

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ISAAC PEREZ, DEFENDANT AND APPELLANT.

G.R. No. 21049. December 22, 1923

Ponente: MALCOLM, J.

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MALCOLM, J.:

Isaac Perez, the municipal secretary of Pilar, Sorsogon, and Fortunato Lodovico, a citizen of that municipality, happening to meet on the morning of April 1, 1922, in the presidencia of Pilar, they became engaged in a discussion regarding the administration of Governor-General Wood, which resulted in Perez shouting a number of times: "The Filipinos, like myself, must use bolos for cutting off Wood's head for having recommended a bad thing for the Filipinos, for he has killed our independence." Charged in the Court of First Instance of Sorsogon with a violation of article 256 of the Penal Code having to do with contempt of ministers of the Crown or other persons in authority, and convicted thereof, Perez has appealed the case to this court. The question presented for decision is, What crime, if any, did the accused commit?

A logical point of departure is the information presented in this case. It reads in translation as follows:

"That on or about April 1, 1922, in the municipality of Pilar, Province of Sorsogon, Philippine Islands, the said accused, Isaac Perez, while holding a discussion with several persons on political matters, did criminally, unlawfully and wilfully and with knowledge that Honorable Leonard Wood was the Governor-General of the Philippine Islands and in the discharge of his functions as such authority, insult by word, without his presence, said Governor-General, uttering in a loud voice and in the presence of many persons, and in a public place, the following phrases: 'Asin an mangña filipinos na caparejo co, maninigong gumamit nin sundang asin haleon an payo ni Wood huli can saiyang recomendacion sa pag raot can Filipinas,' which in English, is as follows: 'And the Filipinos, like myself, must use bolos for cutting off Wood's head for having recommended a bad thing for the Philippines.'

"Contrary to article 256 of the Penal Code."

At the trial of the case, two witnesses were called on behalf of the prosecution and three witnesses on behalf of the defense. According to the first witness for the Government, Juan Lumbao, the municipal president of Pilar, what Perez said on the occasion in question was this: "The Filipinos, like myself, should get a bolo and cut off the head of Governor-General Wood, because he has recommended a bad administration in these Islands and has not made a good recommendation; on the contrary, he has assassinated the independence of the Philippines and for this reason, we have not obtained independence and the head of that Governor-General must be cut off." Higinio J. Angustia, justice of the peace of Pilar, in a written statement, and Gregorio Cresencio, another witness for the prosecution, corroborated the testimony of the first witness. Cresencio understood that Perez invited the Filipinos including himself to get their bolos and cut off the head of Governor-General Wood and throw it into, the sea.

The witnesses for the defense did not deny that an altercation took place on the morning of April 1, 1922, in which the accused participated. But they endeavored to explain that the discussion was between Perez and one Severo Madrid, the latter maintaining that the fault was due to the Nacionalista Party, while Perez argued that the

Governor-General was to blame. The accused testified that the discussion was held in a peaceful manner, and that what he wished to say was that the Governor-General should be removed and substituted by another. On the witness stand, he stated that his words were the following: "We are but blaming the Nacionalista Party which is in power but do not take into account that above the representatives there is Governor-General Wood who controls everything, and I told him that the day on which the Democratas may kill that Governor-General, then we, the Filipinos, will install the government we like whether you Democratas want to pay or not to pay taxes."

The trial Judge found as a fact, and we think with abundant reason, that it had been proved beyond a reasonable doubt that the accused made use of the language stated in the beginning of this decision and set out in the information. The question of fact thus settled, the question of law recurs as to the crime of which the accused should be convicted.

It should be recalled that the fiscal named, in the information, article 256 of the Penal Code as having been infringed and the trial Judge so found in his decision. The first error assigned by counsel for the appellant is addressed to this conclusion of the lower court and is to the effect that article 256 of the Penal Code is no longer in force.

In the case of *United States vs. Helbig* ([1920], R. G. No. 14705[1]), the accused was charged with having uttered the following language: "To hell with the President of the United States and his proclamation!" Mr. Helbig was prosecuted under article 256, and though the case was eventually sent back to the court of origin for a new trial, the appellate court by majority vote held as a question of law that article 256 is still in force.

