

THE RIGHT OF CONFRONTATION IN THE PHILIPPINES SINCE 1900. SAVORY LUNCHEONETTE vs. LAKAS NG MANGGAGAWANG PILIPINO: A PRECEDENT?

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ART. IV, SEC. 19, NEW CONSTITUTION: IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL BE PRESUMED INNOCENT UNTIL THE CONTRARY IS PROVED, AND SHALL ENJOY THE RIGHT TO BE HEARD BY HIMSELF AND COUNSEL, TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM, TO HAVE A SPEEDY, IMPARTIAL, AND PUBLIC TRIAL, TO MEET THE WITNESSES FACE TO FACE, AND TO HAVE COMPULSORY PROCESS TO SECURE THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF EVIDENCE IN HIS BEHALF. xxx

On September 27, 1972, the Savory Luncheonette filed a complaint¹ charging the Lakas ng Manggagawang Pilipino with unfair labor practice for having violated certain provisions of R. A. 875 (Industrial Peace Act), to wit: declaring, among other things, a strike in violation of a no-strike clause of an existing collective bargaining agreement without prior resort to the grievance procedure provided for therein, and without having observed the 30-day cooling off period prescribed by law. To sustain its charges, petitioner presented as its key witness its legal counsel, Atty. Morabe, (who) had allegedly taken charge of the labor management problems of the petitioner and had thereby acquired firsthand knowledge of the facts of the labor dispute.

In the course of the proceedings, counsel for respondents was called to cross-examine Atty. Morabe, but moved for a postponement on the ground that he was not in a position to cross-examine the witness. The cross-examination was re-scheduled, but counsel for respondents failed to appear at the next hearing. The cross-

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¹ *Savory Luncheonette vs. Lakas ng Manggagawang Pilipino*, 62 SCRA 258 (1975).

examination was once more postponed with the warning from the court that should respondents still fail to cross-examine the witness, the right to cross-examine him would be deemed waived. Not heeding this warning, counsel for respondent failed again to appear. All in all, the cross-examination was re-set five times.

On March 31, 1973, Atty. Morabe succumbed to a heart attack, whereupon, respondents filed a motion to strike out his direct testimony from the records on the ground that since cross-examination was no longer possible, such direct testimony could no longer be rebutted. Petitioner filed an opposition to said motion, contending that by respondents' repeated failure and refusal to cross-examine, despite all the time and opportunity granted by the court, they were deemed to have waived the same. The court disregarded petitioner's opposition. Hence, the appeal by certiorari by the petitioner.

The Supreme Court, speaking through Justice Muñoz-Palma, held that the right of a party to confront opposing witnesses in a judicial litigation, *be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers*, is a fundamental right which is part of due process.² However, it was pointed out, the right is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of such right. It was stressed that the rule on implied waiver would be applicable if the party was given the opportunity to confront and cross-examine an opposing witness but failed to take advantage of it for reasons attributable to himself alone. Relying on the case of *People vs. de la Cruz*³ and *State of Hawaii vs. Brooks*,⁴ the Supreme Court applied the basic principles underlying the right of confrontation in criminal prosecution to proceedings before quasi-judicial bodies such as the Court of Industrial Relations, invoking the interest of justice and equity in the process.⁵

The right of confrontation as provided for in Art. IV, Sec. 19 of the New Constitution also finds expression in Rule 115, Sec. 1(f) of the New Rules of the Court which provides that, in all criminal prosecutions, the defendant is entitled "to be confronted at the trial by, and to cross-examine the witnesses against him." In the same section, the Rule specifies the exception that the testimony of a witness for the prosecution previously taken down by question and answer in the presence of the defendant or his attorney, the defense having had an opportunity to cross-examine said witness, may be read upon satisfactory proof to the court that said witness is dead or incapacitated to testify, or cannot with due diligence be found in the Philippines.

Briefly, confrontation has been defined as the act of setting a witness face to face with the accused in order that the latter may make any objection he has to the witness, or that the witness may

² *Id.*, at 260.

