

**MANUEL ELIZALDE, FRED J. ELIZALDE, PRUDENCIO R. EUROPA,  
PETITIONERS, VS. HON. MARIO J. GUTIERREZ, PRESIDING JUDGE,  
CFI-ILOCOS SUR, BRANCH III, AND PEOPLE OF THE PHILIPPINES,  
REP...**

*G.R. No. L-33615. April 22, 1977*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

It was the refusal of respondent Judge Mario J. Gutierrez[1] to grant the motion to quash of petitioners, who were the accused in a prosecution for libel, notwithstanding the invocation of their constitutional right to freedom of expression[2] that led to this suit for certiorari and prohibition. All that could be alleged in the information against them was the publication in the Evening News, a newspaper of general circulation, of an item reproducing in full a dispatch from the Philippine News Service, a reputable news-gathering agency. It summarized the testimony of Jaime Jose in a pending rape case wherein the name of Vincent Crisolago, the offended party in the information for libel, was mentioned. This excerpt from the recent case of *Bocobo v. Estanislao*[3] comes to mind: "This is contrary to the legal tradition of the Philippines dating back to the landmark case of *United States v. Bustos*, where Justice Malcolm emphasized that to prevent dilution of the constitutional right to free speech and free press, every libel prosecution should be tested by the rigorous and exacting standard of whether or not it could be violative of such fundamental guarantee." [4] It is easily understandable then why in the motion to quash, the main reliance was on the *Bustos* doctrine, although other grounds were alleged as warranting the dismissal of the information.[5] When respondent Judge ignored such a fundamental constitutional principle, the proper basis for a certiorari and prohibition proceeding was laid. Petitioners are entitled to the remedies sought.

The alleged offending news item was a reproduction of a news item coming from the Philippine News Service, furnished the Evening News, of which petitioners Manuel Elizalde and Fred J. Elizalde were the Publisher and Assistant Publisher and Prudencio R. Europa was the Editor-in-Chief. It reads thus: "Jaime Jose implicated Tuesday Vincent Crisolago, son of Rep. Floro Crisolago (N, Ilocos Sur) as among his four companions the night of the alleged rape of a former nightclub hostess last year. Jose, one of four principal accused in the celebrated Maggie de la Riva rape case, denied, however, the charges of forcible abduction with rape and robbery filed against him and his companions by Zenaida de la Cruz, 28, and Araceli Sy, both nightclub hostesses. Jose mentioned Vincent Crisolago as among his companions while testifying in his defense before Judge Francisco de la Rosa of the local court of first instance. Jose claimed that both Zenaida and Araceli went voluntarily with his group to the Queen's Court motel here in the early morning of July 4, 1966. Jose said Zenaida and Crisolago went to a room together. However, Jose said, the two girls complained when he and his companions failed to give the girls any money. \* \* \*"[6] This was the continuation of such news item: "The girls charged that they were robbed by Jose and his friends of cash and jewelry inside the hotel. In their original complaint filed with the fiscal's office, the two girls named Vincent Crisolago as among the accused. The taxi driver, whose vehicle was used by Miss de la Cruz, also identified Vincent Crisolago among the five youths in the incident. But the girls later

executed an affidavit saying that they were mistaken in identifying Crisologo as among the five men who allegedly abused them. Jose testified that he and Tillman were about to go to a party in Mandaluyong, Rizal, on the night of July 3, 1966, when Crisologo with three companions arrived. Jose said that young Crisologo wanted to borrow his car since his car would be used by his congressman father. Jose said that after the party they proceeded to Pasay City where Crisologo and a companion went to Bayside nightclub to look for Crisologo's girl friend. Minutes later, Crisologo and his friend went out of the club and they all proceeded to the Barbecue Plaza where they drank liquor. Shortly before 2 a.m., July 4, the group allegedly started for home in Jose's two-toned Mercedes Benz car. On the way, a taxicab overtook them. The cab allegedly carried Zenaida and Araceli. Jose said that Zenaida called Vincent and shouted for them to stop. They then proceeded to Queen's Court motel, Jose said."[7] The alleged offended party, according to the information filed by respondent Provincial Fiscal, Jesus F. Guerrero, is Vincent Crisologo. The information is dated February 5, 1970. Thereafter, there was a motion to quash filed by petitioners on August 14, 1970. An opposition was then filed by an assistant provincial fiscal on September 25, 1970. The order by respondent Judge denying the motion to quash came on December 17, 1970. An extensive motion for reconsideration submitted on February 23, 1971 having proved futile in view of an order of denial a month later from respondent Judge, this petition for certiorari and prohibition was filed with this Court.

