

CRISANTO EVANGELISTA, PLAINTIFF AND APPELLANT, VS. TOMAS EARNSHAW, MAYOR OF THE CITY OF MANILA, DEFENDANT AND APPELLEE.*G. R. No. 36453. September 28, 1932*

Ponente: OSTRAND, J.

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This is an action of mandamus brought against the defendant mayor of the City of Manila. The plaintiff alleges that he is the president of the Communist Party in the Philippine Islands, a political group seeking the speedy granting of independence in these Islands and the redemption of the proletariat, numbering over 300,000 men and women in its ranks; that on the 2d of March, 1931, by means of a letter to the defendant mayor of the city, the plaintiff requested the necessary permission to hold a popular meeting at Plaza Moriones in that city, on the afternoon of March 12, 1931, to be followed by a parade through the streets of Juan Luna, Azcarraga, Avenida Rizal, Echague, and General Solano in order to deliver to the Governor-General a message from the laboring class; that on the 3d of March, 1931, the mayor of the city denied the plaintiff's petition, instructing his subaltern, the chief of police, to prohibit all kinds of meetings held by the Communist Party throughout the city, because he had revoked their permits and licenses; that consequently, the Communist Party has not been able to hold any private or public meetings in the city since the 6th day of March, 1931; that in refusing the requested permission and in prohibiting all meetings of the party within the city, the defendant deprived the Communist Party of a constitutional right. The plaintiff further prays "that a writ of mandamus be issued against the herein defendant compelling him to issue a permit for the holding of meetings and parades by the Communist Party in Manila."

The defendant in his answer and special defense stated that subsequent to the issuance of the above-mentioned permit, it was discovered after an investigation conducted by the office of the fiscal for the City of Manila, that said Communist Party of the Philippines is an illegal association, or organization, which having for its principal object to incite the revolt of the proletariat or laboring class, according to its constitution and by-laws, states as follows:

"The Philippines, as a subject nation, in order to establish an independent government, has to revolt under the leadership of the laborers.

"* * * It is clear that the different political parties of the burgesses (Nacionalista-Consolidado, Democrata, etc.) are no different from one another. They have but one aim; to rise into power and exploit, with independence or not; to enrich themselves and strengthen the control of a government which is procapitalist and proimperialist.

"Because of these, we need a Communist Party, one that is not reformist but revolutionary. Only by revolutionary means can we demolish the slavery of one man by another and of one nation by another nation * * *

"The principal ideal, of the C. P. P. (Communist Party of the Philippines) in the desire to head the Philippine Government is different from that of the bourgeois political parties. Its aim is not to strengthen the capitalist

government but to engender-as it cannot be avoided-the war of the classes and to bring about its downfall. Therefore, the aims of the C. P. P. are the following:

"1. To lead the movement for the immediate and complete independence of the Philippines.

"2. To fight and bring about the downfall of American imperialism which oppresses the Philippines;

"3. To stop the exploitation of the laborers and defend their rights and interests;

"4. To establish in the Philippines a Soviet Government under the laborers.

"5. To bring about the downfall of capitalism.

"6. Under the dictatorship of the laborers, to emancipate and redeem the laborers and farm hands,-to embrace communism.

"With these high ideals the Communist Party of the Philippines will be established. And inasmuch as these ideals are the same as those of the C. I. (Communist International), the C. P. P. will extend its full help for the redemption and welfare of the laborers..

"* * * Here in the Philippines, American Imperialism is being fought also. The reluctance of the Moros in paying taxes to the Government, the disorders in the large haciendas, the farmers resisting the owners and the Constabulary, the strike of the high-school students, the uprising of the Colorums, and the oppression of the imperialists and capitalists of the laborers, are symptoms of a movement, which if carried on with unity, will perforce bring about the downfall of American imperialism and the obtaining of Philippine independence.

"Before achieving this ultimate ideal of the C. P. P. we will have you take other steps. First, to overthrow American imperialism which oppresses the Philippines; second, to overthrow capitalism and feudalism; third, to seize the power in the government; fourth, the establishment of labor dictatorship; fifth, the bringing about of class consciousness and class struggle and the prompt establishment of communism.

"Under this state of affairs, a struggle is indispensable. This struggle may be peaceful or violent, but just the same it will be a bitter struggle, where life and death will be staked.

"For the prompt overthrow of the institutions of capitalism and for the purpose of opening the eyes of the people that the imperialists are not really in earnest about giving subject peoples their independence-because independence is an enemy of oppression and exploitation-unless their downfall is brought about, it is necessary to struggle, not only during elections.

"The difference of the revolutionary movement advocated by the C. P. P. is not found only in its principal ideal but in the steps that it will take. While the reformists advocate understanding and cooperation with the burgesses or capitalists, the movement of the laborers is based on the principle of class struggle. Instead of cooperating with the enemy we should master our own strength and fight our enemies. And in order to achieve this union, strong and powerful, it is necessary that we should counteract every move that will tend to prejudice the laborers.

