

OSCAR ESPUELAS Y MENDOZA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT

G.R. No. L-2990. December 17, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

Article 142 of the Revised Penal Code punishes those who shall write, publish or circulate scurrilous libels against the Government of the Philippines or any of the duly constituted authorities thereof or which suggest or incite rebellious conspiracies or riots or which tend to stir up the people against the lawful authorities or to disturb the peace of the community.

The appellant Oscar Espuelas y Mendoza was, after trial, convicted in the court of first instance of Bohol of a violation of the above article. The conviction was affirmed by the Court of Appeals, because according to said court,

"About the time comprised between June 9 and June 24, 1947, both dates inclusive, in the town of Tagbilaran, Bohol, Oscar Espuelas y Mendoza had his picture taken, making it to appear as if he were hanging lifeless at the end of a piece of rope suspended from the limb of a tree, when in truth and in fact, he was merely standing on a barrel (Exhibits A, C-1). After securing copies of his photograph, Espuelas sent copies of same to several newspapers and weeklies of general circulation, (Exhibits C, F, G, H, I) not only in the province of Bohol but also throughout the Philippines and abroad, for their publication with a suicide note or letter, wherein he made to appear that it was written by a fictitious suicide, Alberto Reveniera and addressed to the latter's supposed wife translation of which letter or note is hereunder reproduced:

"Dearest wife and children, bury me fire meters deep. Over my grave don't plant a cross or put floral wreaths, for I don't need them"

"Please don't bury me in a lonely place. Bury me in the Catholic cemetery. Although I have committed suicide, I still have the right to be buried among Christians"

"But don't pray for me. Don't remember me, and don't feel sorry. Wipe me out of your lives.

"My dear wife, if someone asks you why I committed suicide, tell them I did it because I was not pleased with the administration of Roxas. Tell the whole world about this.

"And if they ask why I did not like the administration of Roxas, point out to them the situation in Central Luzon, the Hukbalahaps. Tell them about Julio Guillen and the banditry of Leyte.

"Dear wife, write to President Truman and Churchill. Tell them that here in the Philippines our government is infested with many Hitlers and Mussolinis.

"Teach our children to burn pictures of Roxas if and when they come across one"

"I committed suicide because I am ashamed, of our government under Roxas. I cannot hold high my brows to

the world with this dirty government.

"I committed suicide because I have no power to put under Juez de Cuchillo all the Roxas people now in power. So, I sacrificed my own self."

The accused admitted the fact that he wrote the note or letter above quoted and caused its publication in the Free Press, the Evening News, the Bisaya, Lamdag and other local periodicals and that he had impersonated one Alberto Reveniera by signing said pseudonymous name in said note or letter and posed himself as Alberto Reveniera in a picture taken wherein he was shown hanging by the end of a rope tied to a limb of a tree."

The letter is a scurrilous libel against the Government.[1] It calls our government one of crooks and dishonest persons (dirty) infested with Nazis and Fascists i.e. dictators.

And the communication reveals a tendency to produce dissatisfaction or a feeling incompatible with the disposition to remain loyal to the government.[2]

Writings which tend to overthrow or undermine the security of the government or to weaken the confidence of the people in the government are against the public peace, and are criminal not only because they tend to incite to a breach of the peace but because they are conducive to the destruction of the very government itself (See 19 Am, Law Rep. 1511). Regarded as seditious libels they were the subject of criminal proceedings since early times in England. (V. op. cit.)

As explained by Paterson,[3] " * * * the great factors of government, consisting of the Sovereign, the Parliament, the ministers of state, the courts of justice, must all be recognized as holding functions founded on sound principles and to be defended and treated with an established and well-nigh unalterable respect. Each of these great institutions has peculiar virtues and peculiar weaknesses, but whether at any one time the virtue or the weakness predominates, there must be a certain standard of decorum reserved for all. Each guarded remonstrance, each fiery invective, each burst of indignation must rest on some basis of respect and deference towards the depository, for the time being, of every great constitutional function. Hence another limit of free speech and writing is sedition. And yet within that limit there is ample room and verge enough for the freest use of the tongue and pen in passing strictures on the judgment and conduct of every constituted authority."

