

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PROCOPIO REYES, POLICARPIO NACANA, FLORENTINO CLEMENTE, HERMOGENES MALLARI, MARCELINO MALLARI, CASTOR ALIPIO, A...

G. R. No. 40577. August 23, 1934

Ponente: HULL, J.

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HULL, J.:

Appellants were convicted in the Court of First Instance of Tarlac of a violation of article 133 of the Revised Penal Code, which reads:

"ART. 133. Offending the religious feelings.—The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon anyone who, in a place devoted to religious worship or during the celebration of any religious ceremony, shall perform acts notoriously offensive to the feelings of the faithful."

In the barrio of Macalong, municipality of La Paz, Province of Tarlac, there is a chapel where it is customary to hold what is known in local parlance as a *pabasa*. As stated by the lower court, "the term *pabasa* is applied to the act of the people, professing the Roman Catholic faith," of assembling, during Lent, "at a certain designated place, for the purpose of reading and chanting the life, passion and death of Jesus Christ. A book known as the '*Vida, Pasión y Muerte de Jesucristo*', which contains a full account in verse of the life, passion and death of Jesus Christ, is used in this celebration." The *pabasa* in Macalong used to begin on Palm Sunday and continue day and night, without any interruption whatsoever, until Good Friday. As usual, refreshment and food were served in the yard adjoining the chapel, and the expenses incidental thereto were defrayed by different persons.

While the *pabasa* was going on the evening of April 10, 1933, between 11 and 12 o'clock, the defendants Procopio Reyes, Policarpio Nacana, Florentino Clemente, Hermogenes Mallari, Marcelino Mallari, Castor Alipio, and Rufino Matias arrived at the place, carrying bolos and crowbars, and started to construct a barbed wire fence in front of the chapel. Alfonso Castillo, who was chairman of the committee in charge of the *pabasa*, tried to persuade them to refrain from carrying out their plan, by reminding them of the fact that it was Holy Week and that it was highly improper to construct a fence at that time of the evening. A verbal altercation ensued.

When the people attending the *pabasa* in the chapel and those who were eating in the yard thereof noticed what was happening, they became excited and left the place hurriedly and in such confusion that dishes and saucers were broken and benches toppled over. The *pabasa* was discontinued and it was not resumed until after an investigation conducted by the chief of police on the following morning, which investigation led to the filing of the complaint appearing on pages 1 and 2 of the record.

Many years ago the Clemente family by informal donation gave the land on which the old chapel was erected. When it was destroyed, the present chapel was erected, and there, is now a dispute as to whether the new chapel is not now impinging on the land that belongs to the Clemente family. The appellants are partisans of the Clemente

family.

It is to be noted that article 133 of the Revised Penal Code punishes acts "notoriously offensive to the feelings of the faithful." The construction of a fence, even though irritating and vexatious under the circumstances to those present, is not such an act as can be designated as "notoriously offensive to the faithful", as normally such an act would be a matter of complete indifference to those not present, no matter how religious a turn of mind they might be.

The disturbance or interruption of any ceremony of a religious character under the old Penal Code was denounced by article 571 and was punished by arrest from one to ten days¹ and a fine of from 15 to 125 pesetas. But this article was omitted from the Revised Penal Code and the offense, if any was committed by the appellants, is denounced in article 287 as an "unjust vexation" and punished by *arresto menor* or a fine ranging from 5 to 200 pesos or both.

It is urged upon us that the act of building a fence was innocent and was simply to protect private property rights. The fact that this argument is a pretense only is clearly shown by the circumstances under which the fence was constructed, namely, late at night and in such a way as to vex and annoy the parties who had gathered to celebrate the *pabasa* and is further shown by the fact that many of the appellants saw fit to introduce as their defense a false alibi.

Appellants are therefore acquitted of a violation of article 133 of the Revised Penal Code but found guilty of a violation of article 287 of the Revised Penal Code and are sentenced each to a fine of P75 with subsidiary confinement in case of insolvency, together with the costs in both instances. So ordered.

Avancena, C. J., Abad Santos, Vickers, and Diaz, JJ., concur.

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