

BURGOS T. SAYOC, PLAINTIFF AND APPELLANT VS. ELLEN CHEN, DEFENDANT AND APPELLANT.

G.R. No. L-11179. December 29, 1960

Ponente: DIZON, J.

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DIZON, J.:

Plaintiff Burgos T. Sayoc, besides being an EENT specialist, is engaged in the general practice of medicine. He was formerly with the Armed Forces of the Philippines, having attained therein the rank of Lieutenant-Colonel MC.

Defendant Ellen Chen is a duly licensed optometrist having completed both the ordinary and the doctorate course in Optometry at the Centro Escolar University. According to her evidence, she also had opportunity to study the Japanese technique in Optometry and Ophthalmology during her stay in several hospitals and universities in Tokyo, particularly the Japanese technique in the operation of strabismus, cataract and "double eyelid".

Sometime in the year 1952 plaintiff read a "paper" on "Plastic Construction of the Superior Palpebral Fold" at the annual meeting of the Philippine Ophthalmological and Otolaryngological Society—hereinafter referred to as POOS—for which he received an award of merit. On February 8, 1953 there appeared in the Sunday Times Magazine (Exhibit H) an article entitled "Simple Operation Widens Slit Eyes" which gave the public the information that plaintiff had received an award of merit for "the best scientific paper presented before the 1952 annual meeting" of the POOS. It also described an operation performed by him as "the first of its kind in the world, the plastic operation devised by the surgeon."

On February 11, 1953 defendant sent to the POOS the following letter:

"Gentlemen:

Having read with interest the article published in the Sunday Times Magazine of February 8, 1953, under the heading 'Simple Operation Widens Slit Eyes', I am prompted to bring to your attention certain serious inaccuracies.

The operation referred to is described in German Texts and the procedure there described has been availed of by Japanese ophthalmologists for many years. Such an operation was performed in Shanghai on the eyes of an acquaintance of mine as far back as 1937; similar operations have been performed in Hongkong and Formosa for perhaps as long a time.

The operation described by Dr. Sayoc and which merited your award as the 'best paper of 1952, is not the first of its kind in the world, and as you will see from the following is not original with him.

I was in Tokyo in April and May of 1951, also in September and October of last year and there observed the method of Japanese ophthalmologists in the surgical relief and correction of cataract, strabismus, and other eye conditions. Including 'widening of the palpebral, aperture, and the particular operation above referred to. My study and observation was intensive. I had clinical experience and instruction in their methods by Dr. Yasushi

Nakamura, Chief, Ophthalmological Department, at the Japan Medical College, Dr. Shikano, Chief of the Ophthalmological Department at Imperial University, Dr. Uchida of Uchida Ophthalmological Clinic, Dr. Umozawa at Juen Hospital and Dr. E. Y. Takano, Ophthalmologist-in-Chief, at Tokyo Teishin Hospital. Dr. Takano may be remembered here as the head of St. Luke's Hospital here in Manila during 1943 and 1944.

I became acquainted with Dr. Sayoc in 1950 when he began sending patients to me for refraction. He became especially interested in what the Japanese ophthalmologists refer to as the 'Double Eyelid Operation'. At his request I taught him the two methods employed for widening slit eyes and instructed him during his first successful operation of this nature on September 29, 1951, employing the technique I brought from the Japanese Ophthalmologists in Tokyo. The excellent results of that operation are evidence in the accompanying photograph. An equally successful operation was performed in the patient's right eye on October 6th, 1951.. The cosmetic effect attained suffers nothing by comparison with the illustration in the magazine article.

The magazine article illustrations of stages in the operation bear a striking similarity to my notes and instructions as received in Tokyo, a portion of which appear in the accompanying photostat. Dr. Sayoc may have worked for six years on the stages and mechanism of the operation but when I instructed him in 1951 he appeared to me to be totally unacquainted with the procedure.

Very truly yours,

(Sgd.) Ellen Chen, O.D."

Defendant furnished copies of the above letter to the Sunday Times Magazine, Dr. Jesus Eusebio, Dr. Domingo Antonio, Dr. Felisa Fernando, Dr. Geminiano de Ocampo and Dr. H. del Castillo. The physicians just named, all residents of the City of Manila, were members of the POOS, except Drs. Antonio and del Castillo.

