

DANIEL VICTORIO AND EXEQUIEL VICTORIO, PETITIONERS, VS. THE HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-32836-37. May 31, 1989

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for review by certiorari of the decision* of the Court of Appeals dated July 27, 1970 in Criminal Cases Nos. 09243 and 09244 entitled "People of the Philippines v. Exequiel Victorio and Daniel Victorio", affirming the lower court's judgment of conviction of the petitioners for grave oral defamation with modification of sentence and the appellate court's resolution dated October 28, 1970 denying herein petitioners' motion for rehearing and/or new trial as well as their urgent motion for reconsideration filed on October 19, 1970. The dispositive portion of the appealed decision reads as follows:

"IN VIEW HEREOF, with the modification that appellants are sentenced to the indeterminate penalty of one (1) month and one (1) day of arresto mayor to one (1) year and one (1) day of prision correccional, the judgment appealed from is affirmed in all respects with costs." (as amended by the resolution dated August 7, 1970, Rollo, p. 19).

The facts of the case taken from the decision of the Court of Appeals are as follows:

Atty. Vivencio Ruiz, a practising lawyer since 1926, one time Justice of the Peace and member of the Provincial Board of Nueva Ecija, a professor of law and for sometime president of the Nueva Ecija Bar Association, has been the attorney of petitioner Exequiel Victorio in certain civil cases from 1953 until 1963 when petitioner decided to hire the services of another lawyer, Atty. L. Castillo in place of Atty. Ruiz and his collaborator, Judge Alfredo Guiang, then Municipal Judge of Guimba, Nueva Ecija. Exequiel Victorio and his wife afterwards filed an administrative charge against Judge Guiang, which was assigned to Judge Ramon Avancena, Presiding Judge of the Court of First Instance of Nueva Ecija, for investigation and disbarment proceedings against Atty. Ruiz, then pending in the Office of the Solicitor General. Petitioner Daniel Victorio is the son of Exequiel Victorio.

During the hearing of the administrative case on that particular afternoon of January 9, 1964 in the sala of Judge Avancena, Atty. Castillo, counsel of the Victorios, presented an urgent motion to disqualify Judge Avancena to hear the administrative case, who apparently taken aback, called down Atty. Castillo and gave him a lecture, while Atty. Ruiz, as counsel for respondent Judge Guiang in the administrative case, moved that Atty Castillo be cited for contempt of court.

After the said hearing and while the two accused were later walking down the corridor leading to the stairs from the sala of Judge Avancena, the incident that gave rise to the criminal prosecution for oral defamation took place. Petitioners were overheard by Emiliano Manuzon, a policeman of Cabanatuan City and one of the witnesses for the prosecution, to have uttered the following defamatory words:

Daniel: "Kayabang ng putang-inang abogado Ruiz na iyan, tunaw naman ang utak, suwapang at estapador."

Exequiel: "Lastog ta ukinnanata abogado Ruiz, suwapang, estapador, paltogak ta ukinnana ta abogado Ruiz, suwapang ken estapador." (Translated in Tagalog as, "Mayabang yang putang-inang abogado Ruiz na iyan, babarilin ko ang putang inang iyan, suwapang at estapador.")

On February 8, 1964, Daniel Victorio and Exequiel Victorio were separately charged with the crime of Serious Oral Defamation in the City Court of Cabanatuan City, in identical informations (Original Record, p. 1) indicting the accused as follows:

"That on or about the 9th day of January, 1964, in the City of Cabanatuan, Republic of the Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, moved by resentment and hatred which he entertained against the person of one Vivencio Ruiz, and in order to put him into public ridicule, discredit, and contempt, did then and there willfully, unlawfully, and feloniously, and in the presence of many persons, uttered the following defamatory words, to wit:

‘LASTOG TA UKINNANATA ABOGADO RUIZ, SWAPANG, ESTAPADOR, PALTOGAK TA UKINNANATA.[1]

and other words of similar import to the great embarrassment of said Vivencio Ruiz.

Contrary to law."

Both accused pleaded not guilty upon arraignment (Original Record, p. 10; p. 4) and the cases were tried jointly.

After trial, both accused were convicted in a decision of the City Court dated April 10, 1968*, the dispositive portion of which reads:

"WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt, the accused, Exequiel Victorio, is hereby found guilty of Grave Oral Defamation and is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS & ONE (1) DAY, and the accused Daniel Victorio is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS & ONE (1) DAY and to pay the costs proportionately.

"SO ORDERED." (Original Record, p. 179).

