102 Phil. 152

[G.R. No. L-8974. October 18, 1957]

APOLONIO CABANSAG, PLAINTIFF VS. GEMINIANA MARIA FERNANDEZ, ET AL., DEFENDANTS. APOLONIO CABANSAG, ROBERTO V. MERRERA AND RUFINO V. MERRERA, RESPONDENTS AND APPELLANTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is a contempt proceeding which arose in Civil Case No. 9564 of the Court of First Instance of Pangasinan wherein Apolonio Cabansag and his lawyers Roberto V. Merrera and Rufino V. Merrera were found guilty and sentenced the first to pay: a fine of P20 and the last two P50 each with the warning that a repetition of the offense will next time be heavily dealt with.

Apolonio Cabansag filed on January 13, 1947 m the Court of First Instance of Pangasinan a complaint seeking the ejectment of Germiniana Fernandez, et al. from a parcel of land. Defendants filed their answer on January 31, 1947 and a motion to dismiss on February 2, 1947, and when the latter was denied, the court upon motion of plaintiff's counsel, set the case for hearing on July 30, 1947. The hearing was postponed to August 8, 1947. On that day only one witness testified and the case was postponed to August 25, 1947. Thereafter, three incidents developed, namely: one regarding a claim for damages which was answered by defendants, another concerning the issuance of a writ of preliminary injunction which was set for hearing on March 23, 1948, and the third relative to an alleged contempt for violation of an agreement of the parties approved by the court. Pleadings were filed by the parties on these incidents and the court set the ease for hearing on October 27, 1948. Hearing was postponed to December 10, 1948. On this date, only part of the evidence was received and the next hearing was scheduled for January 20, 1949. Hearing was again postponed to January 24, 1949 when again only part of the evidence was received and the case was continued to October 4, 1949.

On October 4, 1949, the court, presided over by Judge Villamor, upon petition of both parties, ordered the stenographers who took down the notes during the previous hearings to transcribe them within 15 days upon payment of their fees, and the hearing was postponed until the transcript of said notes had been submitted. Notwithstanding the failure of the stenographers to transcribe their notes, the hearing was set for March 17, 1950. Two more postponements followed for March 23, 1950 and March 27,1950. On August 9, 1850, August 23, 1960, September 26, 1950 and November 29, 1950, hearings were had but the case was only partly tried to be postponed again to January 30, 1951 and February 19, 1951. Partial hearings were held on February 20, 1951, March 12, 1951 and June 6, 3951. These hearings were followed by three more postponements and on August 15, 1951, the case was partially heard. After this partial hearing, the trial was continued on March 6, 1952 only to be postponed to May 27, 1952, No hearing took place on said date and the case was set for continuation on December 9, 1952 when the court, Judge Pasicolan presiding, issued an order suggesting- to the parties to arrange with the stenographers who took down the notes to transcribe their respective notes and stating that the case would be set for hearing' after the submission of the transcript. From December 9, 1952 to August 12, 1954, no further step was taken either by the court or by any of the contending parties in the case.

On December 30, 1953, when President Magsaysay assumed office, he issued Executive Order No, 1 creating the Presidential Complaints and Action Commission (PCAC), which was later superseded by Executive Order No. 19 promulgated on March 17, 1954. And on August 12, 1954, Apolonio Cabansag, apparently irked and disappointed by the delay in the disposition of his case, wrote the PGAC a letter copy of which he furnished the Secretary of Justice and the Executive Judge of the Court of First Instance of Pangasinan, which reads:

> "We, poor people of the Philippines are very grateful for the creation of your Office. Unlike, in the old days, poor people are not heard, but now the PCAC its the sword of Damocles ready to smite bureaucratic aristocracy. Poor people can now rely on the PCAC to help them.

