

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLEN MACASAET, NICOLAS V. QUIJANO, JR., JANET BAY, JESUS P. GALANG, RANDY HAGOS, JEANY LACORTE, VENUS TANDOC, AND RAFFY T. TU...

Ponente: CORALES, J.

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CORALES, J.:

Before the Court are private complainant-appellee Michael C. Guy's (Guy) Motion for Partial Reconsideration and Clarification[1] and accused-appellant Raffy T. Tulfo's (Tulfo) Motion for Reconsideration[2] assailing Our August 30, 2013 Decision[3] which denied accused-appellants' appeal and affirmed with modification the February 24, 2010 Judgment[4] of the Regional Trial Court, Branch 132, Makati City in Criminal Case No. 04-3614, thus:

WHEREFORE, the appeal is DENIED. The February 24, 2010 Judgment of the Regional Trial Court, Branch 132, Makati City, in Criminal Case No. 04-3614 is AFFIRMED with MODIFICATION that all accused-appellants are ordered to pay Michael Guy, jointly and severally, P500,000.00 moral damages and P500,000.00 exemplary damages.[5]

A perusal of Tulfo's motion show that the arguments raised therein are mere rehash of those already considered and passed upon by this Court. No new issues have been presented to justify the reversal or modification of Our Decision, thus, We DENY Tulfo's Motion for Reconsideration for lack of merit.

With respect to Guy's Motion for Partial Reconsideration and Clarification, there is indeed a need to clarify some aspects of the awarded damages in Our August 30, 2013 Decision. As aptly pointed out by Guy, the RTC awarded in his favor "moral and actual damages" and not "moral and exemplary damages" as mistakenly stated in Our August 30, 2013 Decision. For this reason, We hereby render the instant Amended Decision.[6]

AMENDED DECISION

In their separate Notices of Appeal,[7] accused-appellants Allen Macasaet, Nicolas V. Quijano, Jr., Janet Bay, Jesus P. Galang, Randy Hagos, Jeany Lacorte, Venus Tandoc (Macasaet and the editors) and Raffy T. Tulfo (referred individually by their respective family names but collectively as Macasaet, et al.) assail the February 24, 2010 Judgment[8] of the Regional Trial Court (RTC), Branch 132, Makati City in Criminal Case No. 04-3614 finding them guilty of libel.

The Antecedents

Tulfo is a columnist in Abante Tonite while Macasaet, Quijano, Jr., Bay, Galang, Hagos, Lacorte, and Tandoc hold various capacities in Monica Publishing Corporation (Monica Publishing), the publisher of Abante Tonite.

On the strength of a Complaint-Affidavit[9] filed by Guy, President of MG Forex Corporation (MG Forex), a company engaged in foreign exchange trading, the Office of the City Prosecutor of Makati City (OCP) charged

Macasaet, et al. with libel under an Amended Information which reads:

The undersigned Prosecutor accuses ALLEN MACASAET, NICOLAS V. QUIJANO, JR., JANET BAY, JESUS P. GALANG, RANDY HAGOS, JEANY LACORTE, VENUS TANDOC, and RAFFY TULFO of the crime of Libel, committed as follows:

That on or about the 24[th] day of March 2004, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, the above-named accused, being then the publisher, editors and author respectively of a daily publication known as “Abante Tonite”, a newspaper of general and nationwide circulation, conspiring, confederating together and all of them mutually helping and aiding one another, with malicious intent of impeaching the honesty, integrity, virtue and reputations of complainant Michael C. Guy, a resident of 2393 Mabolo Street, Dasmariñas Village, Makati City at the time of publication and with malicious intent of injuring and exposing said Michael C. Guy to public hatred, contempt and ridicule did then and there willfully, unlawfully and feloniously write, edit and publish an article with Abante Tonite, under the column entitled: “Shoot to Kill” quoted verbatim, thus:

MALINIS BA TALAGA O NAGLILINIS-LINISAN
LAMANG (SINO SI FINANCE SEC. JUANITA
AMATONG?)

“Ang mga tanong ngayon, may katotohanan kaya ang akusasyon ni Salanga laban kay Amatong? Nagsasabi naman kaya ng totoo si Amatong nang itanggi niya ang akusasyon ni Salanga laban sa kanya?

