

DOMINGO IMPERIAL, PLAINTIFF-APPELLANT, VS. VENANCIO P. ZIGA AND ANASTACIA V. DE MUÑOZ, DECEASED, SUBSTITUTED BY APOLONIO R. MUÑOZ, DEFENDANTS-APPELLANTS.

G.R. No. L-19726. April 13, 1967

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by both parties, from a decision of the Court of First Instance of Albay finding defendants Venancio P. Ziga and Anastacia V. de Muñoz liable for libel and sentencing them to pay, jointly and severally, to plaintiff Domingo Imperial, the sum of P20,000 as moral damages, and to bear the costs, as well as dismissing defendants' counter-claim.

This is an action by Domingo Imperial against Venancio P. Ziga, Lorenzo P. Ziga, Anastacia V. de Muñoz and Alfredo Caldino to recover P500,000 as moral damages and P100,000 as exemplary or corrective damages, plus interest and costs. In their joint answer, the first three (3) defendants set up a counterclaim for P500,000 each, as moral damages, and P200,000 as "corrective penalty", plaintiff's action having been allegedly brought maliciously. Soon, later, Lorenzo P. Ziga died, in view of which the case was dismissed, insofar as he is concerned. The case was, likewise, dismissed as against Alfredo Caldino, upon motion filed by him and plaintiff Imperial. Thereafter, the action proceeded only against Venancio P. Ziga and Anastacia V. de Muñoz - hereinafter referred to as Mrs. Muñoz - with the result already adverted to.

Plaintiff's action is mainly based upon the publication of: (1) a mimeographed copy of an article, entitled "History of the Last Elections in Albay", by-lined "By Gov. Venancio P. Ziga", and marked as Exhibit F; (2) a certified copy of a letter, dated March 31, 1952, subscribed and sworn to by Mrs. Muñoz, addressed to the Commission on Appointments, and marked as Exhibit N, photostatic copy of the original of which is Exhibit C; and (3) a certified copy of a letter of Mrs. Muñoz, bearing the same date, likewise, addressed to the Commission on Appointments, and marked as Exhibit Q, photostatic copy of the original of which is Exhibit T.

Exhibit F purports to explain the reason for the alleged "hostility of the Imperials - referring particularly to plaintiff Domingo Imperial - "against the Zigas", stating that it is due to the desire of the Imperials "to perpetuate themselves in leadership" and the failure of Venancio P. Ziga, as Governor of Albay, to acquiesce to be a "tool" or "rubber stamp" of the Imperials, in connection with the lease of the public market site at Legaspi Port, and the lease of the fishery and the slaughter house privileges in Legaspi, to "dummies of the Imperials".

Upon the other hand, Exhibit N asserts, inter alia, that "Hon. Domingo Imperial lacks honesty and integrity of character"; that "he committed treachery and sabotage against the Liberal Party, while he was x x x acting as Chairman of the Commission on Elections"; that "he not only used his position, but, also, gave away money and other goods in order to fix the elections in Albay in favor of the Nacionalistas"; that "acting under his instructions, his wife x x x and other relatives actively campaigned in Albay against the Liberal Party, especially against Ex-Governor Venancio P. Ziga"; that, among said relatives of the plaintiff were some of his employees in the

Commission on Elections, as well as a civil service employee in the Public Service Commission and a clerk in the Court of Appeals; that "the reason for the enmity of Hon. Domingo Imperial against Ex-Governor Ziga" is "because as Provincial Governor of Albay, Governor Ziga refused to be cowed and to be dictated by the Imperials" or to be his "tool" in connection with "illegal, illicit or immoral transactions", such as a resolution, approved by the municipal council of Legaspi, upon plaintiff's instructions, leasing part of the Legaspi market site, for a nominal sum, to a dummy of the Imperials, which resolution, like two (2) other resolutions of the same council, giving the fishery privileges and the slaughter house privileges, at nominal fees, to dummies of the Imperials, were disapproved by Governor Ziga, because, "contrary to his oath of office x x x and x x x to his conscience", plaintiff "does not want honest and good officials in the Government service. He wants public officials who serve their own selfish interests. He wants corrupt officials to take advantage of their positions to enrich themselves and their relatives at the expense of the government"; that "nepotism has been his norm of conduct thereby benefiting only his close kin and relatives"; that while he was "Minister of Bangkok and to Indonesia x x x his family and other close relatives were seen going around x x x selling wrist watches, jewelry and Indonesian silks"; that, "as Senator x x sometime ago", he "secured x x x twenty (20) bales of UNRRA clothing destined to be distributed to the poor people of the Philippines," but, instead, he caused the bales to be opened and "sorted out the good clothing", then "gave some to his family and the rest, sold to the public, x x x leaving only for distribution to the poor the remaining little clothing that were really useless"; that plaintiff "miserably lacks nobleness and decency in his conduct as public official"; that when a jobless young man sought his recommendation for a job in Manila, plaintiff refused to help him "unless his father x x x would surrender to him (plaintiff) politically and campaign against Ziga in the last elections"; and that plaintiff dismissed without cause a female employee of the Commission on Elections merely because her parents had not followed "the political dictates of Imperial in the last elections".