> "Undaunted, the undersigned begs to request the help of the PCAC in the interest of public service, as President Magsaysay has in mind to create the said PCAC, to have his old case stated above be terminated once and for all. The

> undersigned has long since been deprived of his land thru the careful maneuvers of a tactical lawyer. The said case which had long been pending could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes. The new Judges could not proceed to hear the case before the transcription of the said notes. The stenographers who took the notes are now assigned in another courts. It seems that the undersigned will lie deprived indefinitely of his right of possession over the land he owns. He has no other recourse than to ask the help of the ever willing PCAC to help him solve his predicament at an early date.
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> "Now, then, Mr. Chief, the undersigned relies on you to do your utmost best to bring justice to its final destination. My confidence reposes in you. Thanks.
>
> Most confidently yours,
> (Sgd.) Apolonio Cabansag
> *Plaintiff*"

Upon receipt of the letter, the Secretary of Justice indorsed it to the Clerk of Court, Court of First Instance of Pangasinan, instructing him to require the stenographers concerned to transcribe their notes in Civil Case No. 9564. The clerk of court, upon receipt of this instruction on August 27, 1954, referred the matter to Judge Jesus P. Morfe before whom the case was then pending informing him that the two stenographers concerned, Miss Illuminada Abello and Juan Caspar, have already been assigned elsewhere. On the same date, Judge Morfe wrote the Secretary of Justice informing him that under the provisions of Act No. 2383 and Section 12 of Rule 41 of the Rules of Court, said stenographers are not obliged to transcribe their notes except in cases of appeal and that since the parties are not poor litigants, they are not entitled to transcription free of charge, aside from the fact that said stenographers were no longer under his jurisdiction.

Meanwhile, on September 1, 1954, Atty. Manuel Fernandez, counsel for defendants, filed a motion before Judge Morfe praying that Apolonio Cabansag be declared in contempt of court for an alleged scurrilous remark he made in his letter to the PCAC to the effect that he, Cabansag, has long been deprived of his land "thru the careful maneuvers of a tactical lawyer", to which counsel for Cabansag replied with a counter-charge praying that Atty.

Fernandez be in turn declared in contempt because of certain contemptuous remarks made by him in his pleading. Acting on these charges and counter-charges, on September 14, 1954, Judge Morfe dismissed both charges but ordered Cabansag to show cause in writing within 10 days why he should not be held liable for contempt for sending the above letter to the PCAC which tended to degrade the court in the eyes of the President and the people. Cabansag filed his answer stating that he did not have the slightest idea to besmirch the dignity or belittle the respect due the court nor was he actuated with malice when he addressed the letter to the PCAC; that there is not a single contemptuous word in said letter nor was it intended to give the Chief Executive a wrong impression or opinion of the court; and that if there was any inefficiency in the disposal of his case, the same was committed by the judges who previously intervened in the case.

In connection with this answer, the lawyers of Cabansag, Roberto V. Mcrrera and Rufino V. Merrera, also submitted a written manifestation stating that the sending of the letter of their client to the PCAC was through their knowledge and consent because they believed that there was nothing wrong in doing so. And it appearing that said attorneys had a hand in the writing and remittance of the letter to the PCAC, Judge Morfe, on September 29, 1954, issued another order requiring also said attorneys to show cause why they should not likewise be held for contempt for having committed acts which tend to impede, obstruct or degrade the administration of justice.

Anent the charge for contempt preferred by Judge Morfe against Apolonio Cabansag, several incidents took place touching on the right of the Special Counsel of the Department of Justice to appear as counsel for Cabansag, which were however settled when the court allowed said Special Counsel to appear as amicus curiae in his official capacity. In addition to this Special Counsel, other members of the local bar were likewise allowed to appear for respondents in view of the importance of the issues involved. After due hearing, where the counsel of respondents were allowed to argue and submit memoranda, the court rendered decision finding respondents guilty of contempt and sentencing them to pay a fine as stated in the early part of this decision. Respondents in due time appealed to this .Court.

The issues involved in this appeal appear well stated in the decision of the trial court. They are: (a) Did the writing of the letter in question to the PCAC tend directly or indirectly to put the lower court into disrepute or belittle, degrade or embarrass it in its administration of justice?; and (6) Did the writing of said letter tend to draw the intervention of the PCAC in the instant case which will have the effect of undermining the court’s judicial independence?

