

REINALDO FLORES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

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PAREDES, J.:[*]

THE CASE

THIS Petition for Review filed by accused Reinaldo Flores (petitioner) assails the Decision[1] dated January 12, 2012 of the Regional Trial Court, Branch 61, Makati City, which affirmed the Metropolitan Trial Court's (MeTC) finding[2] petitioner guilty beyond reasonable doubt of Slight Oral Defamation in Criminal Case No. 11-1855 (353622). Also for review is the Resolution[3] dated June 15, 2012 denying petitioner's Motion for New Trial or Reconsideration.

THE ANTECEDENTS

On October 19, 2007, petitioner was charged with Slight Oral Defamation in an Information[4] which reads, thus:

That on or about the 2[nd] day of June 2007, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the deliberate intent of bringing DR. VALENTIN F. YABES III into discredit, disrepute and contempt, did then and there willfully, unlawfully, feloniously and publicly speak and utter against said complainant the following insulting and defamatory words and expressions, while in complainant's Laser Medical Clinic, Ground Floor, 111 Paseo de Roxas St., Legaspi Vill., Makati City, to wit:

"NAGDO-DOKTOR-DOKTORAN LANG!" and other words of similar import.

CONTRARY TO LAW.

On February 18, 2008, petitioner was arraigned and, with the assistance of counsel, entered a plea of "Not Guilty"[5]. After pre-trial, trial on the merits proceeded.

The prosecution presented the testimonies of private complainant Dr. Valentin Yabes III[6] (Dr. Yabes), Renen Castillo[7], Janelle Dela Cruz[8], Roy Gilbert Ortega[9], and Virginia Francisco[10], whose combined testimonies tended to establish, that:

On June 2, 2007, petitioner went to see Dr. Yabes at his clinic complaining that the laser treatment his mother, Mrs. Emilia Flores, received from Dr. Yabes was making her condition worst, that Dr. Yabes had no right to remove his mother's medication as Dr. Yabes was not a neurologist, and the nutrition prescribed by Dr. Yabes was not suited for her, and demanding that Dr. Yabes refund the expenses they had incurred. When he would not be appeased, petitioner raised his voice and shouted, "Nagdo-doktor-doktoran ka lang!", and repeatedly shoved Dr. Yabes as the latter stood up to leave the premises. Renen Castillo, a staff of Dr. Yabes, called the police. The disturbance caused by appellant subjected Dr. Yabes to disgrace and ridicule in front of his patients; hence, the complaint.

Thereafter, the prosecution formally offered its exhibits consisting of the following, viz.: "A" - Complaint-Affidavit[11] of Dr. Valentin G. Yabes; "B" - Reply to Counter-affidavit[12]; "C" - Sinumpaang

Salaysay of Renen Castillo[13]; "D" - Certified true copy of the Barangay Blotter[14] "E" - Sinumpaang Salaysay of Janelle dela Cruz[15]; "F" - Sinumpaang Salaysay of Roy Gilbert Ortega[16]; and, "G" - Sinumpaang Salaysay of Virginia Francisco[17].

Petitioner and his counsel failed to appear, despite notice, at the scheduled reception of defense evidence. On motion of the public prosecutor, the presentation of defense evidence was considered waived and the case submitted for decision[18]. Petitioner moved for reconsideration from the order of the MeTC, which was granted on December 14, 2010. The case was set anew for reception[19] of defense evidence on March 15, 2011. However, on the appointed date, the purported witness for the defense, Jocelyn Taat failed to appear; hence, the reception of defense evidence was deemed waived and the case was submitted for decision[20].

On April 15, 2011, the MeTC rendered a Decision[21], the fallo reads, thus:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the court renders judgment finding the accused Reinaldo C. Flores GUILTY of the crime of Slight Oral Defamation under Article 358 of the Revised Penal Code and hereby sentenced (sic) him to a penalty of FIFTEEN (15) DAYS IMPRISONMENT and to pay the costs of suit. No award of civil liability as complainant Dr. Valentin Yabes III reserved its (sic) right to file a separate civil action.

SO ORDERED.

On appeal, the RTC affirmed the findings of the MeTC in its Decision[22] dated January 12, 2012, to wit:

WHEREFORE, premises duly considered, the instant appeal of the herein accused-appellant REINALDO C. FLORES (Mr. Flores) is hereby DISMISSED for sheer dearth of merit.

The assailed "Decision" of Branch 66 of the Metropolitan Trial Court of the City of Makati in Criminal Case No. 353622 for "Slight Oral Defamation" entitled "The People of the Philippines -versus- "Reinaldo C. Flores" and dated 15 April 2011 is hereby AFFIRMED IN TOTO.

No costs.

SO ORDERED.

