

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. SALVADOR A. EGUIA AND SEBASTIAN LOZANO, DEFENDANTS AND APPELLANTS.

G. R. No. 13540. October 24, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

Blackmail, in the restricted form in which the crime is punished by section 10 of the Philippine Libel Law, is the subject which this appeal brings, as a case of first impression, to the Supreme Court for consideration.

STATEMENT OF THE CASE.

Action in this case was begun by an information filed by the Fiscal of the city of Manila against Salvador A. Eguia and Sebastian Lozano, in which it was alleged:

"That on or about the period between July 2 and August 23, 1917, in the city of Manila, Philippine Islands, said Salvador A. Eguia and Sebastian Lozano, conspiring and confederating with each other, willfully, unlawfully, and criminally threatened one Maria S. Tuason to publish in *The Independent*, a weekly newspaper edited and published in the said city of Manila, a libel consisting of certain letters which, according to the said defendants, would expose the name of said Maria S. Tuason to public contempt, the said defendants promising at the same time, moved by a desire to gain, to prevent the publication of said letters in the above-mentioned newspaper, should the aforementioned Maria S. Tuason agree to pay them the sum of P4,000, Philippine currency.

"Act committed in violation of law."

Both defendants filed demurrers to the information. They contended that: (1) The facts alleged did not constitute a crime; (2) the information did not contain a copy of the alleged libelous letters; and (3) the information was bad for duplicity since it charged two crimes, namely, a threat to publish a libel and an offer to prevent the publication of a libel for a sum of money. The trial court overruled the demurrers. The defendants demanded separate trials, which was granted. The court rendered a single decision, convicting the defendants, and sentencing Salvador A. Eguia to four months imprisonment and to pay a fine of P500, and Sebastian Lozano to two months imprisonment and to pay a fine of P400; each was to pay one-half of the costs, and in case of insolvency to suffer subsidiary imprisonment as provided by law.

The defendants appeal from the judgment. The questions arising from the various assignments of error involve the sufficiency of the information, of the evidence, and of the penalty. Before resolving these specific points, it is well, however, to know exactly what the applicable law is.

STATEMENT OF THE LAW.

Section 10 of the Libel Law (Act No. 277) is as follows:

"Every person who threatens another to publish a libel concerning him, or any parent, husband, wife, or child of

such person, or any member of his family, and every person who offers to prevent the publication of any libel upon another person, with intent to extort any money or other valuable consideration from any person, shall be punished by a fine of not exceeding one thousand dollars or by imprisonment for not exceeding six months, or both."

The section above quoted contemplates two offenses, one which we may denominate "a threat to publish a libel," and the other, "an offer to prevent the publication of a libel." A reading of the section further discloses that we have in Philippine criminal law a provision, which finds no counterpart, as far as a rather extensive investigation discloses, in the laws of any other country. The crime, which we here call "a threat to publish a libel, is punished" in the United States and Great Britain by the law penalizing blackmailing and extortion.

In common parlance, blackmail and extortion are synonymous, although the latter term may have the wider signification. Blackmail, in its metaphorical sense, may be defined as any unlawful extortion of money by an appeal to the fears of the victim, especially extortion of money by threats of accusation or exposure. Two words are expressive of the crime—hush money. The gravamen of the offense is the intent to extort money or other thing of value. The extortion is committed by obtaining property from another without his consent, induced by wrongful use of fear. The end is the same as in crimes against property, but the means employed are different. Indeed, certain classes of threatening letters have been held in the United States when followed by extortion to constitute robbery. (See *Green vs. The State* [1901], 157 Ind., 101; *State vs. Hammond* [1881], 80 Ind., 80; *Chunn vs. The State* [1906], 125 Ga., 789; 8 *Corpus Juris*, p. 1114, citing cases; *Wharton's Criminal Law*, secs. 1087, 1990.)

OPINION.

1. Sufficiency of the information.—The information alleged that the accused threatened to publish in a weekly periodical certain letters written by a married lady unless she paid P4,000 to them. The defendants demurred to the information on the ground that it did not charge a public offense and that it did not set out the alleged libelous matter.

Defendants rely on the definition of libel contained in the first section of the Libel Law. This section, it will be remembered, defines a libel as "a malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public hatred, contempt, or ridicule." Defendants insist that as these letters were written by the offended party, they could not constitute a libel, as a person cannot libel himself or herself.

This argument is fallacious. The prime requisite of the crime of libel is not necessarily the composing of the article, but the publishing of it. Thus, the sending of love letters by one person to another is not a libel, but when some third person obtains possession of these letters and publishes them in the public press, it must be self-evident that such letters, innocent as they are in themselves, would appear highly ridiculous to any one except the interested parties. To revert to the definition of libel, relied upon by the defendants, the publication of these compromising letters would tend to impeach the virtue and reputation of the lady who wrote them and would thereby expose her to public contempt and ridicule.

