

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
VICENTE S. DEL ROSARIO AND NATALIO B. BACALSO, DEFENDANTS
AND APPELLEE.**

G.R. No. L-2254. April 20, 1950

Ponente: TUASON, J.

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TUASON, J.:

The question for decision is whether a libelous publication affecting more than one person constitutes one crime or more. This is an appeal from an order of the Court of First Instance of Cebu sustaining the first theory and dismissing a complaint for libel on a motion to quash.

The alleged defamatory writing was printed in one sheet of paper in Visaya, which was translated in the complaint into English as follows:

"MY PLEA TO THE CEBUANOS

"Because Morelos, as head of the PRRA wanted to sell flour outside of Cebu preferring that the Chinese could make money, notwithstanding that the inhabitants of the City would suffer;

"Because Morelos, as President of the Municipal Board of the City of Cebu, made money out of the copra ordinance;

"Because, Morelos has a gang in which Zapanta, Seno and companions are members, who, instead of serving the people are only serving for their own good, I plead, with great humility, to all upright Cebuanos, not to elect these men that I mentioned above.

"Because Espina, was merely appointed Mayor of the City of Cebu in order to be made a Herod to go after and dismiss policemen and employees who are without guilt;

"Because Espina now is to be transferred to the Capitol in order to be made Esecutioner (Berdugo) of the employees whom they want to be executed;

"Because, even when he was still in Ormoc, Espina was nearly killed by his tenants because he grabbed lands, I plead that Espina should be buried by all upright Cebuanos.

"President Roxas in his speech made yesterday, when he mentioned about the candidates for councilors in the City of Cebu, said; 'Give me honest men in the City Board, and I will cooperate with them.' These men mentioned above are not honorable and we should cast them aside on election day."

It will be seen that the leaflet attacked Morelos and Espina. Espina instituted a criminal action against the herein defendants, action which was assigned to one branch of the court presided by Judge Moscoso. The case at bar was later commenced by Morelos and corresponded to Judge Felix Martinez, presiding another branch of the Court of First Instance of Cebu. It was the latter case which was dismissed on motion of the defendants.

Judge Martinez, citing Article 48 of the Revised Penal Code ruled that, although two persons claimed to be aggrieved by the libel, yet, he said, "the two libels * * * were the result of a single act," "hence should be subject of a single information, the crime being complex one." His Honor argued thus: "A written defamation becomes punishable the moment, and only when, it is given publicity. Hence, the writing alleged to be defamatory on Espina and Morelos has become punishable following its publication. And it is admitted that the leaflet in question has been published by a single act." To bolster its opinion, the court also cited *State vs. Hoskins*, 60 Minn. 168, in which it was held that "A libel on two or more persons contained in one writing and published by a single act constitutes but one offense so as to warrant a single indictment therefor."

If the act of publishing the libel were the sole or main element of the crime, the court's reasoning would be faultless. But is it?

In the case of *State vs. Hoskins*, supra, the ratio decidendi was that the gist of the offense of libel at common law is the publication of something which tends to affect injuriously the peace and good order of society regardless of its effect upon the person concerned. We cull these thoughts from the decisions "The general policy of the law is to leave the care of men's reputations to themselves. No damage done to a reputation (at least, unless the further element of conspiracy enters into the act) is, at common law? in and of itself, a foundation for a criminal prosecution,," "The law makes the publication of libel punishable as a crime, not because of injury to the reputation, but because the publication of such articles tends to affect injuriously the peace and good order of society."

So also was the interest of public peace and order given the controlling and private interest secondary consideration in *State vs. Hosmer*, (142 Pac. 581, 585, cited in 37 C. J. 147). The court said: "When a libel has been committed, the state in its sovereign capacity seeks to avenge the wrong, not because the commission of the act tends to affect injuriously the good order of society and the dignity of the State," but "because it tends to produce a breach of peace." "The number libelled in the article is immaterial, and the libeler is punished for his own act of publishing a libel calculated to produce violence."

That is the common-law rule. Such rule has been discarded in many states of the Union. Referring to *State vs. Hoskins*, supra, the footnote in 27 L.R.A., 412 says that "The above decision is a rare one and almost without precedent as appears from the opinions of the judges." American Jurisprudence (Vol. 33, p. 292) explains that "Under the common-law theory, which is embodied in some of the statutory provisions on the subject, the criminality of a defamatory statement consists in the tendency thereof to provoke a breach of the peace," but, it adds, "many of the modern enactments, * * * ignore this aspect altogether and make a libelous publication criminal if its tendency is to injure the person defamed, regardless of its effect upon the public."

The present Philippine law on libel conforms to this modern tendency. For a little digression on the present law of libel or defamation, let it be noted that the Revised Penal Code has absorbed libel under Act No. 277 and calumny and insult under the old Penal Code, (Commentaries on the Revised Penal Code, Guevara, p. 764) The new Penal Code includes "all kinds of attacks against honor and reputation, thereby eliminating once and for all the idle distinction between calumny, insult and libel." (Idem, p. 765.)

The subject is treated in Chapter I, entitled "Libel" in the English text and "Defamacion" in the Spanish, under Title Thirteen entitled "Crimes Against Honor," Judge Albert and Judge Guevara in their respective commentaries on the Revised Penal Code criticize the use of the term "libel" in the English version, correctly observing that libel and defamation are not synonymous terms and that the latter is the more appropriate of the two and should have been adopted in both editions. They point out that libel is confined to written insults while defamation includes insults both in written and oral forms.

