43 Phil. 618

[G. R. No. 18078. July 10, 1922]

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. GERARDO P. BORJA, DEFENDANT AND APPELLEE.

D E C I S I O N

STATEMENT

The information alleges that on or about the 21st of July, 1920, the defendant, with malicious intent to injure Juan B. Rañola, a councilman of the municipality of Lukban, Province of Tayabas, Philippine Islands, and to maliciously expose him to odium, contempt, and ridicule, wrote an article in the municipality of Lukban, and caused the publication and circulation thereof in the said municipality and other municipalities of the. province on page 2 in the *Ang Bansa*, a newspaper in the City of Manila, and with general circulation in the municipality of Lukban and the Province of Tayabas, which article was false, injurious, and a malicious libel.

After four witnesses for the prosecution had testified, it appeared that the article was actually written by the defendant in Manila, for which reason the defense moved for the dismissal of the case, and the motion was granted, from which decision the prosecuting attorney appealed to this court. The fiscal filed a motion to dismiss the appeal on the ground that the defendant was placed in jeopardy and acquitted, and that an appeal will not lie.

Johns, J.;

It will be noted that the information itself alleges that the libel was written in Lukban, Province of Tayabas, and that it appeared from the evidence of the prosecution that it was actually written by the defendant in Manila where it was published in a Manila newspaper, which has a circulation in the municipality of Lukban where Juan B. Rañola resided, and other municipalities of the Province of Tayabas, where it was seen and read by the people

residing there. What purported to be a certified copy of an opinion of this court *in banc* promulgated February 21, 1921, and signed by all of the Justices but one, who was absent, was used and submitted to the trial court for its inspection and guidance, in which it is said:

> "We lay down the rule that a criminal prosecution for libel lies only at the place where it is written or printed and published."

Following that decision and relying thereon, the trial court sustained the motion to acquit the defendant. The plain truth of it is that the official records of this court show that the opinion in question was not a bane decision; that it was rendered in the case of United States vs. Perfecto[1]and was signed by only three members of one division, the fourth of whom dissented. Hence, it is very apparent that someone blundered, and that the trial court was misled.

Be that as it may, the fact remains that the defendant was acquitted by the trial court, and that, under the decision of this court in the case of United States vs. Regala (28 Phil, 57), the motion of the fiscal must be sustained.

The case had gone to trial and four witnesses were called for the prosecution, and the defendant then filed his motion, which was sustained, and, as a result of those proceedings, he was placed in jeopardy and cannot be tried again on the same charge.

This is an important case, and the majority of this court do not agree with the decision in the case of United States vs. Perfecto, *supra*. The opinion in that case frankly says:

> "The general rule announced by a large majority of jurisdictions in t*he* United States is, that a criminal prosecution for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where such article was written or printed. This is also the common-law rule whereby the sale of each copy of the newspaper is a distinct offense. The prosecutor may consequently at least choose for which of the distinct offenses he will call the guilty party to account."

We also agree with everything said in that opinion about the freedom of the press, but that does not give a newspaper or anyone else any right or license to publish a malicious libel, or

to maliciously and wrongfully destroy any man's character. No reputable newspaper will do that, and, where it is maliciously done, a crime has been committed, for which someone should be prosecuted. The law, as laid down in the case of Perfecto, in legal effect, would amount to a denial of justice, and would permit a newspaper in Manila with impunity to maliciously libel anyone in a distant province. If it be said that a prosecution in a distant province will work a hardship on a newspaper, the answer is that a newspaper ought not to publish a malicious libel about anyone, and if it does, it invites prosecution.

The courts always have been and always will be ready and willing to protect the freedom of the press, and will not suffer or permit frivolous prosecutions. It is only where the article is malicious and untrue, and that it is published with intent to injure and defame, that the prosecution will lie.