On April 25, 1953, claiming that the following portion of the letter above reproduced—

"I became acquainted with Dr. Sayoc in 1950 when he began sending patients to me for refraction. He became especially interested in what the Japanese ophthalmologists refer to as the 'double eyelid operation'. At his request I taught him the two methods employed for widening slit eyes and instructed him during his first successful operation of this nature on September 29, 1951, employing the technique I brought from the Japanese Ophthalmologists in Tokyo.*** Dr. Sayoc may have worked for six years on the stages and mechanism of the operation but when I instructed him in 1951 he appeared to me to be totally unacquainted with the procedure.* * *"

contained false and libelous statements, had wounded his feelings, besmirched and injured his reputation and good name, exposed him to ridicule and contempt, etc, plaintiff commenced the present action to recover from defendant P50,000.00 as moral damages and P5,000.00 as attorney's fees.

Answering the complaint defendant alleged, inter alia, that the plastic constructions on the upper eyelid mentioned in plaintiff's "paper" were not original of plaintiff nor were the first in the world, as published in the Sunday Times Magazine of February 8, 1953; that she taught plaintiff the formula on the double eyelid operation after her trip and observation in Japan; that her letter of February 11, 1953 was a privileged communication and was intended to reveal the whole truth in good faith and with justifiable motive; that because of the formula that plaintiff learned from her and the modified and improved newspaper advertisement of plaintiff's operations which, by agreement, was taken care of by defendant, the former acquired numerous patients and made several successful operations on double eyelid; that, according to agreement, plaintiff paid her 40% of the professional fees paid by the first patients, but subsequently refused to continue doing so, but instead caused to be published an open letter in the Manila Chronicle of April 29, 1953, sent libelous communications to the POOS on February 19 of the same year and to the President of the Optometric Association on February 25, 1953, causing her to suffer actual damages in the sum of P25,000.00 and moral damages in another sum of P25,000.00.

The alleged defamatory matter contained in plaintiff's open letter published in the Manila Chronicle of April 29, 1953 reads partly as follows:

"(Par. 3) 'Dr. Ellen Chen, a Chinese lady is an optometrist, who refracts and dispenses eye glasses. * * * Her claim to have introduced the 'Simple Operation Widens Slit Eyes' is beyond comprehension because she is not a doctor of medicine but an optometrist'"

"(Par. 4) 'For the information of the reading public 'Dr.' Ellen Chen who has slit eyes is one of the patients of Dr. Sayoc'"

The alleged defamatory matter contained in the letter sent by plaintiff to the POOS on February 19, 1953 reads partly as follows:

"(Par. 5) 'I met Miss E. Chen again sometime in October, 1950, after I had arrived from States. She even started referring patients again to me. One afternoon, she came inquiring if I could enlarge slit eyes for she has them herself. I replied that while in States I was trying to look for a certain technique to that effect, but that it was not known in the United States and that I had my own. She appeared very much interested with my operation and then she remarked that if I had any case, I could send for her if I wanted to, so she could even interpret for me if the patients were Chinese. In one or two patients, Miss Chen was able to see the operation at my clinic. At one time she even volunteered to help me in spite of my assistants, my son, a medical student, and my wife, a dentist. After sensing that I can have many patients among the Chinese, she made a dubious proposition for every Chinese patient who submits to that kind of operation, she wanted 40% of the fees; she proposed even that a contract be drawn to such effect.****'"

"(Par. 6) '*** Again she mentioned that dubious proposition of 40% to which I remarked that I did not like to have anything to do with her on that matter'"

The alleged defamatory matter contained in plaintiff's letter to the President of the Optometric Association, of February 25, 1953, reads as follows:

"(Par. 6) 'In that connection, I am prompted to send you this letter and enclosures complaining against her unethical conduct which is a disgrace to your profession if she is a member. * * *'"

In answer to defendants counterclaim plaintiff admitted having sent the letters mentioned above but denied that the same contained any libelous or malicious statements.

After trial upon the issue thus joined, the lower court rendered judgment absolving defendant from plaintiff's complaint and likewise absolving plaintiff from, defendant's counterclaim, without pronouncement as to costs. From said judgment both parties appealed.

The questions raised by both parties in this instance are, more or less, similar.