³ 56 SCRA 84 (1974).

⁴ 352 P 2d 611.

⁵ *Supra*, note 2.

identify the accused.⁶ Such confrontation must take place in the court having jurisdiction to permit the process of cross-examination, where the accused himself is on trial and where the witnesses will be seen and heard by the said accused. The privilege of confrontation has a double purpose, namely: (1) to secure to the accused the opportunity to test the testimony of witnesses, and (2) to enable the judge to observe a witness' deportment while testifying and to produce a certain subjective moral effect on such witness.⁷

The right of confrontation as guaranteed to the accused in criminal prosecutions is a relatively recent doctrine in Philippine jurisprudence, having been first introduced into these islands by the Americans through Sec. 5 of the Act of the U.S. Congress of July 1, 1902 (Philippine Bill) and Sec. 15 of General Orders, No. 58 implementing such Act. Prior to the coming of the Americans, the right of confrontation as a constitutional privilege was unheard of in the Philippines. Thus, in the case of *U.S. vs. Tanjuanco*,⁸ the Supreme Court remarked that under Spanish procedure (Act 30, Acto Acordado of September 4, 1860), hearsay evidence as well as testimonies obtained from a witness who had not been cross-examined by the defendant, was admissible in evidence. The *Tanjuanco* case was the first significant Supreme Court decision which expounded on the newly granted right of confrontation. In that case, the trial court admitted, as evidence for the prosecution, a copy of the minutes of a municipal council meeting containing a statement to the effect that the defendant was a man of bad character and had previously been prosecuted for robbery, theft and other crimes. The Supreme Court held that the admission of such testimony is reversible error as a violation of the right of the accused to confront and cross-examine the witnesses against him.⁹

Then in *U.S. vs. Anastacio*,¹⁰ the Court had opportunity to clarify the privilege of confrontation further. In that case, the accused was charged with attempted rape and duly tried for that offense. After the close of the evidence, the trial court realized that the offense was improperly charged. Accordingly, the information for attempted rape was dismissed and the accused was thereafter charged with the offense of "abusos deshonestos". After arraignment, the accused and his counsel, in open court and with its consent, agreed with the prosecuting attorney to submit the case upon evidence of record in the former case. Accused was convicted. On appeal, he raised as an error the fact of his failure to confront the witnesses against him. The Court held that, having acted with full knowledge of the circumstances and with the advice of counsel, an accused person

⁶ 4 Martin, *Rules of Court in the Philippines*, Revised ed., 311.

⁷ *Id.*, at 311-312.

⁸ 1 Phil. 374, 375 (1902).

⁹ *Id.*

¹⁰ 6 Phil. 413, 414-415 (1906).

cannot be heard to complain of a thing done with his consent, except in those cases where the doctrine of waiver of right is limited by adverse doctrines interposing with superior force. Thus, it was ruled that the right of confrontation being a personal privilege, there was no reason founded on principle which prohibited its waiver.

Waiver of the right of confrontation may be either express or implied. It is implied when the conduct of a party is such that it may be construed as a renunciation of his right. Thus, in the case of *U.S. vs. Galangco*,¹¹ it was held that the mere statement of a witness introduced in evidence can be admitted, provided that the right of the defense to cross-examine such witness had been reserved by the court, and counsel for the defense did not avail of such right. In that case, the defendants had been charged with theft. One of them, Galangco, pleaded guilty and admitted that he had received the stolen carabaos from his co-defendant, Gamis, with the instruction to sell them and divide the proceeds afterwards. The other defendant, Gamis, pleaded not guilty and his trial proceeded. The statement made by Galangco were presented and admitted in evidence at the trial of Gamis without any objection by the defense counsel. It was acknowledged that the introduction of Galangco's statements was indeed improper (the proper procedure being that the prosecution should have introduced Galangco in person in order that he might testify in the presence of his co-accused and could thus be cross-examined by the latter), but the fact that the trial judge had expressly reserved the right of confrontation to Gamis when admitting such evidence and Gamis had not availed himself of the right, showed that the accused had not been unduly deprived of his right. The reason given for the accused's failure to cross-examine the witness was that he did not desire to do so, and thus he waived the right the law granted him and which was recognized by the trial court. Similarly, in *U.S. vs. Laranja*,¹² it was held that the admission of testimony previously taken in another case, in pursuance of a voluntary stipulation between the parties together with their counsel, constitutes a waiver by the accused of his constitutional right to cross-examine the witness against him.

