

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MAGDALENA
DEFENDANT AND APPELLANT.***G.R. No. 12658. August 08, 1917*

Ponente: MALCOLM, J.

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A written charge of unchastity or immorality brought against a married woman is libelous per se. As Justice Mapa well said in a somewhat similar case (*U. S. vs. Escobanas* [1908], 12 Phil., 80) "for the purpose of humiliating and insulting a woman, nothing more base or more vile can be conceived." And this is practically the fact in the present case. The accused signed and knowingly sent a letter to one Pilar Trespeces, a married woman, in which she charged Pilar Trespeces with having illicit relations with her, the accused's, husband. The letter was "published" as the word is used in the law. All this is admitted. Justifiable motives for defendants's action were not shown. The accused set up the excuse of sickness on account of pregnancy. Undoubtedly, unreasoning jealousy was the prime motive.

The two formal assignments of error by appellant's counsel, going to the merits of the case, are therefore refuted. The other assignment of error is that the trial judge did not have the complaint read to the accused. A glance at the record will show that this assignment is ill-advised for it there appears that "the defendant waived the reading of the complaint and pleaded not guilty."

The lower court imposed a penalty of two months imprisonment and a fine of P250 with subsidiary imprisonment in case of insolvency, and the costs. The Attorney-General suggests that in view of the poor health of the accused and the fact that the libel was not given much publicity, the penalty imposed is too severe. With this we agree and believe that the ends of justice will be met by the imposition of a fine. Accordingly, the judgment of the lower court is modified by substituting a fine of P250, with subsidiary imprisonment in case of insolvency, with the costs of both instances. So ordered.

Arellano, C. J., Johnson, Araullo, and Street, JJ., concur.

CARSON, J., concurring:

I concur in the judgment of conviction, but the reasons assigned in the principal opinion for reducing the penalty to a fine of P250, with subsidiary imprisonment in case of nonpayment, would seem to me to justify and require the imposition of a substantially nominal penalty, which I would fix at about P5 or P10, or not to exceed P25. It is not improbable that the accused will be unable to pay the fine, and will be compelled to suffer subsidiary imprisonment of several months. I would hesitate to impose such a penalty upon a woman who, during the period of her pregnancy seems to have been moved by unreasoning jealousy of her husband to turn upon the woman against whom her unreasoning suspicions are aroused, with words of abuse, either oral or in writing in a letter addressed to the suspected woman herself.

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