2 Phil. 254

[G.R. No. 1109. May 15, 1903]

THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JOSE M. LERMA, DEFENDANT AND APPELLANT.

D E C I S I O N

LADD, J.:

The defendant has been convicted in the trial court of publishing a libel upon J. H. Goldman. The supposed libel is contained in a writing in the form of a petition, signed by the defendant and addressed to the justice of the peace of the pueblo of Pilar, Bataan. This writing was sent by the defendant, inclosed in a sealed envelope, to the justice of the peace. Several criminal prosecutions were at this time pending against the defendant before the justice, and when the petition was delivered the preliminary investigation was being held in one of these cases. The petition states that it is rumored that a plan has been formed to prosecute the petitioner for the purpose of discrediting his candidacy for the governorship of the province, and in general to injure his reputation. Then follows this language, the italicized words being those which are alleged to constitute the libel: *"The hatred and animosity, Mr. Justice, of certain provincial officials totcard me, and especially of the governor, Mr. Goldman, the defeated [candidate in the recent elections, and of the provincial fiscal, Senor Soriano, who has been and is my open enemy, are notorious not only in this province but in Manila, the evident purpose, the outgroicth of previous resentment, being to ruin my political career. The accusations which have been fabricated against me are premeditated and false, the result of passions engendered by political contests, and for this reason the worthy authorities at Manila, in the exercise of their sound judgment, rejected them when they were presented to them. The governor, Mr. Goldman, availing himself of the office which he holds as a provincial authority, has extorted affidavits from certain persons whom he has caused to sign incorrect documents."* The petition goes on to suggest that the fiscal ought to withdraw from the prosecutions, being attorney for the parties claiming to be aggrieved, and, after exhorting the justice to act with the deliberation

which the gravity of the situation demands, concludes with a prayer that, before any judgment unfavorable to the petitioner is rendered, he be given an opportunity to be heard and to testify in his own behalf, and that the petition be filed in the cause, if there is one pending.

While it was not, perhaps, shown at the trial that Mr. Goldman had been instrumental in securing any statements which were ever actually laid before the justice of the peace, it did appear that he had been instrumental in securing statements charging the defendant with various acts of wrongdoing, some of which acts were the subject of .certain of the prosecutions pending before the justice at the time of the filing of the petition. Whether the evidence shows that these statements, or any of them, had been secured by Mr. Goldman in such a manner as to warrant the charge that they were "extorted" from the parties who made them, and whether the statements were true or not, are questions which we do not think it necessary to determine. There was some evidence tending to establish the affirmation of both these propositions.

Assuming that the statements in the petition relating to Mr. Goldman are defamatory, were they made under such circumstances and for such a purpose as to relieve the defendant from criminal responsibility for them?

Section 3 of Act No. 277 provides that "an injurious publication is presumed to have been malicious if no justifiable motive for making it is shown." The effect of this provision is to make the existence of justifiable motives a complete defense to a prosecution for libel. If the publication is shown to have been made with justifiable motives the malicious intent, which is an essential ingredient in the definition of the offense (sees. 1 and 2), and which is presumed from the mere fact of the publication of defamatory matter, is negatived. In other words, the existence of justifiable motives implies the absence of malice. Whether the defendant can, by merely showing that the supposed libel was published upon what is known in the common law as a "privileged occasion," shift to the Government the burden of going forward with evidence to show actual malice, need not now be considered. When the evidence is nil in, if the defendant has shown the existence of justifiable motives, he is entitled to an acquittal; otherwise the publication is considered malicious and he must be convicted.

It has been suggested that section 4 is inconsistent with section 3, giving to the latter section the construction which we have placed upon it. It may be difficult to harmonize these sections if the language of section 4 is to be taken in its literal significance, but we

think there is no inconsistency if we look to the real purpose of the two sections.

Section 4 is as follows: “In all criminal prosecutions for libel the truth may be given in evidence to the court, and if it appears to the court that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; otherwise he shall be convicted; but to establish this defense, not only must the truth of the matter so charged be proven but also that it was published with good motives and for justifiable ends.”

The effect of this section appears to be to make the fact that the defamatory matter was true, evidence to show the existence of justifiable motives, but as justifiable motives may be lacking even Avhere the defamatory matter is true—the common-law maxim indeed being that the greater the truth the greater the libel—the law says that it is not enough merely to establish the truth of the words alleged to be libelous, but that the court must be satisfied upon the whole case, giving to the fact that the words are true such importance as it may deserve as the basis of an inference as to the true character of the party’s conduct, that the motives of the publication were good and the ends justifiable.