As to the venue of the crime, Cyc., vol. 25, p. 433, says:

> "JURISDICTION AND VENUE.—The cause of action for slander is transitory, and action may be brought in any county or jurisdiction in which defendant may be found. In the case of libel it is held that it is not the jurisdiction in which the article is printed but the jurisdiction in which it is published and circulated that determines whether the words used are actionable. So the general rule is that an action for libel may be brought and tried in any county in which the libel was published or circulated."
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> R. C. L., vol. 17, p. 464, says:
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> "JURISDICTION AND VENUE.—It is generally held that a criminal prosecution for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where such article was written or printed. If the libel be, at the request of the defendant, inserted in a newspaper published in an adjoining state, which usually circulates, and which, in fact, was circulated in a neighboring state, the defendant is guilty of a publication in the latter state. * * *"

We do not know of any valid reason why this court should not follow the decisive weight of authority which holds that in this class of cases, it is not a matter of choice with the defendant as to where he should be tried. There is no danger from frivolous prosecutions,

and the courts have a right to, and always will, protect any person from vexatious prosecutions.

It often happens that the injured person is a poor man, and that his character and reputation for honesty are his only assets, and that they are sacred to him. To require that kind of a man to leave his own home and to go hundreds of miles to prosecute a case of libel would amount to a denial of justice. Under the authorities, libel is a continuous crime and is an untrue and malicious assault upon a person made with intent to injure and defame his character, which never ought to be made by a newspaper or anyone else without reasonable ground, and in the trial of any person charged with libel, the law affords ample protection to defendant's rights.

In the instant case, the defendant resided in the same province as Juan B. Rañola, and it is very apparent that he left there and came to Manila and wrote the article in question to avoid prosecution for libel upon the very ground stated and decided in the Perfecto case.

If it be a fact that he wrote the article and caused its publication, and that copies of the newspaper in which it was published were distributed and in general circulation in the municipality of Lukban and adjoining municipalities of the Province of Tayabas, and that the article was malicious and untrue, and was published with intent to defame and injure Rañola, the defendant was guilty of the crime charged and should have been convicted, but, for the reasons above stated, the motion to dismiss is sustained. So ordered,

Johnson, Street, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

Araullo, C. J., concurs in the result.

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[1]Page 624, post

DISSENTING

MALCOLM, *J.*,

As the decision in this case was promulgated during my enforced absence from the court, permission has been granted me to file a separate opinion.

The motion of the Acting Attorney-General of November 1, 1921, asked that the appeal of

the Government be dismissed for the reason that the defendant had been acquitted and had consequently been placed in jeopardy. That, in reality, was all there was to the case. But having so decided, the court, in its decision of July 10, 1922, for reasons which I suppose are for it sufficient, rediscusses the subject of venue in criminal libel cases and revokes the decision in the case of United States vs. Perfecto. In justification for the action of the majority, it may be said that the decision in the Perfecto case was handed down by a division of the court, and so, under the rules, did not constitute jurisprudence, while the instant decision is that of the court *in banc* and, consequently, the authoritative doctrine which henceforth must be followed.

In order that all who read the majority decision may have knowledge of the prior decision which it supersedes, and in order that the writer need not restate his views, the opinion in the Perfecto case is herein set out in full:

"UNITED STATES OF AMERICA
"PHILIPPINE ISLANDS
"IN THE SUPREME COURT OF THE PHILIPPINE ISLANDS
"SECOND DIVISION

"THE UNITED STATES, plaintiff and appellant,	} R. G. No. 16338.
	} Submitted: Dec. 6, 1920.
VERSUS	} Promulgated: Feb. 1, 1921.
	} Present: Araullo, Street, Malcolm, and Villamor, JJ.
"GREGORIO PERFECTO, R. CUSTODIO SALAZAR, and	}
GREGORIO MARIANO, defendants and appellees.	}

"DECISION

"The Government appeals from an order of the Honorable Fermin Mariano, judge of First Instance of Oriental Negros, dismissing, upon demurrer, the criminal action for libel instituted against Gregorio Perfecto, R. Custodio Salazar, and Gregorio Mariano, on the ground that the court had no jurisdiction. Another phase of the constitutional guaranty of freedom of speech and press—and a not unimportant one—is thus presented for consideration.

