43 Phil. 887

[G. R. No. 18463. October 04, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GREGORIO PERFECTO, DEFENDANT AND APPELLANT.

D E C I S I O N

MALCOLM, J.:

The important question is here squarely presented of whether article 256 of the Spanish Penal Code, punishing "Any person who, by * * * writing, shall defame, abuse, or insult any Minister of the Crown or other person in authority * * *," is still in force.

About August 20, 1920, the Secretary of the Philippine Senate, Fernando M. Guerrero, discovered that certain documents which constituted the records of testimony given by witnesses in the investigation of oil companies, had disappeared from his office. Shortly thereafter, the Philippine Senate, having been called into special session by the Governor-General, the Secretary of the Senate informed that body of the loss of the documents and of the steps taken by him to discover the guilty party. The day following the convening of the Senate, September 7, 1920, the newspaper *La Nacion*, edited by Mr. Gregorio Perfecto, published an article reading as follows:

> "Half a month has elapsed since the discovery, for the first time, of the scandalous robbery of records which were kept and preserved in the iron safe of the Senate, yet up to this time there is not the slightest indication that the author or authors of the crime will ever be discovered.
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> "To find them, it would not, perhaps, be necessary to go out of the Senate itself, and the persons in charge of the investigation of the case would not have to display great skill in order to succeed in their undertaking, unless they should encounter the insuperable obstacle of official concealment.

> "In that case, every investigation to be made would be but a mere comedy and nothing more.
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> "After all, the perpetration of the robbery, especially under the circumstances that have surrounded it, does not surprise us at all.
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> "The execution of the crime was but the natural effect of the environment of the place in which it was committed.
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> "How many of the present Senators can say without remorse in their conscience and with serenity of mind, that they do not owe their victory to electoral robbery? How many?
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> "The author or authors of the robbery of the records from the said iron safe of the Senate have, perhaps, but followed the example of certain Senators who secured their election through fraud and robbery."

The Philippine Senate, in its session of September 9, 1080, adopted a resolution authorizing its committee on flections and privileges to report as to the action which should be taken with reference to the article published in *La Nacion*. On September 15, 1920, the Seriate adopted a resolution authorizing the President of the Senate to indorse to the Attorney-General, for his study and corresponding action, all the papers referring to the case of the newspaper *La Nacion* and its editor, Mr. Gregorio Perfecto. As a result, an information was filed in the municipal court of the City of Manila by an assistant city fiscal, in which the editorial in question was set out and in which it was alleged that the same constituted a violation of article 256 of the Penal Code. The defendant Gregorio Perfecto was found guilty in the municipal court and again in the Court of First Instance of Manila.

During the course of the trial in the Court of First Instance, after the prosecution had rested, the defense moved for the dismissal of the case. On the subject of whether or not article 256 of the Penal Code, under which the information was presented, is in force, the trial judge, the Honorable George R. Harvey, said:

> "This antiquated provision was doubtless incorporated into the Penal Code of Spain for the protection of the Ministers of the Crown and other representatives of the King against free speech and action by Spanish subjects. A severe punishment was prescribed because it was doubtless considered a much more

> serious offense to insult the King's representative than to insult an ordinary individual. This provision, with almost all the other articles of that Code, was extended to the Philippine Islands when under the dominion of Spain because the King's subjects in the Philippines might defame, abuse or insult the Ministers of the Crown or other representatives of His Majesty. We now have no Ministers of the Crown or other persons in authority in the Philippines representing the King of Spain, and said provision, with other articles of the Penal Code, had apparently passed into 'innocuous desuetude/ but the Supreme Court of the Philippine Islands has, by a majority decision, held that said article 256 is the law of the land today * * *.
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> "The Helbig case is a precedent which, by the rule of *stare decisis*, is binding upon this court until otherwise determined by proper authority."

In the decision rendered by the same judge, he concluded with the following language:

> "In the United States such publications are usually not punishable as criminal offenses, and little importance is attached to them, because they are generally the result of political controversy and are usually regarded as more or less colored or exaggerated. Attacks of this character upon a legislative body are not punishable under the Libel Law. Although such publications are reprehensible, yet this court feels some aversion to the application of the provision of law under which this case was filed. Our Penal Code has come to us from the Spanish regime. Article 256 of that Code prescribes punishment for persons who use insulting language about Ministers of the Crown or other 'authority/ The King of Spain doubtless felt the need of such protection to his ministers and others in authority in the Philippines as well as in Spain. Hence, the article referred to was made applicable here. Notwithstanding the change of sovereignty, our Supreme Court, in a majority decision, has held that this provision is still in force, and that one who made an insulting remark about the President of the United States was punishable under it. (U. S. vs. Helbig, *supra*.) If it be applicable in that case, it would appear to be applicable in this case. Hence, said article 256 must be enforced, without fear or favor, until it shall be repealed or superseded by other legislation, or until the Supreme Court shall otherwise determine.
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> "In view of the foregoing considerations, the court finds the defendant guilty as

> charged in the information and under article 256" of the Penal Code sentences him to suffer two months and one day of *arresto mayor* and the accessory penalties prescribed by law, and to pay the costs of both instances."

