2 Phil. 247

[G.R. No. 1044. May 15, 1903]

PEDRO JULIA, COMPLAINANT AND APPELLEE, VS. VICENTE SOTTO, DEFENDANT FIND APPELLANT.

D E C I S I O N

MAPA, J.:

The accused is charged with the offense of libel, committed, according to the complaint, by means of a publication on the 12th of September, 1901, in issue No. 209 of "El Pueblo," a newspaper edited and published in the city of Cebu, and of which the defendant was editor and proprietor, of an article entitled "Miracles of Father Julia; the bitter truth," in which article are contained libelous phrases tending to dishonor and discredit the complaining witness and to bring him into contempt. In the complaint those parts of the article which are necessary for the purposes of the accusation are copied literally, hence it is not necessary to transcribe them here.

The case having been prosecuted to a termination, the defendant was convicted in the court below and sentenced to four years' banishment at a distance of 50 kilometers from the town lines of the municipality of Cebu, and to the payment of a fine of 625 pesetas and to the costs of the suit. From this judgment he appeals to this court.

One of the errors assigned by the appellant in this appeal is the infraction of the provisions of section 23 of General Orders, No. 58, which he alleges was committed by the court below in the prosecution of this case against him. This allegation affects the validity of the trial, and is, therefore, by reason of its importance, worthy of a careful consideration. Upon being arraigned on the charge the accused set up the plea of jeopardy, and asked that the complaint be dismissed. This plea was overruled by the court. Thereupon the application for the allowance of an appeal against the order disposing of the plea of jeopardy having been denied, the plea of jeopardy was again advanced at the time the accused pleaded not guilty.

It is alleged that the prosecuting witness, on the 16th of September, 1901, filed against the defendant a complaint, amended on the 4th of November following, charging him with the same offense of which he is accused in the present trial—that is, the publication of libelous matter in the issue of the 12th of September, 1901, of the newspaper "El Pueblo," of which the defendant was editor; that the court sustained a demurrer to this complaint; that in sustaining the demurrer the court did not base its ruling upon a lack of jurisdiction, nor did it order the filing of a new complaint or information. In support of his contention the appellant cites section 23 of General Orders, No. 58, which he alleges prohibits a second trial for the same offense in such cases.

The court below in overruling the said exception of jeopardy did not do so on the ground of the inaccuracy of the facts alleged by the accused as the ground of his motion, but upon the ground that they are not, in his opinion, sufficient to constitute jeopardy, or any other defense.

On his part the complaining witness in a written argument on page 27 of the record admits the truth of the allegations; that a complaint, amended on the 4th of November, 1901, was presented against the accused, and that this complaint was dismissed by the court. He alleges that the ruling is based upon the following grounds:

(1) Because the said complaint was not drawn in the form required by General Orders, No. 58;

(2) Because in the said complaint no allegation was made as to the time or place of the commission of the alleged offense;

(3) Because the alleged libelous words had not been copied therein, but merely the conclusions drawn by the complainant therefrom.

This does not disprove nor is it in conflict with the allegation of the accused that the court below, when dismissing the complaint of November 4, did not order the filing of a new complaint or information, and consequently the truth of this assertion is impliedly admitted. Among the grounds upon which, according to the complaining witness himself, the judge dismissed said complaint, we do not find included a finding that the court was without jurisdiction over the offense charged. The fact that the place in which the offense was committed was not stated in the complaint does not support the deduction which the complainant apparently seeks to draw—that the court dismissed the complaint by reason of lack of jurisdiction—because the only effect produced by such omission is to make the

complaint insufficient or defective, but by no means does it deprive the court of the jurisdiction which the law confers upon it, and which it might have exercised had the complaint been properly drawn. The proof of this is that the complainant subsequently presented the complaint upon which this trial is based, correcting the defects in the complaint of the 4th of November, and presented this new complaint to the same court which had dismissed the preceding one.

Upon the comparison of one complaint with the other, it will readily be seen that the accused is charged therein with the same offense, inasmuch as both refer to the alleged libelous matter published'in the article entitled "Miracles of Father Julia" in the issue of "El Pueblo," of which the defendant was editor, corresponding to the 12th of September, 1901. It is true that in the complaint of November 4 the words contained in the article are not transcribed verbatim, but this circumstance is merely accidental, and by no means necessary for the identification of the offense. It is sufficiently identified by the citation of the article upon which the complaint is based, its heading, the name of the paper in which it was published, the date of its publication, and by the offense which the complainant considers to have been committed by its publication. These are the circumstances which identify the offense with precision and exactness, making it impossible to confound it with any other; and it appears that in both complaints the same offense is referred to. All this, in connection with the statements alleged in the complaint of the 4th of November to be libelous, all of which are taken from the article referred to and are actually found therein and which, by the way, are the most libelous ones it contained, leaves no ground for the slightest doubt that in the said complaint the accused was charged with the publication against the complainant of the libelous matter contained in the article referred to. This libelous matter is precisely the same as that upon which the complaint in this case is based, and therefore the offense charged in both complaints is one and the same, notwithstanding the fact that the complaint of November 4 was dismissed, because in the opinion of the court below it lacked the elements necessary under the laAv to the existence of a valid complaint.

