

1 Phil. 468

[ G.R. No. 922. November 08, 1902 ]

**TRINIDAD H. PARDO DE TAVERA, COMPLAINANT AND APPELLEE, VS. VICENTE GARCIA VALDEZ, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**LADD, J.:**

Both the private prosecutor and the defendant have appealed from the judgment of the court below, finding the defendant guilty of the offense of *injurias graves* under articles 457 and 458 of the Penal Code, and sentencing him to pay a fine of 4,000 pesetas, with subsidiary imprisonment and costs.

(1) No brief has been filed by the defendant, nor did he appear, either personally or by counsel, on the day fixed for the argument, and under the rules of this court the motion that his appeal be dismissed for lack of prosecution might be granted, but we have nevertheless deemed it proper to consider the whole case upon the merits. The evidence shows that the defendant was in September, 1901, the editor of "Miau," a periodical published and circulated in Manila, and that an article containing the alleged injurious matter was published in the issue of that periodical of September 15, 1901. The article is couched throughout in grossly abusive language, and in terms not capable of being misunderstood; charges the private prosecutor, who had been then recently appointed a member of the United States Philippine Commission, with having displayed cowardice at the time of the murder of his mother and sister and with having subsequently entered into intimate political relations with the assassin. The article contains other statements and imputations of a derogatory character, but we base our opinion upon that portion to which reference has been made. *Injurias graves* are classified by article 457 of the Penal Code under four heads, as follows: "(1) The imputation of a crime of the class not subject to prosecution *de officio*. (2) That of a vice or moral shortcoming, the consequences of which might seriously injure the reputation, credit, or interests of the person offended. (3) *Injurias* which by reason of

their nature, occasion, or circumstances are commonly regarded as insulting. (4) Those which may be reasonably classified as grave in view of the condition, dignity, and personal circumstances of the injured party and the offender." The statements in question do not involve the imputation of a crime, and, possibly, not of a vice or moral shortcoming in the strict sense, but they are obviously of a character calculated to bring the person attacked into public obloquy and contempt, and specially so in the present case in view of the position of the private prosecutor as a high official of the Government, and they are therefore clearly comprehended under Nos. 3 and 4 of the article cited. The defendant's offer to prove the truth of the statements was properly rejected. (Penal Code, art. 460.) The conviction must be sustained.

2. The question raised by the appeal of the private prosecutor relates solely to the propriety of the punishment imposed by the court below. Article 458 of the Penal Code provides that "*injurias graves*, put into writing and made public [which is the present case] shall be punished with the penalty of *destierro* in its medium to its maximum degree, and a fine of from 625 to 6,250 pesetas." Act No. 277 of the United States Philippine Commission "defining the law of libel," etc., and reforming the preexisting Spanish law on the subject of *calumnia* and *injurias* affixes to the offense of publishing a libel as defined in the act the punishment of "a fine not exceeding \$2,000 or imprisonment for not exceeding one year, or both." Section 13 of the same act provides as follows: "All laws and parts of laws now in force, so far as the same may be in conflict herewith, are hereby repealed: *Provided*, That nothing herein contained shall operate as a repeal of existing laws in so far as they are applicable to pending actions or existing causes of action, but as to such causes of action or pending actions existing laws shall remain in full force and effect." This act went into effect October 24, 1901, subsequent to the publication of the article in question, and during the pendency of the prosecution. By article 22 of the Penal Code "Penal laws shall have a retroactive effect in so far as they favor the person guilty of a crime or misdemeanor," etc. The court below in fixing the punishment proceeded upon the theory that by the operation of this general rule the penalty prescribed in the Penal Code for the offense in question was necessarily modified and could not be inflicted in its full extension. In so doing we think the court overlooked or improperly construed the proviso in the section of Act No. 277, above cited, by virtue of which the previously existing law on the subject covered by the act is left intact in all its parts as respects pending actions or existing causes of action. The language is general and embraces, we think, all actions, whether civil, criminal, or of a mixed character. In this view of the case we

have no occasion to consider the question argued by counsel for the private prosecutor as to whether the provisions of Act No. 277 respecting the penalty are more favorable to the accused than those of the former law or otherwise. The punishment must be determined exclusively by the provisions of the former law.

It is urged by counsel that the official position of the private prosecutor should be considered as an aggravating circumstance under Penal Code, article 10, No. 20. We are inclined to think that in the view we have taken of the case this circumstance is qualificative rather than generic. (Penal Code, art. 78.)

The result, then, is that the penalty prescribed by article 458, paragraph 1, of the Penal Code should be applied in its medium grade, and in view of all the circumstances of the case we fix the penalty as four years of destierro and a fine of 4,000 pesetas, with subsidiary liability to one day's banishment for every 12| pesetas not paid, and the costs of both instances. The judgment of the court below will be modified in accordance with this opinion, and the record will be returned to that court for the execution of the sentence as thus modified. So ordered.

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

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