corporal Villagas on February 6, 1956 in the presence of Lt. Carungcong, was signed and sworn to the next day before Justice of the Peace Felix Angeles, and contains statements to the effect that Loreto Estacio was killed in the "taklab" (camarin) of Emerico Villanueva, who had resented the filing of a criminal charge against him by Loreto Estacio; that Loreto was mauled and badly beaten on different parts of the body and when he was already unconscious, he was stabbed in the abdomen; that the body of Loreto was then carried and later thrown into a marshy place in barrio Linga commonly called "tikiwan"; that the persons who took part in the killing were Emerico Villanueva, one of his sons, Pedro Percal, Elpidio Habacon and Felix Jasmilona; that it was the son of Emerico who beat and mauled Loreto while Pedro Percal was the one who stabbed him; that Elpidio Habacon and Pedro Percal were paid by Emerico Villanueva the sum of P400 for their cooperation. x x x According to the lower court, the chain of circumstances which in connection with Jasmilona's confession, tended to establish the guilt of the prisoners were the following:

"1. In the afternoon of December 21, 1955, Emerico Villanueva assaulted Loreto Estacio with fist blows on the face;

"2. Loreto Estacio immediately filed a criminal complaint for slight physical injuries against Emerico Villanueva;

"3. On December 22, 1955, Emerico Villanueva asked Benito Mendoza to persuade Loreto Estacio to drop his complaint. Benito Mendoza, who was married to a niece of Loreto Estacio, declined to intervene in the case, and so Emerico Villanueva left disgusted and stated that he would not stop until something untoward would happen to Loreto Estacio;

"4. On December 23, 1955, the Justice of the Peace Court set the preliminary investigation of the Criminal Case against Emerico Villanueva for January 3, 1956;

"5. Patrolman Balderrama notified the accused the next day;

"6. Late in the evening of December 26, 1955, Pedro Percal asked Loreto to withdraw his complaint against Emerico

Villanueva. When Loreto refused, Pedro Percal threatened him, saying 'something bad would happen';

"7. At about 5 a.m. on December 27, 1955, Loreto Estacio left his house to check the water irrigating his rice field. About this time, Benito Mendoza saw him between Emerico Villanueva and Pedro Percal, the three walking single-file, passing in front of his store, coming from the direction of Loreto Estacio's house.

"8. Between 5:30 and 6 p.m., Enrique Fatiga saw Pedro Percal and Felix Jasmilona passing his rice field, the two proceeding in the direction of the 'taklab' of Emerico Villanueva about 200 meters away;

"9. At about half past 7 in the evening of the same day, while Enrique Fatiga was proceeding home he heard sounds coming from inside which seemed to be the groans of a person. He slowed down to find out what it was, but then he heard the voice of a person inside the 'taklab' prodding another and saying — "sulong Felix", "sulong Pedro", followed by laughter. Enrique Fatiga then thought that those persons inside the 'taklab' were having some fun and so he did not give much thought to what he heard and hurried on his way home;

"10. Loreto Estacio did not return home on December 27, 1956 and so on the following morning, his wife, Crescencia Pacana, began to look for him. Four days later on December 31, 1955 his cadaver was found floating on a marshy place called 'tikiwan' in barrio Linga, Calamba, Laguna;

"11. The dark stains on different parts of the 'taklab' of Emerico Villanueva proved to be of human blood;

"12. When Dr. Sunico and his party left the 'taklab' of Emerico Villanueva to board the vehicle wherein they had traveled from Manila, the wife of Emerico Villanueva, who was with the group, suddenly grabbed a wooden pestle from her son, then threw it into an irrigation canal and thereafter she tried to wash off the dark stain (blood) at one end thereof with the use of her hands. Upon being asked by Sergeant Veosano for her suspicious behaviour, Villanueva's wife refused to answer and merely kept silent;

"13. Eight hematoma wounds (contusions) were found on the corpse, in addition to the stab wound on the abdomen." (See pp. 16-19 of the decision of the lower court)

Appellant Jasmilona assails the admissibility and credibility of his extra-judicial confession on the ground that it was not made voluntarily. He claims that he was punched in the belly, and on the neck by one Set. Veosano; that he was taken to a swimming pool in Los Baños, Laguna where he was given the "water treatment"; that he was again struck on the stomach by his investigators and then when he still refused to sign the extrajudicial confession, he was threatened with bodily harm.

Amado Camillas, a witness for the defense, stated in court that when he saw Jasmilona alight from the jeep that carried him to the municipal jail, the latter was limping a little; that upon inquiry he was told by Jasmilona that he was maltreated by his investigators. Dr. Florentino Elasiague, also a witness for the defense, issued a medical certificate (Exh. "3") showing that there were contusions on both shoulders just below the neck of said accused.

However, a prosecution witness, Dr. Juan M. Cardenas, who conducted an examination on the body of appellant Jasmilona on February 6, 1956 (i.e. one day after the defense doctor performed his examination) said that he did not see any sign of external injuries or contusions on any part of Jasmilona's body; that he could not determine the cause of pain complained of by said accused in the lower auxiliary region, right side of the body. (t.s.n. pp. 4-5, Mar. 12, 1957.)

A significant fact pointed out by the Government is that if appellant Jasmilona had really been maltreated by the said investigators, he would have complained to Judge Angeles before whom

the extra-judicial confession was signed and sworn to. But he did not.

Judge Angeles stated in court that he himself read to Jasmilona the contents of the affidavit (extra-judicial confession) and has asked the latter whether or not, he was willing to sign the same and to swear to the truth of its contents. Jasmilona said yes, and willingly. Moreover, he also stated that when such extra-judicial confession was about to be read to the accused, for signature and oath, he (Judge Angeles) ordered the soldiers accompanying the prisoner to leave the room.