As noted at the outset, certiorari and prohibition lie.

1. Petitioners were prosecuted for libel because the Evening News carried in its issue of September 1, 1967 a news item furnished it by the Philippine News Service. It was a faithful and accurate summary of what was testified to by a witness in a pending rape case. That was all. The name of the alleged offended party, Vincent Crisologo, was repeatedly mentioned in such testimony. It would have been a plain and simple distortion thereof if such a fact were omitted by the Philippine News Service. The Evening News in turn published such item. This is a case therefore that falls squarely within the protection of the free press provision found in the Constitution. That such news item possessed a defamatory aspect is beside the point. It cannot justify a prosecution for libel. Even prior to the 1935 Constitution, under the previous organic act, the Philippine Autonomy Act of 1916, which contained a similar provision mandating a free press, this Court, in the epochal *Malcolm* opinion in *United States v. Bustos*,<sup>[8]</sup> decided almost sixty years ago, to be precise on March 8, 1918, enunciated the principle that the freedom of the press is "so sacred to the people of these Islands and won at so dear a cost, [that it] should now be protected and carried forward as one would protect and preserve the covenant of liberty itself."<sup>[9]</sup> Thus it is clear that a prosecution for libel lacks justification if the offending words find sanctuary within the shelter of the free press guarantee. This Court has since then been committed to such an authoritative doctrine.<sup>[10]</sup> The opinion of Chief Justice Paras in *Quisumbing v. Lopez*,<sup>[11]</sup> a 1955 decision, is even more explicit on the matter. Thus: "The newspapers should be given such leeway and tolerance as to enable them to courageously and effectively perform their important role in our democracy. In the preparation of stories, press reporters and editors usually have to race with their deadlines; and consistently with good faith and reasonable care, they should not be held to account, to a point of suppression, for honest mistakes or imperfection in the choice of words."<sup>[12]</sup> At the beginning of this decade, this Court in *Lopez v. Court of Appeals*<sup>[13]</sup> expressed its commitment to such a principle in these words: "No inroads on press freedom should be allowed in the guise of punitive action visited on what otherwise could be characterized as libel whether in the form of printed words or a defamatory imputation resulting from the publication of respondent's picture with the offensive caption as in the case here complained of. \* \* \* If the cases mean anything at all then, to emphasize what has so clearly emerged, they call for the utmost care on the part of the judiciary to assure that in safeguarding the interest of the party allegedly offended, a realistic account of the obligation of a news media to disseminate information of a public character and to comment thereon as well as the conditions attendant on the business of publishing cannot be ignored."<sup>[14]</sup>

2. To be more specific, no culpability could be imputed to petitioners for the alleged offending publication

without doing violence to the concept of privileged communication implicit in freedom of the press. As was so well put by Justice Malcolm in *Bustos*: "Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The inevitable and incontestable result has been the development and adoption of the doctrine of privilege." [15] He then quoted this excerpt from an American Supreme Court decision, *Abbott v. National Bank of Commerce*: "The doctrine of privileged communication rests upon public policy, 'which looks to the free and unfettered administration of justice, though as incidental result, it may in some instances afford an immunity to the evil-disposed and malignant slanderer.'" [16] Considering how ample is the protection afforded a person alleged to have injured another's reputation, it appears quite obvious that respondent Judge did infringe on the constitutional right of petitioners to press freedom when it denied the motion to quash. He apparently was equally unaware of this relevant paragraph in the Malcolm opinion: "A privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications. The ultimate test is that of bona fides." [17] By no stretch of the imagination then could it be said that the Philippine News Service and the Evening News exhibited mala fides by the mere fact of narrating in a news item the testimony of a witness in a rape case just because it did cast a reflection on the conduct of a third party. The prosecution in its pleadings before the lower court could not deny the accuracy of what was reported. Petitioners then ought not to have been subjected to the annoyance, inconvenience, and trouble of going to a distant province and defend themselves against a charge unwarranted under well-settled norms of constitutional dimension. The doctrine of privileged communication moreover is explicitly provided for in the Revised Penal Code, as an exception to the general principle that every defamatory imputation is presumed to be malicious, even if it is true in the absence of "good intention" and "justifiable motive" thus: "A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions." [18]