The general rule is that the complaint or information for libel must set out the particular defamatory words as published, and a statement of their substance and effect is usually considered insufficient. For instance, it is necessary to set out the threatening letter according to its tenor. But this is not precisely a prosecution for libel. The crime of "threatening to publish a libel," while covered by a section of the Libel Law, is of an entirely different character from the usual conception of the crime of libel. From the very nature of the crime charged, it is clearly seen that to require an information to set forth the alleged threatened libel would usually amount to asking

the performance of the impossible. The menacing libel has not as yet been published ; it may be in the possession of the person threatening to publish it, or it may only exist in the imagination of a perverted mind. In either case, it would be impossible to set out the matter threatened to be published. In the present instance, the fact that the letters which the defendants threatened to publish were seized before the institution of these proceedings does not change the rule in regard to the pleadings.

A common law crime which is somewhat akin to the offense now before us is that called "threats," and here it has been held that the indictment need not set out the exact words of the threat, it being sufficient that the substance be stated with certainty. Again, as to the offense of "obscenity," it has been held that an indictment for using obscene language need not set forth the language used. Inde'ed, for the information to reproduce a letter in haec verba would be equivalent to publishing it—would be to permit of the very thing which the law is trying to avoid, the exposure to the public gaze of matter essentially private in nature. The purposes of the law should be effectuated, not frustrated.

We agree with counsel for appellant that "the procedure in the present case was admirably adapted to protect the feelings of the offended party, and this motive seems to have been the guiding principle of the entire case." The record should be kept pure, if possible.

The constitutional principle "that in all criminal prosecutions the accused shall enjoy the right * * * to demand the nature and cause of the accusation against him" is relied upon. This court has repeatedly held in cases, which have received the approval on appeal of the United States Supreme Court, that the complaint or information is not defective if it sets forth the alleged crime in such a manner that a person of ordinary intelligence can tell with what he is charged. The information herein is sufficient to put men capable of devising an intricate blackmailing scheme on notice of what crime they are charged.

2. Sufficiency of the evidence.—The true facts are believed to be the following:

Maria S. Tuason, the offended party, is a married woman living in the city of Manila. For nineteen years she and her husband have been separated, her husband during these years living outside of the Philippine Islands. In the year 1915, Salvador A. Eguia and his wife resided for several months in the house of Mrs. Tuason. As Mrs. Tuason was sick at this time and as she had complete confidence in Eguia, she gave the key to her post office box into his keeping. During this period, Mrs. Tuason wrote a number of letters, rather amorous in nature, to a Dr. Harmer in France, and gave them to Eguia to mail.

About the first of July, 1917, Mrs. Tuason received an anonymous letter which read:

"A number of your love letters addressed to Harmer are to be published in The Independent in the form of a story. I am a sincere friend of yours and I inform you of this in order that you may take proper steps to avoid your name being exposed to public contempt, I happened to discover this in a visit I made this morning in the office of said newspaper."

Later on, Maria Paves, a friend of Mrs. Tuason, came and told her that she had been approached by certain persons who had some letters of Mrs. Tuason's which they would sell to her for P10,000 and that if she did not buy these letters they would be published in "The Independent." After some negotiations between the parties, the price of the letters was reduced to P4,000. Mrs. Tuason made arrangements to meet one of the go-betweens, who it later turned out was Sebastian Lozano, in front of "El Centro Escolar" and go with him to the Luneta and there receive the letters in return for the P4,000. She reported the matter to the police and on the day named went to the rendezvous. Detectives followed her and remained near by. A calesa was seen driving up and down Calle Azcarraga in front of "El Ceritro Escolar." After this calesa had passed up and down three times, Mrs. Tuason

went up to the vehicle. The cochero then told her that she was not to proceed to the Luneta as had been agreed upon but was to go to some house. This she refused to do and so the plan fell through. Maria Paves told Mrs. Tuason that the owners of the letters had learned that she had reported the matter to the police and that they had decided not to have any further dealings with her.

Mrs. Tuason later went to a friend of hers and told him that she needed assistance. He recommended one Villaba, who was working for him and who was acquainted with Eguia. Villaba at first did not care to have anything to do with the matter but was finally persuaded to lend his aid. He was given a free hand and told to do whatever he thought best. He called up the police authorities and told them of his plan and secured permission to go ahead. Villaba then went to see Eguia and told him a story to the effect that Mrs. Tuason had offered him a thousand pesos if he would get the letters. Eguia pretended to know nothing about the letters and Villaba said he would go and see Lozano. Eguia objected strongly to this and said he would introduce Villaba to Lozano. Eguia finally did introduce Villaba to Lozano and then Villaba repeated his story to Lozano and added that he would try to get P4,000 from Mrs. Tuason, and that then Lozano could threaten him with some weapon and he would deliver the money to him in exchange for the letters. Lozano was to hold back one of the letters, however, to give to Villaba in order that Villaba could get something for it. Lozano and Eguia agreed to this scheme and were to deliver the letters on the Luneta at 8.30 p. m. Villaba reported this to the police and they went to the "Manila Hotel" to lay their plans. Villaba was to meet Lozano at the Rizal Monument on the Luneta, so the police agreed that they would station men at the hotel and around the Luneta, all of whom were to have binoculars, and that Villaba was to lift his hat as a signal to them that the letters were in the possession of Lozano.