However that may be, the prosecution for libel upon the initiative of the prosecuting attorney, as was the practice under Act No. 277, has been abolished with one exception. Now libel or defamation, like insults and calumny under the old Penal Code, is prosecuted only at the instance of the offended party or parties,, unless the imputation constitutes a crime that should be the subject of prosecution de oficio, (People vs. Luz Jose, 43 Off. Gaz., 135 [1]) The last paragraph of Article 360 of the Revised Penal Code thus provides:

"No criminal action for defamation which consists in the imputation, of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party."

Construing this rule in *People vs. Luz Jose*, ante, this Court said:

"Esta disposicion es clara, terminante. Bajo su fraseologia, solamente cuando la difamacion consiste en la imputacion de un delito perseguible de oficio cabe deducir accion criminal contra el difamador mediante simple querella del fiscal, sin necesidad de instancia ni denuncia escrita de parte de la persona ofendida. Cuando la difamacion imputa un delito no perseguible de oficio, o bien una cosa deshonorosa, si, pero no delictiva como en el caso que nos ocupa, la instancia y denuncia escrita de la parte ofendida es absolutamente indispensable. (E. U. contra De la Cruz, 17 Jur. Fil. 140.)"

The libel or defamation under consideration does not fall within the class of cases indictable without the concurrence of the aggrieved persons.

The requirement that prosecution for libel must be upon complaint of the offended party amply illustrates the intent and purpose to make injury to the honor and reputation of the persons libelled the dominant factor in the offense. The meaning of this requirement is that there are as many offenses of libel as there are persons libelled, and the computation of the number is not the publication but the writing or composing of the libel. From this point of view there can not be only one defamation when more than one person are defamed. The inclusion of several persons in a libel can not, in the nature of things, be the product of one and the same act.

The fusion of calumny, insult and libel in one definition and the adoption for the resultant offense (defamation or libel) of the procedure indicated for the indictment for the crimes of insult and calumny before the Penal Code was revised, make available for our guidance decisions of the Spanish Supreme Court in the matter of multiplicity of action. Two of such decisions, reported and digested by Viada, will suffice.

"Cuestion 6. Cuando en un folleto se injuria a cinco personas y todas ellas ejercitan la oportuna accion criminal, existiran cinco delitos de injurias?—El Tribunal Supremo ha resuelto la afirmativa Considerando que a pesar de hallarse contenidas en el mismo folleto todas las frases calificadas de injuriosas, no cabe estimar que constituyan un solo delito, porque refiriendose, como se refieren, a cinco personas distintas, todas las cuales han ejercitado para perseguirlas la accion criminal correspondiente, la imputacion que a cada una de ellas se dirige de vicios o faltas de moralidad perjudiciales a su credito y fama ha de ser como lo ha sido, juzgada, aunque en la misma causa con separacion de las restantes, puesto que da lugar a responsabilidades independientes, y mayormente si se atiende a que la indole de estos delitos reserva exclusivamente a la iniciativa particular el derecho de instar y seguir el procedimiento, etc. (S. de 23 de septiembre de 1902, Gaceta de 16 de enero de 1903.)" (2 Viada, 5th ed., p. 608.)

"Cuestion 11. Aun cuando en un mismo acto, o sea en una disputa habida entre dos personas, la una dirige expresiones injuriosas a la otra, y sucesivamente otras calumniosas, b sea imputandole falsamente la comision de delitos concretos, perseguibles de oficio, deberan penarse dos hechos distintos, con arreglo al art. 88 delCodigo, o solo el delito mas grave en el grado maximo, con sujecion al art. 90?—Esto ultimo entendio la Sala de 10 criminal de la Audiencia de la Coruna, la que impuso al procesado la pena del delito mas grave de calumnia en el grado maximo, con arreglo a dicho art. 90; mas el Tribunal Supremo declaro haber lugar al recurso de casacion interpuesto contra dicha sentencia por infraccion del citado articulo, fundandose en que a esta disposicion legal no puede ni debe darse mayor extension que la que alcanza el literal con texto de sus

palabras, como excepcion que es de otra regla general, refiriendose terminantemente al caso en que de un solo hecho, es decir, de una sola accion, resulten distintas infracciones, no cuando son distintos los hechos que producen las infracciones, aunque en el mismo acto as produzcan, como ocurre cuando en una riña el procesado hiere a una persona y mata a otra, lo cual produce dos delitos distintos que deben penarse separadamente, sin que en tal caso sea posible aplicar el art. 90, cuya disposicion es evidente que infringio la Sala al aplicarla al caso de autos, en que se produjeron dos distintos delitos." (S. de l.[o] de febrero del 79 Gaceta de l.o de abril) (2 Viada, p. 635.)

The theory that only one prosecution may be instituted even though several persons are affected would lead to injustice to the offended parties, defeat of some of the law's aims, and great inconvenience. It would deprive of their right offended parties who were absent or for one reason or another were not ready to prosecute the libeler at the time other offended parties commenced action. It would deprive them of their right to vindicate their honor and reputation by proving the falsity or malice of the defamatory imputation. It would bar them from recovering damages in the criminal proceeding, right which is theirs under the penultimate paragraph of Article 360 of the Revised Penal Code.

Upon the foregoing considerations, the order appealed from is reversed and the case is remanded to the court of origin for further proceeding according to law, with costs of this appeal against the appellees.

Moran, C.J., Ozaeta, Pablo, Bengzon, Montemayor, and Reyes, JJ., concur.

[1] 76 Phil., 599.

MORAN, C.J.:

Mr. Justice Padilla voted to reverse.

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