Similarly, Exhibit Q states, among other things, that, "as Chairman of the Commission on Elections", plaintiff had sent to the Bicol provinces "false ballots, similar to the official" ones, on which the names of the Nacionalista candidates had already been written; that these false ballots were used as "lanzaderas", to be exchanged with official ballots during the canvass; that plaintiff is "a man who throws stones with a hidden hand"; that he "turned traitor to the Liberal Party"; that "as Minister in Bangkok, Thailand", he had done nothing "except some business which he (Imperial) smuggled from Bangkok x x x Indonesia in the form of wrist watches, jewelry and embroidered clothes which he sold here at an enormous profit."

Appellants do not deny the libelous nature of these imputations, but they: (1) question the sufficiency of the evidence on the authorship thereof; and (2) invoke their alleged privileged character.

As above indicated, Exhibit F is a mimeographed copy of an article, entitled "History of the Last Elections in Albay", by-lined, "By Gov. Venancio P. Ziga" and written about the early part of 1950. Its subject is the very topic of his political speeches in the 1949 elections, during which his brother Lorenzo, now deceased, ran for Congress, and lost to Eulogio Lawengco, who, the Zigas suspected, was supported by plaintiff herein. In this connection, Antonio Rito testified that, early in 1950, he saw a copy of Exhibit F on top of the desk of Venancio P. Ziga, as Provincial Governor of Albay; that there were about 100 copies thereof in the latter's office; and that he (Rito) then heard Venancio order the mailing and distribution thereof. Similarly, Jesus Salalima declared that, after a conference held in said office, sometime in August, 1951, Venancio P. Ziga gave him said Exhibit F, which he (Salalima) readily mailed to plaintiff herein. Obviously, Venancio P. Ziga is the author of said article and the one who had caused the same to be distributed and published.

How about Exhibits N and Q? Both were sent to the Commission on Appointments when it was considering plaintiff's appointment as Chairman of the Commission on Elections. Evidently, Exhibit N was supposed to

replace Exhibit Q, for the contents of both are about the same, except that Exhibit N includes more charges than those made in Exhibit Q. Although admittedly, signed by Mrs. Muñoz, the lower court found that Venancio P. Ziga is the real author thereof and that Mrs. Muñoz had merely acted as his tool, by lending her name and signature thereon. Upon a review of the record, we do not find therein sufficient justification to disturb this conclusion.

Indeed, according to then Congressman Espinosa, of Mas-bate, in March, 1952, then Congressman Lorenzo P. Ziga, now deceased and brother of Venancio P. Ziga, told him (Espinosa), in the presence of other members of Congress, that plaintiff had sent to Albay already filled in ballots, in order to in-sure the election of Manuel Calleja as Governor in 1951, and that the Zigas were going to file the corresponding complaint against the offenders, especially plaintiff herein.

Furthermore, Congressman Galias, of Sorsogon, declared that late in March, 1952, Congressman Lorenzo P. Ziga urged him to oppose the confirmation of plaintiff's appointment by the Commission on Elections, for he (Congressman Ziga) and his brother, Venancio P. Ziga, were going to file charges against him (plaintiff) with the Commission on Appointments, one of which was that, shortly before the 1951 elections, plaintiff had sent to Albay, from 10 to 12 thousand ballots already filled with the names of Nacionalista candidates and that, a few days prior to the meeting of said Commission on Appointments, Congressman Ziga reiterated the request that he (Galias) object to plaintiff's confirmation, inasmuch as charges had already been preferred against him before said body.

Again, soon after the 1951 elections, Miguel Bustamante was informed by Venancio P. Ziga that, with the help of his brother, Lorenzo P. Ziga, he (Venancio P. Ziga) would file with the Commission on Appointments a protest against plaintiff's appointment as Chairman of the Commission on Elections, because his (Venancio P. Ziga's) defeat in said elections was due to the numerous ballots, already filled with names of Nacionalista candidates, allegedly sent to Albay by the plaintiff.

In other words, there is sufficient evidence to warrant the conclusion that Venancio P. Ziga had caused Exhibits N and Q to be made and then signed by Mrs. Muñoz, as well as sent to the Commission on Appointments.