The first night Villaba went to the Luneta with Mrs. Tuason to keep the appointment but after waiting a long time no one turned up. Villaba then left Mrs. Tuason and went to the house of Eguia to see why Lozano had not come. Eguia said he did not know why Lozano had not done so, but to wait until 10 o'clock, which Villaba did. As no one had then arrived, he went again to the house of Eguia and this time Eguia told him to meet Lozano at the Luneta the next night at 6 o'clock.

The following afternoon Villaba and Mrs. Tuason again went to the Luneta and after waiting for a little while they saw Lozano coming along. Villaba got out of the calesa and went up and spoke to him. Lozano came up to the calesa where Mrs. Tuason was and showed her a letter which she identified as hers. She then gave the P4,000 to Villaba and Lozano said he would go and get the letters. He left and went in the direction of Calle San Luis and returned in a few minutes and told Villaba and Mrs. Tuason to go to a more secluded spot as they would attract too much attention where they were. The money was handed over to Lozano. Villaba had already given the signal to the police and when they all started to go to another place the police came and arrested Lozano. The money (which previously had been marked) was taken away from Lozano. Lozano was removed to the Luneta Police Station and there searched and the letters, a toy pistol, and a negative of one of Mrs. Tuason's letters were found in his possession.

Lozano made a statement to the police in which he tried to lay the blame on Eguia and to excuse himself. Eguia when arrested also made a statement in which he tried to shift responsibility to Lozano.

The circumstances of this case are such that they lead to the irresistible conclusion that Eguia was the prime mover in this nefarious scheme. The only reasonable deduction is that he took the letters from the post office box of Mrs. Tuason. He was the only person who had possession of the key to the box. He knew that Mrs. Tuason was writing to Dr. Harmer. Not all the letters found in the possession of Lozano were from Mrs. Tuason but all had been addressed to Dr. Harmer. The post office box used by Mrs. Tuason was in the name of Dr. Harmer and so if any mail was returned to Manila with his name on it, it would be put in this box. The night on which the letters were delivered, Lozano went in the direction of Eguia's house to get the letters. Eguia composed the note that

fixed the price for the letters at P8,000. He entered into and agreed to the plot made up by Villaba. He introduced Villaba to Lozano. Though Eguia never appeared in the open he was always lurking in the background.

Defendants attack the evidence from two directions. They contend, in the first place, that the court erred in taking into consideration against each appellant evidence presented at the trial of the other defendant. While the court rendered but one judgment, it is nevertheless true that practically the same facts were adduced in the two trials. Each defendant, moreover, endeavors to shield himself behind the acts of his codefendant. Of course, such a contention cannot be permitted to avail for a moment, where the proof shows that both defendants are inculpated.

We hold that Salvador A. Eguia and Sebastian Lozano have been proven guilty beyond a reasonable doubt of a violation of section 10 of Act No. 277.

3. Sufficiency of the penalty.—The law provides a punishment of a fine of not exceeding P2,000 or of imprisonment for not exceeding six months, or both.

Words are inadequate to castigate the despicable acts of these men. Counsel for Eguia apparently in full recognition of this and ashamed of the low designs of his client, says: "It was unmanly and contemptible to attempt to extort money from this woman, as the purchase price of her love letters which had gone astray and place upon her greater shame than she already suffered, if she did not buy." Counsel for Lozano experiences the same feeling, when he says: "It must be admitted that the appellant played an ignoble part in this matter."

In fixing the measure of culpability, we conceive Eguia to be the master mind, who planned and engineered the whole scheme. Lozano was merely the cat's paw of Eguia.

In order to prevent further occurrences of this kind, as far as may be done by judicial action, we are all strongly of the opinion that the judgment of the lower court must be reversed, and that the defendant and appellant Salvador Eguia is deserving of the maximum penalty permitted by law, and accordingly is sentenced to six months imprisonment, to pay a fine of P2,000 or to suffer subsidiary imprisonment in case of insolvency, and that the defendant and appellant Sebastian Lozano, while culpable in a less degree, is also deserving of an increased penalty, and accordingly is sentenced to three months imprisonment, to pay a fine of P1,000, or to suffer subsidiary imprisonment in case of insolvency. Each defendant shall pay one-half the costs of both instances. So ordered.

Torres, Johnson, Street, Avanceña, and Fisher, JJ., concur.

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