Narito ang isang balitang natanggap ng SHOOT TO KILL mula sa isang mapagkakatiwalaan at A-1 source na kung saan ay inarbor ni Amatong sa kanyang mga tauhan ang isang negosyanteng iniimbistegahan ng DOF dahil sa katiwalian sa tax refund. Narito ang kwento at kayo na ang bahalang manghugsa kung sino ang may kredibilidad, si Amatong o si Salanga?

Noong March 20, 2004, Sabado ng hapon pumunta ang isang negosyanteng nagngangalang Michael Guy sa bahay ni Amatong. Si Guy ay iniimbestegahan ng mga tauhan ng Revenue Integrity Protection Service (RIPS) ng DOF dahil sa kahinahinalang mga tax refund na natanggap nito mula sa BIR simula 1998 hanggang 2003. Problemado si Guy sapagkat natunagan niyang iniimbestigahan na siya ng RIPS. Ito’y matapos magpadala ng sulat ang RIPS para hilingin dito na ihinto ang imbestigasyon laban kay Guy at isurender sa kanyang opisina ang lahat ng mga dokumentong nakalap ng RIPS laban dito!!!”

which article and/or publication tend to cause, as it thereby caused dishonor, discredit and contempt upon the person of said Michael C. Guy by exposing him to public ridicule and causing mental anguish, besmirched reputation and other moral pains and suffering. xxx[10]

When arraigned, Macasaet, et al. refused to enter a plea, thus, the RTC ordered that a plea of “not guilty” be entered into the records for all accused-appellants.[11] Pre-trial ensued and the parties stipulated on the following: 1) the jurisdiction of the court; 2) the identity of the accused; and 3) the fact that Tulfo was the author of the alleged offending article which was subject of the case.[12]

During trial, the prosecution presented the following as witnesses: the private complainant, Guy; his client, Jayson Mallari (Mallari); the then Department of Finance (DOF) Secretary, Juanita Amatong (Secretary Amatong); his lawyer, Atty. Karl Castillo (Atty. Castillo); and his accountant, Ma. Esperanza B. Caraig (Caraig).

On the other hand, Tulfo, his alleged source, Ruben Frogoso (Frogoso), and accused-appellants Quijano, Jr., Macasaet, Tandoc and Bay, testified for the defense.

The Version of the Prosecution

Guy identified the March 24, 2004 article authored by Tulfo under the column "SHOOT TO KILL" and published in Abante Tonite. According to Guy, he knew that he was the "Michael Guy" referred to in the said article because he had been subjected to the same kind of attack by Tulfo in six (6) different articles published under the "SHOOT TO KILL" column between October 3, 2003 and October 24, 2003.[13] He, however, admitted that the article mainly referred to Secretary Amatong and only the 5th paragraph, out of fourteen (14) caused him extreme humiliation.[14]

He claimed that after reading the article, he suffered extreme humiliation, embarrassment and depression and lost the trust of his business associates. His wife doubted him while his mother scolded him for bringing shame to the family. His sisters also lost confidence in him and one even sold her shares back to Guy for allegedly losing confidence in his dealings. Even his children were not spared as two teachers allegedly asked them if the article was true. His clients and business associates also refused to transact with him for fear of being involved in the false accusations against him.[15] Guy named his sister and the latter's husband as the business associates who sold back their shares due to loss of confidence in him, and Mallari of Tivoli Enterprises as the client who stopped trading with him due to the malicious article.[16]

He denied personally knowing Secretary Amatong and going to her house on March 20, 2004 or being subjected to any investigation for anomalous tax exemption or tax refund. He also disclaimed that he was investigated by the Revenue Integrity Protection Services (RIPS) and alleged that the investigative power of this agency covers only government officials and not private individuals. As proof, he offered a Bureau of Internal Revenue (BIR) Certification[17] dated September 1, 2004 to the effect that MG Forex had neither delinquent accounts nor application for tax refund/tax credit, and an article[18] allegedly published in the Philippine Daily Inquirer authored by DOF Undersecretary Emmanuel Bonoan (Undersecretary Bonoan) stating that on March 20, 2004, Secretary Amatong left her home at 5:45 a.m. and was still on official leave by March 23, 2004.[19]

Based on his own personal assessment of the damages caused by the offending article,[20] Guy prayed for P50 million moral and exemplary damages.[21] However, he clarified during crossexamination that he has been in the business since 1990 and had not earned P50 Million.[22]

Caraig corroborated Guy's testimony that he did not apply for tax refunds and did not receive any notice from BIR or RIPS. She also identified the BIR certifications respectively issued by its Regional District Offices in Manila[23] and Marikina[24] showing that Guy did not file any claim for tax refund.[25]