Naturally, when the people's share in the government was restricted, there was a disposition to punish even mild criticisms of the ruler or the departments of government. But as governments grew to be more representative, the laws of sedition became less drastic and freedom of expression grew apace. Yet malicious endeavors to stir up public strife continue to be prohibited.

The United States punished seditious utterances in the act of July 14, 1798 containing provisions parallel to our own article 142. Analogous prohibitions are found in the Espionage Act of June 1917 and the Seditious Libel Amendment thereto in May, 1918.

Of course such legislation despite its general merit is liable to become a weapon of Intolerance constraining the free expression of opinion, or mere agitation for reform. But so long as there is a sufficient safeguard by requiring intent on the part of the defendant to produce illegal action such legislation aimed at anarchy and radicalism presents largely a question of policy. Our Legislature has spoken in Article 142 and the law must be applied.

In disposing of this appeal, careful thought had to be given to the fundamental right to freedom of speech. Yet the freedom of speech secured by the Constitution "does not confer an absolute right to speak or publish without responsibility whatever one may choose." It is not "unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom." [4] So statutes against sedition have always been considered not violative of such fundamental guaranty, although they should not be interpreted so as

to unnecessarily curtail the citizen's freedom of expression to agitate for institutional changes. [5]

Not to be restrained is the privilege of any citizen to criticise his government and government officials and to submit his criticism to the "free trade of ideas" and to plead for its acceptance in "the competition of the market." However, let such criticism be specific and therefore constructive, reasoned or tempered, and not a contemptuous condemnation of the entire government setup. Such wholesale attack is nothing less than an invitation to disloyalty to the government. In the article now under examination one will find no particular objectionable actuation of the government. It is called dirty, it is called a dictatorship, it is called shameful, but no particular omissions or commissions are set forth. Instead the article drips with malevolence and hate towards the constituted authorities. It tries to arouse animosity towards all public servants headed by President Roxas whose pictures this appellant would burn and would teach the younger generation to destroy. Analysed for meaning and weighed in its consequences the article cannot fail to impress thinking persons that it seeks to sow the seeds of sedition and strife. The infuriating language is not a sincere effort to persuade, what with the writer's simulated suicide and false claim to martyrdom and what with its failure to particularise. When the use of irritating language centers not on persuading the readers but on creating disturbance, the rationale of free speech can not apply and the speaker or writer is removed from the protection of the constitutional guaranty.

If it be argued that the article does not discredit the entire governmental structure but only President Roxas and his men, the reply is that article 142 punishes not only all libels against the Government but also "libels against any of the duly constituted authorities thereof." The "Roxas people" in the Government obviously refer at least to the President, his Cabinet and the majority of legislators to whom the adjectives "dirty", Hitlers and Mussolinis were naturally directed. On this score alone the conviction could be upheld.[6]

As heretofore stated the publication suggests or incites rebellious conspiracies or riots and tends to stir up the people against the constituted authorities, or to provoke violence from opposition groups who may seek to silence the writer.[7] Which is the sum and substance of the offense under consideration.

The essence of seditious libel may be said to be its immediate tendency to stir up general discontent to the pitch of illegal courses; that is to say to induce people to resort to illegal methods other than those provided by the Constitution, in order to repress the evils which press upon their minds. [8]

"The idea of violence pervades the whole letter" says Justice Paredes of the Court of Appeals "The mere fact that a person was so disgusted with his "dirty government" to the point of taking his own life, is not merely assign of disillusionment; it is a clear act to arouse its readers a sense of dissatisfaction against its duly constituted authorities. The mention made in said letter of the situation in Central Luzon, the Hukbalahaps, Julio Guillen and the banditry in Leyte, which are instances of flagrant and armed attacks against the law and the duly constituted authorities, cannot but be interpreted by the reading public as an indirect justification of the open defiance by the Hukbalahaps against the constituted government, the attempt against the life of President Roxas and the ruthless depredations committed by the bandits of Leyte, thus insinuating that a state of lawlessness, rebellion and anarchy would be very much better than the maladministration of said President and his men.