The allegation made by the private prosecutor, that the complaint of the 4th of November did not charge the accused with any offense, inasmuch as the judge considered that this allegation was insufficient to charge the offense of libel because it did not contain verbatim the alleged libelous matter, but only conclusions of the complaining witness himself, is wholly, without foundation and can not merit our approval. Jit is sufficient to read the complaint in order to see that the charge of libel was clearly and distinctly made, and that the libel was alleged to consist precisely in the article already mentioned. The dismissal of

the complaint by reason of its formal defects could not in any degree affect or alter the reality of this fact, whether the conclusions of law of the court below in its order dismissing it are correct or not, nor can it be at present considered, because of the plaintiff's admission. Furthermore, the libelous matter, the publication of which is denounced in the complaint, is defamatory in so high a degree that it would be difficult for us to imagine a publication which could possibly be more injurious in the eyes of the public.

We consider, therefore that the record discloses sufficiently—

(1) That the defendant had been accused by the complaining witness in his complaint of November 4, 1901, of the same offense with which he is charged in the present case;

(2) That the said complaint was dismissed by an order .sustaining the demurrer of the accused, based, among other grounds, upon the failure to draw the said complaint with the essential requisites prescribed by the law;

(3) That in sustaining the demurrer and dismissing the complaint the court did not find that it was without jurisdiction to try the offense charged, nor did it order the presentation of a new complaint or information.

This being so, the case falls fully within the provisions of section 23 of G.0., No. 58, which is literally as follows:

> "If the demurrer is sustained, the judgment shall be final on the complaint or information demurred to, and it shall be a bar to another prosecution for the same offense, unless the court delivering judgment was without jurisdiction, or unless the court, being of opinion that the objection may be avoided, directs a new complaint or information to be tiled. If the court does not direct that the accused be remanded to a court of proper jurisdiction for trial or that a new information be filed, the defendant must be discharged or his bail be exonerated."

The grounds upon which the demurrer referred to in this section may be made are enumerated in section 21, of which section 23 is the complement, and among them is included (No. 2) the objection to the complaint by reason of its failure to conform to the essential requisites prescribed by the law, which was one of the objections advanced by the accused and sustained by the court in dismissing the complaint of November 4, 1901. The

court, then, not having declared itself to be without jurisdiction and not having ordered the presentation of a new complaint or information, the order sustaining the plea is a bar to further prosecution of the accused for the same offense charged in the first complaint, in accordance with the provisions of section 23.

The principle established by this section is clear and explicit. If a demurrer by the accused is sustained, in order that he may be prosecuted again for the same offense, it is necessary that the ruling on the demurrer rests upon ¦the ground of lack of jurisdiction, or the court must have expressly directed the presentation of a new complaint or information. Outside of these two excepted cases, it would be unlawful and unjust to submit the accused to a subsequent prosecution, and to do so would be error. Andythis is certainly a logical result, in view of the principles of a system of procedure both just and equitable, and neither the spirit nor the law of section 23 are susceptible of any other interpretation.

Without the safeguard this article establishes in favor of the accused, his fortune, safety, and peace of mind would be entirely at the mercy of the complaining witness, who might repeat his accusation as often as dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his own Avill and pleasure. The accused would never be free from the cruel and constant menace of a never-ending charge, which the malice of the complaining witness might hold indefinitely suspended over his head, were it not that the judiciary is exclusively empowered to authorize, by an express order to that effect, the repetition of a complaint or information once dismissed in the cases in which the law requires that this be done. Such is, in our opinion, the fundamental reason of the article of the law to which Ave refer. Thanks to this article, the accused, after being notified of the order dismissing the complaint may, as the case may be, either rest assured that he will not be further molested, or prepare himself for the presentation of a new complaint. In either case, the order gives him full information as to what he may hope or fear, and prevents his reasonable hopes from being dissipated as the result of an equivocal and indefinite legal situation. To this much, at least, one who has been molested, possibly unjustly, by a prosecution on a criminal charge, is entitled.

The objection sustained by the judge in this case solely affected the form of the complaint, and without self-contradiction he might well have ordered the filing of a new complaint or information. Even more, we believe it was his duty to have done so. Our understanding of the spirit of section 23 is that it makes it the duty of the judge to enter such an order whenever he considers that the *defect may he cured*—i. e., whenever the nature of the defect is such as not to be incompatible with the filing of a new complaint or information.

The judge not having done this, the private prosecutor should have appealed if he desired to preserve his right to file a new complaint for the same offense. Far from doing so, he consented to the order by which the demurrer was sustained, without reservation or restriction of any kind, and he must suffer the legal consequence of his own negligence.

The accused calls the defense or exception of which he avails himself under section 23, jeopardy. We are of the opinion that this is a misnomer. Jeopardy can only result after arraignment upon a complaint sufficient bpth in form and substance. (Section 28). In the present case the complaint of November 4 was dismissed precisely because it lacked the essential requisites necessary to its validity and sufficiency as a matter of law. For the very reason that the complaint was dismissed upon the demurrer of the accused there was no arraignment, as this would only have taken place had the demurrer been overruled (section 24). It is therefore evident that this is not a case of jeopardy, notwithstanding the exception or defense set up by the accused is complete and is sufficient to offset the accusation brought by the complaining witness in this case. Section 23 establishes a special defense which, without constituting jeopardy, produces, nevertheless, the same effect a« a matter of law, inasmuch as it is a bar to further prosecution for the same offense. But the judge violated the legal principle contained in this section, and therefore committed an error of law in overruling the plea and in directing the continuance of the prosecution of the cause against the accused.

For these reasons we set aside the judgment of the court below, together with all the proceedings in the trial, with the costs of both instances de oficio. So ordered.

Arellano, C J., Cooper, Willard, and *Ladd, JJ.,* concur.

Torres and *McDonough, JJ.,* did not sit in this case.

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