Secretary Amatong also testified that she does not know and had never met Guy. She was even shocked when she read the article because the same is not true. According to Secretary Amatong, on the subject date she was in Dumaguete and returned home only on March 24, 2004. It was also impossible that Guy went to her house without her knowing.[26]

Meanwhile, Mallari admitted that he had dealings with Guy from 2000 up to the early part of 2004. He terminated his business relationship with Guy after reading the offending article because he does not want to deal with a person allegedly involved in bribing Secretary Amatong and had illegal tax refund cases. He, however, admitted on cross-examination that he was not immediately convinced by the article and called Guy before terminating his business with him but they were back in business sometime in 2005.[27]

Atty. Castillo testified to prove the prayer for P211,200.00 attorney's fees and presented several statements of accounts.[28] The defense admitted the genuineness and due execution of said documents.[29]

The Version of the Defense

Tulfo admitted that he wrote the subject article and the six (6) other articles that the prosecution presented which

were all previously published in his “SHOOT TO KILL” column in Abante Tonite, to wit: “Michael C. Guy, Binondo Godfather”[30] dated October 3, 2003, “Binondo Godfather II”[31] dated October 8, 2003, “Sino si Benny at Vangie ng BIR? (The Binondo Godfather Story Part III)”[32] dated October 10, 2003, “Ang mga Godfather sa BIR”[33] dated October 13, 2003, “Nagbanta na ang Godfather ng Binondo Mafia”[34] dated October 17, 2003 and “Mga Pagbati Mula sa California, U.S.A. At Singapore”[35] dated October 20, 2003. However, he clarified that these articles were not intended to malign the reputation of Guy but only to expose the alleged anomalies and tax scams of the latter. According to Tulfo, the public ought to know these tax scams and that Guy conspired with certain BIR and other government officials in defrauding the government with millions of pesos in taxes.[36]

Tulfo also testified that his allegedly defamatory article was based on the information given by resource persons from the DOF, the BIR and some friends of Guy. He, however, denied personally knowing Guy or Secretary Amatong but claimed that he had documents establishing the truth of what he wrote. He presented a Tax Year Summary Record[37] purportedly from the BIR showing that MG Forex paid P94,607.66 in taxes for 2002 and asked for a P278,117.98 refund on 2003. Tulfo also referred to the Affidavit[38] of Frogoso, earlier attached to his Rejoinder Affidavit[39] before the OCP, as one of his sources in writing that Guy defrauded the government by not paying the correct taxes and he later on went to Secretary Amatong.[40]

Frogoso, who was presented to bolster Tulfo's defense, testified that he is an Intelligence Officer II of the DOF. He affirmed the contents of his Affidavit[41] attached to Tulfo's Rejoinder Affidavit[42] and admitted that he supplied Tulfo with information about Guy even though he knew it to be confidential. He was familiar with Guy because he was assigned by Undersecretary Bonoan in gathering information regarding Guy's activities. It was also revealed that Frogoso was suspended by DOF Secretary Gary Teves because he failed to pass the lifestyle check.[43]

On the other hand, Macasaet and the editors raised the defense that their respective positions had nothing to do with the publication or editing of the offending article, thus, they should be exonerated from the crime charged.

Quijano, Jr. admitted that he was the Managing Editor of Abante and Abante Tonite and detailed the process by which an article is reviewed and edited. For Abante Tonite, the writer submits his work to Hagos and the latter reports the same to Bay, Quijano, Jr.'s assistant. Afterwards, Bay, through a phone call to Quijano, Jr., summarizes the articles that would be included in the edition for publication the next day. Quijano, Jr. does not have personal contact with the writers of the news articles and opinions and would usually talk to Bay only through telephone. He admitted that he does not review the opinion columns and read Tulfo's article only after it was published.[44]

Tandoc, the News Editor of Abante Tonite from 2004 to 2006, testified that she only reviews news articles while another editor reviews the opinion columns.[45] Bay, the Assistant Managing Editor, corroborated Tandoc. According to her, she reviews and edits news articles and helps in deciding which should be the banner story. She, however, denied reviewing columns as it was allegedly the job of the Opinion Page Editor.[46] Tandoc and Bay also denied knowing Guy or ever reading the purported offending article of Tulfo.

