

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE G. MONTALVO, FIDEL S. HERVAS AND CRESCENCIANO LOZANO, DEFENDANTS AND APPELLANTS.

*G.R. No. 10077. February 26, 1915*

Ponente: TRENT, J.

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### TRENT, J.:

This is an appeal from a judgment of the Court of First Instance convicting Crescenciano Lozano, Jose G. Montalvo, and Fidel S. Hervas of the crime of criminal libel against the justice of the peace of the city of Iloilo, Melecio Montinola. A several fine of P1,000 was imposed, together with subsidiary liability in case of insolvency, and the costs of the cause. The appellants insist that the trial court erred:

"(1) In declaring that the articles appearing in the issues of November 29 and December 2, 1913, of El Adalid, upon which this criminal action is based, are libelous.

"(2) In not admitting certain proffered evidence relating to the official conduct of the prosecuting witness.

"(3) In permitting private counsel to assist the provincial fiscal in the prosecution of this case."

The articles of November 29 and December 2, read:

"1. There was held this morning the preliminary examination in the trial for unlawful gambling against Mrs. Soledad Santarromana Smith. The prosecution is represented by the assistant fiscal, Mr. Jaranilla, and the defendant by Mr. Block, with his understudy, Mr. Alano. In the course of the investigation and after some of the witnesses for the prosecution had already begun to testify, the attorney for the defendant asked the court that the public be excluded, for reasons which at the time we failed to comprehend. He invoked to that end the provisions of General Order No. 58 as a right of the accused, to which the fiscal objected on the grounds that the order referred to cases of crime that might affect public morality, as in the cases of rape, estupro, etc. Then followed a short recess or suspension during which decisions and precedents were consulted, Judge Montinola granting ten minutes for considering the question. At last, bewildered and confused, and as though anxious to settle the question offhand, since no authority had been found to support it, he finally announced his decision that the session would be continued behind closed doors, because the attorney, Mr. Block, had so requested; but if the request had been made by a Filipino attorney, we firmly believe that it would have been characterized as impertinence, madness, and \* \* \*. So the public was excluded, with a silent protest against such an unjust and anomalous measure, taken not for the purpose of justice, but only in order to accede to certain influences that were not in the case disinterestedly and because it was a matter of a prominent attorney who is in touch with the gods that be. We say that the reasons were silly and not for the purposes of justice, because the whole thing is due to the fact that our colleague, Mr. Lozano, wished to take' pictures of the trial. At the court's command Mr. Lozano left the place, but not before he had energetically protested against such an act of injustice; that only out of respect for law he left there, hurling at Mr. Block some words of reproach on account of the presumption of the latter, who was as usual trying to run the court. The trial continued behind closed doors, in spite of the murmurs of the public that was wondering at the slight firmness of character of Judge Montinola, who is handling cases in which supermen intervene loses his balance only to come to grief. When

will these infamous acts of weakness have an end? What happened this morning is another and further reason for once more doubting the integrity of some officials. If the situation becomes embarrassing for them and they cannot maintain their true position, why don't they resign?"

