Trammel v. United States

1980

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to consider whether an accused may invoke the privilege against adverse spousal testimony so as to exclude the voluntary testimony of his wife. 440 U. S. 934 (1979). This calls for a re-examination of *Hawkins v. United States*, 358 U. S. 74 (1958).

[The defendant, his wife, and others were indicted for heroin importation. She cooperated with the government in exchange for leniency and agreed to testify against him. He sought to block her testimony under the marital privilege.]

. . . This spousal disqualification sprang from two canons of medieval jurisprudence: first, the rule that an accused was not permitted to testify in his own behalf because of his interest in the proceeding; second, the concept that husband and wife were one, and that since the woman had no recognized separate legal existence, the husband was that one. From those two now long-abandoned doctrines, it followed that what was inadmissible from the lips of the defendant-husband was also inadmissible from his wife.

Despite its medieval origins, this rule of spousal disqualification remained intact in most common-law jurisdictions well into the 19th century. . . .

The modern justification for this privilege against adverse spousal testimony is its perceived role in fostering the harmony and sanctity of the marriage relationship. . . .

In *Hawkins v. United States*, 358 U. S. 74 (1958), this Court considered the continued vitality of the privilege against adverse spousal testimony in the federal courts. There the District Court had permitted petitioner's wife, over his objection, to testify against him. With one questioning concurring opinion, the Court held the wife's testimony inadmissible; it took note of the critical comments that the common-law rule had engendered, *id.*, at 76, and n. 4, but chose not to abandon it. Also rejected was the Government's suggestion that the Court modify the privilege by vesting it in the witness-spouse, with freedom to testify or not independent of the defendant's control. The Court viewed this proposed modification as antithetical to the widespread belief, evidenced in the rules then in effect in a majority of the States and in England, "that the law should not force or encourage testimony which might alienate husband and wife, or further inflame existing domestic differences." *Id.*, at 79.

Hawkins, then, left the federal privilege for adverse spousal testimony where it found it, continuing "a rule which bars the testimony of one spouse against the other unless both consent." *Id.*, at 78. Accord, *Wyatt v. United States*, 362 U. S. 525, 528 (1960). However, in so doing, the Court made clear that its decision was not meant to "foreclose whatever changes in the rule may eventually be dictated by `reason and experience.'" 358 U. S., at 79.

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Testimonial exclusionary rules and privileges contravene the fundamental principle that "`the public . . . has a right to every man's evidence.'" *United States v. Bryan*, 339 U. S. 323, 331 (1950). As such, they must be strictly construed and accepted "only to the very limited extent that permitting a refusal to testify or excluding relevant evidence has a public good transcending the normally predominant principle of utilizing all rational means for ascertaining truth." *Elkins v. United States*, 364 U. S. 206, 234 (1960) (Frankfurter, J., dissenting). Accord, *United States v. Nixon*, 418 U. S. 683, 709-710 (1974). Here we must decide whether the privilege against adverse spousal testimony promotes sufficiently important interests to outweigh the need for probative evidence in the administration of criminal justice.

It is essential to remember that the *Hawkins* privilege is not needed to protect information privately disclosed between husband and wife in the confidence of the marital relationship— once described by this Court as "the best solace of human existence." *Stein v. Bowman*, 13 Pet., at 223. Those confidences are privileged under the independent rule protecting confidential marital communications. *Blau v. United States*, 340 U. S. 332 (1951); see n. 5, *supra*. The *Hawkins* privilege is invoked, not to exclude private marital communications, but rather to exclude evidence of criminal acts and of communications made in the presence of third persons.

No other testimonial privilege sweeps so broadly. The privileges between priest and penitent, attorney and client, and physician and patient limit protection to private communications. These privileges are rooted in the imperative need for confidence and trust. The priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return. The lawyer-client privilege rests on the need for the advocate and counselor to know all that relates to the client's reasons for seeking representation if the professional mission is to be carried out. Similarly, the physician must know all that a patient can articulate in order to identify and to treat disease; barriers to full disclosure would impair diagnosis and treatment.

The *Hawkins* rule stands in marked contrast to these three privileges. Its protection is not limited to confidential communications; rather it permits an accused to exclude all adverse spousal testimony. As Jeremy Bentham observed more than a century and a half ago, such a privilege goes far beyond making "every man's house his castle," and permits a person to convert his house into "a den of thieves." 5 Rationale of Judicial Evidence 340 (1827). It "secures, to every man, one safe and unquestionable and ever ready accomplice for every imaginable crime." *Id.*, at 338.

The ancient foundations for so sweeping a privilege have long since disappeared. Nowhere in the common-law world— indeed in any modern society—is a woman regarded as chattel or demeaned by denial of a separate legal identity and the dignity associated with recognition as a whole human being. Chip by chip, over the years those archaic notions have been cast aside so that "[n]o longer is the female destined solely for the home and the rearing of the family, and only the male for the marketplace and the world of ideas." *Stanton v. Stanton*, 421 U. S. 7, 14-15 (1975).

The contemporary justification for affording an accused such a privilege is also unpersuasive. When one spouse is willing to testify against the other in a criminal proceeding— whatever the motivation—their relationship is almost certainly in disrepair; there is probably little in the way of marital harmony for the privilege to preserve. In these circumstances, a rule of evidence that permits an accused to prevent adverse spousal testimony seems far more likely to frustrate justice than to foster family peace. Indeed, there is reason to believe that vesting the privilege in the accused could actually undermine the marital relationship. For example, in a case such as this, the Government is unlikely to offer a wife immunity and lenient treatment if it knows that her husband can prevent her from giving adverse testimony. If the Government is dissuaded from making such an offer, the privilege can have the untoward effect of permitting one spouse to escape justice at the expense of the other. It hardly seems conducive to the preservation of the marital relation to place a wife in jeopardy solely by virtue of her husband's control over her testimony.

Our consideration of the foundations for the privilege and its history satisfy us that "reason and experience" no longer justify so sweeping a rule as that found acceptable by the Court in *Hawkins*. Accordingly, we conclude that the existing rule should be modified so that the witness-spouse alone has a privilege to refuse to testify adversely; the witness may be neither compelled to testify nor foreclosed from testifying. This modification—vesting the privilege in the witness-spouse— furthers the important public interest in marital harmony without unduly burdening legitimate law enforcement needs.

Here, petitioner's spouse chose to testify against him. That she did so after a grant of immunity and assurances of lenient treatment does not render her testimony involuntary. Cf. *Bordenkircher v. Hayes*, 434 U. S. 357 (1978). Accordingly, the District Court and the Court of Appeals were correct in rejecting petitioner's claim of privilege, and the judgment of the Court of Appeals is

Affirmed.