Considering therefore the circumstances under which this extra-judicial confession was executed, we are not inclined to disagree with the lower court on its finding that it was voluntarily made.

The next question is whether or not said extra-judicial confession may serve as the basis for the conviction of appellants Jasmilona, Villanueva and Peral.

It is urged that granting the confession was admissible, appellant Jasmilona must be absolved because said affidavit contains exculpatory statements exonerating him from guilt. On this point, we say that courts need not believe the confession in its entirety.

As to the other accused, it was allegedly error for the lower court to use the extra-judicial confession of Jasmilona against them.

On this issue, the rule is that where the recitals in the extra-judicial confession of one of the conspirators are corroborated in its important details by other proofs in the record, it may be considered as part of the evidence against the parties concerned.

In the case of U. S. vs. Reyes, et al.(1) we opined:

"The truth of the incriminating statements of Miguela Sibug, Damaso Valencia's widow, in connection with each of the said three defendant, is proved by those made by the other witnesses for the prosecution, Lorenzo Reyes, and by the confession, although extra-judicial, made by Faustino Mañago himself in the municipality of Hagonoy to the lieutenant of the Constabulary, Cristobal Cerquella, and to the municipal president and a policeman of the said pueblo; and this confession is worthy of credence and is admissible against him, as it is likewise credible and admissible against his co-defendants, Abdon de Leon and Severino Perez, his accusation of their participation in the crime, inasmuch as the confession is corroborated both by the testimony of Miguela Sibug herself and by that of Lorenzo Reyes and confirmed by other evidence related thereto and found in the record."

This brings us to the query: Are the recitals in the extra-judicial confession and the other proofs sufficient to support conviction?

We are satisfied that the trial judge made painstaking efforts to evaluate the evidence of record. The circumstances it found to have indicated the guilt of the accused, are indeed substantiated. We do not need to recount them now.

At this juncture, it may be added that we think the trial judge exercised sound judgment when it considered Jasmilona's confession against the other two defendants as an exception to the general rule against its admission, for the following reasons:

"While a confession is against him but not against his co-defendants to whom said confession is hearsay evidence, the rule, however, admits of certain exceptions. One of them is when a defendant, who made the confession, is called to testify as a witness for his co-defendants, his confession then becomes competent evidence for the purpose of contradicting his testimony in behalf of his co-defendants (People v. Manalo, 46 Phil. 573). This was what happened in this case because Emitterio Villanueva and Pedro Peral adopted as part of their defense not only the testimony of Felix Jasmilona

but also the statement given by him before the Justice of the Peace of Calamba on March 10, 1956."

It is urged that some of the prosecution witnesses were biased, because Enrique Fatiga was a dismissed tenant of Emitterio Villanueva, and Benito Mendoza was related by marriage to the deceased, (Mendoza's wife being his niece). However, upon examining the testimony of such witnesses, this Court finds no compelling reason for disbelief. There is no tinge at all of exaggeration or improbability in their testimonies. Besides, the defense itself has shown that the differences between Fatiga and Villanueva had been settled amicably sometime in October, 1950, many years before this fatal incident.

On the other hand, the defendants' alibi carries no weight. Aside from the fact that it is not corroborated by others, it is definitely without sufficient strength in the fact of the assertion of witnesses who saw them at or near the scene of the crime on Dec. 27, 1955.

Appellants ascribe error to the lower court in concluding that there was conspiracy among them. In support of their assertion, they claim that accused Peral and Jasmilona had no motive in killing the deceased, Loreto Estacio; that it was only Emitterio Villanueva, who had been charged by the deceased in the Justice of the Peace Court of Calamba in the criminal complaint, who could have reason to kill.

Although it is true that there is no direct proof of conspiracy among the accused, their acts, in the light of the recitals in the extra-judicial confession show that the killing of Loreto was planned among them and carried out accordingly. This confession, as stated, is supported and corroborated by competent evidence. The chain of circumstances, fitting well into the statements in the extra-judicial confession, is more than sufficient to establish conspiracy, as found by the trial court.

Wherefore, the judgment of conviction must be upheld, and the sentence affirmed. The imprisonment however should be *reclusion perpetua*, instead of *cadena perpetua*. Costs against appellants, who shall be credited with one-half of the period of their preventive imprisonment, in accordance with Art. 29 of the Revised Penal Code.

So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

X

Sergio del Rosario, Petitioner, vs. People of the Phil., Respondent, G.R. No. L-16806, December 22, 1961, Concepcion, J.

CRIMINAL LAW: USING FORGED PHILIPPINE TREASURY NOTES.—The possession of genuine treasury notes of the Philippines wherein any of "the figures, letters, words or signs contained" in which had been erased and/or altered, with knowledge of such erasure and alteration, and with the intent to use such notes, as they were used by the accused and his co-defendants, is punishable under Article 168, in relation to Article 169, subdivision (1), of the Revised Penal Code (U.S. vs Gardner, 3 Phil., 398; U.S. Solito, 36 Phil., 785).

P. M. Stuart del Rosario, for petitioner.
The Solicitor General, for respondent.

DECISION

Accused of counterfeiting Philippine treasury notes, Sergio del Rosario, Alfonso Araneta and Benedicto del Pilar were convicted by the Court of First Instance of Davao of illegal possession of said forged treasury notes and sentenced to an indeterminate penalty ranging from 8 years and 1 day to 10 years and 1 day of *prision mayor*, and to pay a fine of P5,000, without subsidiary imprisonment in case of insolvency, as well as a proportionate part of the costs. On appeal, the judgment was affirmed

(Continued on page 287)

(1) 32 Phil. 163, 173.