In the case of *People vs. Perfecto* ([1922], 43 Phil., 887), the accused was charged with having published an article reflecting on the Philippine Senate and its members in violation of article 256 of the Penal Code. In this court, Mr. Perfecto was acquitted by unanimous vote, with three members of the court holding that article 256 was abrogated completely by the change from Spanish to American sovereignty over the Philippines, and with six members holding that the Libel Law had the effect of repealing so much of article 256 as relates to written defamation, abuse, or insult, and that under the information and the facts, the defendant was neither guilty of a violation of article 256 of the Penal Code nor of the Libel Law. In the course of the main opinion in the *Perfecto* case, is found this significant sentence: "Act No. 292 of the Philippine Commission, the Treason and Sedition Law, may also have affected article 256, but as to this point, it is not necessary to make a pronouncement."

It may therefore be taken as settled doctrine, to which those of us who retain a contrary opinion must bow with as good grace as we can muster, that until otherwise decided by higher authority, so much of article 256 of the Penal Code as does not relate to ministers of the Crown or to writings coming under the Libel Law, exists and must be enforced. To which proposition, can properly be appended a corollary, namely: Seditious words, speeches, or libels, constitute a violation of Act No. 292, the Treason and Sedition Law, and to this extent, both the Penal Code and the Libel Law are modified.

Accepting the above statements relative to the continuance and status of article 256 of the Penal Code, it is our opinion that the law infringed in this instance is not this article but rather a portion of the Treason and Sedition Law. In other words, as will later appear, we think that the words of the accused did not so much tend to defame, abuse, or insult, a person in authority, as they did to raise a disturbance in the community.

In criminal law, there are a variety of offenses which are not directed primarily against individuals, but rather against the existence of the State, the authority of the Government, or the general public peace. The offenses created and defined in Act No. 292 are distinctly of this character. Among them is sedition, which is the raising of commotions or disturbances in the State. It is a revolt against legitimate authority. Though the ultimate object of sedition is a violation of the public peace or at least such a course of measures as evidently engenders it, yet it

does not aim at direct and open violence against the laws, or the subversion of the Constitution. (2 Bouvier's Law Dictionary, 974; U. S. vs. Abad [1902], 1 Phil., 437; People vs. Cabrera [1922], 43 Phil., 64.)

It is of course fundamentally true that the provisions of Act No. 292 must not be interpreted so as to abridge the freedom of speech and the right of the people peaceably to assemble and petition the Government for redress of grievances. Criticism is permitted to penetrate even to the foundations of Government. Criticism, no matter how severe, on the Executive, the Legislature, and the Judiciary, is within the range of liberty of speech, unless the intention and effect be seditious. But when the intention and effect of the act is seditious, the constitutional guaranties of freedom of speech and press and of assembly and petition must yield to punitive measures designed to maintain the prestige of constituted authority, the supremacy of the constitution and the laws, and the existence of the State. (III Wharton's Criminal Law, pp. 2127 et seq.; U. S. vs. Apurado [1907], 7 Phil., 422; People vs. Perfecto, *supra*.)

Here, the person maligned by the accused is the Chief Executive of the Philippine Islands. His official position, like the Presidency of the United States and other high offices, under a democratic form of government, instead of affording immunity from promiscuous comment, seems rather to invite abusive attacks. But in this instance, the attack on the Governor-General passes the furthest bounds of free speech and common decency. More than a figure of speech was intended. There is a seditious tendency in the words used, which could easily produce disaffection among the people and a state of feeling incompatible with a disposition to remain loyal to the Government and obedient to the laws.

The Governor-General is an executive official appointed by the President of the United States by and with the advice and consent of the Senate of the United States, and holds his office at the pleasure of the President. The Organic Act vests supreme executive power in the Governor-General to be exercised in accordance with law. The Governor-General is the representative of executive civil authority in the Philippines and of the sovereign power. A seditious attack on the Governor-General is an attack on the rights of the Filipino people and on American sovereignty. (Concepcion vs. Paredes [1921], 42 Phil., 599; U. S. vs. Dorr [1903], 2 Phil., 332.)

Section 8 of Act No. 292 of the Philippine Commission, as amended by Act No. 1692, appears to have been placed on the statute books exactly to meet such a situation. This section reads as follows:

"Every person who shall utter seditious words or speeches, or who shall write, publish or circulate scurrilous libels against the Government of the United States or against the Government of the Philippine Islands, or who shall print, write, publish, utter or make any statement, or speech, or do any act which tends to disturb or obstruct any lawful officer in executing his office or in performing his duty, or which tends to instigate others to cabal or meet together for unlawful purposes, or which suggests or incites rebellious conspiracies or which tends to stir up the people against the lawful authorities, or which tends to disturb the peace of the community or the safety or order of the Government, or who shall knowingly conceal such evil practices from the constituted authorities, shall be punished by a fine not exceeding two thousand dollars United States currency or by imprisonment not exceeding two years, or both, in the discretion of the court."