We agree with the trial court that courts have the power to preserve their integrity and maintain their dignity without which their administration of justice is bound to falter or fail (Viilavicencio *vs*. Lukban, 39 Phil., 778; Borromeo vs. Mariano, 41 Phil., 322). This is the preservative power to punish for contempt (Rule 64, Rules of Court; Viilavicencio *vs*. Lukban, *supra*). This power is inherent in all courts and essential to their right of self-preservation (Slade Perkins *vs*. Director of Prisons, 58 Phil., 271). In order that it may conduct its business unhampered by publications which tend to impair the impartiality of its decisions or otherwise obstruct the administration of justice, the court will not hesitate to exercise it regardless of who is affected. For, "as important as is the maintenance of an unmuzzled press and the free exercise of the rights of the citizen is the maintenance of the independence of the judiciary" (In re Lozano and Quevedo, 54 Phil., 801). The reason for this is that respect of the courts guarantees the stability of their institution. Without such guaranty, said institution would be resting on a very shaky foundation (Salcedo *vs*. Hernandez, 61 Phil., 724).

The question that now arises is: Has the lower court legitimately and justifiably exercised this power in the instant case?

The lower court tells us that it has because in its opinion the act of respondents tended to put it into disrepute or belittle or upgrade or embarrass it in its administration of justice, und so it punished them for contempt to protect its judicial independence. But appellants believe otherwise, for they contend that in sending the letter in question to the PCAC, they did nothing but to exercise their right to petition the government for redress of their grievance as guaranteed by our constitution (section 1, paragraph 8, Article III).

> "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances.' The First Amendments of the Federal Constitution expressly guarantees that right against abridgment by Congress. But explicit mention there does not argue exclusion elsewhere. For the right is one that cannot he denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions,—principles which the Fourteenth Amendment embodies in the general terms of its due process clause." (Emerson and Haber, Political and Civil

Rights in the United States, p. 419.)

We are therefore confronted with a clash of two fundamental rights which lie at the bottom of our democratic institutions—the independence of the judiciary and the right to petition the government for redress of grievance. How to balance and reconcile the exercise of these rights is the problem posed in the case before us.

> "* * * A free press is not to be preferred to an independent judiciary, nor an indepedent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press." (Justice Frankfurter, concurring in Pennekamp *vs*. Florida, 328 U.S. 354-356)

Two theoretical formulas had been devised in the determination of conflicting rights of similar import in an attempt to draw the proper constitutional boundary between freedom of expression and independence of the judiciary. These are the "clear and present danger" rule and the "dangerous tendency" rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be "extremely serious and the decree of imminence extremely high" before the utterance can be punished. The danger to be guarded against is the "substantive evil" sought to be prevented. And this evil is primarily the "disorderly and unfair administration of justice." This test establishes a definite rule in constitutional law. It provides the criterion as to what words may be published. Under this rule, the advocacy of ideas cannot constitutionally be abridged unless there is a clear and present danger that such advocacy will harm the administration of justice.

This rule had its origin in Schenck vs. U.S. (249) U. S. 47), promulgated in 1919, and ever since it has afforded a practical guidance in a great variety of cases in which the scope of the constitutional protection of freedom of expression was put in issue.[1] In one of said cases, the United States Supreme Court has made the significant suggestion that this rule "is an appropriate guide in determining the constitutionality of restriction upon expression

where the substantial evil sought to be prevented by the restriction is destruction of life or property or invasion of the right of privacy" Thornhill vs. Alabama, 310 U.S. 88).

