

EMMA CIMANES, PETITIONER, V. PEOPLE OF THE PHILIPPINES, RESPONDENT.

Ponente: REYES-CARPIO, A., J.

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REYES-CARPIO, A., J.:

"Every man has a right to build, keep and be favored with a good name. This right is protected by law with the recognition of slander and libel as actionable wrongs, whether as criminal offenses or tortious conduct." [1]

Before Us is a Petition for Review [2] under Rule 42 of the Rules of Court which seeks the reversal of the Decision dated December 29, 2011 [3] of the Regional Trial Court, Parañaque City, Branch 195, in the exercise of its appellate jurisdiction, in Criminal Case No. 11- 0667, the dispositive portion of which reads:

"WHEREFORE, the instant appeal is Dismissed. The questioned decision is Affirmed in toto.

SO ORDERED." [4]

Petitioner was charged with Slander, docketed as Criminal Case No. 05-1197. The accusatory portion of the Information reads:

"That on or about the 27[th] day of August 2004, in the City of Parañaque, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent of bringing one Kennedy Corcino into public dishonor, shame and contempt, did then and there willfully, unlawfully and feloniously utter publicly against the said complainant the following words, to wit:

'IKAW PALA ANG WITNESS NI CARDING REYES E DRUG PUSHER KA NAMAN'.

CONTRARY TO LAW." [5]

As synthesized by the Office of the Solicitor General (hereinafter referred to as OSG), the following are the facts which spawned the filing of the instant Petition:

"Private complainant Kennedy Corcino (Kennedy) and petitioner Emma Cimanos (petitioner) are neighbors at St. Michael Street, San Agustin Village, Parañaque City.

On August 27, 2004, at seven o'clock in the morning, Kennedy and his daughter Candy were walking along St. Michael Street. When they passed by petitioner's house, petitioner told him in a voice loud enough to be heard by petitioner's nearby neighbor, Adelaida "Idang" Dionisio (Adelaida): "IKAW PALA ANG WITNESS NI CARDING REYES E DRUG PUSHER KA NAMAN". Adelaida was cleaning her yard and about two (2) meters away from petitioner.

On the same day, at one o'clock in the afternoon, petitioner, who was then in the nearby store, told the store's owner, Josie, in a loud voice "KUNG MAY CAMERA LANG AKO NAKUNAN KO NG LITRATO SI KENNEDY NA MAY INAABUTAN NG SHABU". Again, Adelaida heard petitioner's statement.

The matter was referred to barangay conciliation, but petitioner failed to appear; hence, a certification to file action was issued. Thereafter, Kennedy filed a complaint against petitioner in the City Prosecutor's Office of

Parañaque City.

An information was filed with the MTC, Branch 77, Parañaque City, charging petitioner with the crime of Slander. x x x

x x x

On May 24, 2011, the MTC rendered a Decision convicting petitioner of the crime of Slander. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered, finding the accused Emma Cimanés GUILTY beyond reasonable doubt of the crime of Slander and is hereby sentenced to suffer the straight penalty of Imprisonment of two (2) months and to pay the costs of suit.

SO ORDERED.

Aggrieved, petitioner elevated the case to the RTC, Branch 195, Parañaque City.

On December 29, 2011, the RTC dismissed petitioner's appeal and, thus, affirmed the MTC's Decision. x x x

x x x

Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC in its Order dated October 2, 2012.[6]

Petitioner raised the following issues for Our consideration:

1. Whether or not the prosecution was able to prove the elements of the crime of slander;
2. Whether or not the dismissal of the accused's defense of denial is correct;
3. Whether or not the penalty meted out, assuming that the conviction stands, is excessive.[7]

In Our Resolution dated March 18, 2014,[8] We considered the case submitted for decision.

We now resolve.

The term oral defamation or slander is defined as the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood. Article 358 of the 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." [9]

Personal hurt or embarrassment or offense is not automatically equivalent to defamation. Words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute bases for an action for defamation.[10]

In resolving whether petitioner is guilty of slight or serious oral defamation, We are guided by the "doctrine of ancient respectability that defamatory words will fall under one or the other, depending not only upon their sense, grammatical significance, and accepted ordinary 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." [11]

We now proceed guided by these principles.

Petitioner claims that not all the essential elements of the crime was established, particularly on the required

publication.

