

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PRIMITIVO TRINIDAD, DEFENDANT AND APPELLANT.

G.R. No. 31011. October 26, 1929

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The crime charged is calumny. The trial court sentenced the defendant to four months and twenty-one days therefor, plus a fine under article 454, No. 1, of the Penal Code, considering that the crime imputed by the defendant is a serious felony.

In the first assignment of error it is contended that the articles of the Penal Code relative to calumny are not applicable to witnesses, inasmuch as under the judicial procedure prevailing when the Code was promulgated, the testimony of witnesses was secret, whereas judicial hearings are now public.

There is no merit in this assignment of error: under the present Penal Code, whether the testimony is secret or not, if it falsely imputes a crime the prosecution of which should be de officio, the person making the imputation is guilty of calumny under the general terms of article 452 of the Penal Code. The penalties, however, are different; if the testimony is public and in writing, the calumny falls under article 453 of the Penal Code, but if it is secret and unwritten, the calumny falls under article 454 of said Code.

The crime of calumny is penalized by article 452 irrespective of the place or occasion where it is committed, so that wheresoever it may be committed, if it contains the elements of calumny, the crime exists. If the felony is committed at a judicial hearing, whether by a witness or by any other person, the calumny is punishable, since, in order to constitute calumny, the imputation must be false, and falsehood is never privileged, in or out of court.

The second assignment of error maintains that such statements are privileged because they were made in the course of a judicial investigation; but, being false, they cannot be privileged. We have just said that falsehood is never privileged.

The third assignment of error contends that such statements do not constitute the felony charged, inasmuch as they do not impute a crime liable to de officio prosecution, the imputation being that Aldanese, the Collector of Customs, conspired and proposed the importation of opium, and conspiracy and proposal are not penalized (U. S. vs. Laserna, 21 Phil., 168). The Opium Law punishes anyone who assists in the importation of opium (sec. 4, Act No. 2381). Moreover, the imputation also included the crime penalized by article 355 of the Penal Code, that is, dereliction of duty on the part of said Collector of Customs, in failing to take action against the importation of opium.

The fourth assignment of error raises a question of fact, and we believe the defendant has not proved his imputation. To our mind, the evidence sufficiently shows such imputation to be false.

The fifth assignment of error has no merit.

Wherefore, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Ostrand, Johns, and Villa-Real, JJ., concur.

Villamor, J., dissents.

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