"In view of the revolutionary campaign of the C. P. P. for the sake of the laborers and farm workers, the capitalists and imperialists will become more violent and antagonistic toward them. And inasmuch ,as the capitalists and imperialists have control of the government, it is not impossible that they will use their power to more violently oppress us; in such a case they will make it clear that their ideals are inconsistent with those of the laborers. When that day comes, the class struggle and the revolution will redouble their force, for they will be forced to defend themselves by rising¹ in revolt against the oppression they are being subject to by means of the power of the state.

"For the obtaining of the partial demands to be made by the C. P. P., it is necessary that all the laborers and

farm hands, now divided by their different industrial organizations, be united. * * * If the factory laborers and farm hands organizations are already established and ready for the struggle, and if their movement is already under the leadership of the proletariat thru the C. P. P., it will endeavor to make the movement more vigorous for the purpose of obtaining its partial demands until the time comes when the factory laborers and farm hands are able to wrest the control of the Government from the capitalists and imperialists" and place it in the hands of the sons of the sweat;"

By virtue of the original permits granted by the defendant mayor to the said Communist Party of the Philippines, several public meetings were held under the auspices of the aforesaid association in different parts of the City of Manila, in which seditious speeches were made urging the laboring class to unite by affiliating to the Communist Party of the Philippines in order to be able to overthrow the present government, and stirring up enmity against the insular and local police forces by branding the members thereof as the enemies of the laborers and as tools of the capitalists and imperialists for oppressing the said laborers.

The communists further insisted that it was the duty of the laborers to bring the government into their hands and to run it by themselves and for themselves, like the laboring class in Russia; that when the laborers were united, neither the Constabulary nor the United States Army nor the imperialist Governor-General could stop them when they rose up as one body in order to free themselves from slavery by the capitalists; that America was cunning and a coward, as evidenced by the fact that when she entered the World War, her enemies were already weak; that the Constabulary and the police were the ones who made trouble for the laborers because they were the agents of the American imperialists in the Islands and they were used as instruments by the American Imperialist Government; that united together, the laborers could down the American Imperialist Government; and other terms and expressions of similar tenor and import.

It will be readily seen that the doctrines and principles advocated and urged in the constitution and by-laws of the said Communist Party of the Philippines, and the speeches uttered, delivered, and made by its members in the public meetings or gatherings, as above stated, are highly seditious, in that they suggest and incite rebellious conspiracies and disturb and obstruct the lawful authorities in their duty.

Considering the actions of the so-called president of the Communist Party, it is evident that he cannot expect that the defendant will permit the Communist Party to hold meetings or parades in the manner herein described. Furthermore, it may be noted that the complaint of the case is written merely in general terms and calls only for a judicial declaration upon a question which is not at present an issue between the parties to this case. But be that as it may, it must be considered that the respondent mayor, whose sworn duty it is "to see that nothing should occur which would tend to provoke or excite the people to disturb the peace of the community or the safety or order of the Government," did only the right thing under the circumstances, that is, cancel and withdraw, as was done, the permit previously issued by him to said Communist Party, in accordance with the power granted him by law—"To grant and refuse municipal licenses or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or municipal ordinance are being committed under the protection of such licenses or in the premises in which the business for which the same have been granted is carried on, or for any other good reason of general interest." (Act No. 2774, sec. 4, amending sec. 2434, par. [m], Administrative Code.)

Instead of being condemned or criticised, the respondent mayor should be praised and commended for having taken a prompt, courageous, and firm stand towards the said Communist Party of the Philippines before the latter could do more damage by its revolutionary propaganda, and by the seditious speeches and utterances of its members. In the case of *Gitlow vs. New York* (268 U. S., 652), the Supreme Court of the United States said:

"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 state cannot reasonably be required to measure the danger from every such utterance in the nice balance of a jeweler's scale. A single revolutionary spark may kindle a fire that, smoldering for a time, may burst into a sweeping and destructive conflagration. It cannot be said that the state is acting arbitrarily or unreasonably when, in the exercise of its judgment as to the measures necessary to protect the public peace and safety, it seeks to .extinguish the spark without waiting until it has enkindled the flame or blazed into the conflagration. It cannot reasonably be required to defer the adoption of measures for its own peace and safety until the revolutionary utterances lead to actual disturbances of the public peace or imminent and immediate danger of its own destruction; but it may, in the exercise of its judgment, suppress the threatened danger in its incipency. In *People vs. Lloyd*, supra, p. 35 (136 N. E., 505), it was aptly said: 'Manifestly, the legislature has authority to forbid the advocacy of a doctrine designed and intended to overthrow the government without waiting until there is, a present and imminent danger of the success of the plan advocated. If the state were compelled to wait until the apprehended danger became certain, then its right to protect itself would come into being simultaneously with the overthrow of the government, when there would be neither prosecuting officers nor courts for the enforcement of the law.' "

At any rate, the right of peaceful assemblage is not an absolute one. In the case of *People vs. Perez* (45 Phil., 599, 605), this court said:

"* * * 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." (Citing III WJarton's Criminal Law, pp. 2127 et seq.; *U. S. vs. Apurado* [1907], 7 Phil., 422; *People vs. Perfecto* [1922], 43 Phil., 887.)

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

Avanceña, C. J., Malcolm, Villamor, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

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