

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLANT VS. EULOGIO BALAO, DEFENDANT-APPELLEE.

G.R. No. L-22250. May 22, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Because of an open letter published in a local paper on November 4, 1959, herein defendant-appellee Eulogio Balao, then a Senator, filed two actions against the writer, Gregorio Co, in the Court of First Instance of Rizal (Quezon City). One action was criminal in nature and charged the offense of libel; the other was civil and sought recovery of damages. At the trial of the civil case Senator Balao took the witness stand, and in answer to certain questions pro-Pounded to him gave some statements which were claimed to be defamatory and on the basis of which Co subsequently filed a complaint for grave slander against him.

The information lodged in the Quezon City Court on September 6, 1962 reads as follows:

"The undersigned Assistant City Fiscal accuses EULOGIO BALAO of the crime of Grave Slander, committed as follows:

"That on or about the 13th day of March, 1962, in Quezon City, Philippines, the above-named accused did, then and there, willfully, unlawfully and feloniously, without any justifiable cause, utter and proffer, in the presence of several persons, the following slanderous words of a serious and insulting manner, against Gregorio Co, to wit:

"I was put to shame because I was being attacked by a known extortionist, . . . and a man of no consequence because he has no visible means of living;"

"I do not invite criminals;"

"I cannot avoid felicitations even to criminals. At least, it is a gentlemen's attitude even towards criminals;"

which words and expressions were directed to the said Gregorio Co, thereby casting dishonor, discredit and contempt upon the latter, to his damage and prejudice, in such amount as may be awarded to him under the provisions of the Civil Code of the Philippines.

Contrary to law."

On November 21, 1962 the defendant moved to quash the information on the ground that the statements attributed to him were covered by the rule of absolute privilege. The prosecution opposed, and the motion was denied. A motion for reconsideration was filed and was similarly opposed. In the defendant's rejoinder to the opposition he attached as evidence a copy each of the complaint in the civil case and of the information in the criminal case against Gregorio Co, as well as a portion of the transcript of his (Balao's) testimony at the trial of the civil case.

On August 20, 1963, the Quezon City court issued the order of dismissal now appealed from, as follows:

"After considering the "Motion for Reconsideration", the "Opposition" thereto, the "Manifestation" and

"Motion" presented by the defense counsel, and the "Rejoinder to the Opposition to Defendant's Motion to Quash", and the Private Prosecutor having been given 10 days from July 31, 1963, within which to file any pleading thereto, this Court, after going over all the pleadings, hereby reconsiders its Order dated December 28, 1962, and hereby DISMISSES this case with costs de oficio".

"SO ORDERED."

Evidently the Quezon City Court, in dismissing the case, took into account the evidence presented in support of the defendant's motion for reconsideration and in the light thereof concluded that the alleged defamatory statements were covered by the mantle of privilege.

In this appeal by the prosecution the Solicitor General poses only one issue: that a motion to quash hypothetically admits the allegations in the information and merely challenges their sufficiency to charge an offense, and that the privileged character of the defamatory statements cannot be determined from such allegations and hence should be raised at the trial. The case of *Duque vs. Hon. Amado Santiago* (L-16916, Nov. 29, 1962) is relied upon.

In the cited case this Court did uphold the trial court's order denying the defendant's motion to quash an information for libel on the ground that whether or not the comments complained of as libelous were privileged was a matter which should be raised as a defense at the trial. There are demonstrable distinctions between that case and the one before us. There the issue of when the question of privilege should be invoked was squarely raised in the lower court in connection with the motion to quash, and was ruled upon by said court to the effect that the question should be invoked at the trial. Furthermore, in the *Duque* case no evidence was considered by the court regarding the privileged character of the alleged libelous statements, since the prosecution immediately challenged the propriety of such evidence in a motion to quash. In the present case, the question is raised for the first time on appeal and the evidence in support of the defendant's claim of privilege was allowed to go into the record without objection on the part of the prosecution. The lower court did not err therefore, in taking such evidence into consideration.

The Solicitor General has limited his brief to the procedural aspect of the order of dismissal, and is silent as to the question of whether or not, in the setting in which the statements of the defendant were uttered, that is, while he was testifying in court as the plaintiff himself in the civil case for recovery of damages by reason of the libel, and considering the allegations in his complaint and the questions propounded to him, those statements were pertinent and relevant to the subject of the inquiry so as to constitute privileged communication. The lower court, in quashing the information, ruled affirmatively on the question, and since the burden to show its error rests on the appellant and no such showing has been made, we find no reason to decree a reversal.

We have also gone over the brief filed by the private prosecutor, although in criminal cases on appeal it is only the Solicitor-General who represents the People, and we have found no sufficient showing either to overcome the conclusion of the lower court and sustain a finding that the statements given by the defendant in the course of his testimony and reproduced in the information had no relevancy or pertinence to the matters subject of his own complaint.

The order appealed from is therefore affirmed, without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaidivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

Order affirmed.

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