Macasaet, the President of Monica Publishing, claimed that his duties are all administrative, such as dealing with suppliers, looking for equipment and ensuring proper replacement if anybody is absent, and he had no participation in the publication of any news item or editorial.[47]

The Ruling of the RTC

In its February 24, 2010 Judgment,[48] the RTC convicted Macasaet et al. of libel. Citing *U.S. v. O'Connell*,[49]

the RTC pronounced that a charge is considered sufficient if the words are calculated to induce hearers to suppose and understand that the person against whom they were uttered was guilty of certain offenses or are sufficient to impeach his honesty, virtue or reputation. After discussing the three (3) BIR Certifications stating that MG Forex and Guy did not file any application for tax refund/tax credit, the court a quo held that the elements of libel such as: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; and (c) identity of the person defamed, were established by the prosecution.

With respect to the presence of malice, the RTC ruled that Tulfo failed to establish good motives or justifiable ends in writing the subject article. According to the court a quo, Tulfo should have ascertained the truth of the report instead of using unverified information to throw wild accusations and besmirch the name of a possibly innocent person. It found the tax year summary presented by Tulfo to be specious since it was unsigned and its authenticity was not established. It did not also give credence to Frogoso's testimony due to his failure to pass the lifestyle check and because he was neither connected with the BIR nor did he prepare the tax year summary.

As to Macasaet's liability as publisher and Quijano, Jr., Bay, Galang, Hagos, Lacorte and Tandoc as editors, the RTC decreed that under Article 360[50] of the Revised Penal Code (RPC), they are liable to the same extent as if they were the authors of the libelous article.

The RTC disposed the case as follows:

WHEREFORE, the Court finds the accused Allen Macasaet, Nicolas V. Quijano, Jr., Janet Bay, Jesus P. Galang, Randy Hagos, Jeany Lacorte, Venus Tandoc and Raffy Tulfo, GUILTY beyond reasonable doubt of the crime of Libel, as defined in Article 353 of the Revised Penal Code, and sentences each of the accused to pay a fine of SIX THOUSAND PESOS (P6,000.00) with subsidiary imprisonment, in case of insolvency.

They are likewise hereby ordered to pay private complainant Michael C. Guy, jointly and severally, the sum of FIVE MILLION PESOS (P5,000,000.00) as actual damages, FIVE MILLION PESOS (P5,000,000.00) as moral damages, and TWO HUNDRED ELEVEN THOUSAND TWO HUNDRED PESOS (P211,200.00) as attorney's fees. (Emphasis appears in the original text of the decision)

Insisting on their innocence, Macasaet, et al. filed their separate appeals. Macasaet and the editors assigned the following errors:

I.

WHETHER THE TRIAL COURT ERRED IN SHIFTING THE BURDEN OF PROOF TO ACCUSED TULFO IN RULING THAT HE FAILED TO ESTABLISH GOOD MOTIVES AND JUSTIFIABLE ENDS IN WRITING HIS COLUMN, CONSIDERING THAT THE COLUMN WAS A QUALIFIEDLY PRIVILEGED COMMUNICATION.

II.

WHETHER THE TRIAL COURT ERRED IN RULING THAT THE COLUMN OF ACCUSED TULFO WAS WRITTEN WITH MALICE.

III.

WHETHER THE TRIAL COURT ERRED IN NOT RULING THAT THE SUBJECT ARTICLE IS CONSTITUTIONALLY PROTECTED.

IV.

WHETHER THE TRIAL COURT ERRED IN CONVICTING APPELLANTS HEREIN WHO HAD NO HAND IN THE PUBLICATION OF THE ALLEGED LIBELOUS COLUMN OF ACCUSED TULFO.

V.

WHETHER THE TRIAL COURT ERRED IN AWARDING AN EXORBITANT AMOUNT OF DAMAGES AND ATTORNEY'S FEES TO PRIVATE COMPLAINANT. [51]

For his part, Tulfo imputed to the RTC the following errors:

I. THE LOWER COURT ERRED IN MISAPPRECIATING THE FACTS OF THE CASE AND IN RULING THAT THE PUBLISHED ARTICLE IS LIBELOUS PER SE, AND NOT PRIVILEGED, AND THAT MALICE IS PRESUMED ON THE PART OF THE ACCUSED IN PUBLISHING THE ASSAILED ARTICLE.

II. THE LOWER COURT ERRED IN NOT APPLYING THE DOCTRINE OF PRIVILEGED COMMUNICATION TO THE SUBJECT WRITING ON THE ALLEGED FINDING THAT SOME OF THE PUBLISHED ARTICLES TURNS (sic) OUT TO BE FALSE OR MISTAKEN.