Upon the other hand, it is clear that Exhibit F is not privileged at all. Indeed, appellants do not claim it to be so. With respect to Exhibits N and Q, the originals thereof had been sent to the Commission on Appointments, in connection with plaintiff's appointment as Chairman of the Commission on Elections, which was pending confirmation before said body, thus giving to both documents the color of qualified privileged communications. It should be noted, however, that, pursuant to Article 354 of the Revised Penal Code, "every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown". Although said presumption is inapplicable to "a private communication made by any person to another in the performance of any legal, moral or social duty", the record satisfactorily shows that Exhibits N and Q had been made and sent to the Commission on Appointments with actual malice on the part of both Mrs. Muñoz and appellant Venancio P. Ziga, and for the purpose of besmirching plaintiff's reputation and exposing him to ridicule and contempt.

To begin with, there is the circumstance that Venancio P. Ziga had tried to conceal the identity of the true maker of said documents, by causing Mrs. Muñoz to sign the same, instead of doing so himself. Besides, the defendants have not attempted to prove the truth of the imputations therein made, or, at least, that they - particularly Mrs. Muñoz - had reasonable grounds to believe them to be true. Indeed, the nature of the imputations is such and the language used so intemperate as to indicate that defendants could not have earnestly believed them to be true or even approximately true, and that they - especially Venancio P. Ziga - were merely giving vent to their extreme

bitterness against plaintiff herein.

This inference becomes even more imperative when we consider that there is no competent evidence that plaintiff was financially interested in the lease either of the market site or of the fishery or slaughter house privileges in Legaspi; that, according to the municipal treasurer of Legaspi from 1921 to 1941 and assistant provincial treasurer and cashier of Albay from 1941 to 1952, plaintiff had never interested himself in seeking or intervening in any application for market privileges in Legaspi; that plaintiff's wife was in Manila during the election campaign in 1951; that she never campaigned, even when her husband was running for a public office; that there is reliable and uncontradicted evidence that plaintiff had always abstained from participating in the proceedings in the Commission on Elections in any matter affecting elections, not only in the province of Albay, but, also, in the entire Bicol region, precisely to avoid any possible suspicion and to maintain public confidence in said Commission; that plaintiff was, moreover, instrumental in stopping gem smuggling in Bangkok; that the persons named in Exhibits N and Q, in connection with the charge of nepotism, were either not appointed by plaintiff or not related to him, or their relationship is beyond the prohibited degree, or the position involved is beyond the scope of the pertinent executive order; and that there is no competent evidence on the alleged irregularities in connection with UNRRR goods.

Then, again, independently of Exhibits N and Q, the article Exhibit F suffices to support plaintiff's action against Venancio P. Ziga.

It is thus clear that the lower court was justified in finding for plaintiff herein and in sentencing the defendants to pay him the sum of P20,000 as moral damages.

Plaintiff, in turn, contends that he is, also, entitled to exemplary damages and that the defendants should, further, be sentenced to pay interest on the amount or amounts adjudicated to him. With respect to the exemplary damages, its recovery is not a matter of right (article 2233, Civil Code of the Philippines) and the records do not show that the lower court had abused its discretion in not awarding it.^[1] Indeed, considering that plaintiff's appointment had eventually been confirmed, we are satisfied that the sum of P20,000.00 adjudged in his favor, by way of moral damages, meets sufficiently the demands of justice.

As regards interest on the aforementioned sum, the cases of *Lopez vs. Pan American World Airways*^[2] and *M. Ruiz Highway Transit vs. Court of Appeals*^[3] sanction the collection of the legal rate of interest from the promulgation of the decision appealed from, on December 10, 1959.

Inasmuch as Mrs. Muñoz has died meanwhile, his surviving spouse Apolonio R. Muñoz has substituted her, as one of the defendants herein. The Court, likewise, takes judicial cognizance of the fact that Domingo Imperial has, also, passed away. Accordingly, it is hereby decreed that his legal representative or heirs be substituted in his stead, as plaintiff herein.

Thus modified, as regards the parties, as well as in the sense that defendants shall pay the legal rate of interest on the sum of P20,000, from December 10, 1959, the decision appealed from should, therefore, be, as it is hereby affirmed in all other respects, with costs against defendants-appellants Venancio P. Ziga and Apolonio R. Muñoz.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., took no part.

[1] *Singson vs. Aragon*, 49 Off. Gaz., 515; *Goleongco vs. Clarapols*, L-19616, March 31, 1964; *Laguna Tayabas*

Bus Co. vs. Diasanta, L-19882, June 30, 1964; Corpus vs. Cuaderno, L-23721, March 31, 1965.

[2] L-22415, March 30, 1966.

[3] L-16086, May 29, 1964.

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