We do not agree.

Petitioner's remarks were heard by Adelaida Dionisio, who was merely about two meters away from petitioner. Private complainant's daughter Candy, who was with him at that time, likewise heard the same. Clearly, the intention of petitioner was for the remarks to be heard by another person. In this regard, there is publication if the defamatory material is communicated to a third person, i.e., a person other than the person to whom the defamatory statement refers.[12]

Meantime, the defense of alibi advanced by petitioner is unacceptable in view of the positive identification of the prosecution's witnesses, Adelaida Dionisio and Kennedy Corcino. Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the appellant's defense of denial and alibi. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[13]

Moreover, for alibi to prosper, petitioner must show that it was physically impossible for her to be at the scene of the crime at the time of its commission.[14] Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places." [15]

As found by the Regional Trial Court:

"While Granoli, Jr. testified that on the date in question, at around 6:30 o'clock in the morning, accused was in his house in Pasay City, he nevertheless, said that he left his house before 7:00 to bring his child in school and to report for work as driver. He did not know the time accused actually left his house. Accused's testimony that she left Granoli Jr's house at 8:30 and that from there she proceeded to a barangay meeting in Moonwalk, cannot be given credence simply because aside from her self-serving allegation, no other clear and convincing evidence was presented to substantiate the same. Granoli, Jr's wife with whom she allegedly talked after the former left their house nor anybody who attended the alleged meeting in Moonwalk, was not presented to corroborate such testimony. Considering the distance from Pasay City to Parañaque City, it was very possible that accused was indeed at the latter place on (sic) the time of the incident and could have possibly uttered the statements in question." [16]

A word on the penalty.

Following Article 358 of the Revised Penal Code, the trial court may impose either the following penalties. (1) arresto mayor in its medium period to prision correccional in its minimum period; or (2) arresto menor or a fine not exceeding 200 pesos. Arresto mayor in its medium period is from two (2) months and one (1) day to four (4) months, while prision correccional in its minimum period is from six (6) months and one (1) day to two (2) years and four (4) months.

Arresto menor is from one (1) to thirty (30) days.

The MTC imposed a straight penalty of two months which is not within the range of arresto mayor in its medium period. On the other hand, it also exceeds the limit of arresto menor.

We note that the MTC and the RTC which affirmed the penalty did not explain how they arrived at the penalty.

Considering that the remarks made were not serious or insulting in nature, the penalty therefore should only be arresto menor.

To appreciate the nature of the remarks, Our attention is drawn to the fact that there were related cases involving

Carding Reyes or Ricardo Reyes and petitioner before the Office of the City Prosecutor of Parañaque City – I.S. No. 04-K-4849, "Emma Cimanos v. Ricardo Reyes", and I.S. No. 04-L-5109, "Ricardo Reyes v. Pedro Crisostomo Ledesma, Edna Ledesma and Emma Cimanos".[17]

Prior to the filing of the cases, petitioner and Kennedy Corcino had no misunderstanding whatsoever. Hence, to Our mind, the remarks "IKAW PALA ANG WITNESS NI CARDING REYES E DRUG PUSHER KA NAMAN" was meant to express petitioner's displeasure, if not anger. It was not meant to insult Kennedy Corcino.

Meanwhile, on January 25, 2008, the Supreme Court issued Administrative Circular No. 08-2008, entitled "Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases" which expressed a preference for the imposition of a fine rather than imprisonment, given the circumstances attendant in the cases cited therein[18] in which only a fine was imposed by the Supreme Court on those convicted of libel. It also states that, if the penalty imposed is merely a fine but the convict is unable to pay the same, the Revised Penal Code provisions on subsidiary imprisonment should apply.

The Circular further allows the courts, in the exercise of sound discretion, the option to impose imprisonment as penalty, whenever the imposition of a fine alone would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice.

The OSG argues that the said Circular did not remove from judges the imposition of imprisonment, and the trial court merely exercised its discretion in imposing a straight penalty of two (2) months imprisonment.

Petitioner, on the other hand, invokes this Circular to justify her view that the penalty of imprisonment of two (2) months is excessive, and that she should be fined instead.

We clarify.

As discussed above, the straight penalty of two months imprisonment is improper and excessive, since the penalty should only be from one (1) day imprisonment to thirty (30) days.

