

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOSE M. BAES, APPELLANT.

G.R. No. 46000. May 25, 1939

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This appeal was given due course by the Court of First Instance of Laguna by virtue of a writ of mandamus issued by this court in G. R. No. 45780. The facts are the following: In the justice of the peace court of the municipality of Lumban, Province of Laguna, a complaint was filed of the following tenor:

"The undersigned Parish Priest of the Roman Catholic Church in the parish and municipality of Lumban, Province of Laguna, upon being duly sworn, charges Enrique Villaroca, Alejandro Lacbay and Bernardo del Rosario with' an offense against religion committed as follows:

"That on April 14, 1937, at about 9 o'clock a. m., in this municipality of Lumban, Province of Laguna, Philippines, and within the jurisdiction of this court, the aforesaid accused, while holding the funeral of one who in life was called Antonio Macabigtas, in accordance with the rites of religious sect known as the 'Church of Christ', wilfully, unlawfully, and criminally caused the funeral to pass, as it in fact passed, through the churchyard fronting the Roman Catholic Church, which churchyard belongs to the said Church and is devoted to the religious worship thereof, against the opposition of the undersigned complainant who, through force and threats of physical violence by the accused, was compelled to allow the funeral to pass through the said churchyard. An act committed in grave profanation of the place, in open disregard of the religious feelings of the Catholics of this municipality, and in violation of article 133 of the Revised Penal Code.

(Sgd.) "JOSE M. A. BAES

"Parish Priest

"Complainant"

(Here follow the affidavit and the list of witnesses.)

The accused pleaded not guilty and waived the preliminary investigation. Before the case was remanded to the Court of First Instance of Laguna, the complainant filed a sworn statement regarding other points so that the provincial fiscal may have full knowledge of the facts and of the witnesses who could testify thereon. Upon the remand of the case to the court, the fiscal, instead of filing the corresponding information, put in the following motion for dismissal:

"The complainant is the parish priest of the Roman Catholic Church of Lumban, Laguna. The said priest charges the accused with having caused, through force, intimidation and threats, the funeral of one belonging to the Church of Christ to pass through the churchyard of the Church. Apparently, the offense consists in that the corpse was that of one who belonged to the Church of Christ.

"The undersigned is of the opinion that the act imputed to the accused does not constitute the offense complained of considering the spirit of article 133 of the Revised Penal Code. At most they might be

chargeable with having threatened the parish priest, or with having passed through a private property without the consent of the owner. Justice Albert, commenting on the article, has this to say: 'An act is said to be notoriously offensive to the religious feelings of the faithful when a person ridicules or makes light of anything constituting a religious dogma; works or scoffs at anything devoted to religious ceremonies; plays with or damages or destroys any object of veneration by the faithful.' The mere act of causing the passage through the churchyard belonging to the Church, of the funeral of one who in life belonged to the Church of Christ, neither offends nor ridicules the religious feelings of those who belong to the Roman Catholic Church."

Sustaining the foregoing motion, the court by an order of August 31, 1937, dismissed the case, reserving, however, to the fiscal the right to file another information for the crime found to have been committed by the accused.

From this order, the plaintiff appealed, which appeal was denied but thereafter given due course by the court by virtue of an order of this court.

The appealed order is based upon the motion to dismiss filed by the fiscal. This officer questions the sufficiency of the facts alleged in the complaint, but omits an essential part thereof, to wit, that the churchyard belongs to the church, and is devoted to the religious services of said church, and it is through this churchyard that the accused, over the objection of the parish priest and through force and intimidation, caused to pass the funeral of one under the rites of the religious sect known as the Church of Christ. Had the fiscal not omitted this essential part, he would not have come to the conclusion that the acts complained of do not constitute the crime defined and penalized by article 133 of the Revised Penal Code.

Moreover, the fiscal, in his aforesaid motion, denies that the unlawful act committed by the accused had offended the religious feelings of the Catholics of the municipality in which the act complained of took place. We believe that such ground of the motion is indefensible. As the fiscal was discussing the sufficiency of the facts alleged in the complaint, he cannot deny any of them, but must admit them, although hypothetically, as they are alleged. The motion raises a question of law, not one of fact. In the second place, whether or not the act complained of is offensive to the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholics and not those of other faithful ones, for it is possible that certain acts may offend the feelings of those who profess a certain religion, while not otherwise offensive to the feelings of those professing another faith. We, therefore, take the view that the facts alleged in the complaint constitute the offense defined and penalized in article 133 of the Revised Penal Code, and should the fiscal file an information alleging the said facts and a trial be thereafter held at which the said facts should be conclusively established, the court may find the accused guilty of the offense complained of, or that of coercion, or that of trespass under article 281 of the Revised Penal Code, as may be proper, pursuant to section 29 of General Orders, No. 58.

The appealed order is reversed and the fiscal is ordered to comply with his duty under the law, without pronouncement as to the costs. So ordered.

Avanceña, C. J., Villa-Real, and Diaz, JJ., concur.

Moran, J., see concurring opinion.

Laurel, J., see dissenting opinion

Imperial, J., concurs in the preceding dissenting opinion of Justice Laurel.