If the purpose of the section is to make it in general incumbent upon the defendant, in order to establish a defense to a prosecution for libel, to prove both truth and justifiable motives, the words “the truth may be given in evidence to the court” are superfluous; so also is the clause “but to establish this defense, not only must the truth of the matter so charged be proven but also that it was published with good motives and for justifiable ends.” The whole structure of the section indicates that it is not intended as a qualification of the general rule of responsibility laid down in section 3, but that its purpose is, as we have said, merely to render admissible evidence of truth in order to show the character of the defendant’s motives.

We take it that the words “good motives” and “justifiable ends” of section 4 are of equivalent import with the expression “justifiable motive” in section 3.

Act No. 277, down to section 11, is almost identical with sections 248-257 of the California Penal Code. The California statute is itself framed on the lines of other recent English and American legislation, by which the common-law doctrine whereby a defendant was not permitted in a criminal prosecution for libel to prove that his words were true, has been modified to the extent of permitting such evidence “when the further fact appears that the publication was made with good motives and for justifiable ends” (2 Bishop’s New Criminal

Law, sec. 920); or "that it was for the public benefit" that the words should have been published. (4 Enc. of Laws of England, 189.)

Section 9 of Act No, 277 provides that "a private communication made by any person to another, in good faith, in the performance of any duty, whether legal, moral, or social, solely with the fair and reasonable purpose of protecting the interests of the person making the communication or the interests of the person to whom the communication is made, is a privileged communication, and the person making the same shall not be guilty of libel nor be within the provisions of this act" What constitutes a justifiable motive is thus defined with reference to private communications, and it is to be noticed that it is not necessary, in order to establish the defense in such cases, that the truth of the words should be proved. If the construction which we have placed upon section 3 is not correct, but it is necessary with reference to written statements not embraced within section 9 to show both justifiable motives and the truth of the statements, in order to establish a defense, then it follows that private written communications are placed upon a more favorable footing than written statements made by a judge, counsel, witness, or, as in the present case, by a party, in the course of judicial proceedings, and, in general, more favorable than any written statements made in the discharge of public duties of any character. We do not think this result could have been,contemplated by the framers of the act.

If the effect of section 3 is, as has been suggested, merely to fix the burden of proof and not to make the existence of justifiable motives a defense, it will still be necessary in every case, in order to decide whether the presumption of malice is rebutted, to determine what are to be considered justifiable motives. The difficulty which it is supposed would result from the construction of section 3, which we have adopted, that there would be "absolutely no guide or compass to direct the court in the determination of what are justifiable motives," exists, therefore, if it exists at all, equally upon the other construction.

The ultimate question is, then, as we construe Act No. 277, whether the words alleged to constitute the libel were published with justifiable motives.

The matter contained in the petition presented to the justice by the defendant all related to the supposed prosecutions against the latter, and we think the circumstances of the case show quite conclusively that the sole motive of the defendant in presenting the petition was to defend himself against those charges. It was not an attempt to make use of judicial proceedings as a vehicle for the utterance of slander. It was merely an exercise of the natural right which a person accused of crime possesses, and which it is for the public

interest that he should enjoy unhampered so long as he exercises it in good faith and in a proper manner, to bring to the notice of the tribunal which is to pass upon his guilt all such considerations as he thinks may influence its judgment in his behalf, even though he may in so doing "incidentally disparage private character." In the sense of the law we think, therefore, that the defendant's motives must be regarded as justifiable.

We do not undertake to lay down any general rule as to what is to be regarded as a "justifiable motive" in criminal prosecutions for libel under Act No. 277. Other cases, involving different conditions of fact, will be determined as they arise. The publication in the present case must, we think, be regarded as having been made with justifiable motives, upon any rational view which can be taken of the meaning of that expression. This result seems a mere corollary from principles of natural right as well as of public policy too obvious to require any express recognition in the written law, and though in accord Avith the American and Knglish doctrine as to the privilege accorded parties, witnesses, and counsel in judicial proceedings, has been reached independently of that doctrine.

The judgment is reversed, with costs *de oficio*. Let the case be returned to tin? court below for proceedings in conformity with this opinion, acquitting the defendant.