As early as the first decade of this century, it was already well settled that the courts are bound to uphold the constitutional privilege of the defendant in a criminal case to confront the witnesses against him except in cases where there is a valid waiver.¹³ However, in the case of *U.S. vs. Gil*,¹⁴ the Supreme Court had occasion to point out a notable exception to the right of confrontation. In that case, it was ruled that the confrontation and cross-examination clause was not intended to render inadmissible dying declarations in criminal cases, for the reason that such declara-

¹¹ 11 Phil. 575, 576-577 (1908).

¹² 21 Phil. 500, 507-508 (1912).

¹³ *Id.*, at 508.

¹⁴ 13 Phil. 530, 549-550 (1909).

tions have always been regarded as an exception to the general rule rejecting hearsay evidence. Such exception is founded on the general principle that, at the point of death, a situation so solemn and so awful is created that every motive to falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. In the case of *U.S. vs. Virrey*,¹⁵ the Supreme Court added that the admission of dying declarations in evidence, subject to certain conditions, is proper and can be sustained on no other ground than that of necessity and to prevent the failure of justice. It was pointed out that the most important of the conditions to be fulfilled before a dying declaration could be admitted is that the declarant should have realized and believed, at the time the statement was made, that he was at the point of death and had given up hope of surviving. In short, it is the belief of an impending death that renders the testimony admissible in evidence.

At this point, it is pertinent to note the case of *U.S. vs. Valdez*,¹⁶ where the Supreme Court held that the constitutional right of an accused to be confronted by the witnesses against him is not violated by an inspection of the scene of the alleged crime made by the trial judge with the consent of, and accompanied by, the counsel for the accused, especially when no evidence was taken during the inspection.

Under the 1935 Constitution, the right of the accused to confront and cross-examine the witnesses against him was guaranteed in Art. III, Sec. 1(17). Jurisprudence under the 1935 Constitution was basically the same with that of the period prior to the adoption of the Fundamental Law. Moran, in his *Comments On The Rules of Court*,¹⁷ stated that the right of the accused to confrontation and cross-examination, as a rule of criminal procedure, is a personal one, and thus may be waived expressly or impliedly. He refers back to the American period when the Supreme Court had occasion to say that right of confrontation is in the nature of a privilege extended to accused rather than a restriction upon him, and he is free to assert it or waive it as to him may seem advantageous.¹⁸

It would seem, though, that the right of confrontation before, as well as during the effectivity of the 1935 Constitution can be invoked as a matter of right only in criminal actions. The Constitution and the Rules of Court plainly speak of an accused in a criminal prosecution. In the case of *Chua Go vs. Collector of Customs*,¹⁹ the Supreme Court had opportunity to clarify the matter. In that case, deportation proceedings were being conducted against Chua Go by the board of special inquiry of the Bureau of Customs. To prevent his deportation, petitioner alleged several

¹⁵ 37 Phil. 618, 624-625 (1909).

¹⁶ 30 Phil. 293, 336-337 (1915).

¹⁷ 4 Moran, *Comments on the Rules of Court*, 1970 ed., 201.

¹⁸ *U.S. vs. Raymundo*, 14 Phil. 416, 438 (1909).

¹⁹ 59 Phil. 523, 527 (1934).

irregularities in the proceedings, namely, among others, the fact that the testimony of an opposing witness was taken in his absence. In setting aside petitioner's contention, the Supreme Court ruled that the fact that the testimony of the opposing witness was taken behind petitioner's back, "thus depriving the latter of the opportunity of being confronted by and cross-examining said witness, is of no consequence on the ground that such right is recognized only in criminal proceedings."