To top it all, the appellant proclaimed to his readers that he committed suicide because he had "no power to put under juez de cuchillo all the Roxas people now in power" Knowing, that the expression Juez de Cuchillo means to the ordinary layman as the Law of the Knife, a "summary and arbitrary execution by the knife", the idea intended by the appellant to be conveyed was no other than bloody, violent and unpeaceful methods to free the government from the administration of Roxas and his men.

The meaning, intent and effect of the article involves maybe a question of fact, making the findings of the court of appeals conclusive upon us.[9]

Anyway, it is clear that the letter suggested the decapitation or assassination of all Roxas officials (at least members of the Cabinet and a majority of Legislators including the Chief Executive himself). And such suggestion clinches the case against appellant.

In 1922 Isaac Perez of Sorsogon while discussing political matters with several persons in a public place uttered these words: "Filipinos must use bolos for cutting off Wood's head—referring to the then Governor-General, Leonard Wood. Perez was found guilty of inciting to sedition in a judgment of this court published in Volume 45 of the Philippine Reports. That precedent is undeniably apposite. Note that the opinion was penned by Mr. Justice Malcolm probably the member who has been most outspoken on freedom of speech. Adopting his own words we could say, "Here the person maligned by the accused is the Chief Executive of the Philippine Islands. His official position, like the Presidency of the United States and other high offices, under a democratic form of government, instead of affording immunity from promiscuous comment, seems rather to invite abusive attacks. But in this instance, the attack on the President passes the furthest bounds of free speech and common decency. More than a figure of speech was intended. There is a seditious tendency in the words used, which could easily produce disaffection among the people and a state of feeling incompatible with a disposition to remain loyal to the Government and obedient to the laws."

The accused must therefore be found guilty as charged. And there being no question as to the legality of the penalty imposed on him, the decision will be affirmed with costs.

Pablo, Padilla, Montemayor, and Reyes JJ., concur.

[1] "Scurrilous" means low, vulgar, mean, foul (U.S. vs. Strong, 263 Fed., 789; U.S. vs. Ault, 263 Fed., 800).

[2] U.S. vs. Dorr, 2 Phil., 332.

[3] Liberty of the Press 2nd Ed. p. 371.

[4] People vs. Nabong, 57 Phil., 455.

[5] U. S. vs. Apurado, 7 Phil., 422.

[6] But we will not rest conviction on this, aware as we are that the prohibition could be pushed to the point where it will silence all criticism against public officials, and thereby infringe the constitutional freedom of speech. Too much danger that men will be prosecuted, simply because they criticize the power that be.

[7] Terminiello vs. Chicago 337 U. S. Rep. p. 1.

[8] Peterson, Liberty of the Press, Speech and Public Workshop, p. 81; note Hale and Benson Law of the Press, p. 359.

[9] People vs. Most, 64 N.E. 175, 58 L.R.A. 509. The question whether the words had the effect of inciting or counseling disturbance of the peace is often a question of degree, which in the U.S. is largely for the jury. this means it is a question of fact. (Cf. Schenk vs. U.S., 249 U.S. 47, 52.)

Jugo, J., concurs in the result.

DISSENTING

TUASON, J.,

Article 142 of the Revised Penal Code, as amended entitled "Inciting to Sedition", provides:

"The penalty of prision correccional in its maximum period and a fine not exceeding 2,000 pesos shall be imposed upon any person who, without taking any direct part in the crime of sedition, should incite others to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish, or circulate scurrilous libels against the Government of the United States or the Government of the Commonwealth of the Philippines, or any of the duly constituted authorities thereof, or which tend to disturb or obstruct any lawful officer in executing the functions of his office, or which tend to instigate others to cabal and meet together for unlawful purposes, or which suggest or incite rebellious conspiracies or riots, or which lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government, or who shall knowingly conceal such evil practices."