The fifteen errors assigned by the defendant and appellant, reenforced by an extensive brief, and eloquent oral argument made in his own behalf and by his learned counsel, all reduce themselves to the pertinent and. decisive question which was announced in the beginning of this decision.

It will be noted in the first place that the trial judge considered himself bound to follow the rule announced in the case of United States vs. Helbig (R. G. No. 14705,[1] not published). In that case, the accused was charged with having said, "To hell with the President and his proclamations, or words to that effect," in violation of article 256 of the Penal Code. He was found guilty in a judgment rendered by the Court of First Instance of Manila and again on appeal to the Supreme Court, with the writer of the instant decision dissenting on two principal grounds: (1) That the accused was deprived of the constitutional right of cross-examination, and (2) that article 256 of the Spanish Penal Code is no longer in force. Subsequently, on a motion of reconsideration, the court, being of the opinion that the Court of First Instance had committed a prejudicial error in depriving the accused of his right to cross-examine a principal witness, set aside the judgment affirming the judgment appealed from and ordered the return of the record to the court of origin for the celebration of a new trial. Whether such a trial was actually had, is not known, but at least, the record in the Helbig case has never again been elevated to this court.

There may perchance exist some doubt as to the authority of the decision in the Helbig case, in view of the circumstances above described. This much, however, is certain: The facts of the Helbig case and the case before us, which we may term the Perfecto case, are different, for in the first case there was an oral defamation, while in the second there is a written defamation. Not only this, but a new point which, under the facts, could not have been considered in the Helbig case, is, in the Perfecto case, urged upon the court. And, finally, as is apparent to all, the appellate court is not restrained, as was the trial court, by strict adherence to a former decision. We much prefer to resolve the question before us unhindered by references to the Helbig decision.

This is one of those cases on which a variety of opinions all leading to the same result can be had. A majority of the court are of the opinion that the Philippine Libel Law, Act No. 277,

has had the effect of repealing so much of article 256 of the Penal Code as relates to written defamation, abuse, or insult, and that under the information and the facts, the defendant is neither guilty of a violation of article 256 of the Penal Code, nor of the Libel Law. The view of the Chief Justice is that the accused should be acquitted for the reason that the facts alleged in the information do not constitute a violation of article 256 of the Penal Code. Three members of the court believe that article 256 was abrogated completely by the change from Spanish to American sovereignty over the Philippines and is inconsistent with democratic principles of government.

Without prejudice to the right of any member of the court to explain his position, we will discuss the two main points just mentioned.

1. *Effect of the Philippine Libel Law, Act No. 277, on article 256 of the Spanish Penal Code*.—The Libel Law, Act No. 277, was enacted by the Philippine Commission shortly after the organization of this legislative body. Section 1 defines libel as a "malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public hatred, contempt or ridicule." Section 13 provides that "All laws and parts of laws now in force, so far as the same may be in conflict herewith, are hereby repealed. * * *"

That parts of laws in force in 1901 when the Libel Law took effect, were in conflict therewith, and that the Libel Law abrogated certain portions of the Spanish Penal Code, cannot be gainsaid. Title X of Book II of the Penal Code, covering the subjects of calumny and insults, must have been particularly affected by the Libel Law. Indeed, in the early case of Pardo de Tavera vs. Garcia Valdez ([1902], 1.Phil., 468), the Supreme Court spoke of the Libel Law as "*reforming* the *preexisting* Spanish law on the subject of *calumnia* and *injuria*." Recently, specific attention was given to the effect of the Libel Law on the provisions of the Penal Code, dealing with calumny and insults, and it was found that those provisions of the Penal Code on the subject of calumny and insults in which the elements of writing and publicity entered, were abrogated by the Libel Law. (People vs. Castro [1922], p. 842, *ante*.)

The Libel Law must have had the same result on other provisions of the Penal Code, as for instance, article 256.

