

1 Phil. 471

[G.R. No. 927. November 08, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. JAIME UBINANA;
DEFENDANT AND APPELLANT.**

D E C I S I O N

LADD, J.:

The alleged libel upon the private prosecutor was contained in a letter which the evidence shows was written by the defendant in the course of an illicit correspondence with the private prosecutor's wife, and which was sent to her by the defendant, read by her, and finally discovered by her husband in her possession. We do not understand that it is claimed by counsel for the defendant that the language of the letter is not defamatory, but it appears to be claimed that the "private, confidential, and secret" character of the letter is sufficient to rebut the presumption that the publication was malicious.

The new libel law, under which this prosecution was brought, attaches the presumption of malice to an injurious publication, "if no justifiable motive for making it is shown." (Act of the United States Philippine Commission, No. 277, sec. 3.) Without undertaking to state what motives may be deemed justifiable under this act, it is sufficient with reference to the present case to say that it would involve a contradiction in terms to hold that the letter in question—a solicitation to commit adultery—was published by the defendant with justifiable motives. There is nothing in the case to rebut the presumption of malice which arises from the mere fact of publication.

It is further claimed that it was not shown that the defendant parted with the custody of the letter "under such circumstances that as a natural and logical consequence it might be read by a third person." Section 5 of the Libel Act provides that "to sustain a charge of publishing a libel, * * * it is enough that the accused knowingly parted with the immediate custody of the libel under circumstances which exposed it to be read or seen by any other person than himself." The circumstances of the present case meet these conditions fully. An examination

of the record shows that the statement of counsel that the court below did not permit the defendant to testify at the trial in his own behalf, upon which the first assignment of error is based, is not true in point of fact The same is the case with reference to the statement upon which the second assignment of error is based, viz, that the court permitted the wife of the private prosecutor to testify without the previous consent of both spouses.

The judgment of the court below is affirmed, the subsidiary imprisonment in case of insolvency to be at the rate of one day for every 12½ pesetas, such imprisonment not to exceed six months in all. The record will be returned to the court below for the execution of the judgment. So ordered.

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