

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE SEDANO Y CALONGE, DEFENDANT AND APPELLANT.

G.R. No. 4998. October 25, 1909

Ponente: CARSON, J.

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CARSON, J.:

Appellant was convicted in the Court of First Instance of the city of Manila of the crime of libel, as defined and penalized in Act No. 277 of the Philippine Commission, and sentenced to three months' imprisonment and to pay a fine of P1,000, Philippine currency, and the costs of the proceedings.

The alleged libelous matter appeared in an article bearing as its title the words "A Portrait, Dedicated to the Filipino People, and Especially to the People of Cavite," which was published on or about the 3d day of May, 1908, in the city of Manila, in a weekly publication known as "Chispazos."

At the trial in the court below, defendant and his counsel admitted in writing that defendant, as editor and proprietor of that periodical, published, printed, and circulated the issue which contained the alleged libelous matter; and the evidence of record conclusively establishes the allegation of the prosecution that the person referred to in the alleged libelous article, and whose character, reputation, and standing in the community are assailed therein, is the Hon. Rafael Palma, now a member of the United States Philippine Commission, and at the time when the article was published a Delegate to the Philippine Assembly from the Province of Cavite.

That the article in question was "an injurious publication" which impeached the honesty, virtue, and reputation of the person against whom it was directed, and tended to expose him to public hatred, contempt, and ridicule by publishing to the world his alleged mental, moral, and physical defects, is not and can not be questioned; and counsel for the appellant rests his argument on appeal, solely and exclusively on his contention that the evidence of record discloses that the matter charged as libelous is true, and was published "with good motives and for justifiable ends," and that appellant should, therefore, be acquitted under the provisions of section 4 of the Libel Law (Act No. 277).

But one witness was called by the defense, whose testimony, so far as it bears upon the truth or falsity of the statements made in the defamatory article, is practically limited to a relation of certain political differences between the witness and the subject of the article, whom the witness specifically charged with having violated a political compact, whereby, as witness claims, mutual assistance was to be rendered in the political campaign incident to the last general election of members of the Philippine Assembly.

The trial judge was of opinion that "the most" that "could be claimed" for this evidence was that it disclosed a misunderstanding between the parties to the quarrel; and even if it be admitted that the uncontradicted testimony of this witness would sustain a finding that the subject of the article had failed, for some reason unknown and not indicated by the witness, to fulfill the terms of a certain political compact entered into with the witness, nevertheless such a finding would fail utterly to sustain defendant's allegations of the truth of the defamatory article, which traduces the physical, mental, and moral qualities of the injured party, asperses his reputation and

standing in both public and private life, impugns his professional attainments, ability, and conduct as an attorney, and by direct imputation as well as by insinuation and veiled suggestion, charges him with grave offenses defined and penalized in the Penal Code.

No evidence whatever was submitted at the trial in support of defendant's contention that the defamatory matter was published with justifiable motives; but counsel on appeal insists that it appearing that the subject of the article was a member of the Philippine Assembly, and a candidate for reelection and for appointment to the Philippine Commission at the time when it was published, comment and criticism upon his conduct, and upon his mental, moral, and physical fitness for the offices for which he was an aspirant might lawfully be made by the public press, and that in the absence of proof of actual malice, such comment and criticism should be presumed to have been made for justifiable motives.

But while it may be admitted that the public acts of public men may lawfully be made the subject of comment and criticism by the public and by the press and that such criticism, when made in good faith, should be and is privileged; and while it may, perhaps, also be admitted that a somewhat broad license should be allowed to criticisms of and comment on the mental, moral, and physical fitness of candidates for public office, the very fact of candidacy putting these matters in issue, and the public having a right to be informed as to the qualifications of those who seek election, and perhaps appointment to public office, nevertheless it is clear upon general principles as well as under the express provisions of the Libel Law (Act No. 277) that such comment or criticism, if defamatory in its nature, constitutes a criminal libel if it appears that it was actuated by actual or express malice; that from the very nature of the privilege claimed the freedom of such criticism is necessarily limited to fair comment on the matters under discussion, fair comment being comment which is true, or which, if false, expresses the real opinion of the author, such opinion having been formed with a reasonable degree of care and on reasonable grounds. (Steph. Dig. Cr. Law, art. 274); and that such criticism can not be permitted to be used as a cloak for malicious assaults on the private life and character of the person criticised..

A mere reading of the article in question is sufficient to sustain a finding that its publication was inspired by actual or express malice, and the trial court properly found that it bears upon its face "plain evidence of a purposed calumny and furious malice." We do not deem it necessary or proper to give such an article further publicity by setting it out in this opinion, and it is sufficient for our purposes to say that the vile and insulting epithets with which it abounds, the manifest vindictiveness with which it assails the family, social, professional, and political relations of the injured person, and the reckless manner in which it imputes the commission of grave crimes and misdemeanors, which the defendant did not even attempt to prove at the trial, although he undertook to justify by offering evidence as to the truth of other portions of the defamatory matter contained in the article, leave no room for doubt of the animus in the mind of the author.

It need hardly be added that such an article can not be said to have been limited to fair comment and criticism of the public conduct of the public official assailed, or of his qualifications and capacity as a candidate for office, and that, its author should not and can not be permitted to shield himself, by claiming that the publication was made with justifiable motives, from the consequences to himself entailed by his malicious assaults on the public and private life of his victim.

