

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICENTE SOTTO, DEFENDANT AND APPELLANT.

G.R. No. 13990. September 24, 1918

Ponente: FISHER, J.

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FISHER, J.:

This is an appeal from a judgment of the Court of First Instance of Manila by which the appellant, Vicente Sotto, was found guilty of the crime of libel and sentenced to pay a fine of P600.

The information upon which this prosecution was based is as follows:

"That during the period from the 1st day of May, 1915, to the 22d of the said month and year, in the city of Manila, Philippine Islands, within the jurisdiction of this Court, the said defendant, Vicente Sotto, being the director, editor, manager, and printer of the weekly paper known as 'The Independent,' edited and published in English and Spanish in the city of Manila, with the intention of attacking the honesty, virtue and reputation of Lope K. Santos, Jose Turiano Santiago and Hermenegildo Cruz, the principal leaders of the association known as the 'Congreso Obrero de Filipinas,' and with the malicious intention of exposing the said Lope K. Santos, Jose Turiano Santiago and Hermenegildo Cruz to public hatred, contempt and ridicule as private citizens and as the leaders of the said association, voluntarily, illegally, criminally and maliciously published and caused to be published of the three persons above named a certain false, injurious and malicious defamation and libel tending to attack the "honesty, virtue and reputation of the same, on page 23 of issue No. 4 of the said weekly paper, dated May 1, 1915, which said publication is as follows:

" 'WITHOUT MALICE

" 'Having become tired of seeing the workingmen at the mercy of parasites who, under the guise of a false sympathy for the laboring classes, exploit the proletariat, making the latter tile plaything of their ambitions and machiavelian manipulations; weary of these self-styled labor leaders who are pointed out by the people as the ones responsible for the malversation of workingmen's funds, the bankruptcy of the "Tagumpay," the "Katubusan scandals," the disappearance of a promissory note from the office of attorney Diokno, the misappropriation of funds in the management of the "El Ideal." The combinations which resulted in the failure of the seamen and street-car employees' strikes, and other numerous blunders committed by the said labor leaders, all of which has left the proletariat in the situation of a victim plucked by the very ones who set themselves up as their defenders; and, realizing that our cause is in danger, now, for the sake of our honor, and for .dignity of the laboring classes, we believe that the time has come to speak plainly and to put an end for once and all to so many parasites.

'If all these charges are true, it is hard to understand why the workingmen have continued until now under the control of their present leaders.

" 'Who is to blame?

" 'Victi.'

"which said libelous publication was amplified by a cartoon published on page 1 of issue No. 7 of the said weekly paper 'The Independent,' on the 22d of May, 1915, which was also published at the place and on the date above-mentioned. which said cartoon, in which among others, there appear the caricatures of the aforesaid parties is made an integral part of this information as Exhibit A; that the said defendant on the aforesaid date and place intended to accuse, as in fact he did accuse, Lope K. Santos, of being responsible for certain scandals which occurred in the cigar and cigarette factory 'Katubusan' and for the disappearance of a promissory note from the office of attorney Ramon Diokno and of being indebted to the firm of E. C. McCullough & Co. and to the printer I. Morales, both of this city of Manila; accusing also Jose Turiano Santiago, one of the organizers of the seamen and street-car employees' strikes, of being responsible for certain combinations and insinuating that he had received the sum of P2,000 to bring about the failure of the said strikes; and accusing also Hermenegildo Cruz of being responsible for the bankruptcy of the printing establishment 'Tagumpay,' of certain scandals in the aforesaid factory 'Katubusan,' and of the misappropriation of funds in the administration of the newspaper 'El Ideal;' and accusing all of the said three parties of the malversation of workingmen's funds; and that the said malicious defamation was published and circulated at the said time and place by the defendant in the manner above set forth with the intention of attacking the honesty, virtue and reputation of the said Lope K. Santos, Jose" Turiano Santiago and Hermenegildo Cruz, thereby exposing them to public hatred, contempt and ridicule.

"All contrary to the law in such cases made and provided."

The defendant demurred to this information upon the ground of duplicity. The trial court sustained the demurrer, and from that ruling an appeal was taken to this court on behalf of the government. Justice Moreland, writing the opinion of the court upon the questions presented by that appeal (U. S. vs. Sotto, 36 Phil. Rep., 389), said:

