

**EMILIANO A. FRANCISCO AND HARRY B. BERNARDINO,
PETITIONERS, VS. THE HONORABLE COURT OF APPEALS AND THE
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

G.R. No. L-45674. May 30, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for review on certiorari of the decision of the Court of Appeals dated August 25, 1976 which modified the decision of the lower court by finding petitioners guilty of the crime of simple slander instead of grave oral defamation as the former Court of First Instance has held, and imposed on him a fine of P200.00 with subsidiary imprisonment in case of insolvency and ordered them to pay complainant the amount of P1,000.00 as moral damages.

On February 6, 1966 complainant Dr. Patrocinio Angeles, who was then the Director of the Morong Emergency Hospital, filed a case for intriguing against honor allegedly committed on December 26, 1965 against Dr. Emiliano Francisco and Atty. Harry Bernardino with the Office of the Provincial Fiscal of Rizal. On May 3, 1966, the Provincial Fiscal filed an information in the former Court of First Instance of Rizal accusing Francisco and Bernardino of the crime of grave oral defamation. On October 8, 1966 the information upon order of the court, was amended by adding the particular statements uttered by each accused allegedly constituting the crime of slander to wit:

"AMENDED INFORMATION

"The undersigned Special Counsel accuses Harry Bernardino and Emiliano Francisco of the crime of Grave Oral Defamation, committed as follows:

"That on or about the 26th day of December, 1965, in the municipality of Tanay, province of Rizal, Philippines and within the jurisdiction of this Honorable Court the abovenamed accused conspiring and confederating together, with the deliberate intent of bringing one Dr. Patrocinio Angeles into public discredit, disrepute and contempt, after having knowledge that the wife of one Romulo Cruz who was a former patient of the Morong Emergency Hospital was operated thereat by Dr. Patrocinio Angeles, did then and there willfully, unlawfully and feloniously and publicly speak and utter the following insulting and defamatory words and expressions, to wit:

Dr. Francisco (To Romulo Cruz):

'Your wife should not have been operated. If I were the doctor, all that I should have done was to do a curretage (raspa) on her.'

Atty. Bernardino:

'Those doctors are incompetent. They are not surgeons. They are just bold.'

Dr. Francisco:

'The operation was unusual.'

Atty. Bernardino:

'The doctors who operated on your wife could be charged for murder thru reckless imprudence. The doctors there are no good. They are not surgeons.'

thereby imputing upon the offended party, Dr. Patrocinio Angeles, the attending physician of the wife of Romulo Cruz and one of the physicians at the Morong Emergency Hospital, professional incompetence, inefficiency, or negligence thus casting public contempt and ridicule upon the reputation of the said Dr. Patrocinio Angeles.

Contrary to law.

Pasig, Rizal, October 8, 1966.

(Sgd.) ZENAIDA S. BALTAZAR

Special Counsel"

On February 1, 1973 the trial court rendered its decision convicting the accused Harry Bernardino and Emiliano Francisco of the crime of grave oral defamation, sentenced each of them to suffer a penalty of four (4) months of arresto mayor as minimum to one (1) year and one (1) day of prision correccional as maximum and each of the accused was directed to pay complainant the amount of ten thousand pesos (P10,000.00).

On appeal to the Court of Appeals the decision of the trial court as already stated was modified finding the accused guilty of simple slander.

As found out by the Court of Appeals, the facts of the case are as follows:

"The evidence of the prosecution is that Mrs. Lourdes Cruz, wife of Romulo Cruz, had been suffering from a vaginal bleeding since November 24, 1965; that she consulted a Dr. Custodio about her ailment and the latter was able to stop the bleeding for two days; that thereafter her bleeding recurred; that Mrs. Cruz then consulted a Dr. Floreza who advised her that if her bleeding continued she should go to a hospital; that her bleeding continued so on December 9, 1965 Lourdes Cruz entered the Morong Emergency Hospital; that she was attended by Dr. Patrocinio Angeles, the complainant; that her ailment was tentatively diagnosed by Dr. Angeles as "R-Mole, abortion and pregnancy"; that an x-ray examination conducted on Mrs. Cruz, however, revealed that she was negative for pregnancy; that Mrs. Cruz continued to lose blood and had to be given a transfusion of fresh blood on December 11, 1965; that as the bleeding did not stop Mrs. Cruz was operated on by the complainant Dr. Patrocinio Angeles; that her uterus which contained three (3) dead foetal triplets was removed; that the operation was successful and her bleeding was arrested; that on December 26, 1965 at about 9:20 o'clock in the evening the two accused Dr. Emiliano Francisco and Atty. Harry Bernardino, together with Dr. Crisologo Golla and Ernesto Ocampo went to the house of Mrs. Lourdes Cruz in Tanay, Rizal; that the two accused interviewed Mrs. Cruz and her husband Romulo Cruz about her operation; that the couple informed the two that they are satisfied with the operation; that in the course of this interview the accused Dr. Emiliano Francisco said that the operation was not correctly done and Mrs. Cruz should not have been operated on and that if he were the one he would not conduct an operation but only curettage (raspahn); that on the same occasion the accused Atty. Harry Bernardino said that the physicians in Morong Emergency Hospital were no good, are incompetent and they are not surgeons and said accused told Romulo Cruz that he could file charges for murder through reckless imprudence; that the accused Dr. Francisco was formerly a member of the Courtesy Medical Staff of the Morong Emergency Hospital and as such he could bring in his private patients who needed the facility of the hospital for proper management; that, however, on December 15, 1965 his membership in the said staff was cancelled by the Credential Committee of said hospital at a meeting called for