"2. Mr. Edmond Block, the prominent attorney, the jurist who has at his finger tips all the laws enacted and to be enacted, who at the bar as well as in private circles, tries to dominate the situation and be everywhere the cock of the walk, he who always has the assurance to point out defects in what others do, the sapient one who is accustomed to gaze superciliously at any upstart whom he thinks his inferior in knowledge and wisdom, has broken loose in to-day's number of The Iloilo Enterprise Press to meet our challenge and still further air the question of the incident that occurred last Saturday in the justice of the peace court of this municipality. His tactics or plan of campaign is counter mining, and even though in his reply of to-day he has stated that he does not like discussions in the newspapers and that he has never had the need or inclination to avail himself of journalistic propagandas in the practice of his profession, nevertheless, as always, and in order to gain an advantage and incline to his side the opinion of the court, he comes out against us in defense of the Honorable Montinola, because, according to him, it would be an injustice to said justice of the peace, if he, Mr. Edmond Block, should not answer or reply to the article in question; which in the local dialect means to lay on the soft soap in shameless fashion and in bad Spanish, play the valet to Judge Montinola. What Mr. Block says to the effect that the court could not do otherwise than reach the conclusion it did of ordering that the trial of the case should be held behind closed doors, was certainly not the exercise of sound discretion but it was rather, as everybody knew, a requirement, an imposition, or whatever it may be called, of the attorney, Mr. Block, through the suggestion of his client that at any risk she wished the public to be excluded from that trial. Hence, when the public was excluded from the court room on that occasion, it was not, as we said at first, for the purpose of justice, and much less for the protection of the rights of the accused, but was due to certain prejudices and scruples of high society and only on account of what might be said. The prominent attorney says that his request was nothing more than the exercise of the privilege that section 40 of G. O. No. 58 grants to all accused persons. Were the construction given by Mr. Block to this provision of the law correct, we would then reach the conclusion that many, if not all, criminal trials should not be public; that is, they would be behind closed doors or without the presence of any other outsider, whenever it might occur to the accused, simply because they said so, to request the exclusion of the public from the court room. And then it is that opportunity would be given for mysterious machinations, stupendous arrangements, and finally, the prostitution of justice. In the case at bar, what advantage was there in surrounding the case with mystery so that the trial should be held behind closed doors? Was it in order not to expose or show up the persons who had intervened therein as coprincipals, abettors, or accomplices of the crime? Was it done for the deliberate purpose of not compromising certain officials, who, according to those who have had an opportunity to look over the green-cloth roster, figure as gamblers? Because it is to be noted that when Mr. Block let out that he did not want to waive the preliminary investigation as he was interested in knowing who the gamblers were, then it was that the Honorable Montinola stopped the discussion and ; announced the decision of the court that the trial would be held behind closed doors. So Mr. Block says that his request for the exclusion of the public, and more especially myself, was due rather to certain prejudices of his client and the plain animosity he feels toward me, although he vainly tries to show something else in the newspaper of which he is the coowner and the inspiration. Why doesn't he say this openly and not deceitfully try to give the appearance of good feelings of friendship, when in reality he is only ready to seize every chance to injure a fellow, availing himself of his preponderating influence, even at the bar of the court? The writer hereof has no reason for concealing his personal enmity toward Mr. Block on account of the latter's domineering character, and even though in his article he has not dared to mention my name; not, therefore, should I pass for some unknown person who was unable to protest against such an enormous injustice in that I was compelled to leave the court room, not through due process of law, as Mr. Block says, but on account of certain characters who bow before the hint of a threat and through fear of losing their jobs. As for the rest, Mr. Block does not have to resort to violent measures in order to make me better trained and more polite, for at all times I shall know how squarely to confront him, give the lie to his false assertion, and reduce him to silence as on the present occasion."

The following appear in the subsequent issues:

January 3, 1914: "El Adalid is to-day in the courts charged by a representative of the Government with having violated the law, because, according to him, it has stained the reputation of a public official who, according to our way of thinking, was lacking in civic courage in the performance of his duty and was guilty of weakness in the presence of influence that a third person brought to bear upon him in the exercise of his authority. Because El Adalid denounced to public opinion the lamentable weakness of an official who ought to be honest and valiant in the performance of his duties; because El Adalid did not hesitate to hurl public charges against a public official paid by the people to administer justice to all who appear before him in search of protection for their rights, without those invidious distinctions and privileges; but that this official, instead of being firm as a rock in the exercise of his prerogatives, has performed acts that depreciate his high authority; because El Adalid has with religious faith attempted to inculcate into weak spirits \* \* \*

"The two articles of El Adalid which, according to the representative of the law, are libelous, are nothing more than the crystallization of opinions which this publication has held up to the public gaze for some time past against the detestable weakness of Judge Montinola in the performance of his trust and against that practice of privileges carried on in the justice of the peace court of this city., weakness and privilege that in the mind of the public are unworthy of any public official paid with the people's money.