"The information in this case, in substance, alleges the following facts: On or about October 1, 1919, the defendants were the owners and editors of *La Nacion*, a daily newspaper in the Spanish language, printed, edited, published, and circulated in the city of Manila. On the said date the defendants, as such owners and editors of the newspaper *La Nacion*, published therein an article tending to impeach the honor, reputation, and virtue of Enrique Villanueva, governor of the Province of Oriental Negros, as a private citizen and as a public official. *La Nacion* was said to be a paper of wide circulation in the city of Manila and in the Province of Oriental Negros, as well as in the other provinces of the Philippine Islands. Efforts were made by the accused to have the libelous article attract attention and to give it the widest possible publicity by sending free of charge to many persons, especially residents of the Province of Oriental Negros, copies of the issue printed on October 1, 1919. The article in question, which was transcribed in the information, charged Governor Enrique Villanueva of Oriental Negros with having prostituted his office, in that he used the services of municipal presidents and municipal policemen in the sale of tickets for the raffle of his automobile when he knew that it could not be raffled because he had to deliver it to a Chinaman in payment of a debt, thereby defrauding the public and violating the law. The defendants in their demurrer did not question the libelous character of the article but relied on the defense of lack of jurisdiction.

"The Libel Law (Act No. 277, section 11), in speaking of civil actions, provides that suit may be brought in any court of first instance having jurisdiction of the parties. The law is, however, silent as to the venue of criminal actions. The Code of Criminal Procedure, which would then seem to be applicable, only provides that a complaint or information is sufficient if it shows among other things that the offense was committed within the jurisdiction of the court and is triable therein. (General Orders No. 58, sec. 6 [4].) It would consequently appear that use must be made of the general principles of criminal procedure. With this the admitted situation as to the status of the case and as to the pertinent Philippine law, the Attorney-General suggests that the point at issue is not in reality whether the Court of First Instance of Oriental Negros had jurisdiction of an offense committed in Manila, but whether, upon the facts alleged in the complaint, the accused committed within that province the crime charged in the information.

"The general rule announced by a large majority of jurisdictions in the United

States is, that a criminal prosecution for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where such article was written or printed. This is also the common-law rule whereby the sale of each copy of the newspaper is a distinct offense. The prosecutor may consequently at least choose for which of the distinct offenses he will call the guilty party to account. (17 R. C. L., 464; Commonwealth vs. Blanding [1825], 3 Pick., 304; State *ex rel*. Taubman vs. Huston [1905], 19 S. D., 644.) It is upon this expression of the principle pertaining to jurisdiction and venue in criminal actions for libel and the abundant authorities which support the same, that the Attorney-General very properly relies in prosecuting the appeal.

"Some decisions are said to hold that a criminal prosecution for libel lies only at the place where it is published, and not where it is circulated. (17 R. G. L., 464.) The best considered decision of this type which has come to our notice is the rather celebrated one in United States vs. Smith (173 Fed., 227), decided by the Federal Court of Indiana in 1909, having to do with the peculiar circumstances surrounding the construction of the Panama Canal. The defendants in this case were the owners and publishers of a daily newspaper at Indianapolis, Indiana, which was also their place of residence. About fifty copies of the paper were deposited in the post-office and sent by mail to Washington, D. C, to subscribers and others ordering the same. It was sought to remove the defendant from the State of Indiana to the District of Columbia for trial. The Federal Court held that for an alleged criminal libel published in Indiana only, and distributed in the District of Columbia, the Court in the District of Columbia was without jurisdiction to try the defendant for such alleged libel.

"The easy and the apparent way would be for us to follow the prevailing American rule without further thought or discussion. It is, however, well to recall, what is possibly too often forgotten, that we are to decide a case for the Philippine Islands and not for the continental United States. We are in the fortunate position of being able to choose between divergent doctrines and to select that one which seems to us most reasonable and most progressive and which will most assist in advancing the public interest in the Philippines. As has been repeatedly demonstrated by our decisions, the Philippine Judiciary looks upon the Anglo-American common law with the deepest respect. Yet it is also true, as heretofore expressly decided by this Court, that 'neither English nor American common law is in force in these Islands, nor are the doctrines derived

therefrom binding upon our courts, save only in so far as they are founded on sound principles applicable to local conditions, and are not in conflict with existing law' (U. S. vs. Cuna [1908], 12 Phil., 241; U. S. vs. Abiog and Abiog [1917], 37 Phil., 137; *In re* Shoop [1920], 41 Phil., 213). The Philippine courts must decide as to which rule is best adapted to the circumstances of the people and consistent with the peculiar character and genius of our government and institutions.

