

THE PEOPLE OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. IGNACIO NABONG, DEFENDANT AND APPELLANT.*G. R. No. 36426. November 03, 1932*

Ponente: STREET, J.

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This appeal has been brought to reverse a judgment of the Court of First Instance of the Province of Nueva Ecija, finding the appellant, Ignacio Nabong, guilty of the offense of sedition under section 8 of Act No. 292, as amended by Act No. 1692, and sentencing him to pay a fine of two hundred pesos, with subsidiary imprisonment in case of insolvency, and requiring him to pay the costs.

The appellant is an attorney engaged in the practice of law at Cabanatuan, in the Province of Nueva Ecija; and shortly before the incident with which we are here concerned, he had been retained to defend one Juan Feleo against a charge of sedition that had been preferred against him. Feleo was in those days a recognized leader of the communists in Nueva Ecija, and was related by marriage to the appellant. In the latter part of January, 1931, one Antonio D. Ora, the head of the communists in the Philippine Islands, died in the municipality of Santa Rosa, Nueva Ecija, and a necrological service in his memory was appointed by his followers to be held at Santa Rosa on the evening of January 30. The fact that said meeting was to be held came to the attention of Major Silvino Gallardo, in charge of the Philippine Constabulary in Cabanatuan, and he was informed that the red flag would be displayed in this meeting as an emblem of the communists. Major Gallardo accordingly had an interview with the provincial fiscal over the question whether the display of the flag should be prevented. The fiscal gave an opinion to the effect that the display of the red flag would be unlawful, and a copy of his opinion to this effect was placed in the hands of Major Gallardo. As Major Gallardo left the court-house, he met the appellant Nabong, and knowing the relation between the latter and Feleo, the leader of the communists in that province, Major Gallardo requested Nabong to interfere and prevent the display of the red flag at the meeting referred to. At this interview a copy of the fiscal *s opinion was exhibited to Nabong and was read by him in the presence of various persons. After perusing the opinion Nabong said that he did not agree with the conclusion of the fiscal; and he, therefore, refused to accompany the Constabulary officers and the deputy provincial fiscal to Santa Rosa, stating that, if he were to go there, he would tell the communists that no law prohibited the display of the red flag and that he would induce them to display the same. He added that, if the communists were forbidden to use the flag, a disturbance would probably result.

The Constabulary officers, accompanied by the deputy fiscal Villamor, then departed for Santa Rosa. On their way they met Juan Feleo. In the interview that followed, Feleo was shown the opinion of the fiscal and he was requested to refrain from displaying the red flag at the meeting in Santa Rosa. Feleo promised to comply with this request, at least until he should have discussed the matter with the communist leaders in Manila.

Although Nabong, as above stated, had refused to ac-company Major Gallardo and his companions on their trip to Santa Rosa, he waited a while at Cabanatuan and afterwards left for Santa Rosa, arriving in time to participate in the meeting. At this meeting the red flag was displayed, contrary to the promise that Feleo had made to Major

Gallardo; and upon learning of this fact, Major Gallardo, accompanied by several Constabulary officers and soldiers, repaired to the place in Santa Rosa where the meeting was being held. Upon arrival they found Feleo making a speech, and inasmuch as some of his utterances appeared to be of a seditious nature, Major Gallardo caused him to be arrested and removed from the place. At the same time the red flag which was being displayed on the platform was removed. Words spoken by Feleo on this occasion became the subject of prosecution in *People vs. Feleo*, G. R. No. 36428.[1]

The arrest and removal of Feleo resulted in disorder among the people present at the meeting, and Major Gallardo found it advisable to make a short speech explaining why Feleo had been arrested. Then, seeing Nabong present, Major Gallardo told him that the disturbance would have been avoided if he (Nabong) had followed the suggestion made to him at Cabanatuan by Major Gallardo. Nabong replied that the communists had consulted him and that he had advised them to display the flag inasmuch as the act was not prohibited by any law.

After Feleo had been arrested and taken away, the proceedings at the meeting were continued, and Jacinto Manahan spoke to the crowd. He was followed by Ignacio "Nabong" who delivered a speech in Tagalog, occupying some twenty minutes of time. In the course of this speech Nabong criticized the members of the Constabulary, using words substantially to the following effect:

"They committed a real abuse in seizing the flag. The members of the Constabulary are bad because they shoot even innocent women, as it happened in Tayug.—In view of this, we ought to be united to suppress that abuse. Overthrow the present government and establish our own government, the government of the poor. Use your whip so that there may be marks on their sides."

