

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. WENCESLAO PASCUAL, TEODORO M. LOCSIN AND R. MCCULLOCH DICK, DEFENDANTS AND APPELLEES.

G. R. No. L-9490. November 29, 1957

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Upon complaint of Jose C. Zulueta, on January 28, 1955, the acting Provincial Fiscal of Iloilo accused Wenceslao Pascual, Teodoro M. Locsin and R. McCulloch Dick, before the Court of First Instance of Iloilo, of the crime of libel. The information alleged:

"That on or about December 26, 1953, in the province of Iloilo, Philippines, and within the jurisdiction of this 'Court, the accused Wenceslao Pascual as Governor of the Province of Rizal, the accused Teodoro M. Locsin as a staff writer of the weekly publication known as the 'Philippine Free Press', edited and published in the City of Manila and which has a considerable circulation in the said city of Manila, in the province of Iloilo and throughout the whole Philippines and in foreign countries, and the accused R. McCulloch Dick as editor and publisher of the aforesaid weekly publication, all the three of them conspiring and working together, did then and there willfully, unlawfully and feloniously, and with malicious intent of impeaching the honesty, virtue and reputation of Senator Jose C. Zulueta, and of injuring and exposing said Jose C. Zulueta to public hatred, contempt and ridicule, write and publish in the regular issue of the said weekly publication of December 26, 1953, a certain article entitled, 'The Senator and The Subdivision' quoted verbatim hereunder to wit:

'THE SENATOR AND THE SUBDIVISION'

by

Teodoro M. Locsin

Staff Member

The "word senator is of honorable ancestry; the position should be filled by an honorable man. The word is from the Latin, signifying an assembly of old men charged with the highest deliberative and legislative functions. The Senate was the supreme council of the Ancient Roman state. Those who composed it were supposed to be men of that maturity of judgment that could come only from age men who, all passion spent, might be expected to consider matters of state without bias or prejudice, not with a view to personal profit or aggrandizement, but for the common good, for the greatness of Rome.

'In the Philippines the Senate is the highest legislative chamber. Age and dignity usually mark those who compose it, although youth is increasingly held not to be a disqualification. A senator is not supposed to be a cheap huckster, a smart operator out for a quick killing, using his office to make some easy money at the people's expense—the people he is supposed to represent and serve. If there is honor even among thieves, honor among senators should occasion no surprise. It should be the rule. And as an indication of the popular expectation regarding senators and their conduct, a member of the Senate is properly addressed as the Honorable So-and-So. Unfortunately, not all honorable, and some would be more fittingly merely as So-and-So. 'The Constitution is clear:

'No Senator or Member of the House of Representative shall directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof, or in any franchise or special

privilege granted by the Congress during his term of office.'

'Last week a senator of the Republic, the Hon. Jose C. Zulueta, stood accused of having violated this provision of the Constitution, of having- acted in a manner unworthy of a senator, of having disgraced the office.

'The accusation was made by the governor of Rizal, Wenecslao Pascual, who pointed to the following:

