

## THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. JOSE S. SERAPIO, DEFENDANT AND APPELLEE.

*G.R. No. 7557. December 07, 1912*

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### PER CURIAM:

This defendant was charged with the crime of libel, alleged to have be committed as follows:

"I. On or about the month of December, 1907, in the municipality of Santa Maria, Province of Bulacan, P. I., the said accused, Jose S. Serapio, did and criminally, with the intention of attacking, reviling, and expose in public hatred and scorn the good name, virtue, and reputation of Bonifacio Morales, write, publish, and send by mail, addressed to the Executive Secretary, an anonymous communication, the pertinent portion whereof is as follows:

" '11. Bonifacio Morales is the murderer of 12 peaceful and honest men are: Mariano Ramirez, municipal president of Bocaue; the teacher of the primary school of Marilao, Emigdio Perez, Candido del Rosario, Juan de Ve Manuel Valderrama, a boy 13 years old of the barrio of Alangalang, one Budio, musician, Mariano Mendoza, all of Santa Maria, an old man of the barrio of Sapang-palay of San Jose and two brothers, sons of Francisco Pascual of Norzagaray. He has committed various assaults and robberies, which are: The robbery of Captain Ciano Caluloua of Meycauayan, the robbery of Simeona of Angat, whereby a girl 12 or 13 years old was killed the robbery of P420 from Juana Reyes of Bocaue, all in the year 1899.'

"II. On the same date or time, to wit, December, 1907, in the municipal Santa Maria, Province of Bulacan, P. I., the said accused, Jose S. Serapio willfully and criminally, with the intention of attacking, reviling, a to public hatred and scorn the good name, virtue, and reputation of Bonifacio Morales, write, publish, and send by mail, addressed to the Executive Secretary, an anonymous communication, the pertinent portion whereof is as follows:

" '12. Bonifacio Morales is known in the Secret Service Department of Ma a criminal, whose crimes the detective Manuel Arbona discovered in year 1903 \* \* \*'

"III. At the same time, to wit, December, 1907, in the same place and pr the said accused, Jose S. Serapio, did willfully and criminally, with the of attacking, reviling, and exposing to public hatred and scorn the good name, virtue, and reputation of Bonifacio Morales, write, publish, an by mail, addressed to the Executive Secretary, an anonymous communication the pertinent portion whereof is as follows:

"'15. Bonifacio Morales is an inveterate gambler find to get money he us diabolical methods, as in the case of the General Santa Ana in 1903, who surrendered voluntarily in order to get within the pale of the law, but M tried to demonstrate to the Government that he was caught by him in order to secure the reward offered by the Government.

"'All the foregoing is little, if the provincial government would get int discovering many crimes committed in the province by Morales and his people.'

"IV. All the facts above specified were written, published, and address the Executive Secretary of the Islands by the said accused, maliciously, willfully, and at the time the slandered Bonifacio. Morales was discharging

duties of the office of justice of the peace of the municipality of Santa Maria, Province of Bulacan, P. I., and all the acts above specified were committed in violation of the law."

Upon said complaint the defendant was duly arraigned. Upon arraignment the defendant, by his attorneys, presented the following demurrer:

"I. The facts alleged in the complaint do not constitute a crime.

"II. It appears from the allegation in the complaint that if there were it has prescribed."

The fiscal of the Province of Bulacan and the attorney for the defendant, each presented written and oral arguments against and in support of said demurrer. The attorney for the defendant (p. 82 of Expediente) seems have waived his contention that the facts stated in the complaint were insufficient to constitute a cause of action.

After hearing the arguments of the respective parties, the Honorable Alberto Barretto, judge, in a very interesting opinion, decided that the ground of said demurrer was not well founded, but sustained the second and ordered the prosecuting attorney of the province to present a new complaint.

With reference to the second ground of the demurrer. Judge Barretto in decision said:

"With reference to the second ground for exception, counsel for the defense maintains that the crime has prescribed under the provisions of the law force in the Islands and supports such conclusion by asserting that absence of a definite provision in Act No. 277 of the Philippine Commission which fixes the time during which the penal action arising from the crime of libel may be exercised, the time which article 131 of the Penal Code fix the prescription of the crimes of calumny and insists is strictly applicable.

"Against this contention of the defense, the Attorney-General and the private prosecutor maintain that the prescription of a general nature contained in said article 131 is not applicable, for two reasons:

"First, because the crime of libel is entirely distinct and independent of calumny and insults; and

"Second, because that provision of the code in the matter of prescriptio crimes is not applicable to the crimes created and punished by special law promulgated by the Philippine Commission or the Philippine Legislature.