3. There being a denial of a constitutional right, a jurisdictional issue was raised. It has been a well-settled doctrine since *Conde v. Rivera*, [19] that under such circumstances, the competence of a court to continue with a pending case ceases. [20] Nor is it to indulge merely in general propositions. In *People v. Andres*, [21] this Court precisely sustained a court of first instance when it quashed an information for libel, the accused, respondent Andres, relying on press freedom to show that the facts charged do not constitute an offense. As pointed out in the opinion of Justice Barrera, it was argued by the prosecution "that the trial court erred in dismissing the case on a mere motion to quash, contending that the trial judge's conclusion on the face of the information that defendant-appellee was prompted only by good motives assumes a fact to be proved, and that the alleged privileged nature of defendant-appellee's publication is a matter of defense and is not a proper ground for dismissal of the complaint for libel \* \* \*." [22] That contention was rejected in this wise: "While there is some point to this contention, yet when in the information itself it appears, as it does in the present case, that the communication alleged to be libelous is contained in an appropriate pleading in a court proceeding, the privilege becomes at once apparent and defendant need not wait until the trial and produce evidence before he can raise the question of privilege. And if added to this, the questioned imputations appear, as they seem in this case, to be really pertinent and relevant to defendant's plea for reconsideration based on complainant's supposed partiality and abuse of power from which defendant has a right to seek relief in vindication of his client's interest as a litigant in complainant's court, it would become evident that the facts thus alleged in the information would not constitute an offense of libel." [23] Similarly, a motion to quash was sustained in the later case of *People v. Alvarez*. [24] In the opinion of Justice Regala, it was pointed out: "As heretofore stated, this Court has adopted a liberal attitude in favor of the writer in matter of the relevancy of allegedly libelous statements in judicial pleadings. In *U.S. v. Bustos, et al.*, 37 Phil. 731, this Court found occasion to express its opinion on privileged

communications, to wit: “\* \* \* A privileged communication should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communication. \* \* \*” It is worthy to mention here that in the information for libel, there is no allegation of the irrelevancy or impertinency of the questioned statements to the cause. Considering the above, We are of the opinion and so hold that no error was committed by the lower court in considering the questioned remarks of the appellee as privileged and in consequently dismissing the information for lack of cause of action.”[25] In a third case, *People v. Aquino*,[26] reference was made to *People v. Andres* to demonstrate that it is fitting and appropriate for a court of first instance to dismiss an information on a motion to quash where the privileged character of the alleged offending publication is apparent. Respondent Judge ought not to have betrayed lack of sensitivity to the categorical pronouncements of this Court in the above three decisions that call for application.

4. Nor is a different conclusion called for just because the heading of the news item arising from the testimony of Jaime Jose was worded thus: "LINK CRISOLOGO SON TO PASAY RAPE CASE." How else could it have been expressed? That was to portray with accuracy what was contained in the news item. What was testified to was to that effect. It succinctly set forth the facts. There was no attempt to sensationalize. The tone is both neutral and objective. Again there is relevance to the following excerpt from *Quisumbing v. Lopez*: "The Court of Appeals found 'that the context of the article in question, is a fair, impartial and true report of official or public proceeding authorized by law. The news item was the result of a press release in connection with an official investigation of the Anti-Usury Division, N. B. I., and was a substantial, if not a faithful reproduction of the said press release which was, in turn, an accurate report of the official proceedings taken by the Anti-Usury Division. The article merely reported a raid on the 'business offices of three alleged money lenders;' and related the steps actually taken or to be taken by the proper officials relative to the investigation. It did not go beyond the actual report of official actuations. The theory of the petitioner, stripped of incidentals, is that while the body of the news item may be considered as being fair, impartial and accurate report of an official investigation of the Anti-Usury Division of the National Bureau of Investigation and therefore privileged, its headline NBI MEN RAID OFFICES OF 3 CITY USURERS,' admittedly not forming part of the basic press release but merely added by the respondents, is libelous per se, because the petitioner had thereby been branded and condemned as a 'usurer' when as a matter of fact no criminal charge was even filed against him for the crime of usury in any court of justice." [27] Nonetheless, the newspaper publisher was not held liable. The Chief Justice then explained why: "We are of the opinion that the appealed decision is correct. The petitioner, while assuming that the article in question is privileged, argues that the headline (libelous per se) added by the respondents rendered the same actionable, because said headline is not borne out by the facts recited in the context. We believe that nobody reading the whole news item would come to the conclusion that the petitioner had been accused or convicted of usury. We agree with the Court of Appeals that the headline complained of may fairly be said to contain a correct description of the news story. The fact that the raid was conducted by anti-usury agents following receipt of a complaint against the petitioner and two others, coupled with the announcement by the Chief of the NBI Anti-Usury Division that criminal action would be filed in the city fiscal's office, naturally would lead one to think that the persons involved were usurers. Nothing in the headline or the context of the article suggested the idea that the petitioner was already charged with or convicted of the crime of usury." [28]