In the case of *U. S. vs. Dorr*, 2 Phil. 332, this Court traced the origin and history of the predecessor of Article 142 and expounded its meaning. Mr. Justice Ladd, who wrote the decision, said:

"Several allied offenses or modes of committing the same offense are defined in that section, viz: (1) The uttering of seditious words or speeches; (2) the writing, publishing, or circulating of scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands; (3) the writing, publishing or circulating of libels which tend to disturb or obstruct any lawful officer in executing his office; (4) or which tend to instigate others to cabal or meet together for unlawful purposes; (5) or which suggest or incite rebellious conspiracies or riots; (6) or which tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government; (7) knowingly concealing such evil practices."

Referring to case (2) scurrilous libels against the Government of the United States or the Insular Government of the Philippine Islands which the Court said may stand on a somewhat different footing from the rest the Court went on to say:

"In the determination of this question we have encountered great difficulty, by reason of the almost entire lack of American precedents which might serve as a guide in the construction of the law. There are, indeed, numerous English decisions, most of them of the eighteenth century, on the subject of libelous attacks upon the 'Government, the constitution, or the law generally,'¹ attacks upon the Houses of Parliament, the Cabinet, the Established Church, and other governmental organisms, but these decisions are not now accessible to us, and, if they were, they were made under such different conditions from those which prevail at the present day, and are founded upon theories of government so foreign to those which have inspired the legislation of which the enactment in question forms a part, that they would probably afford but little light in the present inquiry. In England, in the latter part of the eighteenth century, any 'written censure upon public men for their conduct as such,' as well as any written censure 'upon the laws or upon the institutions of the country,' would probably have been regarded as a libel upon the Government. G. Stephen, *History of the Criminal Law of England*, 348.) This has ceased to be the law in England, and it is doubtful whether it was ever the common law of any American State. 'It is true that there are ancient dicta to the effect that any publication tending to "possess the people with an ill opinion of the Government" is a seditious libel (per Holt, C.J., in *R. vs. Tutchin*, 1704, 5 St. Tr., 532, and Ellenborough, C.J., in *R. vs. Cobbett*, 1804, 29 How. St. Tr., 49), but no one would accept that doctrine now. Unless the words used directly tend to foment riot or rebellion or otherwise to disturb the peace and tranquility of the Kingdom, the utmost latitude is allowed in the discussion of all public affairs.' (11 Enc. of the Laws of England 450.) Judge Cooley says (Const. Lim., 528) : 'The English common law rule which

made libels on the constitution or the government indictable, as it was administered by the courts, seems to unsuited to the condition and circumstances of the people of America, and therefore never to have been adopted in the several States."

After citing the Act of Congress of July 14, 1798, commonly-and historically known as the "Sedition Act," and after noting that "the term 'government' would appear to be used herein the abstract sense of the existing political system, as distinguished from the concrete organisms of the Government the Houses of Congress and the Executive which are also specially mentioned," the Court reached the opinion that "this is the (abstract) sense in which the term is used in the enactment under consideration." The Court pointed out that, "while libels upon forms of government, unconnected with defamation of individuals, must in the nature of things be of uncommon occurrence, the offense is by no means an imaginary one," and cited a case (*Republica vs. Dennie*, 4 Yeates [Pa.], 267) in which the defendant was indicted ' for bringing into contempt and hatred the independence of the United States, the constitution of this Commonwealth and of the United States; for exciting popular discontent and dissatisfaction against the scheme of polity instituted; for condemning the principles of the Revolution, and reviling the characters of the patriots and statesmen; for endangering, subverting, and totally destroying the republican constitutions and free governments of the said United States and the Commonwealth of-Pennsylvania.