Petitioner's Motion for New Trial or Reconsideration[23] having been denied in the Resolution[24] dated June 15, 2012, he filed this Petition, raising the following issues:

I WHETHER THE REMEDY OF NEW TRIAL IS AVAILABLE TO THE PETITIONER WHILE PENDING APPEAL BEFORE THE REGIONAL TRIAL COURT OR NOT.

II WHETHER THE PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW OR NOT.

III WHETHER THE DECISION CONFORMS TO THE EVIDENCE ON RECORD OR NOT.[25]

THE COURT'S RULING

The petition is, in part, meritorious.

Petitioner assails the RTC's denial of his Motion for New Trial or Reconsideration arguing that newly discovered evidence emerged during the pendency of the case before the RTC; and such remedy was still available pursuant to Section 2(b), Rule 121 of the Rules of Court.

Section 1, Rule 121, provides, that:

SECTION 1. New trial or reconsideration. – At anytime before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new

trial or reconsideration.

A motion for new trial should be filed with the trial court within fifteen (15) days from the promulgation of the judgment[26]. If an appeal has already been perfected, a motion for new trial on the ground of newly discovered evidence may be filed in the appellate court[27]. In this case, the RTC issued its decision on January 12, 2012. The motion for new trial was filed on February 21, 2012, or seven (7) days from petitioner's receipt of his copy of the RTC decision on February 14, 2012. The motion[28] was set for hearing on March 8, 2012. On the scheduled date, the RTC issued an order[29] directing the filing of pleadings in lieu of a formal hearing. When the adverse party had been afforded the opportunity to be heard, and has indeed been heard through the pleadings filed in opposition to the motion, the requirements of procedural due process are substantially complied with[30].

After the required pleadings were filed, the RTC issued its Resolution on June 15, 2012, denying petitioner's Motion for New Trial or Reconsideration. This Resolution is assailed. We affirm but for reasons other than those stated in the assailed Resolution.

Procedurally, the RTC denied the subject motion on the following grounds, that: (a) the case is covered by the Rules on Summary Proceeding which proscribes the filing of a motion for new trial or for reconsideration, a prohibited pleading, pursuant to Section 19(c) of the rules; (b) Sections 1 and 2, Rule 121 of the Rules of Court do not find application in this case "because the said reglementary stipulations apply solely when the second-level court concerned is in the exercise of its original jurisdiction and not when it is performing its appellate authority as in the case at bench"; and (c) Section 14, Rule 124 is also inapplicable "since the said procedural regulation, read together with Section 15 of the same Rule refers exclusively to any motion for new trial to be filed with the Honorable Court of Appeals where the appeal of the accused is pending repugning a judgment of the lower court.

Since the case before the MeTC was for slight oral defamation, the penalty for which is arresto menor or a fine not exceeding 200 Pesos, it was governed[31] by the Rules on Summary Procedure. However, the motion for new trial or reconsideration that petitioners allege to be a prohibited pleading was filed before the RTC acting as an appellate court. The appeal before the RTC is no longer covered by the Rules on Summary Procedure. Hence, petitioner's motion for new trial or reconsideration filed with the RTC is not a prohibited pleading[32]. Contrary to the RTC's interpretation of Sections 1 and 2, Rule 121 of the Rules of Court, it had jurisdictional authority to entertain the motion for new trial prescinding, as it does, from the general rule that a motion for new trial or reconsideration should be filed with the court 'before the judgment becomes final.' As there is no distinction between a judgment issued in the exercise of the original or appellate jurisdiction of the RTC, then We should not distinguish. And where the law does not distinguish the courts should not distinguish; where the law does not make exception the court should not except[33]. Moreover, the interpretation of the RTC regarding Sections 1 and 2 of Rule 121 and that regarding Sections 14 and 15 of Rule 124 of the Rules of Court would render the filing of a motion for new trial or reconsideration, on appeal to the RTC, as in the instant petition, nugatory. The RTC interpretation would create a vacuum in the application of the law, a situation which is anathema in statutory construction.

On the other hand, the RTC denied petitioner's motion for new trial or reconsideration based on the newly discovered evidence of the affidavit of Ms. Edeleine Silvestre (Silvestre) finding that it is not newly discovered material evidence "because it is a mere recantation of her (Silvestre's) previous sworn statement. We do not find Silvestre's present affidavit a mere recantation of her previous statement, albeit her affidavit cannot be considered newly discovered evidence.

By definition, to recant[34] is to withdraw or repudiate formally and publicly; while to repudiate is to put away, reject, disclaim or renounce a right, duty, obligation or privilege[35]. A repugnancy exists when there is an

inconsistency, opposition or contrariety between two or more clauses of the same deed, contract or statute, or between two or more material allegations of the same pleading, or any two writings[36]. A mere perusal of the affidavits submitted by Silvestre shows that there is no repugnancy between these documents; hence, there can be no recantation of the prior affidavit by the later affidavit.