"It is impossible not to think of the subject under consideration in terms of the rights of the accused. It is of course undeniable, as said by the Supreme Court of New York, that 'the convenience of the prosecutor, the accused, or the witnesses, has never been allowed either here (the United States) or in England, as a ground for changing the place of trial in a criminal case.' (People vs. Harris, [1847], 4 Denio, 150.) Nevertheless, we cannot shut our eyes to local facts and conditions which everyone knows. Take for example the present case,—with the newspaper printed in Manila and possibly circulating in every province in the Philippines, the prosecuting officials could at least make a choice as to the place for trial—could, if they so desired, institute one action in Cagayan and another action in Jolo, thus continually dragging the unfortunate editor of a struggling paper from one end of the Philippines to the other. In this instance, the trial judge remarked that Dumaguete, the capital of Oriental Negros, was 'four hundred and twenty-five miles from Manila, so that the accused would have to make a long trip, always uncomfortable and at times dangerous, to get to this Court.' If the government has the right to select the tribunal, if there be more than one court to select from, and can take the accused from his home to a distant place to be tried, certainly the hardship to the defense is appreciable, to, say the least. The Administrative Code, in section 164, takes account of such conditions when it provides that the power granted to the judge of First Instance to hold court at a particular place 'shall be exercised with a view to making the courts readily accessible to the people of the different parts of the district and with a view to making the attendance of litigants and witnesses as inexpensive as possible.'

"To our way of thinking, a person accused of crime should be tried in a court at the place where he resides or where the offense was actually committed. The example of the late President Roosevelt who, maliciously charged with being a drunkard and a blasphemer, travelled to the state and county of his traducer,

there brought suit against this editor in his home city, there faced the editor under circumstances favorable to the latter, and there, during the trial, forced from him a retraction, is one worthy of emulation.

"If every sale or delivery of a newspaper is a separate publication, the conclusion is inevitable that this subjects the publisher of a libel to a trial away from his home in every province of the Islands where his publication is circulated. Indeed, as before stated, this is the common-law rule, and we have on our statute books no provision such as is found in New York and other States where it is provided that a person cannot be indicted or tried for the publication of the same libel, against the same person, in more than one county. (Penal Code of New York, sec. 251; U. S. vs. Press Publishing Company [1910], 219 U. S., 1.) When, therefore, the defendants printed their newspaper in Manila and mailed copies thereof to subscribers and others in the various provinces of the Philippines, either they committed a separate crime every time one of these papers went into a province, or there was but one crime, and that crime was committed where the paper was printed and published. We favor that rule which, while bringing the violator of the libel law to task, punishes him but once for the offense and this only after a trial under conditions such as will permit him to prove his innocence.

"In United States vs. Bustos ([1918], 37 Phil., 731), we said in part, and we again repeat that:

" 'Freedom of speech as cherished in democratic countries was unknown in the Philippine Islands before 1900. A prime cause for revolt was consequently ready made. Jose Rizal in "Filipinas Despues de Cien Años" (The Philippines a Century Hence, pages 62, *et seq*.), describing "the reform *sine quibus non*," which the Filipinos insist upon, said: "The minister, * * * who wants his reforms to be reforms, must begin by declaring the press in the Philippines free and by instituting Filipino delegates." The Filipino patriots in Spain, through the columns of *La Solidaridad* and by other means invariably in exposing the wants of the Filipino people demanded "liberty of the press, of cults, and of associations." (See Mabini, *La Revolucion Filipina*.) The Malolos Constitution, the work of the Revolutionary Congress, in its Bill of Rights, zealously guarded freedom of speech and press and assembly and petition.

" 'A reform so sacred to the people of these Islands and won at so dear a cost,

should now be protected and carried forward as one would protect and preserve the covenant of liberty itself.

" 'Next comes the period of American-Filipino cooperative effort. The Constitution of the United States and the State constitutions guarantee the right of freedom of speech and press and the right of assembly and petition. We are, therefore, not surprised to find President McKinley in that Magna Charta of Philippine Liberty, the Instructions to the Second Philippine Commission, of April 7, 1900, laying down the inviolable rule "That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances."