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

CONCURRING

WILLARD, J.:

By sections 1 and 2 of Act No. 277 no one can be punished for publishing a libel unless it appears that the publication was malicious. Section 3 is as follows: "An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown,"

The purpose of this section, in my opinion, was to do away with the necessity of proving malice in certain cases. Its purpose was simply to place the burden of proof. According to the opinion of the court, however, it has a much broader meaning. It is an independent and substantive provision which treats not of presumptions but of defenses, and declares that it shall be a complete defense if the defendant shows that the publication was made with justifiable motives. According to this opinion, it is not necessary to look into other parts of the law in order to find what motives are justifiable. The court can judge for itself in each

case whether, in its opinion, the defendant, under all the circumstances of that case, was justified in publishing the libel. There i>s absolutely no guide or compass to direct the court in this determination. It is at perfect liberty to decide each case, without reference to any rules whatever which declare what are or what are not justifiable motives. Should a court below decide that there were justifiable motives, how is the Supreme Court to determine, as a matter of law, that the judge below was wrong, if there is no rule to which his decision is to be referred in order to know whether it was right or wrong? How is a party to know whether he has a right to publish a certain article? He knows that if he publishes it with justifiable motives he can not be punished. But where is he going to learn in advance what motives are justifiable? There would be absolutely nothing to which he could resort to obtain this information. He could not take the opinion of the judges in advance, and that opinion, with nothing to guide it, Avould determine his guilt or innocence. It is true that in the progress of time a body of decisions would grow up which might furnish him some light, it the doctrine of *stare decisis* should be adhered to. lint in the meantime he would be without relief.

It seems to me that this construction makes unnecessary all of the law after section 3. Having defined a libel, the law says that the accused shall be punished for it if the judges of the Supreme Court see fit to do so. But such absolute discretion has not, as far as I know, been given to the judges by any other body of laws. The Spanish law required a conviction on proof of publication in cases of calumnia, unless the defendant proved the truth of the charge; and in cases of *injuria* it required a conviction regardless of the truth of the charge, except in cases of public servants.

The American and English authorities define now with much precision the cases in which communications are privileged, either absolutely or *prima facie*. They leave nothing to the discretion of the court.

In order to determine what are justifiable motives, we must look into other parts of the law itself for a definition of this term. This section does not create a substantive defense independent of other provisions of the act.

The inconsistency between section 3, as construed by the court, and section 4 is, I think, apparent. A person prosecuted for libel, let us suppose, undertakes to prove the truth of the article, and also that he published it with good motives and for justifiable ends. He does not prove that the article is true, but he does prove that he published it with good motives and for justifiable ends. If section 3 is to be applied to his case he must be acquitted. If section 4

is to be applied he must be convicted.

The error in the construction placed upon section 3 by the court appears also from section 9. This section undoubtedly declares that a private communication, if published under certain circumstances, is made with justifiable motives. If section 3 gives the court a power to declare what are justifiable motives, unlimited by other provisions of the act, it could declare in one case that the motives set out in section 9 did not justify the publication, and in another case that facts which failed entirely to bring the case within section 9 would, notwithstanding, constitute justifiable motives and entitle the defendant to an acquittal.

The difficulty which the court has encountered in this case arises in this way. The act has declared that certain publications are privileged. By section 9 a private communication, made in the performance of some duty, is privileged. By section 7 a newspaper is authorized to publish, if it does so without malice or comment, reports of judicial proceedings. But the act has not expressly declared that a libelous document presented in a judicial proceeding is privileged. The case at bar is such a case. It is not covered, in my opinion, by section 7. There is a marked difference between the publication by a newspaper, without malice or comment, of a document which is actually a part of the records of the court, and the presentation to the court of such a document. In the latter case, the question as to whether the document was or was not material to the case would be a proper subject of inquiry, while in the former case it could not be required of a newspaper that, before publishing an official record, it consult a lawyer for the purpose of determining whether or not the record which it proposes to publish was material to the controversy then before the court. To publish a record of the court is one thing; to make that record is an altogether different thing.

The case not being covered by section 7, it seems plain that it is not included in section 9. There are no other provisions of the act applicable, and the result is that there has been a failure to provide in this law for what are known in some of the American text-books as absolutely privileged communications.

