

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. GREGORIO PERFECTO, DEFENDANT AND APPELLANT.

G. R. No. 17274. September 09, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 28th day of November, 1919, Guillermo Guevara, one of the assistant prosecuting attorneys of the city of Manila, presented a complaint, in the Court of First Instance of the city of Manila, against the appellant charging him with the crime of libel. The complaint alleged:

"That on or about November 24, 1919, in the city of Manila, Philippine Islands, the said accused, being the editor of the daily newspaper denominated La Nacion, which is published in Spanish in said city and of general circulation in the Philippine Islands and abroad, voluntarily, illegally and criminally, and with the intention to attack the honesty, virtue and reputation of a lady, Sra. Angelina Montenegro de Papa, wife of Dr. Ramon R. Papa, actual president of the Municipal Board of the city of Manila, and with the further purpose of exposing her to public hatred, contempt and ridicule, wrote, composed and published, and permitted and caused to be written, composed and published in issue No. 265, year III, of said newspaper La Nacion, corresponding to the 24th day of November, 1919, Monday, an injurious and defamatory article relative to and concerning the person of said Sra. Angelina M. de Papa, which article is in the words following :

"'THE POLICE CAUGHT GAMBLING IN THE HOUSE OF THE NACIONALISTA DELEGATE, MR. NERY.'

" 'PERSONS VERY WELL KNOWN APPEAR IN THE LIST OF WELL-KNOWN GAMBLERS'

" 'ONE OF THE "CHIEFS" OF THE POWERFUL "TRUST" OF GAMBLERS IS MR. EUSEBIO RAMIREZ.

" 'The wife of D. Leonardo Osorio, president of the Nacionalista Club, also appears.'

" 'At 6.30 p. m. last Saturday, several members of the secret police, headed by the famous detective Conley, carried out a fruitful raid of house No. 651, Calle Regidor, Quiapo, which is occupied by the ex-representative of Misamis, Mr. Ramon Nery and wife, surprising in fraganti the gamblers that were there engaged in playing monte. Among those that were caught are prominent and well-known individuals of Manila. The owners of the house, Mr. and Mrs. Nery, as well as the banker and the betters, pleaded guilty this morning before Judge Torres, who presides the municipal court of the city, the first having been fined P200, the banker the same amount, and each of the betters, P80.

" 'Here is the list of those caught:

" 'Hon. Ramon Nery y San Jose, ex-representative, and his wife, as owners of the house.

" 'Mr. Eusebio Ramirez y Apostol, as banker, one of the noted chiefs of the powerful trust of bankers which regularly operates in Manila and the bigger provinces.

" 'Sra. Da. Soledad R. de Manas and her husband Mr. Hugo Manas.

" 'Mr. Ignacio Carlos y Villagracia, well-known property owner and famous "tahir."

" 'Mr. Manuel Reyes y Batac, do. do.

" 'Mr. Roque Baviera y Roa.

" 'Messrs. Eusebio Calma, Eusebio Enriquez y Calma, Andres Fernandez y Baviera, Martin Bautista y Duran, Justo Urquico y Martin, Juan Berenguer y Vargas, Amado Aguilar y Fausto, Leoncio Velicio, Rufo Malbar y Ramos, Eleuterio Navoa y Cruz, Nicolas Cerrudo, Juan G. Generoso.

" 'Mr. Conrado Chuidian, well-known "sportman" of Manila, ex-floor manager of "La Perla" and "La Campana," as well as the wife of a most popular councillor who laments the misfortune of not being a papa to any child, were stricken out of the information.'

"That the article in question, especially, the last sentence of the last paragraph says 'as well as the wife of a most popular councillor who laments the misfortune of not being a papa to any child' had for its object to insinuate and made it understood, as was in effect understood and interpreted by the public who read it, that the lady referred to therein can be no other than the above-mentioned! Angelina M. de Papa, wife of the present councillor and president of the municipal board, Hon. Ramon R. Papa, in this manner transmitting maliciously and intentionally to the public the impression that said lady, Angelina M. de Papa, was one of the gamblers surprised and arrested by the police in the house in question,—all, as already stated, with the object of destroying her reputation, of discrediting and ridiculing her before the public concept. "Acts committed in violation of law."

Upon said complaint the defendant was arrested and brought before the court for arraignment. To the complaint the defendant presented a demurrer and alleged that the facts stated in the complaint were not sufficient to show that a crime had been committed. After consideration, the lower court overruled said demurrer and the defendant duly excepted to that order.

Later, the cause was brought on for trial and the defendant was duly arraigned and plead "not guilty" of the crime charged in the complaint. At the close of the trial the Honorable M. V. del Rosario, judge, found that the defendant was guilty of the crime charged in the complaint and sentenced him to pay a fine of P100, and in case of insolvency, to suffer subsidiary imprisonment in accordance with the provisions of the law. From that sentence the defendant appealed to this court and made several assignments of error.

The contention of the appellant is that the evidence adduced during the trial of the cause does not show, beyond a reasonable doubt, that he is guilty of the crime described in the complaint.

An examination of the record shows that the alleged libel is based upon the last paragraph of the publication in question. That paragraph refers to something that must have taken place in court. In other words, it says that the names of certain persons were eliminated from the complaint which had theretofore been filed in a criminal case against numerous persons, charging them with a violation of the Gambling Law.

After a complaint is presented in court, and it is not a complaint until it is so presented, the names of the persons charged therein cannot be eliminated therefrom without an order of the court. (Sees. 34, 35, and 36, Gen. Orders No. 58; and Act No. 2709.) Therefore, when said newspaper article stated that certain names had been eliminated from the complaint, it must have been an effort to report something that had taken place in a judicial proceeding. And there is no proof in the record to the contrary. There is no proof in the record to show that the last paragraph of said publication, above quoted, was not a true report of a fact that took place in a judicial proceeding.

The record shows that the appellant was occupied in court during all of the day of the publication of said article; that he did not write said article; that he took no part in writing it, and knew nothing of the fact that it had been

written until he saw it for the first time after it was published.

Section 7 of Act No. 277 provides among other things that: "No reporter, editor or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial * * * proceedings * * * except upon proof of malice in making such report, which shall not be implied from the mere fact of publication." In the present case, the said paragraph of the published article appearing to have been a true report of "a judicial proceeding," the alleged libel must fall, under the provisions of said section; and it was incumbent, by virtue of said section, upon the prosecution to show that there was malice in making such report. With reference to the malice of the appellant, there was no effort to show that the publication was malicious. Upon the contrary, the appellant, personally, could not have been guilty of a malicious intent in preparing and publishing said article for the reason that he knew nothing of its preparation and publication until after it had been published. And, moreover, he swore positively that he had no ill will against the alleged offended person and that he did not desire to do her any harm. While the prosecution made no effort to prove the existence of malice, the defendant, by his own declarations, which are not disputed in the slightest degree, showed clearly and beyond a reasonable doubt that there was no malicious intent on his part in the publication of said alleged libelous article.

Inasmuch as the record fails to show that said publication was made maliciously, the defendant cannot be held guilty of the crime of libel for said publication. Malice will not be implied from the mere fact of the publication of a true report of any judicial proceeding. Malice in such cases is the very gist of the offense, provided that the alleged report is "a true report of a judicial proceeding."

From all of the foregoing we find no escape from ordering and decreeing, as we do hereby order and decree, a revocation of the sentence of the lower court, the dismissal of the complaint, and the discharge of the appellant from the custody of the law, with costs de oficio'. So ordered.

Araullo, Avancena, and Villamor, JJ., concur.

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