

ESTEBAN C. MANUEL, PETITIONER, VS. THE HON. ERNANI CRUZ PAÑO, AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BR. XVIII, Q.C., ANTONIO A. BARANDA, EDSSEL LABAYEN AND ROLANDO GA...

G.R. No. L-46079. April 17, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

One wonders why the respondent judge did not immediately grant the petitioner's motion to quash the information on the obvious and valid ground that the facts charged did not constitute an offense. This decisive act could have avoided the needless molestation of one more citizen and cleared the clogged dockets of this Court of still another of the persecutions big and small so rampant during those days of martial law. More importantly, it would have affirmed once again the freedom of expression guaranteed in the Bill of Rights to which every one was entitled even under the 1973 Constitution.

This case goes back to April 21, 1976, when a raid was conducted by the agents of the now defunct Anti-Smuggling Action Center on two rooms in the Tokyo Hotel in Binondo, Manila, pursuant to a warrant of seizure and detention issued by the Acting Collector of Customs of Manila on April 20, 1976.[1] The raid resulted in the seizure of several articles allegedly smuggled into the country by their owners, three of whom were tourists from Hongkong. These articles subsequently became the subject of seizure proceedings in the Bureau of Customs but most of them were ordered released upon proof that the customs duties and other charges thereon had been duly paid as evidenced by the corresponding official receipts. Only a few items "of no commercial value" were ordered confiscated.[2]

While the seizure proceedings were pending, the petitioner, as counsel for the owners of the seized articles, sent a letter dated April 19, 1976, to the Chairman of the ASAC in which he complained about the conduct of the raid and demanded that the persons responsible therefor be investigated. The letter follows in full:[3]

ESTEBAN C. MANUEL

Attorney at Law

643 Carvajal Street

Binondo, Manila

AApril 29, 1976

The Chairman

ASAC, Camp Aguinaldo

Quezon City

Sir:

This is in behalf of my clients, Mrs. Ng Woo Hay and her son, Mr. Lee Kee Ming, who sought my help in reporting to your goodself their complaint about certain acts committed by ASAC men which, from all appearances, constitute criminal offenses. I am referring to the raid they conducted on April 21, 1976 at about 4:30 in the afternoon at Tokyo Hotel, Ongpin Street, Binondo, Manila, pursuant to a "Warrant of Seizure and Detention" (seizure Identification No. 14922) issued by the Acting Collector of Customs on April 20, 1976. The raiding team, about 10 in number and headed by one Amado Tirol, took advantage of the fact that Mrs. Ng Woo Hay was alone in her hotel room. The ASAC agents, despite Mrs. Ng's protest and claim of innocence, forced their way into the room and ransacked the place for alleged untaxed goods. Not only did they take everything they could find in the room, but also forcibly took from her person the wrist watch and jade bracelet (gold plated) she was wearing at the time. They also forced open her handbag and divested her of her wallet containing 70 Hongkong dollars, as well as her necklace and her son's wrist watch which she had placed in said handbag. Mrs. Ng was also subjected to the indignities of being searched by a male person. After emptying the room of its contents, the raiding team presented to her a carbon copy of a list purporting to show the goods seized. The list, however, appears not only illegible but does not reflect all the goods that were taken away by the ASAC agents. What is more, said men, likewise taking advantage of the absence of Mrs. Ng's son, owner of some of the articles, falsified the signature of the latter by writing his name on the space designated as "owner", making it appear that he (Lee Kee Ming) had acknowledged that the list covers all the items seized.

The documents and other papers presented to me by my clients reveal that the articles seized were declared at the Manila International Airport upon arrival, and were properly appraised. The corresponding customs charges were likewise paid. It is evident, therefore, that my clients were victims of foul play masterminded by no less than law enforcers who prey on tourists, particularly Chinese, for obvious reasons.

I examined the records in the Bureau of Customs and found out that it was on the basis of an affidavit executed by ASAC Agent Rolando Gatmaitan and the letter-request sent by the Vice-Chairman of ASAC Brig. Gen. Ramon Z. Aguirre, to the Collector of Customs that prompted the latter to issue the warrant in question. In this connection, I must state, with all frankness, that there was undue haste in the request for the issuance of the warrant, because it is discernible from a mere reading of the affidavit that its contents are mere pro-forma and hearsay statements of the abovenamed ASAC agent. It could not have, as it now appears, justified the drastic action sought to be accomplished.

Needless to state, the incident complained of not only has caused considerable damage to my clients but to our country as well. It is for this reason that we demand for an immediate and full dress investigation of the ASAC officers and men who took part in or caused the issuance of the warrant, as well as those who participated in the raid, with the view of purging the government of undesirables; and that pending such investigation, the said officers and men be suspended from further performing their duties.