"After carefully considering the case, the court finds that while the crime of libel differs from that of calumny, defined and penalized in article 452, not so with respect to the crimes of insults provided for and penalized in articles 456 et seq. of the Penal Code. Under said articles and paragraph of article 277, the court does not understand to exist the same essential difference between the crime of insults in writing and that in both the object of the perpetrator of the crime is to attack the honesty, virtue, or the reputation of a person, exposing him to public scorn, or ridicule, characteristic elements that are likewise found in the insults in writing, defined and penalized in article 456 of the Penal Code in connection with 458 thereof. It is certain that Act No. 277 has not way fixed the prescription for the penal action in the crimes of libel. There is no provision in said Act that fixes the time within which the action arising from a libelous imputation may prescribe, but it is not less certain that by applying the rule that a criminal act is not prescriptible unless law expressly fixes such prescription, the crime of libel and other prosecuted at any time, which would naturally make the provisions of the Act absurd, for a case might arise where a penal action might be exercised even after the person concerned in the crime or responsible therefor had died.

"In support of his contention, the Attorney-General cites the precedent established by the court in the cases of U. S. vs. Lao Lock Hing Rep., 86) and U. S. vs. Calaguas (14 Phil. Rep., 739). What Supreme Court has established in these cases is that the rules of the Penal Code cannot be applied in the penalty to be imposed in the crimes punished by a special Act, but only the characteristic and special American principles of discretion in the punishment. In said cases the Supreme Court has down no principle applicable to the case at bar, that is, to prescription of the crime.

"The court believes that the provisions of the Penal Code with reference extinction of penal responsibility are applicable to the case, like those general character included in Book I of the Penal Code, which refer to essential requisites common to all crimes. No special law fixes these defines crime, but starting from the definition previously laid down by the common penal legislation it defines and establishes the requisites peculiar special crime it is sought to correct; but still, the court thinks that n deny that before classifying an act as a special crime it becomes necessary see whether or not the essential requisites common to every crime present. If such principles are of undoubted application, even without provision of the special law, the court thinks that those of the general legislation fixing the period within which the penal responsibility is e are likewise, for both are essential to make the law consistent and reason Under these considerations, the court holds that the ground for exception indicated should be sustained, and he therefore sustains the second ground demurrer or exception, and understanding that said objection can be corrected, orders the presentation of a new complaint."

From that decision an appeal was taken to this court by Mr. Imperial, a for the Government, who made the following assignments of error:

"The trial court incurred a legal error in sustaining the second ground demurrer, and in declaring that the crime alleged in the complaint has prescribed in accordance with the third paragraph of article 131 of the Code of the Philippines."

Under this assignment of error the only question presented by the appellant is, whether the prescription fixed by article 131 of the Penal Code for offense of calumny and insults (arts. 452-457) is applicable to the crime of libel as defined and punished under an Act (No. 277) of the Philippine Commission.

Calumny, as defined by the Penal Code, is: "The false imputation of a crime upon which a prosecution might be instituted by the Government on its own motion." (Art. 452.) This false imputation of crime may be expressed publicly in writing (art. 453) or orally (art. 454). The punishment provided, when the calumny is expressed publicly in writing, prison correccional in its minimum and medium degrees" (imprisonment six months and one day to four years and two months) "and a fine of not more than 12,500 pesetas" (P2,500) (art. 453). If the calumny expressed orally simply, the punishment is "arresto mayor in its degree (imprisonment from one month and one day to two months) and a fine of not less than 625 and not more than 6,250 pesetas" (P125 Pl,250) (art. 454).

It will be noted by reading said articles 453 and 454, that the punishment calumny depends not only upon whether it was expressed publicly, in writ or orally, but also whether the crime imputed was "a grave felony," o less grave felony' When a felony is grave or less grave is defined the Penal Code. (Art. 6.)

In the case of the crime of "insults," it may be either a statement act. In case it is a statement, it may also be either in writing or The penalty fixed for insults also depends on whether the offense is "gr "less grave," or "trifling." The punishment for the offense of "insult or "less grave" is banishment, in its minimum and maximum degrees (for period of two years four months and one day, to six years) "and a fine of not less than 325 and not more than 6,250 pesetas" (P65 to P1, (Art. 458.) If the insult is "trifling" the punishment is "arresto mayor minimum degree" (imprisonment for a period of one month and one day to two months) "and a fine of not less than 325 and not, more than 3,250 pesetas" (P65 to P650).