III. THE LOWER COURT ERRED IN RULING THAT THE ASSAILED ARTICLE IS LIBELOUS BECAUSE “RAFFY FAILED TO ESTABLISH GOOD MOTIVES OR JUSTIFIABLE ENDS IN WRITING THE SUBJECT ARTICLE.”

IV. THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED WAS “NOT FAIR AND ABUSED THE PRIVILEGED COMMUNICATION.”

V. THE LOWER COURT ERRED IN RULING THAT PRIVATE PROSECUTOR WAS ABLE TO DISCHARGE ITS BURDEN OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT, DESPITE HIS HAVING FAILED TO PROVE ACTUAL MALICE IN THE PUBLICATION OF THE ASSAILED ARTICLE, AND REBUT THE PRESUMPTION OF GOOD FAITH AND REGULARITY ON THE PART OF THE ACCUSED IN PUBLISHING WHAT HE BELIEVED WAS HIS “LEGAL, MORAL AND SOCIAL DUTY” TO EXPOSE TO THE PUBLIC VENALITIES IN GOVERNMENT AGENCIES.

VI. THE LOWER COURT ERRED IN AWARDING ACTUAL AND MORAL DAMAGES BASED ON CONJECTURES ESTIMATES SPECULATION WITHOUT ANY FACTUAL BASIS. [52]

This Court’s Ruling

The appeals are bereft of merit.

Tulfo's Article Defamatory

Article 353 of the RPC defines libel as a public and malicious imputation of a crime or of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit or contempt of a natural or juridical person or to blacken the memory of one who is dead. Consequently, the following elements constitute libel: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and (d) existence of malice.[53]

Although the foregoing elements must concur, the defamatory nature of the subject printed phrase must be proved first because this is vital in a prosecution for libel; were the words imputed not defamatory in character, a libel charge will not prosper.[54] In *MVRS Pub. Inc. v. Islamic Da'wah Council of the Phils., Inc.*,[55] the Supreme Court defined defamatory language in this wise:

Defamation, which includes libel and slander, means the offense of injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute. Defamation is an invasion of a relational interest since it involves the opinion which others in the community may have, or tend to have, of the plaintiff. (Emphasis added)

It is also a well-settled rule that in determining whether a statement is defamatory, the words used are construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense. Simply stated, a charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule.[56]

Guided by the foregoing pronouncements, We find that Tulfo's March 24, 2004 article is indeed defamatory. The article, which was misquoted in the Amended Information, actually reads as follows:

Ang mga tanong ngayon, may katotohanan kaya ang akusasyon ni Salanga laban kay Amatong? Nagsasabi naman kaya ng totoo si Amatong nang itanggi niya ang akusasyon ni Salanga laban sa kanya?

Narito ang isang balitang natanggap ng SHOOT TO KILL mula sa isang mapagkakatiwalaan at A-1 source na kung saan ay inarbor ni Amatong sa kanyang mga tauhan ang isang negosyanteng iniimbistegahan ng DOF dahil sa katiwalian sa tax refund. Narito ang kwento at kayo na ang bahalang manghusga kung sino ang may kredibilidad, si Amatong o si Salanga?

Noong March 20, 2004, Sabado ng hapon pumunta ang isang negosyanteng nagngangalang Michael Guy sa bahay ni Amatong. Si Guy ay iniimbestegahan ng mga tauhan ng Revenue Integrity Protection Service (RIPS) ng DOF dahil sa kahinahinalang mga tax refund na natanggap nito mula sa BIR simula 1998 hanggang 2003.

Problemado si Guy sapagkat natunugan niyang iniimbestigahan na siya ng RIPS. Ito'y matapos magpadala ng sulat ang RIPS sa Central Bank at hinihingi rito ang lahat ng mga transaksyon ng kumpanya ni Guy sa lahat ng mga bangko. Ang nakatanggap ng sulat sa Central Bank ay kakilala ni Guy.