"It is contended that each publication set out in the information is libelous in itself and, therefore, constitutes a crime; and, as a necessary result, that two crimes are charged in the information. We do not believe this contention is sound. The only purpose of including in the information the second publications was to complete the publication. The first publication mentions no names. It speaks of labor leaders in general but of no one in particular. It employs, however certain words and phrases such as 'the bankruptcy of the Tagumpay,' 'the Katubusan scandals,' 'the disappearance of a promissory note from the office of Attorney Diokno,' 'the misappropriation of funds in the management of El Ideal,' and 'the combinations which resulted in the failure of the seamen and street-car employees' strikes. The second publication consists of a cartoon in which the persons referred to in the first publication are caricatured by name and to each one of them is attached one of the words or phrases just mentioned, thereby identifying him as one of the persons meant in the first publication. In the first publication, as we have seen, the labor leaders referred to are charged with having caused 'the bankruptcy of the Tagumpay.' In the cartoon we have the picture of a man labeled 'H. Cruz' carrying a banner which bears among others, the word 'Tagumpay.' The first publication also mentions 'the Katubusan scandal.' In the cartoon the word 'Katubusan' is found inscribed on a banner carried by H. Cruz and also upon one carried by a person labeled 'L. K. Santos.' In the first publication we have also the charge that the labor leaders therein referred to were responsible for 'the disappearance of a promissory note from the office of Attorney Diokno.' The word 'Diokno' appears in the cartoon upon the banner carried by 'L. K. Santos.' On the banner carried by H. Cruz are the words 'El Ideal' to which reference is found in the first publication where the labor leaders are charged with responsibility for the disappearance of funds belonging to 'El Ideal.' A person named 'J. Turiano' is seated at a table with a dish before him labeled 'Labor Congress' which he is engaged in eating. He also holds in his hand a banner carrying the devices 'seamen strike and street-car employees strike.' The banner borne by L. K. Santos carried in addition to the words 'Katubusan' and 'Diokno' the words 'McCullough' and 'Morales.' From the mouths of the three figures

thus depicted in the cartoon, H. Cruz, J. Turiano and L. K. Santos, issue the words respectively 'I am the first leader,' 'And I am the second,' and 'And I am the third.'

"The evident purpose and result of the publication of the cartoon, called the second publication, was to make clear to the public that the three men named in the cartoon were the labor leaders referred to in the first publication. The effect of the cartoon was to give form and substance to the insinuations and references made in the first publication and the persons to whom they were directed. It served as the means of identification of the unnamed persons who were the subject of the first publication; and also of placing upon each one the particular offence of which the first publication charged him. It not only served to identify but it also served to point out the person upon whom should fall the odium of the particular charge made."

In view of the close and necessary connection between the first publication and the cartoon, the Court held that "this joinder of the separate parts of publications in one indictment is permissible even though each separate publication constitutes libel in itself, provided that all of the different publications refer to the same subject-matter and are necessary or convenient for the completion of the other * * *" and upon this statement of the principles of law involved reversed the ruling of the lower court upon the demurrer. The case was then remanded, and the defendant, having entered a plea of not guilty, was brought to trial.

The defense was based upon the contention (1) that the charges against the complainants Cruz, Santos and Turiano are true, and (2) that they were published with good motives and for justifiable ends. The trial judge, without making any findings with regard to the truth or falsity of the charges against the complainants, held that they were not published with "good motives and for justifiable ends," and that the defendant, in making the publication, was actuated by actual malice and personal spite against the persons libeled.

The appellant contends that the trial judge erred in finding that he was the editor and manager of "The Independent," a newspaper in which the offending matter was published. We are of the opinion that the evidence is ample to sustain this finding and fully establishes the responsibility of appellant for all matters published in this newspaper, of which he expressly admitted himself to be the owner. He also contends that the trial court erred in holding that the publications complained of are libelous. The defamatory nature of the publication is, however, so palpable that we cannot regard this contention as having been seriously advanced.

With regard to the defense that the libelous imputations are true, we are of the opinion, after a careful consideration of the evidence, that the defendant has failed completely to make good his contention in this regard.

In the case of *Jimenez vs. Reyes* (27 Phil. Rep., 52), at page 59, Justice Trent, writing the opinion of the court, laid down the rule that for the purpose of determining the meaning of any publication alleged to be libelous "that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public would naturally understand what was uttered. The published matter alleged to be libelous must be construed as a whole. In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be, from the word used in the publication."

Applying this rule to the publications here under consideration, we are of the opinion that the readers of defendant's newspaper would naturally understand that by them it was intended to impute to the complainant Cruz, the malversation of funds belonging to the "El Ideal" newspaper company; to the complainant Turiano the malversation of funds belonging to the labor unions with which he was connected and to the complainant Santos the theft of a promissory note from the office of Diokno. Other derogatory imputations may be inferred, more or

less clearly, from the article and the cartoon, considered together, but there can be no doubt that those we have mentioned are clearly brought to the mind of the reader. To make good his defense that the defamatory charges are true, the burden rested upon defendant of showing that the complainants were in fact guilty of the reprehensible conduct imputed to them. (Newell on Slander and Libel, par. 959.) Having arrogated unto himself the authority to cast upon complainants the stigma of guilt, without giving them an opportunity to be heard in their defense, he can escape the consequences of his officious assumption of power by nothing short of positive proof that his accusation was warranted by the facts, and that in making it public he was not actuated by personal spite against the complainants, or a mere delight in the propagation of scandal, but by a good motive and a desire to accomplish a justifiable object. The proof of the truth of the accusation cannot be made to rest upon mere hearsay, rumors, or suspicion. It must rest upon positive, direct evidence, upon which a definite finding may be made by the court. It must embrace all the charges. A plea of justification of a libel charging more than one offense is not made out of proof of part of the charges.