Hence, granting that the trial court had exercised its discretion, the same must be corrected by this Court.

On the other hand, Administrative Circular No. 08-2008 speaks of libel under Article 355,[19] while this case is for violation of Article 358 of the Revised Penal Code.

We doubt the applicability of this Administrative Circular in petitioner's case for it only speaks of libel under Article 355 of the Revised Penal Code.

Having established that petitioner was guilty of slight oral defamation, the penalty of imprisonment should be from one (1) to thirty (30) days or a fine of not more than P200.00.

Considering that the trial court opted to impose the penalty of imprisonment, and absent showing of grave abuse of discretion, We uphold the same with the necessary correction that it be lowered to thirty (30) days to conform with the prescribed penalty under the Revised Penal Code.

WHEREFORE, in the light of the foregoing, the Petition is PARTLY GRANTED. The Decision dated December 29, 2011 of the Regional Trial Court, Parañaque City, Branch 195, in the exercise of its appellate jurisdiction, in Criminal Case No. 11-0667, is AFFIRMED WITH MODIFICATION in that, petitioner Emma Cimanos is sentenced to suffer the penalty of imprisonment for Thirty (30) Days.

SO ORDERED.

Tijam (Chairperson) and Baltazar-Padilla, JJ., concur.

[1] Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, October 19, 2004

[2] Rollo, pp. 8-25

[3] Rollo, pp. 26-30

[4] Rollo, p. 30

[5] Rollo, pp. 188-189

[6] Rollo, pp. 188-190

[7] Rollo, p. 12

[8] Rollo, p. 218

[9] Victorio v. Court of Appeals, G.R. Nos. 32836-37, May 31, 1989

[10] Lopez v. People, G.R. No. 172203, February 14, 2011

[11] Pader v. People, G.R. No. 139157, February 8, 2000

[12] Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, October 19, 2004

[13] People v. Regalario, G.R. No. 174483, March 31, 2009; Talay v. People, G.R. No. 119477, February 27, 2003; People v. Basquez, G.R. No. 144035, September 27, 2001

[14] People v. Cruz, G.R. No. 186129, August 4, 2009

[15] People v. Tolentino, G.R. No. 139351, February 23, 2004; People v. Mosquera, G.R. No. 129209, August 9, 2001

[16] Rollo, p. 29

[17] See Rollo, pp. 57-60

[18] The Administrative Circular cited the following cases: (1) Sazon v. Court of Appeals (325 Phil. 1053, 1068 [1996]), where the Supreme Court modified the penalty imposed upon petitioner, an officer of a homeowners' association, for the crime of libel from imprisonment and fine in the amount of P200.00, to fine only of P3,000.00, with subsidiary imprisonment in case of insolvency, for the reason that he wrote the libelous article merely to defend his honor against the malicious messages that earlier circulated around the subdivision, which he thought was the handiwork of the private complainant; (2) Mari v. Court of Appeals (388 Phil. 269, 279 [2000]), in which the crime involved is slander by deed, the Supreme Court modified the penalty imposed on petitioner, an ordinary government employee, from imprisonment to a fine of P1,000.00, with subsidiary imprisonment in case of insolvency, on the ground that the latter committed the offense in the heat of anger and in reaction to a perceived provocation; (3) Brillante v. Court of Appeals (G.R. Nos. 118757 & 121571, November 11, 2005, 474 SCRA 480, 484), where the Supreme Court deleted the penalty of imprisonment imposed upon petitioner, a local politician, but maintained the penalty of fine of P4,000.00, with subsidiary imprisonment in case of insolvency, in each of the five (5) cases of libel, on the ground that the intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter, and that incomplete privileged

communication should be appreciated in favor of petitioner, especially considering the wide latitude traditionally given to defamatory utterances against public officials in connection with or relevant to their performance of official duties or against public figures in relation to matters of public interest involving them; (4) *Buatis, Jr. v. People* (G.R No. 142509, March 24, 2006, 485 SCRA 275, 292), where the Supreme Court opted to impose upon petitioner, a lawyer, the penalty of fine only for the crime of libel considering that it was his first offense and he was motivated purely by his belief that he was merely exercising a civic or moral duty to his client when he wrote the defamatory letter to private complainant."

[19] Committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means. The penalty under this Article is prison correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both in addition to the civil action which may be brought by the offended party.

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