January 10, 1914: "But what I can't make out is the esteem accorded the honesty of a person, especially when that person is regarded as fit to be called a son of \_\_\_\_\_ his country.

"Scarcely have we savored the bitterness of the purgative draught that our enemies in ideals and politics have administered to us in the guise of a Christmas gift, when we now find ourselves confronted with another blood-letting in the form of a civil suit arranged and prepared by one who thinks himself injured in his virtue, reputation, and integrity as justice of the peace of the municipality of Iloilo, Horinable Melecio Montinola.

January 12, 1914: "In our issue of Saturday last several errors slipped in which ought to be cleared up so that they will not be wrongly construed by any evil-minded reader.

"In the article 'El Sexto de Worcester,<sup>1</sup> referring to the civil suit of Judge Montinola, instituted by the attorneys Bruce, Lawrence, Ross & Block and by his cousin Ruperto Montinola, the word Honorable was inadvertently converted into Horinable, and in another paragraph 'bromeando en serio' appeared some leaders after the words son of \_\_\_\_\_ and before his country, which had nothing to do with the matter.

"Thus will be explained the slips which to the clear comprehension of the reader will not have passed unperceived."

Had the articles of November 29 and December 2 simply alleged that the justice of the peace was irresolute and vacillating in making his decisions and failed to direct the business of his court with a firmness and dignity worthy of the office, there might be a question as to whether the articles are libelous. But the articles impute discrimination to the justice of the peace in his treatment of attorneys having business in his court, based upon race distinction. And, as will be seen from the first article, it refers to the degrading weakness of the justice of the peace and doubts his integrity because he wanted to "accede to certain influences," and "because it was a matter of a prominent attorney who is in touch with the gods that be." In the second article, in speaking of the exclusion of the public from the court room, this language was used: "It was not, as we said at first, for the purpose of justice and much less for the protection of the rights of the accused, but was due to certain prejudices and scruples of high society and only on account of what might be said. \* \* \* Was it done for the deliberate purpose of not compromising certain officials, who, according to those who had an opportunity to look over the green-cloth roster, figure as gamblers? \* \* \* such an enormous injustice in that I was compelled to leave the court room, not through due process of law, as Mr. Block nays, but on account of certain characters who bow before the hint of a

threat and through fear of losing their jobs." Here was a positive charge laid against the justice of the peace that he was shielding or assisting in shielding certain persons, and also a charge that he was prostituting his office in order to retain the position.

From unambiguous statements contained in the two articles it clearly appears that the attack upon the justice of the peace was made because he decided a question of law in accordance with a motion of an attorney for whom Lozano entertained personal hatred and which prevented Lozano from carrying out his purpose of taking photographs of the proceedings during the preliminary hearing of that case. In other words, the articles hold up the justice of the peace as a mere puppet in the hands of Lozano's enemy and all because of a judicial decision on a point raised by the latter which thwarted Lozano's plans.

The facts upon which the second alleged error is based are these:

By counsel for the appellants directed to witnesses called on behalf of the defense: "Q. Do you know of any action of the justice of the peace that is impartial on his part as administrator of justice?"

[Objection sustained.]

"Q. Do you know whether or not the reputation of Melecio Montinola is that he is not impartial as a justice of the peace?"

[Objection sustained.]

"Q. Do you know his reputation as justice of the peace?"

[Objection sustained.]

By the court to Mr. Rohde, one of the counsel for the appellants: "You must confine yourself to such facts as you know are unjust and partial. I don't think that you can go by reputation."

By Mr. Rohde: "The evidence is offered for the sole purpose of proving that the publication of the article was not made with a malicious motive, but that the paper or those of the accused connected with the paper who are now on trial, acted upon what they considered public facts."

Mr. Rohde, continuing: "I now offer as witnesses (naming them) to prove that the justice of the peace has the reputation of being partial and has had the reputation of being partial for a long time."

