

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. LOPE K. SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 11065. February 12, 1916

Ponente: CARSON, J.

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CARSON, J.:

The appellant was convicted in the court below of the publication of a libel, and sentenced to pay a fine of P150 and the costs of the proceedings.

The facts as found by the trial judge are substantially undisputed.

Defendant and appellant was the editor or director of *Ag Mithi*, the Tagalog section of *El Ideal*, a newspaper of general circulation in the Philippine Islands. As such editor, or director, he ordered and procured the publication of an article which is set out at length in the information. This article contains grave charges against the complaining witness, Agustin Martinez; among others, that Martinez is an "estafador" (embezzler); that while president of the municipality of Pañgil, Laguna, he collected money from various inhabitants of that town under color of authority of law, and appropriated this money to his own use; that he bribed various persons to give false testimony against municipal officers; and that he is a disturber of public order and stirs up litigation among the people. These charges and aspersions against the official and private character of the complaining witness had previously been embodied in a communication signed by various residents of the town of Pangil, Laguna, and addressed and transmitted by them to His Excellency the Governor-General with a request that they be investigated. This communication was filed in due course in the archives of the Executive Bureau, and the accused, before publishing the contents of this communication, took pains to verify the fact that the communication had been submitted and filed. The article in question contained no improper comment on the charges contained in the communication on file in the Executive Bureau, and set forth merely the fact that the editor had received a copy, with a request that it be published, followed by extracts of the charges and the names of the persons who signed the communication.

There can be no doubt that the charges published in the article in question tended to impeach the honesty and reputation of the complaining witness, and to expose him to public hatred, contempt and ridicule. On its face it is a malicious defamation constituting the offense of libel defined and penalized in Act No. 277 of the Philippine Commission, unless its publication was privileged, as counsel for appellant contends, on the ground that the original document, from which the charges were taken, was on file in the records of the Government bureau prior to their publication by the appellant.

A mere reading of the provisions of sections 7 and 9 of the Libel Law (Act No. 277) clearly discloses that the publication of the article under consideration is not privileged under the express terms of that Act; and further that no privilege could be claimed for its publication upon any of those "principles of natural right as well as of public policy too obvious to require any express recognition in the written law," upon which the doctrine of privilege has been developed in the courts of the United States and of England.

Counsel for appellant in support of his claim of privilege relies wholly on the privilege which is recognized in the United States with relation to the publication of "public records and documents," and cites in support of his contentions the text of the Cyclopedia of Law under that heading, and the cases cited in support of the text. It is there said that:

"The publication of public records to which every one has a right of access is privileged.

"A report of a bureau officer of an executive department of the government, when incorporated in a printed senate document as part of a committee report, becomes a public document, which every person is entitled to receive, inspect, and circulate; and, if such bureau officer gives or loans to another person such a senate document, he does not incur liability as for a publication of a libel. (*De Arnaud vs. Ainsworth*, 24 App. Cas. [D. C.], 167.) (25 Cyc, 411.)

"The provision of St. 1896, c. 303 declaring that the 'record shall at all times be open to public inspection' made it a public record, and that as such the publication of it was privileged. It was not necessary to prove that the hearings before the fire marshall were public. (*Conner vs. Standard Pub. Co.*, 67 N. E., 596; 183 Mass., 474.)"

But the statement of the doctrine thus announced clearly limits this privilege to the publication of records and documents to which every one has a right of access; and without attempting to discuss or decide to what extent such a privilege should be recognized in this jurisdiction, it is sufficient for the purposes of this opinion to indicate that the cases cited in support of the doctrine in those jurisdictions in which it has been applied, would seem to indicate that the privilege had been strictly limited to cases in which the right of access is secured by law, and in which the purpose and object of the law is to give publicity to the contents of the record or document, in the interest, or for the protection of the public generally. Thus, where the public record of a judgment gives a lien on the real or personal property of the judgment debtor in favor of the judgment creditor, the publication of the recorded judgment has been held to be privileged. On like principles the privilege has been extended to the publication of the contents of a register of protests of commercial paper; and it will readily be seen that the privilege with relation to printed senate documents and fire-marshals' reports in the cases cited by counsel rest on similar grounds of public policy. (*Searles vs. Scarlett*, [1892] 2 Q. B., 56; 56 J. P., 789; 61 L. J. Q. B., 573; 66 L. T. Rep. N. S., 837; 40 Wkly. Rep. (696; *Annaly vs. Trade Auxiliary Co.*, L. R. 26 Ir., 394; *Fleming vs. Newton*, 1 H. L. Cas., 363; 9 Eng. Reprint, 797; *McNally vs. Oldham*, 16 Ir. C. L., 298; 8 L. T. Rep. N. S., 604; *Cosgrave vs. Trade Auxiliary Co.*, Ir. R. 8 C. L., 349. Compare *Reis vs. Perry*, 64 L. J. Q. B., 566; 15 Reports, 427; 43 Wkly. Rep., 648.)

Manifestly, the principles on which the privilege has been recognized in these cases are wholly inapplicable in support of the privilege claimed by the defendant in the case at bar.

The mere filing of the communication addressed to the Governor-General in the records of the office of the Executive Secretary did not convert it into a public document or record to which the law gives every one a right of access. The public at large have no legal right to demand the privilege of inspecting the contents of the files of the Executive Secretary; and many of the documents on file in his office, far from being public documents or records in that sense, are of the most highly confidential nature.

The law makes no provision for the publication of the contents of the files of the Executive Secretary, and indeed there must be many instances when, in the very nature of things, to do so would be highly prejudicial to the interests of the public.

The name, fame, and reputation of no man would be safe from unfounded attacks if the mere presentation to the executive authorities of a libelous communication, signed by one or more irresponsible persons, would give the

newspapers the right to publish its contents broadcast with impunity, however false, calumnious, and defamatory they may be.

It appearing that the defendant editor was not actuated by express malice in the publication of the Jibelous article and that he was not even acquainted with the complaining witness, the trial judge properly imposed a comparatively light fine, and, in doing so, he doubtless took into consideration the claim of the defendant that he believed, in good faith, that he had a legal right to publish the contents of any communication of this nature tiled in the office of the Executive Secretary.

We find no error in the proceedings prejudicial to the rights of the appellant. The judgment appealed from should therefore be affirmed with the costs of this instance against him. So ordered.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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