CONCURRING OPINION

MORAN, J.:

I concur in the dispositive part on the ground that the lower court, without determining if the churchyard of the Catholic Church is a place devoted to religious worship or not, held that the passage through the said churchyard of a funeral conducted in accordance with the rites of another religion is not offensive to the feelings of the Catholics. If that funeral with ceremonies of another religion had been made to pass inside the church, it would without question be offensive to the feelings of the Catholics. The lower court, through the provincial fiscal, is thus under a duty to determine: (1) If the churchyard is a place devoted to the religious worship of the Catholic Church, and (2) if the funeral held under the rites of another religion was made to pass through the said churchyard.

If the churchyard of the Catholic Church is like some of those seen in Manila churches where anyone can pass and where goods are even sold to the public, then it is not a place devoted to religious worship, and the fact that a funeral conducted under the rites of a different religion was made to pass through it, does not constitute a violation of article 133 of the Revised Penal Code, but, at most, the offense of threats if it is true that the parish priest was threatened when he prohibited the passage of the funeral.

DISSENTING OPINION

LAUREL, J.:

I dissent.

It is an accepted doctrine of construction that criminal statutes must be strictly interpreted. In fact, no person should be brought within the terms of the penal law who is not clearly so within, and no acts should be pronounced criminal unless so defined and penalized by law. The offense imputed to the defendants herein is defined in article 133 which is as follows:

"Art. 133. Offending 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."

As defined, two essential elements must be present under this article, to wit: (1) That the acts complained of were performed in a place devoted to religious worship or during the celebration of any religious ceremony; and (2) that the said act or acts must be notoriously offensive to the feelings of the faithful. It is admitted that the whole incident happened in the "atrio" or "patio" of the Catholic church of Lumban, Laguna. There was no celebration of any religious ceremony then. The "atrio" coming from the Latin "atrium" means, an open space, generally closed, fronting a building or a church. In this case it is a churchyard. While occasional religious ceremonies may be performed in the "atrio", nevertheless this does not make the "atrio" a place devoted to religious worship under article 133 of the Revised Penal Code, any more than a public plaza, a street or any other place occasionally used for religious purposes. But assuming that the churchyard in this case is "a place devoted to religious worship"-contrary to what we see and know (Justice Brown, in *Hunter vs. New York O. & W. Ry. Co.*, 23 N. E., 9, 10; 116 N. Y., 615)—is the act complained of "notoriously offensive to the feelings of the faithful?" The imputed dereliction consists in that "los acusados arriba nombrados, estando dirigiendo el entierro segun el rito de una secta religiosa llamada 'Iglesia de Cristo', del cadaver de uno que en vida se llamaba Antonio Macabigtas,

voluntaria, ilegal y criminalmente hicieron que dicho entierro pasase, como en efecto paso, por el atrio de la Iglesia Catolica Romana frente a dicha Iglesia, el cual atrio es propiedad de dicha Iglesia y esta dedicado a los cultos religiosos de esta Iglesia, contra la oposicion del infrascrito denunciante a quien los acusados mediante fuerza y amenazas de maltrato obligaron a cederles el paso del entierro por dicho atrio." (Underscoring is mine.) As I see it, the only act which is alleged to have offended the religious "feelings of the faithful" here is that of passing by the defendants through the "atrio" of the church under the circumstances mentioned. I make no reference to the alleged trespass committed by the defendants or the threats imputed to them because these acts constitute different offenses (arts. 280, 281 and 282-285) and do not fall within the purview of article 133 of the Revised Penal Code. I believe that an act, in order to be considered as notoriously offensive to the religious feelings, must be one directed against religious practice or dogma or ritual for the purpose of ridicule; the offender, for instance, mocks, scoffs at or attempts to damage an object of religious veneration; it must be abusive, insulting and obnoxious (Viada, Comentarios al Codigo Penal, 707, 708; vide also Pacheco, Codigo Penal, p. 359).

Why, may I ask, should the mere act of passing of the corpse or funeral cortege in or through a private property be characterized as notoriously offensive to the feelings of any religion or of its adherents or followers?

"The Lord gave, and the Lord hath taken away; blessed be the name of the Lord." (Job. I. 21.)

In this case, the Lord has recalled the life of one of His creatures: and it must be His wish that the remains shall have the right of way that they may be buried "somewhere, in desolate, wind-swept space, in twilight land, in no man's land but in everybody's land."

Rather than too many religions that will make us hate one another because of religious prejudices and intolerance, may I express the hope that we may grasp and imbibe the one fundamental of all religions that should make us love one another!

I must decline to accept the statement made in the majority opinion that "whether or not the act complained of is offensive to the religious feelings of the Catholics, is a question of fact which must be judged only according to the feelings of the Catholics and not those of other faithful ones, for it is possible that certain acts may offend the feelings of those who profess a certain religion, while not otherwise offensive to the feelings of those professing another faith." (Underscoring is mine.) I express the opinion that offense to religious feelings should not be made to depend upon the more or less broad or narrow conception of any given particular religion, but should be gauged having in view the nature of the acts committed and after scrutiny of all the facts and circumstances which should be viewed through the mirror of an unbiased judicial criterion. Otherwise, the gravity or leniency of the offense would hinge on the subjective characterization of the act from the point of view of a given religious denomination or sect, and in such a case, the application of the law would be partial and arbitrary, withal, dangerous, especially in a country said to be "once the scene of religious intolerance and persecution." (Aglipay vs. Ruiz, 35 Off. Gaz., 2164.)

I think that the ruling of the lower court in ordering the dismissal of the case and in reserving to the provincial fiscal the presentation of another complaint or complaints under other provisions of the Revised Penal Code, is correct and should be upheld.

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