The facts here are that the editor of a newspaper published an article, naturally in writing,

which may have had the tendency to impeach the honesty, virtue, or reputation of members of the Philippine Senate, thereby possibly exposing them to public hatred, contempt, or ridicule, which is exactly libel, as defined by the Libel Law. Sir J. F. Stephen is authority for the statement that a libel is indictable when defaming a "body of persons definite and small enough for individual members to be recognized as such, in or by means of anything capable of being a libel." (Digest of Criminal Law, art. 267.) But in the United States, while it may be proper to prosecute criminally the author of a libel charging a legislator with corruption, criticisms, no matter how severe, on a legislature, are within the range of the liberty of the press, unless the intention and effect be seditious. (3 Wharton's Criminal Law, p. 2131.) With these facts and legal principles in mind, recall that article 256 begins: "Any person who, by * * * *writing*, shall defame, abuse, or insult any Minister of the Crown or other person in authority," etc.

The Libel Law is a complete and comprehensive law on the subject of libel. The well-known rule of statutory construction is, that where the later statute clearly covers the old subject-matter of antecedent acts, and it plainly appears to have been the purpose of the legislature to give expresssion in it to the whole law on the subject, previous laws are held to be repealed by necessary implication. (1 Lewis' Sutherland Statutory Construction, p. 465.) For identical reasons, it is evident that Act No. 277 had the effect of repealing article 256 of the Penal Code, or at least so much of this article as punishes defamation, abuse, or insults by writing.

Act No. 292 of the Philippine Commission, the Treason and Sedition Law, may also have affected article 256, but as to this point, it is not necessary to make a pronouncement.

2. *Effect of the change from Spanish to American sovereignty over the Philippines on article 256 of the Spanish Penal Code*.—Appellant's main proposition in the lower court and again energetically pressed in the appellate court was that article 256 of the Spanish Penal Code is not now in force because abrogated by the change from Spanish to American sovereignty over the Philippines and because inconsistent with democratic principles of government. This view was indirectly favored by the trial judge, and, as before stated, is the opinion of three members of this court.

Article 256 is found in Chapter V of Title III of Book II of the Spanish Penal Code. Title I of Book II punishes the crimes of treason, crimes that endanger the peace or independence of the state, crimes against international law, and the crime of piracy. Title II of the same book punishes the crimes of *lese majeste*, crimes against the *Cortes* and its members and against

the council of ministers, crimes against the form of government, and crimes committed on the occasion of the exercise of rights guaranteed by the fundamental laws of the state, including crimes against religion and worship. Title III of the same Book, in which article 256 is found, punishes the crimes of rebellion, sedition, assaults upon persons in authority, and their agents, and contempts, insults, *injurias*, and threats against persons in authority, and insults, *injurias*, and threats against their agents and other public officers, the last being the title to Chapter V. The first two articles in Chapter V define and punish the offense of contempt committed by any one who shall by word or deed defame, abuse, insult, or threaten a minister of the crown, or any person in authority. Then with an article condemning challenges to fight duels intervening, comes article 256, now being weighed in the balance. It reads as follows: "Any person who, by word, deed, or writing, shall defame, abuse, or insult any Minister of the Crown or other person in authority, while engaged in the performance of official duties, or by reason of such performance, provided that the offensive conduct does not take place in the presence of such minister or person, or the offensive writing be not addressed to him, shall suffer the penalty of *arresto mayor*,"—that is, the defamation, abuse, or insult of any *Minister of the Crown of the Monarchy of Spain* (for there could not be a Minister of the Crown in the United States of America), *or other person in authority in the Monarchy of Spain*.

It cannot admit of doubt that all those provisions of the Spanish Penal Code having to do with such subjects as treason, *lese majeste*, religion and worship, rebellion, sedition, and contempts of ministers of the crown, are no longer in force. Our present task, therefore, is a determination of whether article 256 has met the same fate, or, more specifically stated, whether it is in the nature of a municipal law or a political law, and is consistent with the Constitution and laws of the United States and the characteristics and institutions of the American Government.