The crime of libel is defined by the law (Act No. 277) of the Philippine Commission as "a malicious defamation, expressed either in writing, printing or by signs or pictures, or the like, or public theatrical exhibitions, blacken/the memory of one who is dead or to impeach the honesty, virtue, or reputation, or to publish the alleged or natural defects o who is alive, and thereby expose him to public hatred, contempt, or ridicule."

Under this law (Act No. 277) it will be noted that the crime of libel c never be committed by oral expressions; it must always be express either in writing, printing, or by signs or pictures or the like, or p theatrical exhibitions.

The punishment provided under said Act (No. 277) always within the sound discretion of the court. The court, in fixing the penalty, is not limited by any of the rules of the Penal Code in relation to the grades of punishment therein prescribed.

It is contended by the appellee, that inasmuch as the Act (No. 277) of the Philippine Commission covers a part of the offenses of calumny and insults, that it is not a special law, as that phrase is used in article 7 of the Code, and that the provisions of article 131 (of the Penal Code) relation to calumny and insults apply to the crime of libel as defined by said Act 277). This contention makes it necessary to define "special laws," as phrase is used in article 7 of the Penal Code. Does this phrase "especiales" as used in the Penal Code (article 7) have the meaning applied to the phrase "special laws," as the same is generally used? But under the common law and the civil law, one of the general classifications of laws is that of (a) general and (b) special. The first, or general defined as a law which applies to all of the people of the state or to all of a particular class of persons in the state, with equal and obligation. A special law, as the phrase is generally used, is a law which applies to particular individuals in the state or to a particular or portion of the state only. The phrase "general law" is sometimes substituted by the phrase "public law" in contradistinction to special or private law. Mr. Black, in his very valuable law dictionary, defines a general law, contra-distinguished from one that is special or local, as a law that embraces a class of subjects or places, and does not omit any subject or place naturally belonging to such class. (Van Riper et al. vs. Parsons Law, 1.) It is confidently contended that the phrase "leyes especiales," as used in the Penal Code (article 1) is not used with this general signification: In fact, said phrase may refer not to a special law as defined, but to a general law. A careful reading of said article 7 indicates, that the phrase "leyes especiales" was not used to signify "special laws" in the general signification of that phrase. The article be noted, Simply says, in effect, that when a crime is made punishable under some other law than the Penal Code, it (the crime) is not subject to the provisions of said code. We are confirmed in this opinion by an examination of the Spanish jurisprudence upon the same subject. Viada (1 Viada, 84), in his valuable commentaries on the provisions of the Penal Code, in discussing article 7, practically limits himself to an examination "leyes especiales" to which the provisions of the Penal Code are not applicable. In answering the question: "Cuales son las leyes especiales penales," he simply enumerates such laws as follows, to wit:

- Ordenanza Militar;
- Ley de Organizacion y Atribuciones de los Tribunales de Guerra;
- Código Penal del Ejercito;
- Ley de Enjuiciamiento Militar;
- Delitos de Contrabando y Defraudacion;
- Delitos Electorales;
- Ordenanzas de Montes;
- Ley Municipal;

- Ley de Reclutamiento y reemplazo del Ejercito;
- Ley sobre policia;
- Ley sobre conservacion de los Ferrocarriles;
- Ley de Caza;
- Ley sobre Usurpation;
- Ley sobre la Falsification de Patentes de Invencion;
- Ley sobre Proteccidn a los Menores; and others which might be mentioned.

An examination of these laws denominated "leyes especiales," that phrase is used in the Penal Code, shows that, in fact, most of them general laws in the sense that they apply to all the persons in the state to all of a particular class. The rule which we now adopt, to wit: That when a crime is made punishable by a law other than by the provisions of the Penal Code, the provisions of said code do not apply, as has been heretofore announced by this court. (U. S. vs. Lao Lock Hing, Rep., 86; U. S. vs. Calaguas, 14 Phil. Rep., 739). In the case o vs. Lao Lock Hing, supra, the defendant was charged with a violation of the Opium Law. (Sec. 31, Act No. 1761.) In deciding the the court, speaking through Mr. Justice Torres, said:

"The crime under consideration consists of the violation of a special la referred to in article 7 of the Penal Code, and consequently the provision said code and the classification of the crimes comprised therein are no applicable in the present case. The crime must be punished under the provisions of the Act (No. 1761) which the sovereign power, by virtue its authority, saw fit to enact for the good of the country and its inhabitants. Wherefore, inasmuch as it is an act which the lawmaker ha declared to be invested with the attributes of a crime, the overruling o demurrer and the prosecution of the case are in accordance with the law."