In the words of the law, Perez has uttered seditious words. He has made a statement and done an act which tended to instigate others to cabal or meet together for unlawful purposes. He has made a statement and done an act which suggested and incited rebellious conspiracies. He has made a statement and done an act which tended to stir up the people against the lawful authorities. He has made a statement and done an act which tended to disturb the peace of the community and the safety or order of the Government. All of these various tendencies can be ascribed to the action of Perez and may be characterized as penalized by section 8 of Act No. 292 as amended.

A judgment and sentence convicting the accused of a violation of section 8 of Act No. 292 as amended, is, in effect, responsive to, and based upon, the offense with which the defendant is charged. The designation of the

crime by the fiscal is not conclusive. The crime of which the defendant stands charged is that described by the facts stated in the information. In accordance with our settled rule, an accused may be found guilty and convicted of a graver offense than that designated in the information, if such graver offense is included or described in the body of the information, and is afterwards justified by the proof presented during the trial. (Guevara's Code of Criminal Procedure, p. 9; De Joya's Code of Criminal Procedure, p. 9.)

The penalty meted out by the trial court falls within the limits provided by the Treason and Sedition Law, and will, we think, sufficiently punish the accused.

That we have given more attention to this case than it deserves, may be possible. Our course is justified when it is recalled that only last year, Mr. Chief Justice Taft of the United States Supreme Court, in speaking of an outrageous libel on the Governor of Porto Rico, observed: "A reading of the two articles removes the slightest doubt that they go far beyond the 'exuberant expressions of meridional speech,' to use the expression of this court in a similar case in Gandia vs. Pettingill (222 U. S., 452, 456). Indeed they are so excessive and outrageous in their character that they suggest the query whether their superlative vilification has not overleapt itself and become unconsciously humorous." (Balzac vs. Porto Rico [1922], 258 U. S., 298.) While our own sense of humor is not entirely blunted, we nevertheless entertain the conviction that the courts should be the first to stamp out the embers of insurrection. The fugitive flame of disloyalty, lighted by an irresponsible individual, must be dealt with firmly before it endangers the general public peace.

The result is to agree with the trial Judge in his findings of fact, and on these facts to convict the accused of a violation of section 8 of Act No. 292 as amended. With the modification thus indicated, judgment is affirmed, it being understood that, in accordance with the sentence of the lower court, the defendant and appellant shall suffer 2 months and 1 day's imprisonment and pay the costs. So ordered.

Street, Ostrand, Johns, and Romualdez, JJ., concur.

[1]March 16, not reported.

CONCURRING AND DISSENTING

VILLAMOR, J., with whom concurs Avanceña, J.:

I agree in that the accused should be sentenced to suffer two months and one day of arresto mayor with costs, as imposed by the court a quo, under the provisions of article 256 of the Penal Code, but not under section 8 of Act No. 292. The accused, in my opinion, should not be convicted of the crime of sedition because there is no allegation in the complaint nor proof in the record, showing that when the accused uttered the words that gave rise to these proceedings, he had the intention of inciting others to gather for an illicit purpose, or to incite any conspiracy or rebellion, or to disturb the peace of the community or the safety and order of the Government, which are the acts penalized by section 8 of Act No. 292. On the contrary, having due regard to the place and time when the discussion arose between Lodovice and the accused, the political rivalry between them and the difference of opinion that they entertained regarding the administration of the Governor-General, the Honorable Leonard Wood, it would appear evident that the accused expressed himself in biting and poignant language, unbecoming and improper of a law-abiding citizen and highly detrimental and insulting to the authority of the Governor-General which is the thing prohibited and punished by article 256 of the Penal Code.

Johnson, J., concurring with the concurring and dissenting opinion of Villamor, J.: I agree with the opinion of Mr. Justice Villamor. I cannot give assent to a doctrine which permits a complaint to be presented upon one theory and the trial to be carried through upon that theory and then to condemn the defendant upon a theory which he nor the prosecution ever dreamed of.

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