It is a general principle of the public law that on acquisition of territory the previous political relations of the ceded region are totally abrogated. "Political" is here used to denominate the laws regulating the relations sustained by the inhabitants to the sovereign. (American Insurance Co. vs. Canter [1828], 1 Pet., 511; Chicago, Rock Island and Pacific Railway Co. vs. McGlinn [1885], 114 U. S., 542; Roa vs. Collector of Customs [1912], 23 Phil., 315.) Mr. Justice Field of the United States Supreme Court stated the obvious when in the course of his opinion in the case of Chicago, Rock Island and Pacific Railway Co. vs. McGlinn, supra, he said: "As a matter of course, all laws, ordinances and regulations in conflict with the political character, institutions and Constitution of the new government are at once displaced. Thus, upon a cession of political jurisdiction and legislative power—and

the latter is involved in the former—to the United States*, the lawsof the country* in support of an established religion or *abridging the freedom of the press*, or authorizing cruel and unusual punishments, *and the lik*e, would at once cease to be of obligatory force without any declaration to that effect." To quote again from the United States Supreme Court: *"It cannot be admitted that the King of Spain could, by treaty or otherwise, impart to the United States any of his royal prerogatives*; and much less can it be admitted that they have capacity to receive or power to exercise them. Every nation acquiring territory, by treaty or otherwise, must hold it subject to the Constitution and laws of its own government, and not according to those of the government ceding it." (Pollard vs. Hagan [1845], 3 How., 210.)

On American occupation of the Philippines, by instructions of the President to the Military Commander dated May 28, 1898, and by proclamation of the latter, the municipal laws of the conquered territory affecting private rights of person and property and providing for the punishment of crime were nominally continued in force in so far as they were compatible with the new order of things. But President McKinley, in his instructions to General Merritt, was careful to say: "The first effect of the military occupation of the enemy's territory is the severance of the former political relation of the inhabitants and the establishment of a new political power." From that day to this, the Spanish codes, as codes, have been constantly applied, and ordinarily it has been taken for granted that the provisions under consideration were still effective. To paraphrase the language of the United States Supreme Court in Weems vs. United States ([1910], 217 U. S., 349), there was not and could not be, except as precise questions were presented, a careful consideration of the codal provisions and a determination of the extent to which they accorded with or were repugnant to the *" 'great principles of liberty and law' which had been 'made the basis of our governmental system*.'" But when the question has been squarely raised, the appellate court has been forced on occasion to hold certain portions of the Spanish codes repugnant to democratic institutions and American constitutional principles. (U. S. vs. Sweet [1901], 1 Phil., 18; U. S. vs. Balcorta [1913], 25 Phil., 273; U. S. vs. Smith [1919], 39 Phil., 533; Weems vs. U. S., *supra*.)

The nature of the government which has been set up in the Philippines under American sovereignty was outlined by President McKinley in that Magna Charta of Philippine liberty, his instructions to the Commission, of April 7, 1900. In part, the President said:

> "In all the forms of government and administrative provisions which they are authorized to prescribe, the Commission should bear in mind that the government which they are establishing is designed not for our satisfaction or for

> the expression of our theoretical views, but for the happiness, peace, and prosperity of the people of the Philippine Islands, and the measures adopted should be made to conform to their customs, their habits, and even their prejudices, to the fullest extent consistent with the accomplishment of the indispensable requisites of just and effective government. At the same time the Commission should bear in mind, and *the people of the Islands should be made plainly to understand, that there are certain great principles of government which have been made the basis of our governmental system, which we deem essential to the rule of law and the maintenance of individual freedom, and of which they have, unfortunately, been denied the experience possessed by us; that there are also certain practical rules of government which we have found to be essential to the preservation of these great principles of liberty and law, and that these principles and these rules of government must be established and maintained in their islands for the sake of their liberty and happiness,* however much they may conflict with the customs or laws of procedure with which they are familiar. It is evident that the most enlightened thought of the Philippine Islands fully appreciates the importance of these principles and rules, and they will inevitably within a short time command universal assent."

The courts have naturally taken the same view. Mr. Justice Elliott, speaking for our Supreme Court, in the case of United States vs. Bull ([1910], 15 Phil., 7), said: "The President and Congress framed the government on the model with which Americans are familiar, and which has proven best adapted for the advancement of the public interests and the protection of individual rights and privileges."

Therefore, it has come with somewhat of a shock to hear the statement made that the happiness, peace, and prosperity of the people of the Philippine Islands and their customs, habits, and prejudices, to follow the language of President McKinley, demand obeisance to authority, and royal protection for that authority.