In consonance with the principles laid down, the Court held that the article published by Dorr, in which he virulently attacked the policy of the Civil Commission in appointing Filipinos to office, did not come within the purview of the law, although it "may have had the effect of exciting among certain classes dissatisfaction with the Commission and its measures." It found that there was nothing in the article which could "be regarded as having a tendency to produce anything like what may be called dissafection, or, in other words, a state of feeling incompatible with a disposition to remain loyal to the Government and obedient to the laws."

The message which the accused herein caused to be published with his picture contained no libel or criticism against the instituted system of government as distinct from the administration. On the contrary, the gist of the message was that the author was desperate and was going to kill himself because many men in the government were following the practices of absolute and despotic rulers in other parts of the world. He wanted President Truman and Mr. Churchill, leading exponents of such democratic institutions as are consecrated in the Philippine Constitution, to be informed that President Roxas and others in his administration were unfaithful to the tenets of constitutional government. He pointed to the turbulent situation in Central Luzon, the rampant banditry in Leyte, the attempted assassination of President Roxas by Guillen, etc., not as examples to be emulated but as the direct outcome of what he claimed widespread graft and corruption in the Government. He pretended to have decided to take his life because he was impotent to remedy or suppress this deplorable state of affairs, and he was ashamed of the way the Government was being conducted. He likened some men in the government, whom he did not specify, to Hitler and Mussolini, not that he idolized those notorious characters but because, he felt, evil forces that undermined the ideas and ideals of the Constitution were at work in our republic. In short, far from advocating the overthrow or change of the present scheme of polity, the article evinced intense feeling of devotion to the welfare of the country and its institutions.

President Roxas was the only official named in the article. But the defendant did not counsel violence in his reference to the President and the unnamed officials. In his statement to the effect that he was going to kill himself because he could not kill President Roxas and the men who surrounded the Executive, it is not a necessary deduction that he wished others to do it. Let it be remembered that the message was addressed to the writer's "wife" and "children" who, it turned out, were imaginary.

At best, the meaning of the sentence is doubtful and the norm is that, where the defendant's intention is ambiguous he should be given the benefit of the doubt. The courts may not subject an act or utterance to a microscopic

examination in an endeavor to find in it germs of seditious purpose. In prosecutions for sedition utmost caution is called for lest the freedom of expression be impaired. Although statutes against sedition have been held not to violate the constitutional guaranty to the freedom of expression, the courts are warned to so construe or interpret them as not to abridge that freedom. (33 C.J. 164, citing U. S. vs. Apurado et al., 7 Phil. 422.) It is axiomatic that the Constitution is the paramount law and that legislation has to be adjusted thereto. Accordingly in the solution of clashes, which frequently occur, between liberty of free speech and prosecution for sedition, the criterion, it is submitted, should be the presence or absence of real, not imaginary, danger of the utterance materializing or inciting others to disloyalty to the Government and Its laws.

There is no inciting to sedition unless, according to Mr. Justice Holmes¹ theory expressed in connection with a similar topic, "the words used are used in such circumstances and are of such a nature as to create clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." In the very law punishing inciting to sedition there is the requirement that the words alleged to be seditious or libelous lead or tend to the consummation of the evils sought to be prevented. Even in the ordinary offenses of threat and defamation, words are not taken at face value, hut their import or gravity is gauged by the circumstances surrounding each particular case.

The terms "lead" and "tend" are used in Article 142 of the Revised Penal Code in their ordinary signification. Thus understood, lead as a verb means "to draw or direct by influence" or "to prevail on," and tend means "to conduce to an end." (Webster's International Dictionary)

