

REVEREND ULRIC ARCAND, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 46336. September 29, 1939*

Ponente: IMPERIAL, J.

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The accused was charged in the justice of the peace court of Lucena, Province of Tayabas, with the light felony of oral defamation defined and punished by article 358 of the Revised Penal Code, for having insulted the offended party from the pulpit of the Roman Catholic Church of said town, calling him gangster No. 1 and saying that he would send him to jail like gangster No. 2, referring to Antonio Nosce. The accused pleaded not guilty but the justice of the peace court, after due trial, found him guilty of said light felony and sentenced him to pay a fine in the sum of P20, with the corresponding subsidiary imprisonment in case of insolvency, plus the costs. He appealed to the Court of First Instance of the province wherein he likewise pleaded not guilty, and after due trial he was convicted of the same offense and sentenced to pay a fine of P150, with the corresponding subsidiary imprisonment in case of insolvency, plus the costs of both instances. He again appealed to the Court of Appeals and said court modified the judgment appealed from by sentencing him to pay a fine of P100, affirming it in all other respects, with costs. The accused appealed for the third time to this court.

The facts of the case are summarized by the Court of Appeals as follows:

"The accused in this case, Reverend Ulric Arcand, had been designated by the Bishop of the Diocese of Lipa to take personal charge of the spiritual guidance of the catholic youth of Lucena, capital of the Province of Tayabas, by teaching them the doctrine and principles of their religion. For one reason or another, the truth is that the accused had provoked hostility and discontent not only among some elements of Lucena not affiliated with the Catholic church but even among catholics themselves. This hostility and discontent took the form of public parades including violence committed on the person of the accused. In fact on the afternoon of December 3, 1933, one Antonio Nosce went to the vicinity of the Lucena church and, upon meeting the accused therein, he slapped the latter, for which he was later prosecuted and convicted in criminal case No. 5864. In this movement of protest against the accused, it seems as if Aniceto Enriquez, the offended party in the case at bar, also took part. The enmity between the accused and the offended party must have been very strong since the former had filed more than one complaint, for threats, against the latter with the office of the provincial fiscal of Tayabas, which complaints, however, were not sustained by the fiscal's office inasmuch as it refused to take action against Enriquez.

"Such was the state of affairs when, on November 25, 1934, the feast of 'The Miraculous Virgin' was celebrated in Lucena. On this occasion, Father Arcand mounted the pulpit to deliver the sermon which, according to the evidence for the defense, dwelt on a certain phase of the life of Jesus Christ. After developing his theme, the orator proceeded to answer the written questions dropped by the faithful into a box placed at the door of the church and labeled 'Question Box'. The accused was engaged in this task when all of a sudden the strains from a band playing outside the church were heard. Thereupon, the accused stopped answering the written questions of the faithful and addressed an exhortation to his hearers, advising them not to be scandalized by said music which, according to him, was dedicated to the feast of The Miraculous Virgin and

was not in any way a demonstration against him, adding that during the public demonstration organized against him the year before, not more than sixty persons took part, only four of whom were catholics, and that he would take the necessary steps for the excommunication of three of them. He further stated: 'I believe you will remember that for said first demonstration, we sent to jail gangster No. 2 (alluding to Antonio Nosce, who slapped him on December 3, 1933); now we are going to send to jail gangster No. 1, that man Ceto (alluding to the offended party who was then outside the church, near the door). I was with him in the office of the fiscal for more than three hours yesterday.'

* * * * *

"There is no dispute regarding the main facts that have given rise to the present case. The defense does not deny that the accused, on the occasion in question, uttered the defamatory words alleged in the information. Nor is it denied that said words were addressed to the offended party, Aniceto Enriquez. The accused does not seriously nor positively deny that in the middle of his sermon he called the offended party gangster No. 1, saying that he would send him to jail as he did to gangster No. 2 (Antonio Nosce), and that to this effect he had had a three-hour conference with the provincial fiscal the day before. * * *"

We have transcribed the conclusions of fact arrived at by the Court of Appeals because the same cannot be altered and upon them must be based the conclusions of law which will hereinafter be expounded (sec. 138, subsec. [6], of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 3).

After the case had been decided by the Court of Appeals, the accused, in a motion for reconsideration, asked said court to make specific findings on the following facts:

"1. When the Bishop of Lipa designated the herein accused Father Ulric Arcand, as a missionary, to take charge of the religious instruction of the young students in the town of Lucena, capital of Tayabas, a protestant organization, the Young Men Christian Association, had a monopoly of the religious proselytism among the youth of said locality. As was to be expected, a bitter rivalry immediately arose between the two organizations. A harmless incident gave occasion for some evil-disposed persons to excite public animosity against the accused Father Arcand. Bonifacio Day was being celebrated in 1933 with a parade and a meeting. The parade was organized by the residents in general, but the meeting was under the auspices of the Y. M. C. A. (Testimony of Superintendent V. Trinidad, page 174.) Father Arcand, in turn, prepared a program at the Catholic Club, part of which was dedicated to the same hero Andres Bonifacio (testimony of the accused, page 122). Father Arcand, in a speech delivered prior to the arrival of the feast day, criticized the school authorities for compelling the students of the public schools to attend the meeting patronized by the Y. M. C. A. and went to the extent of advising the youth not to attend said meeting (testimony of the accused, page 125). This speech was distorted by some people and Father Arcand was accused of being anti-Filipino for preventing the youth from honoring the memory of Andres Bonifacio.