Can we resort to any other body of law to supply this defect? That we can not resort to the common law of England or America seems clear. That body of law has never been in force in these Islands. While, for the purpose of construing acts placed in force here by the Commission, we may resort to the construction placed upon similar laws existing in the United States, yet we can not supply actual omissions in such acts by adding to them provisions on the same subject which may exist in the American laws. The difficulty of so

doing is illustrated by this case. In some of the States of the Union utterances in court are absolutely privileged, whether material or not. In others they are not, unless they have some connection with the matter in litigation. Are we to supply the defect in our law by taking from the former States or from the latter?

The body of penal law in force in these Islands at the time Act No, 277 was passed was the Penal Code. This act was simply an amendment of that Code. It repealed only such parts of that Code as were in conflict with it. Article 467 is in part as follows: "No one can maintain an action for libel or slander committed in judcial proceedings without first obtaining permission therefor from the trial court. This was the law in force in regard to the libelous statements made in court when Act No. 277 was passed. That act says nothing about this subject. The provision of the Code is not inconsistent with anything in the act. It is, I think, styill in force, and is applicable law of the case.

I concur in the judgment, on the ground that the prosecution was commenced without the previous permission of the court to which the libelous document was presented.

CONCURRING

COOPER, J.:

The statement upon which the charge of libel is issued was contained in a letter signed by the defendant and addressed to the justice of the peace of the pueblo of Pilar, Bataan.

Assuming that the statement upon which the prosecution is based is Hbelous in its nature, still the defendant can not be convicted under the provisions of the Libel Act, inasmuch as the statement was contained in a private communication and is a privileged writing within the provisions of section 9 of the act, which reads as follows :

> "SEC. 9. A private communication made by any person to another, in good faith, in the performance of any duty, whether legal, moral, or social, solely with the fair and reasonable purpose of protecting the interests of the person making the communication or the interests of the person to whom the communication is made, is a privileged communication, and the person making the same shall not be guilty of libel nor be within the provisions of this act."

That the document was a private communication clearly appears from the testimony. The statement was contained in a letter signed by the defendant, inclosed in a sealed envelope and addressed to the justice of the peace. That the communication was made in good faith and solely with the fair and reasonable purpose of protecting the interests of the writer appears equally plain. It was done for the purpose of exculpating himself before the justice of the peace then about to enter upon the trial of certain criminal cases that were pending against the defendant. There is nothing to show that he could possibly have had in view any other purpose. As said in the majority opinion, it was not an attempt to make use of it as a vehicle for the utterance of slander. This is sufficient to bring the case within the provisions of section 9, without the necessity of making proof of the truth of the matter, or proof of other justifiable motives. Such other proof is not required by the provisions of this section to constitute the defense.

I do not concur in the construction placed upon section 3 of the Libel Act as given in the majority opinion, and upon which the decision of the court rests. The section reads as follows :

> "SEC. 3. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown." The majority opinion of the court states that the effect of this provision is *"to make the existence of justifiable motive a complete defense for a prosecution for libel."* Such a construction is in conflict with the express provisions of section 4 of the act, and has the effect of repealing it. This section reads as follows:
>
> "SEC. 4. In all criminal prosecutions for libel the truth may be given in evidence to the court, and if it appears to the court that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; otherwise he shall be convicted; but to establish this defense, *not only must the truth of the matter so charged be proven but also that it teas published with good motives and for justifiable ends."*

The proper construction of section 3 is, that it is intended simply to operate as a rule of evidence, establishing a presumption of malice from the fact of an injurious publication. It is not intended to confer a substantive defense. The provision of section 4, on the other hand, is not made for the purpose of regulating the evidence, but is intended to establish a defense. At the common law, the truth of the matter charged to be libelous was not of itself

a defense to a criminal action for libel, nor was it under the civil law. By article 460 of the Spanish Penal Code it is expressly provided that persons charged with libel shall not be allowed to furnish evidence tending to prove the truth of the imputations. The purpose of section 4 was to change the law in this particular.

It does not appear from the evidence that the written communication to the justice of the peace was ever filed in the case, or was intended as other than a private communication. It therefore becomes unnecessary to consider the state of the present libel law with reference to judicial proceedings. The protection in such cases will likely be found to rest upon the public policy, to promote justice, by removing the restraint imposed by fear of civil or criminal responsibility, exempting from liability for torts or criminal prosecutions all persons connected as essential parties in a judicial proceeding, such as the officers of the court, the parties to the suit, and the witnesses who testify. (I Jaggard on Torts, 127.)

My concurrence in the decision of the case is based upon the reasons above stated.

McDonough, J., did not sit in this case.

Date created: April 15, 2014