that purpose by the complainant Dr. Angeles who was then the Director of the Morong Emergency Hospital; that the accused Harry Bernardino, as counsel of a Dr. Lerma; had earlier moved for the ouster of Dr. Angeles as Director of the Morong Emergency Hospital; that the case was bitterly contested that it even reached the Office of the President; that, furthermore, during the incumbency of the accused Atty. Bernardino as Mayor of Morong, Rizal he caused the passage of a resolution wherein he was given authority to recommend all charity cases for admission to the Morong Emergency Hospital and that this resolution, however, was ignored by the complainant Dr. Angeles in accordance with the policy of the Director of the Bureau of Medical Services.

"The evidence of the defense is that as Chairman of the Ethics Committee of the Eastern District of Rizal Medical Society, the accused Dr. Francisco sought to find out what could be done with the reported wrong operation of Mrs. Lourdes Cruz by complainant Dr. Angeles which resulted in the removal of triplets; that so the accused Dr. Francisco consulted the other accused Atty. Bernardino on the proper steps to take; that upon the advice of accused Atty. Bernardino, the accused Dr. Francisco accompanied by Dr. Crisologo Golla who was a Committee member, and the accused, Atty. Bernardino went on December 26, 1965 to Tanay, Rizal the hometown of Mrs. Lourdes Cruz; that they interviewed the spouses Romulo Cruz and Lourdes Cruz regarding the operation performed on Mrs. Cruz on December 13, 1965; that in that interview the two accused sought the facts regarding the case pursuant to the Ethics Committee decision to conduct the fact finding investigation; and that after the interview with the Cruz spouses Dr. Golla and the accused Dr. Francisco went to Dr. Floreza, in-coming president of the Rizal Medical Society on December 27, 1965, to take up the matter with him but they were advised to take it up with the Eastern District of Rizal Medical Society, which they did."

On the basis of the foregoing, the Court of Appeals concluded that while it is true that the statements were made on the occasion of the so-called fact finding interview pursuant to the Ethics Committee decision, the accused went out of bounds by imputing to the complainant acts which are not only derogatory but constitute a crime that can be prosecuted de oficio. It went on to rule however that the defamation committed by the accused cannot be considered as grave under the circumstances, and the worst that was said of the complainant was that he should not have performed the operation, and that he could be prosecuted for murder through reckless imprudence.

Not satisfied with the decision of the Court of Appeals, the present case was instituted. While the case was pending, Atty. Harry Bernardino one of the petitioners herein died, hence in the resolution of April 10, 1979 the case was dismissed insofar as he is concerned.

Petitioners' brief, prepared by their counsel with notable zeal raises several questions. In synthesis, they are:

- Whether or not the crime of simple slander found by the Court of Appeals to be the offense committed by the petitioners has prescribed;
- Whether or not the alleged defamatory remarks of petitioners may be considered libelous;
- Whether or not there was conspiracy;
- Whether or not the failure to allege in the information that petitioners acted with "malice" is fatal; and
- Whether or not the Court erred in giving credence to the testimony of the witnesses for the prosecution.

As the case against the late Harry Bernardino has already been dismissed, We shall discuss only those matters as may be pertinent to petitioner Francisco.

Francisco argues that since the Court of Appeals had found that the offense committed was the lesser offense of simple slander, which prescribed in two months under Article 90 of the Revised Penal Code, the said court should have dismissed the case, and sustained the acquittal of the accused on the ground that said crime had already prescribed. He pointed out the alleged defamatory remarks were committed on December 26, 1965, and the information charging the accused of the greater offense of grave oral defamation was filed with the court more

than four (4) months later on May 3, 1966.