Art. IV, Sec. 19 of the New Constitution and Rule 115, Sec. 1(f) of the New Rules of Court still speak of the right as that of an accused in criminal prosecution. What is more, Rule 115 is a rule of criminal procedure. However, it would seem that lately, the Supreme Court has liberalized the interpretation of the two provisions. In the case of *Savory Luncheonette vs. Lakas Ng Manggagawang Pilipino*, the Court gave the impression that the right of confrontation guaranteed the accused in a criminal prosecution may, in the interest of justice and equity, be made to apply to non-criminal cases including administrative proceedings before tribunals with quasi-judicial powers, a right which may be waived expressly or by implication, it being a personal one.²⁰ The fact that the decision in the *Savory* case, a labor dispute, relied mainly in *People vs. de la Cruz*,²¹ a criminal case, reinforces this conclusion. In fact, the Court, in deciding the *Savory* case, followed the logic of the *de la Cruz* decision. In the latter case, it was held that failure to formally terminate the cross-examination of the complainant is not irregularity that constitutes an impairment of the constitutional right of the accused to meet the witnesses face to face, provided that there was a subsequent failure of the defense counsel to ask that he be allowed to continue his cross-examination or to object when the fiscal called his next witness. In the eyes of the Court, such failure on the part of the defense constitutes a waiver of the right to make an additional cross-examination.²²

At any rate, the ruling of the *Savory* case could have simply and plainly invoked the general principles of substantial and procedural due process in non-criminal cases and administrative proceedings. However, its reference to the right of confrontation could very well set a precedent expanding the scope of the heretofore limited application of the right of confrontation as secured by the Constitution and expressed in the rules of criminal procedure, making it a more flexible facet of due process. Now, it would seem that although the right of confrontation, as contemplated by the confrontation clause of the Constitution, was originally available only in criminal proceedings, it may also be invoked in non-criminal cases for the sake of justice and equity and to provide a more concrete and specific basis for a court decision,

²⁰ *Supra*, note 2.

²¹ *Supra*, note 3.

²² *Id.*, at 91.

complementing the oftentimes vague but all-embracing concept of due process in its application to a given situation. Nonetheless, one cannot be too positive about the ramifications of the *Savory* decision. Suffice it to say at this point that what the Supreme Court practically did was, in the words of a respectable professor, "to mitigate the rigid texture" of the confrontation clause of the Constitution, thus opening the way for development.

To conclude, it may be said that there is a general purpose that the law everywhere aims, or should aim, at achieving, and that is justice.²³ There are two principal ways in which a legal system may aspire to attain substantial justice.²⁴ The first is by incorporating by positive enactment in the Constitution certain value-judgments or principles operative in the particular society. This the lawmakers of the nation have already done, and among the fundamental values embodied in the Constitution are the right of confrontation and due process. Henceforth, it is the function of the courts to give effect to such stated principles. Inevitably, this leads to the second way of achieving justice, and this is by adopting a certain flexibility in the application by the courts of rules and principles so as to create the possibility of developing the law and adopting it to the needs of the society in which it operates. Flexibility can best be fulfilled by liberalizing the rigid texture of a law or by stating it in general terms, subject either to very general specifically stated limitations or to implied limitations of an indefinite kind.

Therefore, in the final analysis, whether the Court, in determining a particular case, appeals to the general concept of due process or opts to apply a liberal interpretation of the confrontation clause, the interests of justice and equity should be served. As a matter of fact, no complete distinction can really be made between the right of confrontation and due process because the former is, ultimately, an aspect of the latter. And as was seen in the *Savory* case, both may complement each other when invoked in a particular situation. In the words of the Supreme Court itself, the right of a party to *confront and cross-examine* opposing witnesses in any judicial litigation is a fundamental right which is part of due process.²⁵

²³ Lloyd, *The Idea of Law*, 1973 ed., 116.

²⁴ *Id.*, at 134-137.

²⁵ *Supra*, note 2.