1. During¹ the last session of Congress, Republic Act No. 920 was passed, providing for, among other items, the construction of 'Pasig feeder road terminals, the (Gen. Roxas— Gen. Araneta—Gen. Lucban—Gen. Capinpin—Gen. Segundo Gen. Delgado—Gen. Malvar—Gen. Lim) at the cost of P85,000 to the people of the Philippines, President Quirino approved it.
2. All the proposed feeder road terminals for the construction of which the sum of P85,000 was appropriated are on private land in the Antonio Subdivision owned by a Senator, Jose C. Zulueta,
3. With the approval of the act on June 29, 1953, Senator Zulueta immediately wrote to the municipal council of Pasig, Rizal], advising the body of the availability of P85,000 in public funds for the construction of roads in his subdivision.
4. The Director of Public Works, Isaias Fernando 'practically authorized the District Engineer of Rizal to start work on the roads. 'It is believed this authorization by the donor will give you the right of entry as well as the use and occupancy of the portions needed by the feeder roads in question pending formalization of pertinent documents on the matter, for the purpose of expenditure of the fund for construction of the project'. The director of Public Works, in other words, told the district engineer to go ahead and spend public funds for the improvement of what was still the private property of Senator Zulueta.
5. Donation is a contract, to perfect which there must be acceptance of the donation. You cannot donate a dead horse to your neighbor just like that. When Governor Pascual objected to the expenditure of the people's money on the construction of roads in a private subdivision, Senator Zulueta executed a deed of donation giving to the government the area to be occupied by the proposed terminal roads. Senator Zulueta made the donation on Dec. 12, 1953; the donation was accepted by President Quirino's acting executive secretary, Marciano Roque, on the same day. The acceptance was made without consulting the provincial governor or the municipal council as to the desirability of the gift. The secretary of public works and communications, Pablo Lorenzo, recommended the acceptance of the donation. Two days later, on December 14, the director of public works instructed the district engineer of Rizal that his office 'may therefore proceed to complete the construction of the Pasig feeder road terminals with the appropriation as provided for under Republic Act No. 920'.
6. Even before Zulueta's 'gift' was accepted by the government, work had already been started on his private property, public funds spent to improve it. Wrote the director of public works to President Quirino on Dec. 12; 'It may be stated in this connection that the construction of the said road has been started by the district engineer upon the granting by the donor of the right of entry on the property. In order that transfer of ownership may be made for the portions of the land needed for the right-of-way of the same- road, it is recommended that the donation be accepted.'

'SUSPICION

'On December 16, Governor Tascual enjoined the District Engineer to desist from the prosecution of the project, which the governor called¹ a violation of the provisions of the Constitution already cited. Said the governor:

'You will note that the said deed of donation was perfected by its acceptance by Mr. Roque in representation of the President, without the knowledge and in utter disregard of the provincial government of Rizal and/or the municipal government of Pasig, two entities which should normally be advised before acceptance of donation could be made. This strengthened my suspicion that Senator Zulueta and the Office of the President have acted in conspiracy to legalise this highly questionable and immoral expenditure of the people's money, ignoring- even the Constitution, to achieve their nefarious aims.'

'The last official act 'of the dying administration of President Quirino' according to the Governor, would seem to be *to mispend P85,000 of the people's money to favor an acrobatic senator and darling of the Liberal Party,'

'Zulueta who had been elected senator as a Nacionalista in a general revulsion against the Liberal administration in 1951; left the Nacionalista Party during the 1953 electoral campaign and joined hands with Quirino & Co.

'In a press statement, Senator Zulueta tried to explain the expenditure of public funds in the improvement of his private property:

'The public should know and so also the government entities concerned that upon the approval in 1951 by the Urban Planning Commission of the Antonio Subdivision, those feeder roads were already there, connecting such important public properties as Highway 54, PC Headquarters, Shaw Boulevard, Provincial Capitol, etc., and also a Seminary and many other private owners who now are residing in that area.

'Those feeder roads are so important in the life and maintenance of those properties (public and private), that they constitute the only means of communication between them and the rest of the community.

'It should be known, that the formalization of the pertinent documents regarding the donation, between the donor and the government, if this has been approved lately, is beside the question. This being the case, that portion of the San Antonio Subdivision now occupied by those feeder roads has naturally, become also public property and personally, I am deprived of my right to dispose of them as I please. In fact, as a consequence, I stood to lose the sum of P1,400,000 for a lot of 101,000 square meters which I was offered at the time, if I would have sold the whole subdivision, including the 22,747 square meters occupied by the feeder roads.'

'This explanation did not make any sense to us. If 'the feeder roads were already there' in 1951, what was the sense in appropriating P85,000 in public funds for their construction in 1953? 'The only road made by Zulueta in his subdivision is a stretch of about 100 meters said Governor Pascual in an interview at his office.