Moreover the grounds of public policy upon which the so-called privilege of "fair criticism" of the public acts of public officers, and of directing public attention to the character and qualifications or lack of qualifications of candidates for office is based, by no means justify or necessitate the extension of the privilege to false and unfounded allegations of fact. The interests of society require that immunity should be granted to the discussion of public affairs, and that all acts and matters of a public nature may be freely published with fitting comments and strictures; but they do not require that the right to criticise the public acts of public officers shall embrace the right

to base such criticisms upon false statements of fact, or to attack the private character of the officer, or to falsely impute to him malfeasance or misconduct in office; and as to candidates for office it has frequently been held in the United States that false allegations of fact even when made in good faith and with probable cause are not privileged (59 Fed., Rep., 530; 21 Fla., 431; 136 Mass., 164; 36 S. W. Rep. (Texas), 765; 6Q Mich., 307; 69 Pa., 103; 42 N. S. Rep. (N. Y.), 270); although it has also been held that where there is an honest belief in the truth of charges made against candidates for office, and the publication is made in good faith and with probable cause one is not responsible even for publishing an untruth (46 Ia., 533; 64 Tex., 354; 111 Pa., 404), and the latter view is that held by Bishop, who asserts that this "is believed to be the better doctrine" in reason as well as as in authority. (Bishop's Crim. Law, Vol. II, § 936.)

For the purposes of this opinion, however, it is not necessary to discuss this latter question, or the distinction usually drawn in this connection between candidates for elective and appointive offices, because in the case at bar the lack of proof of probable cause for the belief by the publisher of the article of the truth of the charges contained therein; the lack of good faith disclosed in the manifest recklessness and malicious vindictiveness with which the attack was made; and the utter failure of the attempt to justify by proving the truth of the numerous defamatory allegations of fact, leave no room for doubt as to the criminal liability of the defendant.

Counsel for the appellant calls upon this court, by its decision in this case, to protect the freedom of speech and secure to the people of these Islands the liberty of the press which are guaranteed in the Philippine Bill. But while it is "fundamental with us that the proper and open discussion of whatever concerns the public shall be free," and that "the law of libel is never to be so administered as to impair the just liberty of the press" (Bishop's Crim. Law, Vol. II, § 913), the provisions of the Constitution of the United States guaranteeing the liberty of the press, from which the provisions of the Philippine Bill were adopted, have never been held to secure immunity to the person responsible for the publication of libelous defamatory matter in a newspaper, the right guaranteed consisting merely of a right to print what one chooses, without any previous license, but subject to be held responsible therefor in like manner as would anyone else be held responsible for a similar publication made in some other way. (Jones vs. Townsend, 21 Fla., 431; Giddens vs. Thirk, 4 Ga., 364; Sweeney vs. Baker, 13 W. Va., 158.)

We find no error in the proceedings prejudicial to the rights of the accused, and we are satisfied that the judgment of conviction of the trial court should be sustained.

We are unanimously of opinion, however, that the trial court erred on the side of leniency in imposing a sentence upon the convict, which, we think, is wholly inadequate in view of the gravity of the offense committed. The publication of falsehood and calumny against public officers or candidates for public office has frequently been held to be specially reprehensible and an offense most dangerous to the people and to the public welfare, because of the danger that the services of the best citizens may thereby be lost to the State (151 Mass., 50; 74 Tex., 89; 93 Ky., 347; 117 Pa., 520); and in the case at bar the offense is aggravated to a degree, not only by the form of the attack itself and the manner in which it was made public, but by the high and responsible nature of the duties performed by the official attacked and the dignity of both the office which he held at the time the libel was published and of the office for which he was at that time a candidate and to which he was later appointed. The libelous article occupies about four foolscap pages of typewritten matter, and every paragraph, and nearly every sentence, contains one or more distinct defamatory allegations of fact; and it would be difficult to conceive of a more wilfully and vindictively cruel, wicked, base, and dastardly attack upon the honor and integrity of a high public official and upon his private, family, social, and professional relations than that which is contained therein; it is couched in language so indecent, and abounds in indirections so vulgar, that it is not fit for publication in any respectable newspaper, and yet it was published in an illustrated weekly, which was spread broadcast through-out the Islands and sought especially to gain an entrance into the homes of the people of the city of Manila where its

victim resided and of the Province of Cavite which he represented in the Philippine Assembly, and, finally as the trial court well found, the mere reading of the article not only discloses "purposed calumny and furious malice," but a wanton and reckless attempt on the part of its publisher to inflict upon the victim of his malicious attacks the utmost pain and suffering and injury which could be caused by a scurrilous and libelous attack in the public press.

In view of all the circumstances of the case, we think that the penalty which should not fall far short of the maximum penalty prescribed by law, and we, therefore, modify the sentence imposed by the trial court, by substituting for so much thereof as imposes the penalty of three months' imprisonment and a fine of P1,000, the penalty of one year's imprisonment and a fine of P1,000, together with subsidiary imprisonment in accordance with law in the event of insolvency and failure to pay the fine, the subsidiary imprisonment, however, not to exceed one-third of the principal penalty; and thus modified, the sentence imposed by the trial court is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Moreland, JJ., concur.

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