WHEREFORE, the writ of certiorari prayed for is granted and the order of respondent Judge denying the motion to quash of December 17, 1970 as well as the order of respondent Judge of March 25, 1971 denying the motion for reconsideration filed by petitioners are set aside and nullified. The writ of prohibition is likewise granted and the restraining order issued on June 10, 1971 made permanent, respondent Judge or any person who may have taken his place being prohibited from taking any action in Criminal Case No. 11-V for Libel except for the

purpose of dismissing the same. No costs.

Aquino and Concepcion, Jr., JJ., concur.

Barredo, J., concurs, not because there is a denial of a constitutional right, but because there is grave abuse of discretion in not recognizing what is clearly not libelous.

Antonio, J., concurs in the concurring opinion of Justice Barredo.

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[1] The People of the Philippines as represented by Provincial Fiscal Jesus F. Guerrero of Ilocos Sur was likewise named respondent.

[2] According to Article III, Section 1, par. (8) of the 1935 Constitution, then in force at the time of this litigation: "No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances." The same provision is reproduced as Article IV, Section 9 in the present Constitution.

[3] L-30548, August 31, 1976, 72 SCRA 520.

[4] Ibid, 524.

[5] The other grounds alleged were that one news item could not be the subject of separate libel suits, that only an editor or business manager could be held liable for defamation, that because of failure to indicate the actual residence of the offended party, the court was without jurisdiction, and that the action had prescribed.

[6] Information for Libel, Criminal Case No. 11-V, Second Judicial District, Annex A to Petition, 1-2.

[7] Ibid, 2-3.

[8] 37 Phil. 731.

[9] Ibid, 740.

[10] Cf. *United States v. Cañete*, 38 Phil. 253 (1918); *Santiago v. Calvo*, 48 Phil. 919 (1926); *El Hogar Filipino v. A. W. Prautch*, 49 Phil. 171 (1926); *People v. Burgos*, 59 Phil. 375 (1934); *Sayoc v. Chen*, 110 Phil. 356 (1960); *Deaño v. Godinez*, L-19518, November 28, 1964, 12 SCRA 483.

[11] 96 Phil. 510.

[12] Ibid, 515.

[13] L-26549, July 31, 1970, 34 SCRA 117.

[14] Ibid, 127.

[15] *United States v. Bustos*, 37 Phil. 731, 742.

[16] Ibid. The Abbott excerpt is found in 175 US 400, 411 (1899).

[17] Ibid, 743. Cf. *Santiago v. Calvo*, 48 Phil. 919 (1926) and *El Hogar Filipino v. Prautch*, 49 Phil. 171 (1926).

[18] Art. 354, par. 2 of the Revised Penal Code. Cf. *People v. Burgos*, 59 Phil. 375 (1934); *Sayoc v. Chen*, 110 Phil. 356 (1960); *Sison v. David*, 110 Phil. 662 (1961); *Tolentino v. Baylosis*, 110 Phil. 1010 (1961); *Deles v. Aragona, Jr.* Adm. Case No. 598, March 28, 1969, 27 SCRA 633; *Cuenco v. Cuenco*, L-29560, March 31, 1976, 70 SCRA 212.

[19] 45 Phil. 650 (1924).

[20] Cf. *Harden v. Director of Prisons*, 81 Phil. 741 (1948); *Abriol v. Homeres*, 84 Phil. 525 (1949); *Chavez v. Court of Appeals*, L-29169, Aug. 19, 1968, 24 SCRA 663; *Celeste v. People*, L-31435, Jan. 30, 1970, 31 SCRA 391; *Gumabon v. Director of Prisons*, L-30026, Jan. 30, 1971, 37 SCRA 420.

[21] 107 Phil. 1046 (1960).

[22] *Ibid*, 1050.

[23] *Ibid*.

[24] L-19072, August 14, 1965, 14 SCRA 901.

[25] *Ibid*, 906.

[26] L-23908, October 29, 1966, 18 SCRA 555.

[27] 96 Phil. 510, 511-512.

[28] *Ibid*, 513-514.

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