According to our view, article 256 of the Spanish Penal Code was enacted by the Government of Spain to protect Spanish officials who were the representatives of the King. With the change of sovereignty, a new government, and a new theory of government, was set up in the Philippines. It was in no sense a continuation of the old, although merely for convenience certain of the existing institutions and laws were continued. The demands which the new government made, and makes, on the individual citizen are likewise

different. No longer is there a Minister of the Crown or a person in authority of such exalted position that the citizen must speak of him only with bated breath. "In the eye of our Constitution and laws, every man is a sovereign, a ruler and a freeman, and has equal rights with every other man. We have no rank or station, except that of respectability and intelligence as opposed to indecency and ignorance, and the door to this rank stands open to every man to freely enter and abide therein, if he is qualified, and whether he is qualified or not depends upon the life and character and attainments and conduct of each person for himself. Every man may lawfully do what he will, so long as it is not *malum in se* or *malum prohibitum* or does not infringe upon the equally sacred rights of others." (State vs. Shepherd [1903], 177 Mo., 205; 99 A. S. R., 624.)

It is true that in England, from which so many of the laws and institutions of the United States are derived, there were once statutes of *scandalum magnatum*, under which words which would not be actionable if spoken of an ordinary subject were made actionable if spoken of a peer of the realm or of any of the great officers of the Crown, without proof of any special damage. The Crown of England, unfortunately, took a view less tolerant than that of other sovereigns, as for instance, the Emperors Augustus, Caesar, and Tiberius. These English statutes have, however, long since, become obsolete, while in the United States, the offense of *scandalum magnatum* is not known. In the early days of the American Republic, a sedition law was enacted, making it an offense to libel the Government, the Congress, or the President of the United States, but the law met with so much popular disapproval, that it was soon repealed. *"In this country no distinction as to persons is recognized*, and in practice a person holding a high office is regarded as a target at whom any person may let fly his poisonous words. High official position, instead of affording immunity from slanderous and libelous charges, seems rather to be regarded as making his character free plunder for any one who desires to create a sensation by attacking it." (Newell, Slander and Libel, 3d ed., p. 245; Sillars vs. Collier [1890], 151 Mass., 50; 6 L. R. A., 680.)

Article 256 of the Penal Code is contrary to the genius and fundamental principles of the American character and system of government. The gulf which separates this article from the spirit which inspires all penal legislation of American origin, is as wide as that which separates a monarchy from a democratic republic like that of the United States. This article was crowded out by implication as soon as the United States established its authority in the Philippine Islands. Penalties out of all proportion to the gravity of the offense, grounded in a distorted monarchical conception of the nature of political authority, as opposed to the American conception of the protection of the interests of the public, have been obliterated

by the present system of government in the Islands.

From an entirely different point of view, it must be noted that this article punishes contempts against executive officials, although its terms are broad enough to cover the entire official class. Punishment for contempt of non- judicial officers has no place in a government based upon American principles. Our official class is not, as in monarchies, an agent of some authority greater than ,the people but it is an agent and servant of the people themselves. These officials are only entitled to respect and obedience when they are acting within the scope of their authority and jurisdiction. The American system of government is calculated to enforce respect and obedience where such respect and obedience is due, but never does it place around the individual who happens to occupy an official position by mandate of the people any official halo, which calls for drastic punishment for contemptuous remarks.

The crime of *lese majeste* disappeared in the Philippines with the ratification of the Treaty of Paris. Ministers of the Crown have no place under the American flag.

To summarize, the result is, that all the members of the court are of the opinion, although for different reasons, that the judgment should be reversed and the defendant and appellant acquitted, with costs *de officio*. So ordered.

Ostrand, and *Johns, JJ.,* concur.

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[1]Decided March 16, 1920.

CONCURRING

ARAULLO, *C. J.,*

I concur with the dispositive part of the foregoing decision, that is, with the acquittal of the accused, for the sole reason that the facts alleged in the information do not constitute a violation of article 256 of the Penal Code; for although that article is in force with respect to

calumny, *injuria*, or insult, by deed or word, against an authority in the performance of his duties or by reason thereof, outside of his presence, it is repealed by the Libel Law in so far as it refers to calumny, *injuria*, or insult committed against an authority by writing or printing, as was that inserted in the said information.

CONCURRING

ROMUALDEZ, *J.,* with whom concur **JOHNSON, STREET, AVACEÑA,** and **VILLAMOR,** *JJ.,*

I concur with the result. I believe that the responsibility of the accused has not been shown either under article 256 of the Penal Code or under the Libel Law.

I am of the opinion that article 256 of the Penal Code is still in force, except as it refers to "Ministers of the Crown," whom we do not have in our Government, and to calumny, *injuria*, or insult, by writing or printing, committed against an authority in the performance of his duties or by reason thereof, which portion was repealed by the Libel Law.

Judgment reversed, defendant acquitted.

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