Disputing the foregoing, the Solicitor General contends that for the purpose of determining the proper prescriptive period, what should be considered is the nature of the offense charged in the information which is grave oral defamation, not the crime committed by the accused, as said crime was found by the Court to constitute only simple slander. Hence, the period of prescription here should be six (6) months.

Moreover, according to the Solicitor General, the complaint was filed by the offended party before the Fiscal's office on February 3, 1966 or only thirty-nine (39) days after the incident in question which is still within the prescriptive period. He cited the case of *People v. Olarte*[1] which overruled the case of *People v. del Rosario*[2] and held that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation should, and does, interrupt the period of prescription of criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. It makes no difference whether the case as filed in the Fiscal's Office and not in the Municipal Court as in the *Olarte* case, since Article 91 of the Revised Penal Code does not require that the complaint be one filed in court in order to toll the running of the period.

Where an accused has been found to have committed a lesser offense includible within the offense charged, he cannot be convicted of the lesser offense, if it has already prescribed. To hold otherwise would be to sanction the circumvention of the law on prescription by the simple expedient of accusing the defendant of the graver offense. The principle has the support of overwhelming authorities in American jurisprudence:

"The general rule, as stated in 22 CJS, Criminal Law, Sec. 225b, is 'as a general rule, one indicted for an offense not barred by limitation, but convicted of a lesser included offense which is so barred, is entitled to discharge'; and in 15 Am. Jur., Criminal Law, Sec. 343: 'It frequently happens that a change of felony includes an offense of a lower grade with a different period of limitation, so that, while the felony is not barred, the statute has run as to the lesser offense. In this situation, the rule is that if the statute has not run against the felony, while the lesser offense is barred, the bar cannot be evaded by indicting the defendant for the felony and convicting him of the lesser offense.'"[3]

Article 91 of the Revised Penal Code provides that "the period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, on their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him."

Interpreting the foregoing provision, this Court in *People vs. Tayco*[4] held that the complaint or information referred to in Article 91 is that which is filed in the proper court and not the denuncia or accusation lodged by the offended party in the Fiscal's Office. This is so, according to the court, because under this rule it is so provided that the period shall commence to run again when the proceedings initiated by the filing of the complaint or information terminate without the accused being convicted or acquitted, adding that the proceedings in the Office of the Fiscal cannot end there in the acquittal or conviction of the accused.

The basis of the doctrine in the *Tayco* case, however, was disregarded by this Court in the *Olarte* case, cited by the Solicitor General. It should be recalled that before the *Olarte* case, there were diversity of precedents on the issue of prescription. One view declares that the filing of the complaint with the justice of peace (or municipal judge) does interrupt course of prescriptive term. This view is found in *People v. Olarte* L-13027, June 30, 1960 and cases cited therein; *People v. Uba*, L-13106, October 16, 1959; *People v. Aquino*, 68 Phil. 588, 590. The other pronouncement is that to produce interruption, the complaint or information must have been filed in the proper

court that has jurisdiction to try the case on its merits, found in the cases of *People v. del Rosario*, L-15140, December 29, 1960; *People v. Coquia*, L-15456, June 29, 1963.

The *Olarte* case set at rest the conflicting views, and enunciated the doctrine aforecited by the Solicitor General. The reasons for the doctrine which We find applicable to the case at bar reads:

"In view of this diversity of precedents, and in order to provide guidance for Bench and Bar, this Court has reexamined the question and, after mature consideration, has arrived at the conclusion that the true doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed can not try the case on its merits. Several reasons buttress this conclusion: first, the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.

"And it is no argument that Article 91 also expresses that the interrupted prescription "shall commence to run again when such proceedings terminate without the accused being convicted or acquitted", thereby indicating that the court in which the complaint or information is filed must have power to acquit or convict the accused. Precisely, the trial on the merits usually terminates in conviction or acquittal, not otherwise. But it is in the court conducting a preliminary investigation where the proceedings may terminate without conviction or acquittal, if the court should discharge the accused because no *prima facie* case has been shown."

As is a well-known fact, like the proceedings in the court conducting a preliminary investigation, a proceeding in the Fiscal's Office may terminate without conviction or acquittal.

As Justice Claudio Teehankee has observed:

"To the writer's mind, these reasons logically call with equal force, for the express overruling also of the doctrine in *People vs. Tayco*, 73 Phil. 509, (1941) that the filing of a complaint or denuncia by the offended party with the City Fiscal's Office which is required by law to conduct the preliminary investigation does not interrupt the period of prescription. In chartered cities, criminal prosecution is generally initiated by the filing of the complaint or denuncia with the city fiscal for preliminary investigation. In the case of provincial fiscals, besides being empowered like municipal judges to conduct preliminary investigations, they may even reverse actions of municipal judges with respect to charges triable by Courts of First Instance . . ."[5]

Clearly, therefore, the filing of the denuncia or complaint for intriguing against honor by the offended party, later changed by the Fiscal to grave oral defamation, even if it were in the Fiscal's Office; 39 days after the alleged defamatory remarks were committed (or discovered) by the accused interrupts the period of prescription.