By the court: "Do they base their opinion on any fact that they are able to give?"

By Mr. Rohde: "No; the same thing as the others."

"Q. Just common talk?—A. Yes, sir."

By Mr. Block: "I object to the admission of these witnesses. They are not admissible."

Mr. Rohde: "Then we close our case."

The only testimony in the record touching the investigations made by the appellants before publishing matters relating to the conduct of persons is that of the appellant Montalvo in answer to the following question put by his counsel:

Mr. Rohde: "Did anyone tell you whether the justice of the peace was partial or impartial?—A. Those who give news to the newspapers, whether they are on its staff or not. Before publishing any piece of information of a delicate nature, as is that dealt with in the present case, the news gatherers collect the rumors within and without the city regarding the person's reputation, and when the newspaper had once been convinced that the rumors current with reference to Mr. Montinola's reputation were true, those are the rumors the newspaper

published, and they can be used for the benefit of the public."

It will be noted that the proffered testimony was offered "for the sole purpose of proving that the publication of the article (articles) was not made with a malicious motive, but that the paper, or those of the accused connected with the paper who are now on trial, acted upon what they considered public facts."

Section 1 of Act No. 277 defines libel to be "a malicious defamation." Section 2 provides that "every person who willfully and with a malicious intent to injure another \* \* \* shall be punished by a fine of not exceeding two thousand dollars or by imprisonment for not exceeding one year, or both." Section 3 provides that "an injurious publication is presumed to have been malicious if no justifiable motive for making it is shown." Under section 4, if the truth of the matter charged, together with the fact that the same was published with good motives and for justifiable ends be established, this will constitute a complete defense. Under the above definition, as given in section 1, malice is an essential ingredient of the crime of libel. Whether section 3 makes the existence of justifiable motives a complete defense or merely establishes a rule of evidence, we need not determine in this case, for the reason that the defense failed to establish that the defamatory matters were true and that the same were published with good motives and with justifiable ends. But it is contended that the proffered testimony "Would establish these requisites if the same had been admitted by the trial court. With this we cannot agree, for the reason that the subsequent publications show malice on the part of the appellants. Publications of the defamations subsequent to the commencement of an action are admissible to show in what spirit the defamations were published at the time alleged in the complaint. In the issue of January 3, 1914, "the detestable weakness of Judge, Montinola" is again referred to, and in that of January 10, it is said, "But what I can't make out is the esteem accorded the honesty of a person, especially when that person is regarded as fit to be called a son of \_\_\_\_\_ his country.". And again, "\* \* \* as justice of the peace of the municipality of Itoilo, Horinable Melecio Montinola." In the issue of January 12, an attempt was made to explain that the insertion of the dots and the use of the word "Horinable" were unintentional mistakes. We think, after an examination of the entire record, that this explanation is too weak to deserve serious consideration. The matters published in these subsequent issues show, as we have indicated, a malicious design to injure the justice of the peace. Having reached this conclusion, it is unnecessary to further discuss the second assignment of error.

In support of the third assignment of error, the appellants rely upon section 14 of Act No. 277. This section reads:

"All criminal actions under the provisions of this Act shall be begun and prosecuted under the sole direction and control of the ordinary prosecuting officers, anything in the existing laws to the contrary notwithstanding."

The provincial fiscal of Iloilo was assisted in the prosecution of this case by the firm of Bruce, Lawrence, Ross & Block, and Mr. Montinola. The direction and control of the case, however, was under the fiscal. The reason that the direction and control of criminal actions for libel were placed in the hands of the Government's prosecuting officer is due to the fact that criminal libel is a public offense and not a private crime, as the somewhat kindred offense of calumnia and injuria were under the Penal Code. We think that to hold that private counsel cannot assist the prosecuting officers in the prosecution of criminal actions under Act No. 277 would be going farther than was intended by the Legislature.

For the foregoing reasons the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

Johnson and Morehmd, JJ., concur in the result.

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