'We asked a real estate man who was in the governor's office during the interview what was the usual procedure in making a subdivision. He enlightened us;

'We make the roads. We spend our money for their construction. Without roads, nobody would buy a lot in a subdivision. After we have made the roads, we turn them over to the government. The government afterward takes care of the maintenance.'

'That seemed reasonable to us. The maintenance of roads is one of the services the government owes the taxpayer. But not, it seemed to us, the improvement of a subdivision by constructing the roads in it. Otherwise, all real estate firm would have to do to make a killing is get a piece of rice land, turn over a portion to the government for roads, and wait and see the value of the land rise.

'Would the construction of roads by the government in a subdivision increase the value of the lots? We asked to make sure.

'Of course. A great deal. Nobody would buy a lot in a subdivision without access to the main road.

'The Antonio Subdivision consists of about 10 hectares, or 100,000 square meters, we were told. The construction of roads in the subdivision should greatly increase the value of a square meter. The construction of roads by the government at the cost to the people of P85,000 should increase the value of Senator Zulueta's subdivision by hundreds of thousand of pesos. It would be pure profit.

'Has Senator Zulueta violated the Constitution?

'If he has, should he be allowed to remain a senator, a member of the highest chamber of the legislature, so that he can further enrich himself at the people's expense, as the governor of Rizal charges ?

'If innocent, let him explain the questionable deal better—better than he has done so far.

'He owes it to the people.

'The people of this country are poor. In many, many places they don't even have clean water to drink. They can ill afford to have their money used to make some senator richer.

"CONTRARY TO LAW "

Iloilo City, January 28, 1955.

(Sgd.) JOSE M. ZAMBARRANO

Acting Provincial Fiscal

"Annex A

"PROVINCE OF RIZAL

"OFFICE OF THE GOVERNOR

December 16, 1953

"The District Engineer, Pasig, Rizal

"Sir;

"Under the date of November 27, 1953 I called your attention to the illegal expenditure of P85,000 of the people's money on a private land in the Antonio Subdivision owned by Senator Zulueta. I also enjoined you to desist from the prosecution of the said project altho the game is provided for in Public Works Act No 920, Items—

"43. Rizal.....Group I

(H) Pasig Feeder Road Terminals (Gen. Roxas-Gen. Araneta- Gen. Lukban- Gen. Capinpin-Gen. Segimdo-Gen, i)elgado- Gen, Malvar- Gen- Lira> P85,000.00

"It has now come to my knowledge that to cure the defect above mentioned, (the land in question not being government property) Sen. Zulueta, executed a deed of donation to the government of the lands involved; and Mr. Marciano Roque, the Acting Executive Secretary, presumably with the knowledge and consent of President Quirino, whose term is about to expire, hurriedly accepted the donation on behalf of the Republic of the Philippines, thus in effect, abetting and sanctioning an immoral expenditure of public funds. "In this connection, I wish to inform you that more serious violation is thereby made this time, of the Constitution which in its Art. VI, Sec. 17, states:

'Sec. 17. No Senator or Member of the House of Representatives shall directly or indirectly * * *.'

"You will note that the same deed of donation was perfected by its acceptance by Mr. Roque, in representation of the President, without the knowledge and in utter disregard of the Provincial Government of Rizal and/or the Municipal Government of Pasig, the entities which should normally be advised before acceptance of the donation could be made. This strengthened my suspicion that Senator Zulueta and the Office of the President have acted in conspiracy to legalize this highly questionable and immoral expenditure of the people's money, ignoring the Constitution, to achieve their nefarious aims.

"By virtue of the foregoing circumstances, therefore, you are hereby enjoined to stop this project until further advice from this Office.