Their motion for reconsideration and/or modification of judgment (Original Record, p. 181) filed on the same date was denied in an order of the trial court dated September 25, 1968 (Original Record, p. 189). On appeal, the Court of Appeals, on October 9, 1968 (Original Record, p. 201) affirmed the decision of the trial court but modified the penalty to the indeterminate sentence of one (1) month and one (1) day of arresto mayor as minimum to one (1) year and one (1) day of prision correccional as maximum (Resolution of August 7, 1970; Rollo, p. 19). The motion for hearing and/or reconsideration filed on October 15, 1970 as well as their urgent motion for reconsideration filed on October 19, 1970 were denied by the Court of Appeals in its resolution dated October 28, 1970. Thus, this petition for review by certiorari filed with the Court on December 18, 1970 (Rollo, p. 9).

On February 11, 1971, the Court resolved to deny the petition for insufficient showing that findings of fact are unsupported by substantial evidence and for lack of merit (Rollo, p. 43). However, in its Resolution of April 15, 1971, the Court, considering the grounds of the motion of petitioners for reconsideration of the resolution of February 11, 1971, resolved to: (a) reconsider said resolution; and (b) to give due course to the petition for review on certiorari of the decision of the Court of Appeals (Rollo, p. 56).

On October 15, 1974, counsel for petitioners-appellants filed a motion to dismiss G.R. No. L-32836 (Criminal Case No. 9469 of the City Court of Cabanatuan City and CA-G.R. No. 09243-44-CR), manifesting that the petitioner-appellant Exequiel Victoria died on April 14, 1974 at Guimba, Nueva Ecija where he was then residing

(Rollo, p. 131). There being no objection interposed by the Solicitor General in his comment filed with the Court on December 11, 1974, the death of petitioner-appellant having occurred prior to the rendition of final judgment (Rollo, p. 154), the Court resolved on December 18, 1974 to dismiss L-32836-37 only insofar as appellant Exequiel Victorio is concerned (Rollo, p. 157).

The lone assignment of error (Brief for the Petitioners, p. 91), is as follows:

"THAT THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE WORDS UTTERED BY THE PETITIONERS IN CONVERSATION WITH EACH OTHER AND WHILE IN THE HEAT OF ANGER CONSTITUTE GRAVE ORAL DEFAMATION INSTEAD OF MERELY LIGHT ORAL DEFAMATION."

In effect, counsel for petitioners abandoned all the assignments of error in the Court of Appeals, confined himself to only one, and practically admitted that the accused committed the crime charged although of a lesser degree - that of slight oral defamation - only, instead of grave oral defamation.

There is no dispute regarding the main facts that had given rise to the present case. Appellant-petitioner in this instant appeal, does not deny that the accused, on the occasion in question, uttered the defamatory words alleged in the information. Thus, the sole issue that the Court has to resolve is whether or not the defamatory words constitute serious oral defamation or simply slight oral defamation.

The term oral defamation or slander as now understood, has been defined as the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood (33 Am. Jur. 39). Article 358, Revised Penal Code, spells out the demarcation line, between serious and slight oral defamations, as follows: "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." (Balite v. People, 18 SCRA 280 [1966]).

To determine whether the offense committed is serious or slight oral defamation, the Court adopted the following guidelines:

"x x x We are to be guided by a doctrine of ancient respectability that defamatory words will fall under one or the other, depending upon, as Viada puts it, 'x x x not upon their sense and grammatical meaning judging them separately, but also upon the special circumstances of the case, antecedents or relationship between the offended party and the offender, which might tend to prove the intention of the offender at the time: x x x'". (Balite v. People, Ibid., quoting Viada,Codigo Penal, Quinta edicion, page 494).

Thus, in the same case cited where scurrilous words imputed to the offended party the crime of estafa, the Court ruled:

"The scurrilous words imputed to the offended party the crime of estafa. The language of the indictment strikes deep into the character of the victim; He 'has sold the union'; he 'has swindled the money of the vendees'; he 'received bribe money in the amount of P10,000.00 x x x and another P6,000.00'; He 'is engaged in racketeering and enriching himself with the capitalists'; He 'has spent the funds of the union for his personal use.'

"No amount of sophistry will take these statements out of the compass of grave oral defamation. They are serious and insulting. No circumstances need to be shown to upgrade the slander. x x x/"

In another case where a woman of violent temper hurled offensive and scurrilous epithets including words imputing unchastity against a respectable married lady and tending to injure the character of her young daughters, the Court ruled that the crime committed was grave slander:

"The language used by the defendant was deliberately applied by her to the complainant. The words were uttered with evident intent to injure complainant, to ruin her reputation, and to hold her in public contempt, for the sake of revenge. One who will thus seek to impute vice or immorality to another, the consequences of which might gravely prejudice the reputation of the person insulted, in this instance apparently an honorable and respectable lady and her young daughters, all prominent in social circles, deserves little judicial sympathy. Certainly, it is time for the courts to put the stamp of their disapproval on this practice of vile and loud slander." (U.S. v. Tolosa, 37 Phil. 166 [1917]).