Noong Sabado ng hapon din, ayon sa aking source, tinawagan ni Amatong ang hepe ng RIPS para hilingin dito na ihinto ang imbestigasyon laban kay Guy at isurender sa kanyang opisina ang lahat ng mga dokumentong nakalap ng RIPS laban dito!!![57] (Emphasis and underscoring supplied)

The subject article in its entirety not only portrayed Guy as a person involved in anomalous tax refunds but also conveyed the idea that he had influenced Secretary Amatong in order to stop the investigation against him. The use of the word "katiwalian sa tax refund" impute upon Guy the commission of a crime such as tax fraud. Also, the language, emotion and tone of the article are calculated to induce an ordinary reader to believe that Guy had involvement in the alleged corruption done by Secretary Amatong when the latter called the RIPS and asked for the surrender of papers allegedly connected to Guy's pending cases. To the mind of an ordinary reader, these imputations are sufficient to impeach the virtue and reputation of Guy. The article definitely injured the reputation, respect, goodwill in Guy and excites derogatory feelings or opinions about him.

Malice Sufficiently Proven

Tulfo, in denying malice on his part, claims that his intention was to expose Guy's involvement in anomalies and tax scams which were done in conspiracy with certain BIR and other government officials.[58] According to Tulfo, these are matters of public interest and considered as qualifiedly privileged communication as enunciated in *Borjal v. Court of Appeals*. [59]

Tulfo's reliance in the Borjal case is clearly misplaced. Explaining the decision in the Borjal case, the Supreme Court in *Philippine Journalist Inc. v. Thoenen*[60] said:

In *Borjal v. Court of Appeals*, we stated that "the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged. We stated that the doctrine of fair commentaries means "that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition."

Again, this argument is unavailing to the petitioners. As we said, the respondent is a private individual, and not a public official or public figure. We are persuaded by the reasoning of the United States Supreme Court in *Gertz v. Robert Welch, Inc.*, that a newspaper or broadcaster publishing defamatory falsehoods about an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability, for injury inflicted, even if the falsehood arose in a discussion of public interest. (Emphasis supplied)

Similarly, Guy is neither a public official nor a public figure, thus even if Tulfo's article allegedly arose in a discussion involving public interest, the disquisition in the Borjal case is inapplicable in this case. Since the article cannot be considered as privileged communication, malice is therefore presumed, and the fourth requisite for the imputation of libel to attach to the petitioners in this case is met. The news article is therefore defamatory and is not within the realm of protected speech.[61]

Accordingly, Tulfo has the burden to establish that the article was not attended by malice. He, however, failed to discharge this burden. We cite with approval the findings of the RTC, thus:

The Court is not impressed. The evidence shows that Raffy failed to establish good motives or justifiable ends in writing said article. To prove that he made personal interviews and verifications with his sources before he wrote the article. He presented a copy of tax year summary to back up his allegation that the private complainant was indeed involved in tax fraud, a letter dated 4 March 2004 and the testimony of Ruben Frogoso. The Court finds the tax year summary is specious because it was unsigned and there was no proof that said document was indeed from the BIR. On contrary, the prosecution presented several certifications from the BIR that private complainant did not apply for a tax refund.

We cannot fault the RTC in not giving credence to the tax year summary presented by Tulfo. Without compliance with the mandates of Sections 24[62] and 25,[63] Rule 132 of the Rules of Court, the tax summary cannot be considered as prima facie evidence of the facts stated therein. Also, the fact that the RIPS only investigates allegation of corruption against erring officials of the DOF and its attached agencies[64] and Guy is definitely not a government official, clearly shows that Tulfo failed to verify the information on which he based his article. This just shows that Tulfo's article contained baseless and wild accusations against Guy. Accordingly, he failed to meet the "reckless disregard test" laid down in *New York Times Co. v. Sullivan*,[65] reiterated in *Flor v. People*,[66] and cited in the case of *Tulfo v. People of the Philippines*[67] which states that to determine if a defamatory statement was made with actual malice, the test to be followed is whether it was with knowledge that it was false or with reckless disregard of whether it was false or not.

All told, the prosecution sufficiently established all the elements of libel.

Liability of Macasaet and the Editors

Macasaet and the editors cannot escape liability for libel by simply arguing that they had no participation in the publication of Tulfo's article. The ruling of the Supreme Court in the Tulfo case[68] is instructive on this matter,

thus:

The language of Art. 360 of the RPC is plain. It lists the persons responsible for libel:

Art. 360. Persons responsible.—Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The claim that they had no participation does not shield them from liability. The provision in the RPC does not provide absence of participation as a defense, but rather plainly and specifically states the responsibility of those involved in publishing newspapers and other periodicals. It is not a matter of whether or not they conspired in preparing and publishing the subject articles, because the law simply so states that they are liable as they were the author.