Thus, speaking of the extent and scope of the application of this rule, the Supreme Court of the United States said "Clear and present danger of substantive evils as a result of indiscriminate publications regarding judicial proceedings justifies an impairment of the constitutional right of freedom of speech and press only it" the evils are extremely serious and the degree of imminence extremely high. * " * A public utterance or publication is not to be denied the constitutional protection of freedom of speech and press merely because it concerns a judicial proceeding- still pending in the courts, upon the theory that in such a case it must necessarily tend to obstruct the orderly and fair administration of justice. * * * The possibility of engendering disrespect for the judiciary as a result of the published criticism of a judge is not such a substantive evil as will justify impairment of the constitutional right of freedom of speech and press." (Bridges vs. California, 314 U.S. 252, syllabi)

No less important is the ruling on the power of the court to punish for contempt in relation to the freedom of speech and press. We quote; "Freedom of speech and press should not be impaired through the exercise of the power to punish for contempt of court unless there is no doubt that the utterances in question are a serious and imminent threat to the administration of justice. * * * A judge may not hold in contempt one who ventures to publish anything that tends to make him unpopular or to belittle him. * * * The vehemence of the language used in newspaper publications concerning a judge's decision is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely, threat to the administration of justice." (Craig *vs*. Harney, 331 U. S. 367, syllabi.)

And in weighing the danger of possible interference with the courts by newspaper criticism against the right of free speech to determine whether such criticism may constitutionally be punished as contempt, it was ruled that "freedom of public comment should in borderline instances weigh heavily against a possible tendency to influence pending cases." (Pennekamp vs. Florida, 328 U. S. 331)

The question in every case, according to Justice Holmes, id whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring1 about the substantive evils that congress has a right to prevent. It is a question of proximity and degree (Schenck *vs*. U.S., *supra*).

The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are subject to restrictions and limitations, one of them being the protection of the courts against contempt (Gilbert *vs*. Minnesota, 254 U.S. 325.)

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (Gitlow *vs*. New York, 268 U.S. 652.)

> "It is a fundamental principle, long- established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language, and prevents – the punishment of those who abuse this freedom, * * * Reasonably limited, it was said by story in the passage cited this freedom is an inestimable privilege in a free government; without such limitation, it might become the scourge of the Republic.

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> "And, for yet more imperative reasons, a state may punish utterances endangering the foundations of organized government and threatening its overthrow by unlawful means. These imperil its own existence as a

constitutional state. * * *

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* * * And the immediate danger is none the less real and substantial because the effect of a given utterance cannot be accurately foreseen. The state cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipiency. In People vs. Lloyd, *supra*, p. 35 (136 N.E. 505), it was aptly said: 'Manifestly, the legislature has authority to forbid the advocacy of a doctrine until there is a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, than its right to protect itself would come into being' simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.' " Gitlow *vs*. New York, *supra*.)

The question then to be determined is: Has the letter of Cabansag created a sufficient danger to a fair administration of justice? Did its remittance to the PCAC create a danger sufficiently imminent to come under the two rules mentioned above?

Even if we make a careful analysis of the letter sent by appellant Cabansag to the PCAC which has given rise to the present contempt proceedings, we would at once see that it was far from his mind to put the court in ridicule and much less to belittle or degrade it in the eyes of those to whom the letter was addressed for, undoubtedly, he was compelled to act

the way he did simply because he saw no other way of obtaining the early termination of his case. This is clearly inferable from its context wherein, in respectful and courteous language, Cabansag gave vent to his feeling' when he said that he "has long since been deprived of his land thru the careful maneuvers of a tactical lawyer"; that the case which had long been pending ' "could not be decided due to the fact that the transcript of the records has not, as yet, been transcribed by the stenographers who took the stenographic notes"; and that the "new Judges could not proceed to hear the case before the transcription of the said notes." Analyzing said utterances, one would see that if they ever criticize, the criticism refers, not to the court, but to opposing counsel whose "tactical maneuvers" has allegedly caused the undue delay of the case. The grievance or complaint, if any, is addressed to the stenographers for their apparent indifference in transcribing their notes.

The only disturbing effect of the letter which perhaps has been the motivating factor of the lodging of the contempt charge by the trial judge is the fact that the letter was sent to the Office of the President asking for help because of the precarious predicament of Cabansag. While the course of action he had taken may not be a wise one for it would have been proper had he addressed his letter to the Secretary of Justice or to the Supreme Court, such act alone would not be contemptuous. To be so the danger must cause a *serious imminent* threat to the administration of justice. Nor can we infer that such act has "a dangerous tendency" to belittle the court or undermine the administration of justice for the writer merely exercised his constitutional right to petition the government for redress of a legitimate grievance.

