



PEDRO VILLARRIEL ALIAS PETER VILLARRIEL ALIAS PETER VILLAREAL v. STATE

295 S.W.2d 222 (1956) | Cited 1 times | Court of Criminal Appeals of Texas | October 10, 1956

ON STATE'S MOTION FOR REHEARING

The state, through her district attorney, urges that we reconsider our holding that the asking of the two questions set forth originally constituted reversible error. As we see it, questions asked a reputation witness may constitute reversible error if they:

- . Are asked in bad faith,
2. Constitute a direct charge that the incident mentioned in the question has occurred,
3. Inquire about an act which is prejudicial but is not inconsistent with the good reputation about which the witness has testified.

In the case at bar, numbers one and two above are not shown to have been violated. Now, as to three: While we do not feel that the term "Pachuco" has become so widely known that we might take judicial knowledge thereof, we have concluded that modern usage has so changed the meaning of the words "gang" and "hoodlums" as to require that we give full recognition of their current meaning.

Webster's New International Dictionary (Second Edition) defines "gang" as follows: "A company of persons acting together for some purpose, usually criminal, or at least not good or respectable."

The Supreme Court of Nevada in *State v. Teeter*, 200 P. 2d 657, said, "Hoodlum is an opprobrious term defined in Webster's New International Dictionary, 2nd Edition, as 'a young rowdy.' In the public mind the term 'hoodlum' is associated with 'gangster' * * * *"

We have concluded that the asking of this question did not constitute reversible error because it inquired about a trait of character that was inconsistent with the reputation about which the witness had testified.

We now move on to the question about keeping the 14-year-old girl out all night. On original submission, we discussed only the fact that the appellant was a Latin-American and that the question described the girl as "white." Latin-Americans are members of the white race. *Sanchez v. State*, 156 Tex. Crim. 468, 243 S.W.2d 700.

Article 534, V.A.P.C., denounces the offense of contributing to the delinquency of a minor. After



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more mature deliberation, we have concluded that the act of a 20-year-old man in taking a 14-year-old girl out in the country and keeping her all night in his automobile would constitute such an act as would debase or injure the morals of such girl and would be inconsistent with

the man's reputation as being a peaceable and law-abiding citizen.

The state's motion for rehearing is granted, the judgment of reversal is set aside, and the judgment of the trial court is now affirmed.

DAVIDSON, Judge, dissenting.

I remain convinced of the correctness of the conclusion expressed in the original opinion.

Defendants ought to be tried solely for the offense charged against them in the state's pleading; they ought not to be called upon to defend against rumors, whisperings, and insinuations which are obviously hurtful and inflammatory.

This appellant had to defend not only against the accusations against him but also against the insinuations of guilt cast upon him by the questions of the district attorney.

Under the holding of my brethren, an accused cannot restrict the prosecution to the offense charged in the indictment, for the bridle has now been taken off and unlimited freedom now conferred upon the state to prosecute for rumors, insinuations, and whisperings not shown or contended to be true, in fact.

To the granting of the motion for rehearing and the affirmance of this case, I respectfully dissent.