"2. Such was the state of affairs when a notorious malefactor (who then had already been convicted in Manila and Tayabas for having imprudently embraced and kissed young women against their will) slapped Father Arcand in the face at the door of the church, while the latter was accompanying the Bishop who was on a visit to the parish (criminal case No. 5864). This individual, Antonio Nosce, was later sentenced to jail for the act committed on that occasion. Before said incident took place, an impromptu meeting had been held in a cinema theater of the locality during which the orators individually exploited the anti-Filipinism of the missionary Father Arcand in their speeches. During the meeting, the herein complainant, Aniceto Enriquez, carelessly said in a loud voice that he would 'take charge of Father Arcand' (criminal case No. 5684, pages 196-198).

"3. In the night of said day on which Father Arcand was iniquitously maltreated at the door of the church itself, the Bishop was in the convent taking supper with several priests and residents when shouts were heard from the street. The parish priest Father Emilio Merchan went down, followed by Mr. Casiano Sandoval (now governor of the province), Mr. Antonio Marquez, Father Daete and a brother of Father Merchan. On the street

among the crowd was the herein complainant Aniceto Enriquez armed with a swagger stick with which he attempted to slug Father Merchan on the head. If he did not succeed in dealing the blow, it was due to the timely intervention of Mr. Sandoval and Mr. Marquez. While other residents, who rushed to the scene, were taking away Aniceto Enriquez from said place, the latter shouted at the top of his voice that he was disposed to kill 'all the friars and all foreign priests who come here' (testimony of A. Marquez, page 65; testimony of C. Sandoval, page 69). "I am going to kill Father Arcand and all the friars and white priests' (testimony of Father Daete, page 91).

"4. Upon instructions from the Bishop, Mr. Antonio Marquez and Father Daete went to ask for help at the police headquarters which was separated from the convent by only one street. The sole policeman therein answered that he could not give them any help because there was nobody to take his post (testimony of Antonio Marquez, page 65). Mr. Marquez telephoned the Constabulary barracks but there he was informed that according to their regulations, they were not bound to leave their barracks unless there was a 'clash or bloodshed' (testimony of A. Marquez, page 67; testimony of Father Daete, page 92).

"5. On the night of December 7, 1933, while Father Arcand was about to go up the house of Attorney Pedro Guevara for the purpose of rendering him spiritual assistance because he was dying, the herein 'offended party' Aniceto Enriquez followed him and held him by the arm with the evident intention of assaulting him. Father Arcand had to hurry up the stairs of Mr. Guevara's house and was able to leave only when a sergeant and a policeman arrived and accompanied him to the convent (testimony of Father Arcand, page 110; testimony of policeman Salamanca, pages 97, 93). On said occasion, Antonio Nosce and Aniceto Enriquez were seen by the accused standing at the door of the post office which was in front of the house of Mr. Guevara (testimony of U. Arcand, page 109). During those days, Antonio Nosce and Aniceto Enriquez, armed with canes, were frequently seen together near the convent (testimony of U. Arcand, page 109).

"6. The proceeding against Antonio Nosce for the maltreatment inflicted upon Father Arcand was still pending when said Antonio Nosce, with the evident intention of spreading terror in the entire community, with a big cane attacked from behind the attorney who represented Father Arcand as private prosecutor in said case, while said attorney came from mass, causing a wound on his head and felling him unconscious to the ground. This took place on January 28, 1934 (see criminal case No. 5905). Nosce was charged with frustrated homicide and convicted of serious physical injuries.

"7. On October 18, 1934, a group of individuals hostile to Father Arcand, who were organized into a 'parade', passed in front of the convent shouting: 'Out, Father Arcand; out, Father Arcand', while the latter looked out of the window of the convent. Among those individuals was the herein complainant Aniceto Enriquez, who, upon seeing the accused Arcand, stretched his hand out to the latter, gesticulating later with the same hand to convey him the idea that he would cut his neck (testimony of Maria Cabanero, page 74; testimony of H. Manalo, pages 77, 78).