The fact is that even the trial court itself has at the beginning entertained such impression when it found that the criticism was directed not against the court but against the counsel of the opposite party, and that only on second thought did it change its mind when it developed that the act of Cabansag was prompted by the advice of his lawyers. Nor can it be contended that the letter is groundless or one motivated by malice. The circumstances borne by the record which preceded the sending of that letter show that there was an apparent cause for grievance.

Thus, the record shows that on January 13, 1947, or more than 8 years ago, appellant Cabansag filed with the lower court a complaint against Geminiana Fernandez, et al. seeking to eject them from a portion of land covered by a torrens title. On October 4, 1949, or two years thereafter, the court, Judge Villamor presiding, issued an order requiring the stenographers who took down the notes to transcribe them within 15 days upon payment of their corresponding fees. On December 9, 1952, or almost 3 years thereafter, the court,

Judge Pasicolan presiding, issued a similar order requiring the stenographers to transcribe their notes and decreeing that the case be set for hearing after said notes had been transcribed. No further step was taken from this last date either by the court or by the opposing parties. Meanwhile, the stenographers were given assignment elsewhere, and when this matter was brought to the attention of the court by its own clerk of court, said court in an indorsement sent to the Secretary of Justice expressed its inability to take action in view of the fact that the stenographers were no longer under its jurisdiction. And in said indorsement nothing was said about its readiness to continue with the trial even in the absence of the transcript of the notes.

Under such a state of affairs, appellant Cabansag cannot certainly be blamed for entertaining the belief that the oneway by which he could obtain redress of his grievance is to address his letter to the PCAC which after all is the office created by the late President to receive and hear all complaints against officials and employees of the government to facilitate which the assistance and cooperation of all the executive departments were enjoined (Executive ' Order No. 1, as amended by Executive Order No. 19). And one of the departments that come under the control of the President is the Department of Justice which under the law has administrative supervision over courts of first instance. (Section 83, Revised Administrative Code) The PCAC is part of the Office of the President. It can, therefore, be said that the letter of Cabansag though sent to the PCAC is intended for the Department of Justice where it properly belongs. Consequently, the sending of that letter may be considered as one sent to the Department of Justice and as such cannot constitute undue publication that would place him beyond the mantle of protection of our constitution.

> "* * * under the presidential type of government which we have adopted and considering the departmental organization established' and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required ¦by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated

> in the regular course of business, are unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive". (Villena vs. The Secretary of the Interior, 67 Phil., 451, 463.)

We would only add one word in connection with the participation in the incident of Cabansag's co-appellants, Attys. Roberto V. Merrera and Rufino V. Merrera. While the conduct of Cabansag may be justified considering that, being a layman, he is unaware of the technical rules of law and procedure which may place him under the protective mantle of our constitution, such does not obtain with regard to his co-appellants. Being learned in the law and officers of the court, they should have acted with more care and circumspection in advising their client to avoid undue embarrassment to the court or unnecessary interference with the normal course of its proceedings. Their duty as lawyers is always to observe utmost respect to the court and defend it against unjust criticism and clamor. Had they observed a more judicious behavior, they would have avoided the unpleasant incident that had arisen. However, the record is bereft of any proof showing improper motive on their part, much less bad faith in their actuation. But they should be warned, as we now do, that a commission of a similar misstep in the future would render them amenable to a more severe disciplinary action.

Wherefore, the decision appealed from is reversed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Reyes A., Labrador, Concepcion, Reyes, J.B.L., Endencia, and *Felix, JJ.*, concur.

Judgment reversed.

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[1] Schenck vs. U.S. 249 U.S. 47; Abrams us. U.S. 250 U.S. 619, Whitney vs. California, 274 U.S. 357; Herndon *vs*. Lowry, 301 U.S. 242; Bridges *vs*. California, 314 U.S. 252; Pennekamp *vs*. Florida, 328 U.S. 331; Craig *vs*. Harney, 67 S. Ct. 1294.

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