While Nabong was talking his words were attentively listened to by deputy fiscal Villamor, as well as Captain Cacdac and Lieutenant Arambulo, all of whom understood the Tagalog language. At the same time Captain Cacdac and Lieutenant Arambulo took notes of the substance of this part of the speech. Major Gallardo himself was also attentive to what was said, and from time to time, in the course of the speech, the major asked fiscal Villamor whether the language then being used was seditious. An affirmative answer to these questions was not given by the fiscal until that part of the speech was reached which contained the words above quoted, and after those words had been spoken Nabong was arrested.

The proof in our opinion shows beyond reasonable doubt that the language imputed to the appellant was used by him; and this is corroborated by the circumstance that the appellant, upon the occasion of a meeting of the Nueva Ecija Bar Association in connection with this charge against Nabong, admitted having advocated in Santa Rosa the overthrow of the Government. Such advocacy by the defendant is confirmed by the testimony of Amado Estonilo, a witness for the defense.

The testimony for the defense tends to show that Nabong went to Santa Rosa for the purpose of preventing a disturbance, and that upon arrival in Santa Rosa he attempted to prevail upon Feleo not to display the red flag. The proof for the defense further suggests that Nabong is well affected to the Government and that the language used by him was not intended to advocate the overthrow of the Government by force. The trial court seems to have attached little weight to this line of proof, and we are of the opinion that in this no error was committed.

The language used by the appellant clearly imported an overthrow of the Government by violence, and it should be interpreted in the plain and obvious sense in which it was evidently intended to be understood. The word "overthrow" could not have been intended as referring to an ordinary change by the exercise of the elective franchise. The use of the whip, an instrument designed to leave marks on the sides of adversaries, is inconsistent with the mild interpretation which the appellant would have us impute to the language. It was the purpose of the speaker, beyond a doubt, to incite his hearers to the overthrow of organized government by unlawful means. The

words used by the appellant manifestly tended to induce the people to resist and use violence against the agents of the Constabulary and to instigate the poor to cabal and meet together for unlawful purposes. They also suggested and incited rebellious conspiracies, thereby tending to stir up the people against the lawful authorities and to disturb the peace of the community and the order of the Government, in violation of section 8 of Act No. 292 of the Philippine Commission, as amended. It is not necessary, in order to be seditious, that the words used should in fact result in a rising of the people against the constituted authorities. The law is not aimed merely at actual disturbance, and its purpose is also to punish utterances which may endanger public order. As was said by the Supreme Court of the United States in *Gitlow vs. New York* (268 U. S., 652, 669), "Such utterances, by their very nature, involve danger to the public peace and to the security of the State. They threaten breaches of the peace and ultimate revolution. And the immediate danger is none the less real and substantial, because the effect of a given utterance cannot be accurately foreseen."

The question of the seditious character of the language imputed in the information to the appellant was raised by demurrer to the information, but the demurrer was overruled and the defendant was required to plead. There was no error in the action thus taken by the trial court.

It is suggested in the appellant's brief that the provisions of our law relating to sedition are incompatible with that portion of section 3 of the Jones Law which declares that no law shall be passed abridging the freedom of speech or of the press, but the appellant's brief does not contain any argument tending to support this suggestion. At any rate the point is not well taken. The acts contemplated in the provisions of law relating to sedition are not protected by the constitutional provision, being abuses rather than the exercise of the right of speech and of the use of the press. It is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or unrestricted or unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. (*Gitlow vs. New York*, 268 U. S., 652, 666.)

With respect to the penalty appropriate to this case, we are of the opinion that the trial court erred in not imposing upon the appellant imprisonment for a period of six months in addition to the fine of P200. In reaching this conclusion we bear in mind the fact that the appellant is a lawyer by profession, and by reason of his intelligence and education, as well as by the obligation of his office as a lawyer, it was his duty to exercise his influence in support of the State. Instead of this he appears to have made the cause of Feleo and other communistic agitators his own. In particular, it is proved that the display of the red flag upon the occasion referred to was due to his advice. In taking this position and uttering the seditious words which he is proved to have used, the appellant violated not only the written law but his oath of office as an attorney.

The act which is the subject of this prosecution was committed prior to the coming into effect of the Revised Penal Code; but the penalty provided for this offense in article 142 in relation with article 139 of said Code is greater than that imposed by the trial court, and by this court, under section 8 of Act No. 292. It results that nothing beneficial to the appellant is revealed in the new Code.

It being understood, therefore, that the penalty of imprisonment for six months is imposed upon the appellant in addition to the fine, the judgment appealed from is affirmed. So ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Abad Santos, Vickers, Imperial, and Butte, JJ., concur.

[1] Page 990, post.

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