

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEES, VS. NELLY P. CORTEZ, DEFENDANT-APPELLANT.

G.R. No. L-23508. December 11, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

A complaint for grave slander was filed on January 16, 1964 by Julita Santos against Nelly P. Cortez in the Court of First Instance of Manila. It was alleged therein:

"That on or about the 14th day of November, 1963, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully, feloniously and publicly utter and proffer slanderous words and expressions which are grave and of insulting nature, considering that the complainant is a married woman with good reputation, such as 'Matanda kang walang hiya, anak mo na lamang nagpapaasawa ka pa, kaya ikaw ay hiniwalayan ng asawa mo dahil sa gawain mo, ang sabi ng asawa ko ay nagpapaasawa ka sa kanya, iyon pumunta ka roon sa Kalunya mo' and other words of similar import against Julita Santos, thereby bringing the latter into public disgrace, contempt and ridicule."

At the arraignment on January 30, 1964, the defendant, waiving the right to be assisted by counsel, pleaded not guilty to the charge. The case was then set for hearing at 8:30 A.M. of February 6, 1964. On said date, however, on petition of Atty. Angel Aquino, counsel de oficio of the accused, to enable him to prepare for the defense, the hearing was postponed to 8:30 A.M. of March 3, 1964.

From this point, the record of the trial court shows that on the date scheduled for hearing, the court rendered a decision which, after quoting the charge, proceeded to state as follows:

"Upon being arraigned assisted by her counsel de oficio, Atty. Angel Aquino, the accused voluntarily and spontaneously entered the plea of guilty and insisted thereto notwithstanding the information furnished her by the Court regarding the consequences of her plea.

"WHEREFORE, the Court finds the accused NELLY P. CORTEZ guilty beyond reasonable doubt of the commission of the crime of grave slander, defined and penalized in Art. 358 of the Revised Penal Code, and appreciating in her favor the mitigating circumstances of voluntary plea of guilty, hereby sentences her to suffer the penalty of four (4) months and one (1) day of arresto mayor, with the accessory penalties prescribed by law, and to pay the costs of these proceedings.

"SO ORDERED." (Record, p. 16)

The same day, the accused filed a notice of appeal to the Court of Appeals, from said decision convicting her. The Court of Appeals, on September 3, 1964, certified said appeal to this Court as involving only questions of law.

Appellant in her brief now contends that she did not plead guilty to the complaint and that no plea of guilty had thereafter been entered of record as required by the Rules. Appellant would rely on the fact that a page of the trial court's record (page 15), which she alleges to have contained the stenographic recording of the trial of March 3,

1964, is missing, adding that the loss appears to have occurred while the case was in the Court of Appeals. It is argued that said loss has rendered it impossible for appellant to prove her claim that she never pleaded guilty to the complaint. She stresses that the only plea of record is that of "not guilty" entered on January 30, 1964. And, with the conformity of the Solicitor General (See Appellee's brief, p.3), she now asks for a remand of the case for trial.

Fortunately, there are other data of record showing that defendant really pleaded guilty in the lower court. Thus, in appellant's motion of April 30, 1964, with her annexed affidavit (Annex "G") praying for admission of attached documents as part of the record, and her supplemental motion of May 19, 1964, asking that she be allowed to present evidence, in addition to her plea of guilty, in order to obtain a lesser penalty, both filed in the Court of Appeals, and appearing in the Rollo of this case, defendant admits that she pleaded guilty but argues that the court should have allowed her to present evidence in spite of her plea of guilty, to determine the graveness or lightness of the offense charged as well as the corresponding penalty to be imposed. Thus, she stated in the affidavit:

"2. That I have interposed said appeal of the lower Court's judgment of conviction not for the purpose of seeking its reversal but only for the purpose of seeking a modification of the penalty imposed which I believe is rather harsh and severe or excessive;

xxx xxx xxx

"With respect to the lawyer offered to me by the Honorable Judge, I declined to avail of his services, besides I was then already dead-set to lead guilty. In fact, my only conversation with the court-appointed lawyer was when I asked him what the penalty would be in the event I enter a plea of guilty and he assured me that I will only be made to pay a fine not exceeding P20.00 or P30.00. Thus, with this added inducement coming from no less than a lawyer, I did not even hesitate in expressing to the Honorable Judge my willingness to plead guilty."

It is clear, therefore, that defendant did not question the fact that she pleaded guilty, but even admitted it, until page 15 of the record was missing; thereafter, she started to deny said plea of guilty.

Considering the foregoing circumstances and the presumption that official duty has been regularly performed (Sec. 5[m], Rule 131, Rules of Court), this Court can reach no other conclusion but that the statement in the appealed decision, that the accused pleaded guilty upon arraignment, truly reflects what transpired. And even assuming that defendant's plea of guilty, altho made, was not entered in the record, the failure to so enter the same does not affect the validity of the proceeding held. (Sec. 1, Rule 118, Rules of Court.)

As regards the correctness of the penalty, the slander, as quoted in the complaint, is patently of a serious and insulting nature. The penalty for slander, if of a serious and insulting nature, is arresto mayor in its maximum period to prision correccional in its minimum period (Art. 358, Revised Penal Code). The court a quo, therefore, imposed the right penalty.

WHEREFORE, the appealed judgment is hereby affirmed, with costs against appellant. Let a copy of this decision be transmitted to the Honorable, Presiding Justice of the Court of Appeals, for any investigation he may wish to order regarding the missing page of the trial court's record.

SO ORDERED.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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