The first assignment of error submitted in plaintiff's brief assails the lower court's ruling to the effect that defendant's letter marked as Exhibit K-1 is a privileged communication; the second, third, sixth to the ninth assignments-of error cover the proposition that said court erred in not declaring that said letter is, in part, libelous. and actionable, and in not finding that plaintiff was entitled to moral damages and attorney's fees, while the fourth and fifth assignments of error are to the effect that said court also erred in holding that plaintiff's letter Exhibit 13 is sufficient proof that he had sent patients to defendant for refraction, and in giving weight, in this connection, to the suspicions receipt Exhibit 5-a.

Upon the other hand, in her first assignment of error defendant assails the ruling of the lower court to the effect that plaintiff's open letter to the Manila Chronicle, and his letter to Dr. Estrada, Exhibits 6 and 7, respectively, are not libelous, while in the second she claims that said court erred in dismissing her counterclaim.

We agree with plaintiff that defendant's letter Exhibit K-1, particularly the portion marked as Exhibit K-2, is not privileged. On the assumption that, originally, it, was privileged, it ceased to be so from, the moment defendant sent copies thereof to parties 'who had no authority of any kind over plaintiff, but to the contrary, were, we might say, his competitors in the practice of medicine—particularly in the line of his specialty.

After reading the letter in question, however, we are constrained to hold that the same is not libelous and cannot give rise to liability for damages on the part of its author. The contents, thereof, it must be admitted, cannot be pleasing to the plaintiff nor could they positively enhance his reputation as a professional, but it does not indulge in personalities, nor does it follow the plaintiff into his private life. Its main purpose—it would seem—is to correct certain inaccuracies that its author had discovered in the article regarding the work of plaintiff. A communication of its kind should not be subjected to microscopic examination to discover grounds of malice, bad faith or falsity.

A reading of the letter in question makes it clear that it does not charge the plaintiff with any crime, vice or defect. It states clearly that the writer's only purpose is to invite attention to certain inaccuracies contained in the article published in the Sunday Times Magazine, and if, aside from sending the letter to said publication, she likewise sent copies thereof to other members of the medical profession, it was because their names appeared mentioned in said articles and defendant thought it her moral duty to them and to society in general to invite their attention to what she believed glaring inaccuracies in the article.

Whether the plaintiff was the originator of the double eyelid operation or not, whether the technique' required for the success of an operation of that kind was learned in Japan by defendant and she later taught such technique or 'its formula to the plaintiff was the subject of conflicting evidence—that for one side not being clearly preponderant over that of the other. But even assuming that defendant's statements and views on this matter were incorrect, there is no sufficient evidence that in sending the letter in question for publication in the Sunday Times Magazine she had acted with utter malice and not merely for the purpose of placing the true facts before the general public. Furthermore, even assuming that, as plaintiff contends, the publication of said letter subjected him to embarrassing questions from his colleagues in the profession and prevented his promotion from "active" member to "fellow" member of the POOS, we agree with the trial court that there is no sufficient evidence in the record to establish the pecuniary value of the embarrassment allegedly suffered by the plaintiff and of the promotion he claims to have failed to secure.'

On the question of whether the letter under consideration contained falsities with respect to the main matter involved, it appears that the plaintiff himself does not claim originality for the operation described in his "paper"—according to the letter of Dr. Jesus Eusebio, marked Exhibit 10. That it was described in the article as "the first of its kind in the world, etc." was therefore the view of the writer of the article and not the claim of the plaintiff. Defendant was therefore entitled to correct such inaccuracy and to invite the attention of the POOS and other competent persons to the same.

Coming now to defendant's appeal, we agree with the trial court that the open letter published by plaintiff in the Manila Chronicle and his letters to the POOS and the President of the Optometric Association are not libelous nor malicious. The last may be considered a privileged communication because it was addressed' to the President of the Optometric Association which undoubtedly had interest in the, proper conduct to be observed by optometrists. The mere fact that the abbreviation Dr. was enclosed within quotation marks did not make the letter aforesaid libelous or defamatory. As the lower court held, this should be taken only as an indication of poor taste.

Wherefore, finding the judgment appealed from to be in accordance with law and the evidence, the same is hereby affirmed.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ.,

concur.

Judgment affirmed.

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