We are of the opinion that the evidence adduced by the accused in this case falls far short of proof of the truth of any of his charges against the complainants. He has shown that there were rumors in circulation derogatory to them concerning these matters, and that some people believe them to be guilty of misconduct, but that is the most that can be said. We, therefore, hold that his defense of justification has failed.

Having failed to prove the truth of his charges, the motive which induced him to publish them is of comparatively little important. Were we convinced that defendant acted in good faith, after careful inquiry, and was the victim of an honest mistake, we might take that circumstance into consideration in fixing the penalty. As it is we are fully in accord with the trial court in the opinion that defendant was actuated by express malice. This is shown by the insistence with which he has reiterated his charges against complainants and the methods employed by him in holding them up to contempt and ridicule.

It is frequently suggested in cases of this kind, in which the medium of publication of the libelous matter is a newspaper, that a conviction of the responsible party is objectionable as constituting an infringement of the freedom of the press. Such a criticism involves a fundamental misapprehension concerning the nature of that freedom. The freedom of the press consists in the right to print and publish any statement whatever without subjection to the previous censorship of the government. It does not mean immunity from willful abuses of that freedom, which, if permitted to go unrebuked, would soon make the license of an unrestrained press even more odious to the people than would be the interference of government with the expression of opinion. Certainly a moment's reflection will convince anyone approaching the subject with an open mind that no public service is rendered by the publication in a newspaper of defamatory statements which are false and were published, not from a sense of duty, but to gratify the personal spite and animosity of the writer against the persons defamed. Such is this case. The trial judge, in his carefully written opinion, said:

"In order to form an opinion as to the degree of malice disclosed by the acts of the accused, it is sufficient to glance over the thirty issues of his weekly paper, introduced in evidence by the prosecution They disclose the determination of the accused to hold the complainants up to ridicule, sometimes by veiled hints, at others by direct expression, exposing to the public gaze even their physical defects It would have been difficult to determine the malice and evil intention of the accused, which caused the publication of the article and caricature, had he not, after their publication, so frequently made mention of the three complainants over so long a period of time, referring to them in terms of contempt, depicting them, in several issues of 'The Independent,' and especially in the issue of July 31, 1915, as despicable fellows, scoundrels, and vagabonds."

Taking into consideration the systematic persecution by the accused of which the complaining witnesses have been the victims, we are of the opinion that the Attorney-General is warranted in recommending that a sentence of

imprisonment be imposed in addition to the fine inflicted by the trial court.

It would hardly repay the effort for us to review the decisions of this court in earlier cases of criminal libel in which the punishment inflicted has been limited to a fine, and to show why the particular penalty was imposed in each instance. No two cases are alike. It may well be that the defamatory charges, though in fact untrue, were made under such circumstances as to convince the court that the accused believed them to be true and that such a belief was not unreasonable. Or the proof may disclose that, while the particular defamatory imputation charged is untrue, the general character of the complainant is good, which may properly be considered in fixing the penalty or assessing the damage.

But, even admitting the tendency of the court in the past has been toward leniency, the conclusion to be drawn from the growing frequency with which the Libel Law is disregarded would appear to be that it is time to treat offenders with somewhat greater severity. It would be greatly to be deplored if the impression were to be created that libels may be published without fear of personal inconvenience by anyone able and willing to pay a moderate fine for the privilege. Exemplarity is one of the effects which may properly be expected in the infliction of a penalty. The purpose of a law penalizing libel and providing a remedy by civil suit for defamation of character is to encourage persons so injured to appeal to the courts for vindication rather than to attempt to remedy or revenge their grievances by taking the law into their own hands.

We, therefore, find the accused to be guilty of the crime of libel as charged against him in the information, and sentence him to imprisonment for a period of three months and to the payment of a fine of P600, with costs. So ordered.

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

DISSENTING OPINION

MALCOLM, J., dissenting:

I dissent. Judgment should be affirmed.

ON MOTION FOR RECONSIDERATION.

October 1, 1918.

FISHER, J.:

Appellant has moved for reconsideration of the decision rendered in this case and argues that it is void for lack of jurisdiction upon the ground that before the decision was filed the accused gave notice of the withdrawal of his appeal.

We hold that the rule announced in the case of *Dee See Choon vs. Stanley* (p. 208, ante) is applicable to criminal as well as to civil cases, and that, after a case has been heard and is submitted to the court for decision, the appellant cannot, at his election, withdraw the appeal. As was stated by Justice Torres in the case of *Bautista vs. Johnson* (2 Phil. Rep., 230), with respect to an appeal to a Court of First Instance from a municipal court * * * "before the trial has commenced, and a hearing has been had before, the judge * * * having jurisdiction over the appeal, the right of the appellant remains intact to withdraw his appeal * * *." Nothing contrary to this doctrine, which is supported by the decisions of many American courts (*Merrill vs. Dearing*, 24 Minn., 179; *In re Seattle*,

40 Wash., 450) was decided in the case of U. S. vs. Samio (3 Phil. Rep., 691), inasmuch as the appeal in that case was withdrawn before the hearing.

The motion is denied.

Arellano, C. J., Torres, Johnson, Street, and Malcolm, JJ., concur.

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