The June 23, 2007 affidavit[37] of Silvestre refers to an incident which occurred on May 29, 2007, where there was no confrontation between petitioner and Dr. Yabes as the latter was out of the Laser Medical Clinic; this is not the incident subject of the charge against petitioner for slight oral defamation. On the other hand, the January 16, 2012 affidavit[38] of Silvestre narrates the incident which took place several days after June 2, 2007, where she claims that a commotion occurred inside the office of Dr. Yabes, voices were raised but she could not hear what was being said, except for the voice of Roy Ortega who was yelling to Renen Castillo to call the police; and that what she heard as Dr. Yabes was exiting his office through the back door, was Dr. Yabes saying "Do you want to punch me? Do you want to punch me?" and petitioner responding, saying "Doc, you are just provoking me. Bakit pabalik nyo pa kami eh andito na nga kami". Instead of a recantation, Silvestre's January 16, 2012 affidavit is a supplement to her June 23, 2007 affidavit.

For Silvestre's January 16, 2012 affidavit to be considered newly discovered evidence, it must be shown that: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered[39].

The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the [proffered] evidence is in fact a "newly discovered evidence which could not have been discovered by due diligence." In order that a particular piece of evidence may be properly regarded as newly discovered to justify a new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it[40].

The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. In other words, the concept of due diligence has both a time component and a good faith component. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him[41].

Silvestre had submitted an affidavit dated June 23, 2007, but it is noted that she was not utilized by the prosecution as a witness, i.e. her testimony was not adduced during trial. The question then is, why was she not presented as a witness during the trial? The answer lies in the fact that she apparently maintained a hostile attitude toward her employer, Dr. Yabes; for while she complied with counsel's instructions to execute affidavits, she did not comply with the substance thereof, i.e., that the affidavits be in the form of a complaint against the petitioner[42]. What she stated in her June 23, 2007 affidavit was the incident of May 29, 2007 where nothing untoward took place, and which was not the subject of the prosecution for slight oral defamation against petitioner. It is not clear when Silvestre's employment at the Laser Medical Clinic ended, but, with due diligence and analysis, Silvestre's affidavit and testimony could have been presented during trial at the presentation of defense evidence, and not five (5) long years thereafter.

Nonetheless, will Silvestre's January 16, 2012 affidavit withstand the test of materiality, not merely cumulative, corroborative, or impeaching; and will such evidence be of such weight that it would probably change the judgment if admitted? Regrettably, the answer must be in the negative.

The affidavit is clearly corroborative of the affidavits of petitioner's wife, Architect Cynthia Flores[43], his sister, Sherley Flores[44], the caregiver of petitioner's mother, Jocelyn Taat[45]. As such, Silvestre's January 16, 2012 affidavit will, most decidedly, not alter the outcome of the judgment.

We see no reason to depart from the findings of fact and the ruling of the MeTC regarding the credibility of the witnesses for the prosecution, and the evidentiary weight the court accorded thereto. It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in the transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court." [46]

Slight Oral Defamation under Article 358 of the Revised Penal Code, provides, that:

Art. 358. Slander. – Oral defamation shall be punished by *arresto mayor* in its maximum period to *prision correccional* in its minimum period if it is of a serious and insulting nature; otherwise, the penalty shall be *arresto menor* or a fine not exceeding 200 pesos.

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 esteem, respect, goodwill or confidence in the plaintiff, or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything that is injurious to the good name or reputation of another or tends to bring him into disrepute. In determining whether certain utterances are defamatory, the words used are to be construed in their entirety and taken in their plain, natural and ordinary meaning, as they would naturally be understood by persons hearing (or reading, as in libel) them, unless it appears that they were used and understood in another sense[47].

In the instant case, petitioner knew complainant as a doctor, nonetheless, with the clear intent to shame and belittle the character and reputation of complainant, uttered, in front of complainant's staff and patients, the words: "Nagdo-doktor-doktoran ka lang!" Undoubtedly, statements such as those uttered by the petitioner, are injurious to complainant's character, fame and reputation and diminishes the respect, goodwill, esteem and confidence reposed upon the complainant by his patients and employees. As to the element of malice, since the utterance is defamatory, there is a presumption that the offender acted with malice. Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown. There is malice when the author of the imputation is prompted by personal ill-will or spite and speaks not in response to duty but merely to injure the reputation of the person who claims to have been defamed[48]. No good intention was shown in the utterance made by petitioner; rather, personal ill-will and spite prompted it.

Accordingly, petitioner may be penalized under Article 358 of the Revised Penal Code, prescribing the penalty of arresto menor or a fine not exceeding 200 pesos[49].