Judged by these tests, and granting for the present purposes that the defendant did intend to incite others to sedition, the article was harmless as far as the safety of the Government and its officers was concerned, and should have been ignored, as many others more serious than this one have been. The message, like an evil imagining from which no harm proceeds except to the individual himself, was not conducive to the attainment of the prisoner's aims. If words are "the keys of persuasion" and " the triggers of action," the article under consideration was far from possessing either of these qualities, taking into consideration the personality of the man who wrote it and what he "did". The reaction of the readers could not have been other than that the whole thing was comical if it were not "tragic." The general reaction, it is fairly safe to say, was one of regret for a man of eccentric and unbalanced mind or ridicule and curiosity for a grotesque stunt. The witnesses for the Government themselves, some of whom were constabulary officers stationed at Tagbilaran, stated that upon reading the article and seeing the author's picture they Just laughed it off, "thinking, that this fellow must be crazy." That was akin to our own reaction, and there is little or no doubt that it exemplified the general effect upon the minds of other readers of the article. It "is certain that none would commit a rash act upon a vague suggestion of a man who hanged himself and whom they had never heard of before, while those who had known him, like the constabulary officers above mentioned, were aware that the picture was a fake and thought the subject was a crank.

Attacks more serious, virulent and inflammatory than the one at bar, by persons well known in politics and public life and having influence and large following, have frequently appeared in the press or been launched on the platforms. What the defendant did or said was very tame and mild by comparison. Nevertheless, those critics have not been brought to court; and it is to the everlasting credit of the administration and, in the long run, for the good of the Government, that the parties reviled and the prosecutors have adopted a tolerant attitude. A well-known author on criminal law quoting classical writers on the same subject has truly said.

"Yet while such is no doubt the law, prosecutions of this class have recently fallen, in England as well as in the United States, for several reasons, into disuse. In the first place, it is now generally felt that unless criticism be permitted to penetrate even to the foundations of government, revolution rather than reform may result. Time,

says Bacon, is the greatest of destructives; and truth is to be constantly employed in repairing the breaches which time makes. The wise conservative, therefore, is often apparently the most destructive radical; as he is the most prudent repairer who, when the piers of a bridge are weakened by a storm, advises that the work of reconstruction should begin at the foundation. To prevent the application of revolutionary criticism to government is of all modes of government the most revolutionary. And closely allied with this position is another, that among countries used to freedom libels only begin to bring the state into contempt when they are prosecuted by the state as contemptuous. The sedition laws, for instance, were among the chief causes of the overthrow of the administration of John Adams; and their repeal one of the chief causes of the popularity of that of Jefferson. If, however, seditious libels are to be prosecuted, it is well to keep in mind the noble words of princes from whose edicts the English common law, imbued as it is in so many other respects with the spirit of freedom, has much, in reference to the law of libel, to learn: 'Imppp. Theodosius, Arcadius et Honorius, A.A.A. Rufino P. P. Si quis modestiae nescius et pudoris ignarus improbo petulantique maledicto nomina nostra crediderit lacesenda, ac temulentia turbulentus obtrectator teraporarum nostrorum fuerit, eum poenae nolumus subiugari neque durum aliquid nee asperum sustinere, quoniam, si ex levitate processerit, contemnedum est, si ex insania. miseratione dignissimum. si ab injuria. remlttendum. ' ' (2 Wharton's Criminal Law; Section 1947.)

In somewhat parallel vein is the dissent of Mr. Justice Holmes, joined in by Mr. Justice Brandeis, in *U. S. vs. Abraxas*, 250 U. S. 621, 629. Said Justice Holmes:

"Persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises or your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says that he has squared the circle, or that you do not care whole heartedly for the result, or that you doubt either your power or your premises. But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best twist of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year if not every day we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country. I regret that I cannot put into more impressive words my belief that in their conviction upon this indictment the defendants were deprived of their rights under the Constitution of the United States."

Moreover, the subject of this prosecution does not reveal personal malice or hatred. Except for the "Juez de cuchillo" item which, like words coming from a babe's mouth, did not have the weight or chance to sway the listeners, the article was but a statement of grievances against official abuses and misgovernment that already were of common knowledge and which more influential and responsible speakers and writers had denounced in terms and ways more dangerous and revolutionary.

Paras, C.J., and Feria, J., concur.

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