Neither the publisher nor the editors can disclaim liability for libelous articles that appear on their paper by simply saying they had no participation in the preparation of the same. They cannot say that Tulfo was all alone in the publication of Remate, on which the subject articles appeared, when they themselves clearly hold positions of authority in the newspaper, or in the case of Pichay, as the president in the publishing company.

As Tulfo cannot simply say that he is not liable because he did not fulfill his responsibility as a journalist, the other petitioners cannot simply say that they are not liable because they did not fulfill their responsibilities as editors and publishers. An editor or manager of a newspaper, who has active charge and control of its management, conduct, and policy, generally is held to be equally liable with the owner for the publication therein of a libelous article. On the theory that it is the duty of the editor or manager to know and control the contents of the paper, it is held that said person cannot evade responsibility by abandoning the duties to employees, so that it is immaterial whether or not the editor or manager knew the contents of the publication. In *Fermin v. People of the Philippines*, the Court held that the publisher could not escape liability by claiming lack of participation in the preparation and publication of a libelous article. (Emphasis supplied; citation omitted)

Damages

In the *Thoenen* case,[69] citing *Guevarra v. Almario*,[70] the Supreme Court noted that the damages in a libel case must depend upon the facts of the particular case and the sound discretion of the court, although appellate courts were “more likely to reduce damages for libel than to increase them.” So it is in this case.

The RTC awarded to Guy P5,000,000.00 moral damages and P5,000,000.00 actual damages. However, the said award is unreasonable considering the circumstances peculiar to this case. Indeed, Tulfo's article was proven to be defamatory but Guy failed to prove substantial damages to his business; in fact, he was doing business with Mallari again and only his sister sold her shares back to him. Furthermore, Guy's claim for P50,000,000.00 lost of earning in ten (10) years is merely speculative and theoretical. In fact, he even admitted that he had not earned P50,000,000.00 since the start of his business in 1990. Thus, there was no showing of any pecuniary loss suffered by Guy and there is no reason to grant actual or compensatory damages as provided in Article 2199[71] of the New Civil Code (NCC). Without proof of actual loss that can be measured, the award of actual damages cannot therefore stand.[72]

On similar ground, We reduce the award of moral damages to P500,000.00. Guy's testimony that he lost one client as a result of Tulfo's article but said client eventually returned to business with him proved that the damage to Guy's reputation and goodwill was not as severe as he claimed. It bears stressing that moral damages are not a

bonanza. They are given to ease the defendant's grief and suffering. It should therefore be reasonably approximate to the extent of the hurt caused and the gravity of the wrong done.[73] We also delete the exemplary damages earlier awarded in Our August 30, 2013 Decision. Under Article 2230 of the NCC, exemplary damages may be imposed in criminal offenses when the crime was committed with one or more aggravating circumstances. No aggravating circumstances accompanied the commission of the libelous acts; thus, no exemplary damages can be awarded.[74]

Pursuant to Article 2208[75] of the NCC, the Court deems it just and equitable to retain the award of P211,200.00 attorney's fees which is reasonable under the facts and circumstances of this case.

WHEREFORE, the appeal is DENIED. The February 24, 2010 Judgment of the Regional Trial Court, Branch 132, Makati City in Criminal Case No. 04-3614 is hereby AFFIRMED with MODIFICATIONS that all accused-appellants are ORDERED to pay Michael Guy, jointly and severally, P500,000.00 moral damages and P211,200.00 attorney's fees. The award of P5,000,000.00 actual damages is DELETED for lack of factual and legal basis.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

[1] Rollo, pages 405-410.

[2] Ibid., pages 419-429.

[3] Ibid., pages 371-391.

[4] Ibid., pages 208-225.

[5] Ibid., page 391.

[6] Section 12, Rule VI of the 2009 Internal Rules of the Court of Appeals (IRCA) provides "xxx Any action modifying or reversing a decision of the Division shall be denominated as "Amended Decision."

[7] Notices of Appeal for Macasaet and the editors and Tulfo's separate Notice of Appeal, records, pages 816-817 and 813-814, respectively.

[8] Penned by Judge Rommel O. Baybay, rollo, pages 34-52.

[9] Records, pages 94-100.

[10] See Amended Information dated December 14, 2005, *ibid.*, pages 223-224.

[11] See May 4, 2005 Order for Macasaet and the editors' arraignment and September 13, 2006 Order for Tulfo's arraignment, *ibid.*, pages 156 and 250, respectively.

[12] See Pre-trial Order, *ibid.*, pages 269-270.