" 'The Philippine Bill, the Act of Congress of July 1, 1902, and the Jones Law, the Act of Congress of August 29, 1916, in the nature of organic acts for the Philippines, continued this guaranty. The words quoted are not unfamiliar to students of Constitutional Law, for they are the counterpart of the first amendment to the Constitution of the United States, which the American people demanded before giving their approval to the Constitution.

* * * * * * *

" 'The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted. Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be borne for the common good. Rising superior to any official or set of officials, to the Chief Executive, to the Legislature, to the Judiciary-to any or all the agencies of Government-public opinion should be the constant source of liberty and democracy.'

"From the days of the early Filipino patriots, from the time when Rizal, Del Pilar,

> Mabini and others agitated for a free press in the Philippines, from the date when President McKinley imposed upon every division and branch of the Government of the Philippines, the inviolable rule that no law shall be passed abridging the freedom of speech or of the press, until the present, this paramount constitutional privilege and inhibition has had a rocky road to travel. It has had to penetrate the mists of an apathetic public opinion. It has had to surmount a drastic Libel Law. And it has had to contend with occasional overly zealous judicial officers who are still prone to think of defamation in the terms of the Code of Hammurabi promulgated about 2250 B. C, and punishing the false accuser with death, or in the terms of the early colonial statute of Massachusetts enacted May 14, 1645, and authorizing the stocks and the whipping post for the defamer. We must refuse to interpose yet another obstacle to democratic progress.
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> "We lay down the rule that a criminal prosecution for libel lies only at the place where it is written or printed and published. Accordingly, the judgment is affirmed, without special finding as to costs. "It is so ordered.
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> (Sgd.) "GEO A. MALCOLM.
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> "We concur:
> (Sgd.) "MANUEL ARAULLO.
> "IGNACIO VlLLAMOR.
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> (In all fairness to Mr. Justice Avanceña, it should be stated that he also dissented when the case was under discussion, but was unable to announce his vote at the time the decision was promulgated, because of his absence from Manila. The vote in division was thus three to two.)

I need add little to my opinion in the Perfecto case. Nor, although cognizant of the sincere motives actuating the majority, and although entertaining the highest respect for the author of the decision, would I withdraw a word from my opinion. I shall be proud to have my decision in the Perfecto case stand side by side with the decision in this case.

The essential difference between the Borja decision and the Perfecto decision is not at all difficult to comprehend, and is fundamentally one of point of view. The majority is overcome

by the fetish of the “majority rule,” by the sanctity of judicial precedents, and by deference to that which is done in the continental United States. The writer is endeavoring to think in terms of reason and of common sense, in terms of a legal principle responsive to local conditions, in terms of Philippine progress and welfare. The majority is deeply moved by the plight of the injured person who often “is a poor man”—”To require that kind of a man to leave his own home and to go hundreds of miles to prosecute a case of libel would amount to a denial of justice.” (It may be mentioned in this connection that Tayabas is not hundreds of miles from Manila.) The writer sees, on the other hand, the plight of the accused, who, to paraphrase the language of the majority, is often a poor man—To require that kind of a man to leave his own home and to go hundreds of miles to defend a case of libel, would amount to a denial of justice. The majority puts the emphasis on the technical rights of the injured person and the prosecution. The writer would put the emphasis on the humanitarian rights of accused persons and the public. It may fairly be anticipated under the rule laid down in the majority decision, that unfortunate defendants and luckless editors will be required to leave their homes and businesses and travel to distant provinces to defend themselves against frivolous charges.

The instant decision draws the unwarranted inference, in my opinion, that the defendant, a resident in the same province as the injured party, left it and came to Manila and wrote the article in question to avoid prosecution for libel upon the very ground stated and decided in the Perfecto case. This assumption gives to the defendant a knowledge of the intricacies of the law which is flattering, but not justifiable. Moreover, a not very heavy burden would have been imposed on the prosecution and on the prosecuting witness had the criminal action been started in Manila instead of Tayabas, considering the proximity of Tayabas to Manila, and the ease with which the prosecution’s case could have been presented in the metropolis.

Much has been written of democracy in the Philippines; of the priceless guaranty to the Filipino people of free speech and a free press; of the advisibility of increasing newspaper reading; and of the vital need to develop an informed public opinion. Unfortunately, all too often, words are not transmuted into reality.

Motion to dismiss sustained.

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