In the case of U. S. vs. Calaguas, supra, the defendant w charged with having, by means of a wrench, removed several screws and fishplates from the line of the railroad, in the municipality of Santa R Province of Nueva Ecija, It was alleged that he thereby damaged the lin and that a derailment of the train would have occurred, had it not been discovered in time. The court decided that the "Ley de Ferrocarriles was a ley especial, under said article 7, and that the general provi the Penal Code did not apply. This court, speaking through its chief justice Mr. Arellano, said:

"Crimes which are punished by special laws are not subject to the provision of this article (article 7 of the. Penal Code). The act of wrenching screws and fishplates from the rails of a railroad line is punished by a law, that which governs the policing and preservation of railroads, came by the law of November 23, 1877, made applicable to the Philippine by royal decree of August 6, 1875. In reality this provision relates to th November 14, 1855, one almost identical to that of 1877, article 16 of reads: 'He who shall voluntarily destroy or damage a railway line \* \* \* shall be punished with the penalty of prision correctional'"

In the more recent case of U. S. vs. Fuster (10 Off. Gaz., 1048) very brief opinion, when the question was squarely presented whether provisions of the Penal "Code relating to the prescription or limitatio action for calumny and insults were applicable, this court refused to the rule of prescription or limitation of the Penal Code

to the crime as defined by the law of the United States Commission. (Act No. 277.)

This court has refused in many cases to apply some of the general provisions of the Penal Code to the laws of the United States Commission, or to special decrees of the Kingdom of Spain applicable to the Philippine I thereby holding, in effect, that such laws, when they provided a penal for their violation, were "leyes especiales," as that phrase is u Penal Code.

See U. S. vs. Hutchinson (5 Phil. Rep., 343, November 21, 1905), court refused to apply the provisions as to subsidiary imprisonment the nonpayment of a fine under Acts Nos. 610 and 652 of the United States Commission;

U. S. vs. Glefonea (5 Phil. Rep., 570, January 24, 1906), where refused to apply the rule with reference to subsidiary imprisonment to a of Act No. 619 of the United States Commission;

U. S. vs. Lineses (5 Phil. Rep., 631, February 17, 1906), where refused to apply the provisions as to subsidiary imprisonment of the Pen Code, to Act No. 292 of the United States Commission;

U. S. vs. Carvajal et al. (4 Off. Gaz., 705, April 16, 1906), wher refused again to apply the rules as to subsidiary imprisonment of the Penal Code to section 8 of Act No. 292 of the United States Commission; in t case, the court, speaking through Mr. Justice Torres, said:

"The provisions of the Penal Code which authorize the imposition of subsi imprisonment for the nonpayment of a fine imposed are not applicable to those guilty of crimes punished under said Act (No. 292) and other Acts of the Commission, the Penal Code being based upon an entirely different system of legislation."

U. S. vs. Ang Kan Ko (6 Phil. Rep., 376, August 22, 1906), whe court again refused to allow the application of the rules of the Pen Code to the laws of the United States Commission (Acts Nos. 355, 653 and 864);

U. S. vs. Cortes et al. (7 Phil. Rep., 149, December 7, 1906). the court again refused to allow the provisions of the Penal Code to applied to the laws of the United States Commission, or to the Law of Brigandage (Act No. 518);

U. S. vs. Lopez Basa (8 Phil. Rep., 89, March 19, 1907). In this court refused to apply article 3 of the Penal Code relating to attempts commit crimes, to the crimes defined and punished by the laws of the United States Commission (Act No. 82);

U. S. vs. Macasaet (11 Phil. Rep., 447, October 15, 1908). In this case the court refused to apply the rules relating to subsidiary imprisonment of Penal Code to sections 66 and 68 of Act No. 1189 of the United States Commission;

U. S. vs. Servillas (12 Phil. Rep., 12, November 11, 1908), where again refused to allow the provisions of the Penal Code to be applied t Act No. 1461 of the United States Commission;

Ocampo vs. Jenkins (14 Phil. Rep., 681, 683, December 24, 190 where the court said it had, in numerous cases, decided that the provisions of the Penal Code were not applicable to crimes created by the laws of the United States Commission;

Cruz vs. The Director of Prisons (17 Phil. Rep., 269, November where this court again said, speaking through Mr. Justice Trent, "Prior to the enactment of Act No. 1732, the Courts of First Instance had no author to impose subsidiary imprisonment for a failure to pay fines in cases o conviction for violation of Acts of the United States Commission;"

U. S. vs. Kennedy (18 Phil. Rep., 122, December 29, 1910), where the court again refused to apply the provisions of the Penal Code to the Acts of the United States Commission.