With respect to the imposition of the penalty, We consider the mitigating circumstances of: (1) acting upon an impulse so powerful as naturally to have produced passion or obfuscation. Petitioner was deeply concerned about the deteriorating health of his mother who was suffering from breast cancer and Parkinson's disease since the time Dr. Yabes took over her treatment and prescribed the removal of certain drugs; and (2) being a first-time offender, petitioner had no intention to commit so grave a wrong as that committed. Withal, the imposition of a fine in the amount of P200.00, in lieu of imprisonment, is proper.

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The Decision dated January 12, 2012 and the Resolution dated June 15, 2012 of the Regional Trial Court, Branch 61, Makati City in Criminal Case No. 11-1855(353622) is AFFIRMED with the MODIFICATION that the penalty imposed on petitioner Reinaldo Flores, in lieu of imprisonment, is a fine in the amount of P200.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.

Dicdican, (Chairperson), and [**]Corales, JJ., concur.

[*]Acting Senior Member per Office Order No. 461-14-ABR dated November 3, 2014.

[**] Acting Junior Member per Office Order No. 461-14-ABR dated November 3, 2014..

[1] Records, vol. 2, pp. 151-64.

[2] Decision dated April 15, 2011, records, vol. 2, pp. 475-82.

[3] Records, vol. 2, pp. 213-6.

[4] Records, vol. 1, p. 1.

[5] See Order dated February 18, 2008, records, vol. 1, p. 306.

[6] TSN, December 9, 2008, records, vol. 2, pp. 1-34.

[7] TSN, September 14, 2009, records, vol. 1, pp. 267-93.

[8] TSN, December 14, 2009, records, vol. 2, pp. 35-67.

[9] TSN, June 22, 2010, records, vol. 2, pp. 68-92.

[10] TSN, September 27, 2010, records, vol. 2, pp. 93-117.

[11] Records, vol. 1, pp. 233-5.

[12] Records, vol. 1, pp. 101-5.

[13] Records, vol. 1, p. 149.

[14] Records, vol. 1, p. 444.

[15] Records, vol. 1, pp. 122-3.

[16] Records, vol. 1, pp. 151-2.

- [17] Records, vol. 1, pp. 95-6.
- [18] MeTC Order dated December 6, 2010, records, vol. 1, p. 451.
- [19] MeTC Order dated December 14, 2010, records, vol. 1, p. 462.
- [20] MeTC Order dated March 15, 2011, records, vol. 1, p. 464.
- [21] Records, vol. 1, pp. 475-82, 481-2.
- [22] Records, vol. 2, pp. 152-64, 163-4.
- [23] Records, vol. 2, pp. 170-4.
- [24] Records, vol. 2, pp. 213-6.
- [25] Petition for Review, rollo, pp. 17-46, 25.
- [26] Rule 122, Section 6: When appeal to be taken. — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel at which time the balance of the period begins to run.
- [27] Rule 124, Section 14 of the Rules of Court.
- [28] Records, vol. 2, pp. 170-5, 174.
- [29] Records, vol. 2, p. 181.
- [30] Marylou Cabrera vs. Felix Ng, G.R. No. 201601, March 12, 2014.
- [31] Rule on Summary Procedure, Sec. 1(B, 5): All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months (arresto mayor), or a fine not exceeding One Thousand Pesos, or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom; Provided, however, That in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed Ten Thousand Pesos.
- [32] See Estate of Felomina G. Macadangdang, etc. vs. Gaviola, et al., G.R. No. 156809, March 4, 2009.
- [33] Pablo C. Francisco vs. CA and The Honorable Maximo C. Contreras, G.R. No. 108747 April 6, 1995.
- [34] Black's Law Dictionary, Sixth Ed., p. 1267.
- [35] Id., p. 1303.
- [36] Id.
- [37] Records, vol. 1, p. 239.
- [38] Records, vol. 2, pp. 176-8.
- [39] See Manuel Ybiernas, et al. vs. Ester Tanco-Gabaldon, et al., G.R. No. 178925, June 1, 2011.
- [40] Id.
- [41] Id.

[42] No. 15 of the Affidavit of Edeleine Silvestre, records, vol. 2, pp. 176-8, 177.

[43] Records, vol. 1, pp. 180-2.

[44] Records, vol. 1, pp. 63-4.

[45] Records, vol. 1, pp. 65-6.

[46] People vs. William Mangune y Del Rosario, G.R. No. 186463, November 14, 2012.

[47] Alfonso T. Yuchengco vs. The Manila Chronicle Publishing Corporation, et al., G.R. No. 184315 , November 25, 2009 .

[48] Ogie Diaz vs. People of the Philippines, G.R. No. 159787, May 25, 2007.

[49] Rogelio Pader vs. People of the Philippines, G.R. No. 139157, February 8, 2000.

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