

1 Phil. 562

[G.R. No. 513. December 19, 1902]

BENITO LEGARDA Y TUASON, COMPLAINANT AND APPELLANT, VS. VICENTE GARCIA VALDEZ, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

The appellant filed a criminal complaint against the defendant for the crime of libel (*injurias graves*), defined and punished by article 458 of the Penal Code, alleging that in issue No. 16, dated September 15, 1901, of the weekly paper called "Miau," published in this city and of which the defendant was the editor, an article was published under the heading "D. Benito Legarda y Tuason," and to which reference was made by the complaint, it not being reproduced verbatim on account of its great length; that in said article certain defamatory statements are made, tending to discredit the complainant and to bring him into contempt by charging him with vice and immorality, which defamation tends to prejudice his good name, credit, and honesty.

A prosecution having been had upon the said complaint the judge of the court below, on the 6th day of May, 1902, entered judgment, in which he declared the defendant to be guilty and condemned him to suffer six months' banishment and to pay a fine of 625 pesetas and the costs of the action.

The private prosecutor appealed from this judgment, against which the defendant on his part did not appeal.

The evidence taken during the trial shows fully that the accused was the editor of "Miau" at the time of the publication of the article upon which the complaint is based. The text of this article, on the other hand, leaves no room for doubt as to its defamatory character and of the gravity of the defamatory statements made therein concerning the complainant. It is sufficient to merely read the article to reach this conclusion. The accused himself must have

been so fully convinced of this fact that he made no attempt to even deny it or discuss it, and much less to demonstrate the contrary, but simply offered to prove the truth of the charges made against the complainant in this article, which offer to prove was properly rejected by the judge, in accordance with the provisions of article 460 of the Penal Code, to the effect that "the defendant in a prosecution for libel (*injuria*) shall not be allowed to introduce evidence as to the truth of the charges * * *."

Such an offer, properly regarded, to a certain extent is an implied acknowledgment on the part of the accused that he was the author of the article in question.

It also appears from the record that the complainant was a member of the United States Civil Commission in these Islands at the date of the publication of the article referred to.

Accepting, upon these grounds, the opinion of the court below as to the guilt of the accused, it is obvious that the penalty imposed upon the latter in the judgment appealed is not that which corresponds to the crime prosecuted in accordance with the provisions of the Penal Code.

Article 458 of the Penal Code provides that written *injurias graves* made public shall be punished by banishment from the medium to the maximum degree and a fine of 625 to 6,250 pesetas. Under article 462 *injuria* is considered to have been made in writing and publicly when it is effected by means of printed papers, and this is precisely what has occurred in this case.

The minimum duration of the penalty of banishment in its medium degree is that of two years four months and one day, as appears from the demonstrative table of article 96. Consequently, although the penalty prescribed by article 458 should be imposed in its minimum degree, it must be at least of that duration, and could never be for six months only, more especially in view of the fact that the Penal Code does not recognize the penalty of banishment for so short a time, the duration of this banishment, under article 28, being from six months and a day to six years.

The appellant contends that the penalty prescribed by article 458 should be imposed upon the accused in its maximum degree, because of the concurrence in the commission of the offense of the aggravating circumstance of the commission of the crime in disregard of the respect due the defendant by reason of the dignity of his office as a Commissioner at the time of the publication of the article which led to this prosecution.

The judge below did not apply this circumstance, upon the ground that as no evidence was admissible on the part of the accused as to the truth of the charges contained in the publication, it was impossible to determine whether these charges were or were not made in disregard of the respect due the complainant by reason of his office. According to the judge it would be such a disrespect if the computation was false, but none if it was true.

We can by no means accept this reasoning. The prohibition established by the Penal Code as to the admission of evidence as to the truth of libelous publications is not and can not be an obstacle to the consideration in the commission of the crime of *injuria* of the dignity of the complainant. This very circumstance constitutes one of the reasons for regarding the *injuria* as grave. What is in itself merely a slight *injuria* may be regarded as grave, in accordance with section 4 of article 457, by reason of the status, dignity, and circumstances of the complainant or of the defendant. This demonstrates conclusively that, notwithstanding the prohibition referred to, dignity can and should be considered for the purpose of giving the proper legal classification to the offense, and consequently in determining the penalty which should be imposed upon the defendant, according as the case may be.

When, for the purpose of classifying a defamation as grave it is necessary to take into consideration as an element constituting its gravity the status and dignity of the complainant, as in the case of paragraph 4 of article 457 referred to, this circumstance must be regarded as a qualification of the offense, in which case it can not produce the effect of augmenting the penalty, under article 78, because it has already been considered by the law in defining and punishing the crime. This was so held in a decision rendered on the 8th of November last in the case entitled Pardo de Tavera vs. Vicente Garcia Valdez. But when the defamation is per se of a grave character, or is so classified independently of the dignity of the person defamed, as occurs, among other cases, in that falling under paragraph 2 of article 457, which is precisely the case now before us, then this circumstance is to be regarded as a generic, aggravating circumstance, in accordance with the provisions of paragraph 20 of article 10 of the Penal Code. (Judgment of the supreme court of Spain of February 5, 1884.) The court below, by failing to so regard it in the judgment appealed, clearly violated this provision.

Therefore an error of law was committed in the said judgment: (1) In so far as the accused is thereby condemned to six months banishment, whereas the duration of this penalty can in no case be less than six months and one day, in accordance with article 28 of the Penal Code; (2) because the penalty prescribed by article 458 of the said Code, this being the article applicable to the crime herein prosecuted, was not inflicted; and (3) because the

aggravating circumstance of the commission of the crime in disregard of the respect due the complainant by reason of his office was not applied. This circumstance in this particular case is not qualificative of the defamation, as this is *per se* of a grave character, having been committed without regard for the dignity of the complainant, and consequently the provisions of paragraph 20 of article 10 were violated.

In addition to this aggravating circumstance it is necessary to consider against the defendant the circumstance of recidivation, indicated in paragraph 18 of article 10. According to this article there is recidivation when the defendant, upon being tried for a crime, has been already convicted of another offense comprised in the same title of the Code, and the defendant has already been convicted of the same offense as that herein prosecuted, to wit, the offense of *injuria grave*, by the judgment of this court of the 8th of November, 1902, in the prosecution instituted against him at the instance of D. T. Pardo de Tavera, above mentioned.

We therefore condemn the defendant to six years of banishment from the city of Manila and from the territory surrounding it within a radius of 250 kilometers, and to pay a fine of 6,250 pesetas, or, in the event of the failure to pay the same, to suffer subsidiary banishment at the rate of one day for each twelve and one-half pesetas, subject to the provisions of article 50 of the Penal Code, and to pay the costs of this instance.

The judgment appealed, thus modified, is affirmed. So ordered.

Arellano, C. J., Torres, Cooper, Willard, Ladd, and Smith, JJ., concur.