This court has uniformly, through a long line of decisions, as above indicated, refused to apply some of the provisions of the Penal Code to *leyes especiales*, as that phrase is used in article 7; or, in other words, court has refused to apply some provisions of the Penal Code to any general law of the Philippine Commission, which, within itself, define punishment of a crime.

The Honorable Alberto Barretto, judge, in his decision in the court very correctly says, among other things:

"But it is no less certain that by applying the rule that a criminal act is prescriptible unless the law expressly fixes such prescription." In this is the correct rule. (*Dover vs. Maestaer*, 5 Esp, 92 Eng Common Law Reports; *Hyde vs. Partridge*, 3 Salk, 223, 228 (E. C. L. Reg. vs. Hull, 2 Fast & F., 16 (E. C. L.)) The doctrine of prescription, the limitation of time within which an action may be brought, is of pure statutory origin. Both under the common and the civil law a right of action never died by mere lapse of time. (*Mackeldrey's Roman Law*, sec. 213; G 4, sec. 128.) The court, in the absence of express law, has no authority to fix a period of prescription or limitation. (*Missouri vs. Illin* 496; *Reist vs. Heilbrennan*, 11 Serg. & R. (Pa.), 131; *Battle vs. Ga.*, 405; *Buchanan vs. Rowland*, 5 N. J. Law, 721; *Gray vs. Hartford Ins. Co.*, 6 Fed. Cases, No. 3375; *1 Blatchford (U. S.)*, 28 *Williams vs. Jones*, 13 East, 439; *The People vs. Gilbert*, 18 John 227; *Bell vs. Morrison*, 1 Peters (U. S.), 351.)

Under the common law the word "prescription" is generally used with reference to the acquisition of a right by the lapse of time. It is example, under the common law, that one may acquire a right to real property or to an easement by prescription.

The word "limitation," as applied to actions under the common law, has reference to the time within which an action must be brought after the right of action has accrued. Under the Civil Code the word "prescription" is used to cover both of these ideas. (See Civil Code, arts. 1930-1975; 4 Escriche's *Diccionario de Legislation y Jurisprudencia*, 643-649.)

Under the Penal Code the word "prescription" is used with reference to time within which the action must be brought. (See Penal Code, art. 13 paragraphs 6 and 7.)

By prescription or limitation of actions, the right of action is not extinguished, neither under the common nor under the civil law. Both Civil and the Penal Codes provide when the action is extinguished and when it is prescribed simply. These statutes (of prescription or limit) do not destroy the right. They simply provided, in effect, that after the time prescribed by law, the defendant might object, if he desire to being sued. If the defendant failed, in some proper way, to object, in other words, interpose the statutory defense, the action could be maintained. The statute provided a special defense simply. If the defense of prescription or limitation is not expressly raised, it is waived and available. It can not be raised by demurrer. It must be expressly pleaded (*Aldeguer et al. vs. Hoskyn*, 2 Phil. Rep., 500; *Domingo vs. Osori* Rep., 405; *Maxilom vs. Tabotabo*, 9 Phil. Rep., 390; *Harty vs.* 13 Phil. Rep., 31; *Sunico vs. Ramirez*, 14 Phil. Rep., 500.)

Our conclusions, then, following the rule heretofore adopted by this court, are:

First. That by reason of article 7 of the Penal Code, some of the general provisions of said code do not apply to the penal laws of the United States Commission, unless, by express provision of law, they are made applicable

Second. That there is no general or special provision of law making any the provisions of the Penal Code applicable to the Libel Law of the United States Commission (Act No. 277), except the provision as to subsidiary imprisonment when a fine is imposed. (Act No. 1732.)

Third. That the period of prescription fixed by article 131 of the Penal Code for calumny and insults, does not apply to the crime of libel as defined and punished under Act No. 277 of the United States Commission.

Fourth. That unless a period of prescription or limitation is fixed by law particular offense or crime, the action for such offense or crime is no barred by lapse of time.

Fifth. That the law defining and punishing the crime of libel (Act No has not fixed a period of prescription or limitation within which an a for such crime shall be instituted.

For all of the foregoing reasons, the judgment of the lower court, sustain the second ground of demurrer, is hereby reversed, and it is hereby ordered that the cause be remanded to the lower court from which it cam with direction that the defendant Jose S. Serapio be ordered to appear plead to the complaint presented in this cause. It is so ordered, without finding as to costs.

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

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