"8. In the night of November 21, 1934, stones were thrown at the convent, breaking the windowpanes. The accused Father Arcand and Father Rafiñan went down. They found Ceto Enriquez himself in the vicinity of the convent. Father Arcand requested a policeman to arrest said Enriquez. Undoubtedly, it was Father Arcand's right to request it. Upon hearing it, however, Aniceto Enriquez became furious and, with the cane carried by him, wanted to strike Father Arcand. The policeman intervened and warded off the blow. (Testimony of Father Arcand, pages 59, 60.)

"9. Even in the very church, while Father Arcand performed the duties of his ministry, Aniceto Enriquez used to insult him. According to the testimony of Enriquez himself, he used to enter the church (although he was not a catholic but an aglipayan) and as soon as Father Arcand began to preach, he left on the pretext that he did not understand English (testimony of Aniceto Enriquez, page 42).

"10. On November 25, 1934, the day of the incident in question, while Father Arcand was on his way from the convent to the church, he met the chief clerk of the provincial treasury of Tayabas, Mr. Nicolas Tolentino. This

gentleman told the accused: 'My wife told me not to go to church frequently because they say that they are going to kill Father Arcand. I answered: why should I not go to church if I want to comply with my duties as a catholic?' (Testimony of Nicolas Tolentino, page 55; testimony of the accused, page 103.)

"11. On that day, the feast of the Miraculous Virgin was being celebrated. Shortly afterwards, and while the accused was preaching from the pulpit, a band passed. 'I noticed in the congregation', says the accused, 'a movement not only of surprise but also of fear' (testimony of the accused, page 101). This state of the mind was due to the series of aggressions, vexations and insults of which Father Arcand had been the object, and to rumors spread that the latter would be killed, for which reason the faithful would do well not go to church frequently. It was due to a great extent to the presence of Aniceto Enriquez at the churchyard, which presence in itself constituted a provocation to panic and disorder.

"12. It is not true that the complaint was filed by Aniceto Enriquez, prompted by the offense caused to him by the phrase uttered by the accused. The incident occurred on November 25, 1934. In the very churchyard, immediately after the mass, the teacher Paterno Africa informed Aniceto Enriquez of what Father Arcand had said of him (testimony of Aniceto Enriquez, page 37). Aniceto Enriquez did not file any complaint either on the same day, or on the following day, or the following week, or the following month. The complaint was filed by him, at the instigation of others and purely for vengeance, on January 3, 1935, one day after Father Arcand had gone to the office of the provincial fiscal to demand protection from the acts of violence that Ceto himself had been committing (testimony of the accused Arcand, page 114. See date of the complaint, January 3, 1935)."

The Court of Appeals denied the motion. In his brief the attorney for the accused asserts that the Court of Appeals denied the motion without stating any ground therefor. We do not have the order of denial before us for the reason that it has not been forwarded. It may be presumed, however, that the Court of Appeals denied the motion for being unfounded and because in its decision there already appears a detailed statement of all the material facts necessary to arrive at the conclusion whether or not the accused is really guilty of the offense imputed to him.

In the first assignment of error, the accused maintains that the Court of Appeals violated the law in refusing to make the aforesaid findings of fact. We are of the opinion and so hold that such error does not exist. By reading the appealed decision, it will be seen that it contains a methodical and complete statement of all the essential facts necessary to determine the degree of criminal liability incurred by the accused. With the fullness and precision demanded by the case, the Court of Appeals stated the material facts, including the greater part of the ones on which specific findings were sought. A reproduction of all the facts which the defense claims to have been proved would not serve any practical purpose in view of the fact that those not appearing in the appealed decision are irrelevant and do not establish the innocence of the accused.

The main and only defense invoked in favor of the accused and which is the object of the second assignment of error, is that the words, which have been considered defamatory, constitute a privileged communication and that he acted without malice and in good faith.

In the case of *United States vs. Canete* (38 Phil., 253 et seq.), we said that "A) communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding¹ interest or duty, although it contained criminatory matter which without this privilege would be slanderous and actionable (*Harrison vs. Bush*, 5 E. & B., 344; 1 Jur. [N. S.], 846; 25 L. J. Q. B., 25; 3 W. R., 474; 85 E. C. L., 344)." The defense of privileged communication, to be good, must be based on the good faith of the person violating the law or invoking the privilege. Speaking of oral defamation or slander, the facts or circumstances under which the defamation or slander was committed must show that the offender acted without malice or in good faith. In the case under consideration, the accused is not found in this situation and cannot successfully plead that he acted in good faith and without malice. Accepting all

the facts invoked in justification of his attitude, it appears clear that he was not justified in defaming and discrediting from the pulpit the good name and reputation of the offended party.

The light felony committed by the accused is that defined in the last part of article 358 of the Revised Penal Code and the penalty is in accordance with law, for which reason the appealed judgment is affirmed, with the costs of this instance to the accused-petitioner. So ordered.

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

Concepcion, J., concurs with the majority in the dispositive part of the foregoing decision.

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