Respectfully,

(Sgd.) WENCESLAO PASCUAL"

In February, 1955, defendants Locsin and McCulloch Dick, who were subsequently joined by defendant Pascual, filed a motion to quash, upon the ground: (1) that the Provincial Fiscal of Iloilo had no jurisdiction to file said information, because a complaint for the same offense had, in February, 1954, been filed by Jose C. Zulueta with the Provincial Fiscal of Rizal, who, after conducting a preliminary investigation, dropped the case on May 4, 1954, upon the ground that the defendants had not committed the crime charged; (2) that, as a consequence, the Court of First Instance of Iloilo had no jurisdiction over the case; and (3) that, in any event, the facts alleged in the information do not constitute a crime.

After due hearing, this motion was granted by the Court of First Instance of Iloilo and the information was quashed, whereupon the prosecution has appealed upon the ground that:

- The trial court erred in holding that the Provincial Fiscal of Iloilo had no authority to file the information;
- The trial court erred in holding that it had no jurisdiction to try the offense;
- The trial court erred in holding that the facts charged do not constitute an offense;
- The trial court erred in dismissing this case."

Predicated upon the premise that the Provincial Fiscal of Rizal was not disqualified to act on the complaint filed before him; that he had dropped said complaint, after due investigation, upon the ground that the defendants had not committed the offense charged; that, as a consequence of this order of dismissal, the only remedy left for the complainant was, either "to re-file the case directly with the Court of First Instance of Rizal," or to compel the Provincial Fiscal thereof, "by mandamus, to file the corresponding information" against the accused, or, else, to "re-file the case" with said officer "with more evidence to substantiate the charge," none of which alternatives were taken by the complainant; that, in cases, like the one at bar, which may be filed before several courts of concurrent jurisdiction, the one first exercising its authority over the case acquires jurisdiction, over the same to the exclusion of all other courts; and that, otherwise, numerous informations, for one and the same offense, could be filed in different courts, in order to harass the accused—the Court of First Instance of Iloilo concluded that the Provincial Fiscal of Iloilo had gravely abused his discretion "in accepting this case and in filing the corresponding information;" that he was disqualified from acting on the complaint filed by Jose C. Zulueta, and had "no authority to conduct the preliminary investigation" in relation thereto, that he had, therefore, "no authority to file the corresponding information;" and that, consequently, the lower court "did not acquire jurisdiction over the subject-matter of the action and over the persons of the accused." The lower court, likewise, held that the letter quoted in the information "belongs to the category of a qualifiedly privileged communication and is not slanderous or actionable;" that the article of defendant Locsin "is a fair comment on a matter of public interest;" and that, consequently, one of the essential elements of the crime of libel—namely, malice—is lacking in the present case.

It should be noted, however, that the complaint filed with the Provincial Fiscal of Rizal was dropped by him. No information was filed with the Court of First Instance of Rizal. Hence, the same acquired no jurisdiction over the case and did not divest other courts of the authority (venue) to receive and hear a charge for the same offense.

Needless to say, there is, for the same reason, no question of, either double jeopardy, or single jeopardy, before Us. Defendants had never been in jeopardy in the first case—for it did not even reach any court. Neither were they placed in jeopardy in the case at bar. The information therein was dismissed before arraignment and plea.

Again, the record before Us does not affirmatively show that, either the intent, or the effect, of the the filing of the complaint with the Provincial Fiscal of Iloilo and of that of the information with the Court of First Instance of

Iloilo, was to harass the accused. There are a number of possibilities in connection therewith, and the circumstances surrounding the case are not necessarily inconsistent with the honest intention of prosecuting those who might earnestly be believed to be guilty of the offense charged.