[13] TSN, Michael Guy, February 28, 2007, page 13 and 16-17.

[14] *Ibid.*, April 18, 2007, page 11.

[15] *Ibid.*, February 28, 2007, pages 19-28.

[16] *Ibid.*, April 18, 2007, pages 13-14 and 16.

- [17] Certification, marked as Exhibit C, records, page 389.
- [18] Marked as Exhibit D, *ibid.*, page 390.
- [19] TSN, Michael Guy, April 18, 2007, pages 21-23.
- [20] *Ibid.*, pages 8-9.
- [21] *Ibid.*, November 7, 2007, page 3.
- [22] *Ibid.*, April 18, 2007, page 14.
- [23] Records, page 626.
- [24] *Ibid.*, page 627.
- [25] TSN, Ma. Esperanza B. Caraig, October 14, 2009, pages 7-8.
- [26] TSN, Secretary Amatong, May 9, 2007, page 10.
- [27] TSN, Jayson Mallari, June 27, 2007, pages 7-10.
- [28] See Statement of Account from Fortun Narvasa Salazar Law Office dated May 5, 2004; December 12, 2005; and March 30, 2007, records, pages 403-405.
- [29] TSN, Atty. Karl Castillo, September 5, 2007, page 5.
- [30] Records, page 391.
- [31] *Ibid.*, page 392.
- [32] *Ibid.*, page 393.
- [33] *Ibid.*, page 394.
- [34] *Ibid.*, page 395.
- [35] *Ibid.*, page 396.
- [36] TSN, Raffy Tulfo, August 6, 2008, pages 9-16.
- [37] Records, page 65.
- [38] *Ibid.*, pages 62-64.
- [39] *Ibid.*, pages 55-61.
- [40] TSN, Raffy Tulfo, August 6, 2008, pages 10, 18-21 and 29-31.
- [41] *Supra*, at note 38.
- [42] *Supra*, at note 39.
- [43] TSN, Ruben Frogoso, September 17, 2008, pages 8-14.
- [44] TSN, Nicolas Quijano, Jr., January 7, 2009, pages 6-16.
- [45] TSN, Venus Tandoc, March 11, 2009, pages 5-7.
- [46] TSN, Maria Janet Bay, June 3, 2009, pages 4-6.

[47] TSN, Allen Macasaet, January 21, 2009, pages 4-5.

[48] Supra, at note 8.

[49] G.R. No. 13173. March 11, 1918.

[50] Art. 360. Persons responsible. — Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof. xxx

[51] See Macasaet and the editor's Appellant's Brief, rollo, pages 86-87.

[52] See Brief for Appellant Tulfo, *ibid.*, pages 159-160.

[53] Yambot, et al. v. Tuquero, G.R. No. 169895. March 23, 2011 citing Daez v. Court of Appeals, G.R. No. 47971. October 31, 1990.

[54] Lopez v. People, G.R. No. 172203. February 14, 2011.

[55] G.R. No. 135306 . January 28, 2003.

[56] See Lopez v. People, *supra*, at note 54.

[57] See Exhibit A, records, page 378 and pages 11-12 of the assailed Judgment, *supra*, at note 8.

[58] See TSN, Raffy Tulfo, August 6, 2008, page 9.

[59] G.R. No. 126466. January 14, 1999.

[60] G.R. No. 143372. December 13, 2005.

[61] See Philippine Journalist Inc. v. Thoenen, *ibid.*

[62] Sec. 24. Proof of official record. - The record of public documents referred to in paragraph (a) of section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy xxx

[63] Sec. 25. What attestation of copy must state. - Whenever a copy of the document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of court having a seal, under the seal of such court.

[64] See Executive Order No. 259 entitled Creating the Department of Finance Revenue Integrity Protection Service and Other Purpose.

[65] 376 US 254, 11 L ed. 2Nd 686 as cited in Tulfo v. People of the Philippines, G.R. Nos. 161032 and 161176. September 16, 2008.

[66] G.R. No. 139987. March 31, 2005.

[67] Supra, at note 65.

[68] *Ibid.*

[69] Supra, at note 60.

[70] G.R. No. L-35357. February 2, 1932.

[71] Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[72] Tulfo v. People, supra, at note 65.

[73] Yuchengco v. The Manila Chronicle Publishing Corporation, G.R. No. 184315. November 28, 2011.

[74] Tulfo v. People, supra, at note 65.

[75] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

xxx

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

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