Nevertheless, petitioner Francisco cannot be held liable, for his statements—

'Your wife should not have been operated. If I were the doctor, all that I should have done was to do a curretage (raspa) on her.'

...

'The operation was unusual.'

are clearly not libelous per se. Complainant Angeles had admitted that he committed a mistake in the management

of the case of Mrs. Cruz. The remarks made by Francisco were but a harmless expression of his opinion on what should have been done in treating her, if he were the doctor managing her. His statements were nothing more than a comment that complainant committed a mistake in the diagnosis and management of the patient. An impartial observer would readily note that such remarks do not degrade the competency of a doctor, for the latter, because of human limitations, cannot be expected to be accurate at all times in the diagnosis of patients. As noted in the case of *Blende v. Hearst Publications*, 93 P 2d, 733, a "physician is only required to possess the ordinary knowledge and skill of his profession, and is not liable for mistakes if he uses the methods recognized and approved by those reasonably skilled in the profession. Clearly, a criticism in a physician's wrong management of the case, such as that of Francisco cannot be considered libelous. In the same American case, it was held:

"It is clear that to charge a physician merely with the mismanagement of the making of a wrong diagnosis in a particular case is not of itself actionable. Such a charge implies nothing more, at most, than ignorance or unskillfulness in that case, and does not materially affect his reputation as respects his general competency to practice his profession.

"To charge a professional man with negligence or unskillfulness in the management or treatment of an individual case is not more than to impute to him the mistakes and errors incident to fallible human nature. The most eminent and skillful physician or surgeon may make mistake on the symptoms of a particular case without detracting from his general professional skill or learning. To say of him, therefore, that he was mistaken in that case would not be calculated to impair the confidence of the community in his general professional competency."

We cannot see our way clear on how Francisco's questioned statements could be branded as libelous. To stigmatize them as libelous would be a dangerous precedent whereby a mere criticism on the actuation of another will generate criminal liability for slander. His alleged defamatory remarks may be likened to a criticism of a lawyer's or Judge's erroneous handling of the case.

It may be mentioned here that in the brief of the Solicitor General, the statements quoted and stigmatized as defamatory are those only of accused Bernardino.[6] The latter's statements are what the Solicitor General considered as "strong words that are evidently serious and damaging." Nothing has been said by the Solicitor General regarding the statements uttered by Francisco. Nonetheless, the Solicitor General would like to hold Francisco liable by the utterances of Bernardino on the ground of conspiracy. Assuming that Bernardino's statement is libelous, Francisco cannot be held liable for the same. Neither the lower court nor the Court of Appeals found that they conspired with each other to commit the alleged crime. This is so because no evidence was offered to show that there was prior consultation on what each would say. The fact alone that they were together when those words were uttered is not proof that there was conspiracy to utter those words. Clearly, each accused spoke spontaneously and individually.

Conspiracy being of a very far-reaching effect, the degree of proof required for establishing it must be the same as that required to support a finding of guilt for the crime itself[7] which must be upon proof beyond reasonable doubt.[8]

The finding of the Court of Appeals that the "statements were made on the occasion of the so-called fact-finding interview pursuant to the Ethics Committee decision" is obviously incompatible with the notion that petitioners had gone to the residence of the Cruz pursuant to a conspiracy to defame or slander Dr. Angeles. The legitimate purpose of going to Tanay, Rizal, having been accepted as a fact by the Court of Appeals, it is incongruous to allege, as respondents now do, that Atty. Bernardino and Dr. Francisco had conspired to slander Dr. Angeles.

From what has been said, there is no further need to discuss the other issues raised in this case.

WHEREFORE, in view of the foregoing, accused Emiliano Francisco is hereby acquitted, with cost de oficio.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.
Aquino, J., in the result.

[1] 19 SCRA 494.

[2] 110 Phil. 476.

[3] State vs. King, 84 SE 2d 313; 47 ALR 2d 878.

[4] 73 Phil. 509.

[5] Footnote in the case of David vs. Santos, 31 SCRA 796.

[6] p. 11, Brief of the Solicitor General.

[7] People vs. Portuguesa, 20 SCRA 901.

[8] People vs. Tividad, 20 SCRA 549.

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