The case of *Conde vs. Judge of First Instance* (45 Phil. 173), cited in the order appealed from, is not in point. It involved one accused of slight physical injuries before a Justice of the Peace Court. On the date set for trial, the information was amended to charge attempted murder. Upon subsequent failure of the prosecution to appear at the preliminary hearing, the case was dismissed. However, two days later, another complaint for attempted murder was filed. After a preliminary investigation, the case was forwarded to the Court of First Instance where the prosecution filed an information for the same offense. On the date scheduled for the hearing, the fiscal stated that he was not ready therefor, and got a postponement thereof. When the case was called for trial, on another date, the prosecution secured a second postponement. On the third date set for the hearing of the case, the fiscal declared that he had no evidence to prove the crime of attempted murder, and amended the information to charge serious physical injuries. As the court denied a preliminary investigation requested by the defendants, the latter, upon arraignment, refused to plead, although the trial Judge ordered her to do so. Upon petition for certiorari and prohibition, this Court annulled said order and held that she was entitled to a preliminary investigation, apart from warning: the prosecution against further harassment of the accused. Thus, the facts in the *Conde* case are basically different from those of the one under consideration.

Referring now to the merits of the issue before Us, the third paragraph of Article 360 of the Revised Penal Code (prior to its amendment by Republic Act No. 1289 on June 18, 1955), provides:

"The criminal action and the civil action for the image in cases of written defamations as provided in this chapter, may be filed simultaneously or separately with the Court of First Instance of the province wherein the libel was published, displayed or exhibited regardless of the place where the same was written, printed or composed."

The information in the case at bar alleges that the libelous matters imputed to defendants-appellees were published or circulated in the Province of Iloilo. Presumably, said matters were, also, published or circulated in the Province of Rizal, for, otherwise, the offended party would not have filed his first complaint with the Provincial Fiscal of Rizal and the latter would have mentioned the lack of venue as a ground for his decision to drop said complaint. Under these facts, which are not disputed, it is clear that, pursuant to the provision above quoted, defendants-appellees could have been accused of libel before the Court of First Instance, other of Rizal, or of Iloilo. The question is: who had the right to choose the venue ?

In this connection, the last paragraph of said Article 360 reads:

"No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party."

The letter of defendant Pascual and the article of defendant Loesin, referred to in the information herein, impute to Senator Jose C. Zulueta a violation of Article VI, section 17, of the Constitution and this, pursuant to Commonwealth Act No. 826, is a crime which may be prosecuted de oficio. As such, the Provincial Fiscal of Iloilo could have filed the information herein, upon his own initiative, without the offended party's complaint, and, even over his objection. The reason is obvious—"all criminal actions * * * shall be prosecuted under the direction and control of the fiscal," according to section 4 of Rule 106 of the Rules of Court. If, the offended party could not, by direct, positive and explicit prohibition, restrain the Provincial Fiscal of Iloilo from instituting this case, it follows necessarily that neither could the former achieve the same result indirectly, by merely filing the first complaint with the Provincial Fiscal of Rizal. Accordingly, the lower court erred in holding that the

Provincial Fiscal of Iloilo had no authority to conduct a preliminary investigation and to file the information in the present case and that, as a corollary thereof, said court did not acquire jurisdiction over the subject-matter of this proceedings and over the parties therein.

Said court, likewise, erred in dismissing the case upon the ground that the letter and the article quoted in the information are qualifiedly privileged communications. As stated in *Lu Chu Sing vs. Lu Tiong Cui* (76 Phil., 669) :

"Defendant's contention that the charge filed by him in the City Fiscal's Office was a privileged communication, is not a proper ground for the dismissal of the complaint. In the first place, it is a matter of defense. In the second place, the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the 'presumption of malice, which the plaintiff has to prove in such a case. (Sec Article 354, Revised Penal Code.)" (Italics ours.)

The information in this case alleges that the accused have acted "willfully, unlawfully and feloniously, and with malicious intent," and the prosecution is entitled to a chance to prove this allegation, apart from the fact that the truth thereof is deemed hypothetical admitted in the motion to dismiss.

Wherefore, the order appealed from is hereby set aside and reversed, and let the record of this case be remanded to the Court of First Instance of Iloilo, for further proceedings, without special pronouncement as to costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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