In a case where the accused, a priest, called the offended party a gangster, in the middle of a sermon, the court affirmed the conviction of the accused for slight slander (People v. Arcand, 68 Phil. 601 [1939]). There was no imputation of a crime nor a vice or immorality in said case.

In the instant case, appellant-petitioner admitted having uttered the defamatory words against Atty. Vivencio Ruiz. Among others, he called Atty. Ruiz, "estapador", which attributes to the latter the crime of estafa, a serious and insulting imputation. As stated by the Court in Balite v. People, supra, "no amount of sophistry will take these statements out of the compass of grave oral defamation x x x. No circumstances need to be shown to upgrade the slander."

Defamatory words uttered specifically against a lawyer when touching on his profession are libelous per se. Thus, in Kleeberg v. Sipser (191 NY 845 [1934]), it was held that "where statements concerning plaintiff in his professional capacity as attorney are susceptible, in their ordinary meaning, of such construction as would tend to injure him in that capacity, they are libelous per se and (the) complaint, even in the absence of allegation of special damage, states cause of action." Oral statements that a certain lawyer is 'unethical,' or a false charge, dealing with office, trade, occupation, business or profession of a person charged, are 'slanderous per se.' (Kraushaar v. LaVin, 42 N.Y.S. 2d 857 [1943]; Mains v. Whiting, 49 NW 559 [1891]; Greenburg v. De Salvo, 216 So.2d 638 [1968]).

In Pollard v. Lyon (91 U.S. 225 [1876]), the court there had occasion to divide oral slander, as a cause of action, into several classes, as follows:

"(1) Words falsely spoken of a person which impute to the party the commission of some criminal offense involving moral turpitude for which the party, if the charge is true, may be indicted and punished;

"(2) Words falsely spoken of a person which impute that the party is infected with some contagious disease, where, if the charge is true, it would exclude the party from society;

"(3) Defamatory words falsely spoken of a person which impute to the party unfitness to perform the duties of an office or employment, or the want of integrity in the discharge of the duties of such office or employment;

"(4) Defamatory words falsely spoken of a party which prejudice such party in his or her profession or trade; and

"(5) Defamatory words falsely spoken of a person, which, though not in themselves actionable, occasion the party special damage."

In the instant case, appellant-petitioner imputed the crime of estafa against a prominent lawyer - one time Justice of the Peace and member of the Provincial Board of Nueva Ecija, a professor of law and for sometime a president of the Nueva Ecija Bar Association. As the scurrilous imputation strikes deep into the character of the victim, no special circumstance need be shown for the defamatory words uttered to be considered grave oral defamation (Balite v. People, supra). In addition, the fact that the offended party is a lawyer, the totality of such words as "kayabang", "tunaw ang utak", "swapang at estapador", imputed against him has the import of charging him with dishonesty or improper practice in the performance of his duties, hence, actionable per se.

Petitioner argues that this Court in *People v. Doronila* (40 O.G. No. 15, Supp. 11, p. 231 [1941]) and *Pp. v. Modesto* (40 O.G. No. 15, Supp. 11, p. 128 [1941]) ruled that defamatory words uttered in the heat of anger could only give rise to slight oral defamation (Rollo, p. 13).

We disagree.

An examination of the rulings relied upon by petitioner showed that said cases were decided not by this Court but by the respondent court. Suffice it to say that said decisions do not bind this Court.

Nevertheless, the cases adverted to by petitioner would not in any manner help his cause. As pointed out by the Solicitor General, there was no reason for the petitioner to be angry at the offended party who was merely performing his duties as a lawyer in defense of his client. Petitioner's anger was not lawfully caused. (Brief for the Appellee, p. 7). The fact that the defamatory words were uttered by the petitioner without provocation by private respondent and taken seriously by the latter, renders inapplicable the cases relied upon by petitioner.

As a matter of fact, the scurrilous remarks were found by the respondent court to have been uttered in a loud voice, in the presence of at least ten (10) persons, taken seriously by the offended party and without provocation on his part.

WHEREFORE, the petition is Denied for lack of merit and the appealed decision Affirmed in toto.

SO ORDERED.

Fernan, C.J., (Chairman), Gutierrez, Jr., Feliciano, and Cortes, JJ., concur.

* Penned by Justice Magno S. Gatmaitan and concurred in by Justices Edilberto Soriano and Jose M. Mendoza.

[1] With respect to Exequiel Victorio. Insofar as Daniel Victoria is concerned, the defamatory words uttered are: "Kayabang ng putang-inang abogado Ruiz na iyan, tunaw naman ang utak, swapang at estapador."

* Decision of Judge Meliton Pajarillaga.

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