Very truly yours,

(SGD.) ESTEBAN C. MANUEL

The Chairman of the ASAC ordered the investigation as demanded, but the agents charged were all exonerated in a decision dated August 25, 1976.[4] Not satisfied with what he later described as a "home town decision," the petitioner, on behalf of his clients, filed a complaint for robbery against the same agents with the Office of the City Fiscal of Manila. This was later withdrawn, however, on advice of the inquest fiscal who said that the case might come under the jurisdiction of the military tribunal.[5] The petitioner says he then went to Camp Aguinaldo but was discouraged from filing the complaint there when he was told that it would take about a year to complete the preliminary investigation alone.[6] The owners of the seized articles then instituted a civil complaint for damages which the petitioner filed for them in the Court of First Instance of Manila on June 7, 1976.[7]

Three days later, there appeared in the June 10, 1976 issue of the Bulletin Today the following report:[8]

TOURISTS SUE AGENTS, OFFICIAL

Four Chinese, three of whom were tourists from Hongkong, have filed a case for damages against a customs official and 11 agents of the government's anti-smuggling action center (ASAC) in connection with a raid conducted in their hotel rooms, more than a month ago.

The case was docketed in Manila's court of first instance (CFI) as Civil Case No. 102694.

The complaints also alleged they lost assorted materials amounting to P46,003.40

Named respondents in the case were acting customs collector Ramon Z. Aguirre, Rolando Gatmaitan, Antonio Baranda, Amado M. Tirol, Francisco C. Santos, Edsel Labayen, Jose Robles, Nestor Eusebio, Freddie Ocnila, Renato Quiroz, Pedro Cunanan, Jr., and Enrique Perez, all of ASAC.

The acting customs collector was impleaded in the case in his official capacity for having issued the warrant that led to the criminal offenses complained of.

Aguirre, ASAC vice-chairman, was named as defendant for soliciting the issuance of a warrant of seizure and detention reportedly on the basis of charges contained in an affidavit executed by Gatmaitan, another ASAC agent.

Esteban Manuel filed the case in behalf of the plaintiffs composed of Manila resident Ng Tee, and Hong Kong visitors Ng Woo Hay, Cheng Pik Ying, and Lee Kee Ming who came to the Philippines to visit their relatives and friends.

The agents allegedly subjected Ng Woo Hay to indignities and took her necklace, bracelet and wrist watch. They allegedly seized many articles valued at P27,000 which have remained unaccounted for in the list submitted by the defendants as the inventory of the items confiscated.

On the basis of these antecedent facts, an information for libel was filed against the petitioner, Lee Kee Ming and Ng Woo Hay in the Court of First Instance of Rizal.[9] A reading of the information does not show why the two Chinese were included in the charge; all it said was that they were the clients of the petitioner. As for the petitioner himself, it was alleged that he had committed the crime of libel by writing the letter of April 29, 1976 (which was quoted in full) and by causing the publication of the news item in the Bulletin Today.

The subject of this petition is the order of the respondent judge dated March 23, 1977,[10] denying the motion to quash filed by the petitioner, who had claimed that his letter to the ASAC Chairman was not actionable because it was a privileged communication; that the news report in the Bulletin Today was not based on the letter-complaint; and that in any case it was a fair and true report of a judicial proceeding and therefore also privileged.[11] His motion for reconsideration having been also denied in the order dated April 27, 1977,[12] he now seeks relief from this Court against what he claims as the grave abuse of discretion committed by the respondent judge in sustaining the information.

It is perhaps indicative of the weakness of the respondents' position that when asked to comment on the petitioner's motion to quash, the city fiscal never did so during a period of more than ninety days.[13] It was left to a private prosecutor to enter his own appearance thereafter, presumably because the fiscal did not seem to be very enthusiastic about the case, and to file the comment for the private respondents himself.[14] Later, when the petitioner came to this Court and we required a comment from the Solicitor General, this official complied only after asking for (and getting) twenty-six extensions for a total of nine months and seven days, and at that the comment was only a half-hearted defense of the challenged orders.[15] Despite the petitioner's effective rebuttal in his reply, the Solicitor General did not ask for leave to file a rejoinder as if he had lost all taste for combat

notwithstanding the many points raised by the petitioner that had to be refuted.

Perhaps it was just as well. Like a good general, the Solicitor General probably understood that the battle was lost.

Indeed it was. In fact, it should never have commenced.

From the purely procedural perspective, there is much to fault about the information. The two Chinese clients who were impleaded with the petitioner were charged with absolutely nothing, prompting the respondent judge to peremptorily dismiss the information as to them.[16] Worse, the information imputed to the remaining accused two different offenses, to wit, writing the allegedly libelous letter and causing the publication of the allegedly libelous news report. This was not allowed under Rule 110, Section 12, of the Rules of Court, providing that "a complaint or information must charge but one offense, except only in those cases in which existing laws prescribe a single punishment for various offenses." [17] If libelous, the letter and the news report constituted separate offenses that should have been charged in separate informations. (However, not having been raised in the motion to quash, that ground was deemed waived under Rule 15, Section 8, of the Rules of Court.) [18]

From the viewpoint of substantive law, the charge is even more defective, if not ridiculous. Any one with an elementary knowledge of constitutional law and criminal law would have known that neither the letter nor the news account was libelous.

The applicable provision in the Revised Penal Code reads as follows:

Article 354. Requirement for publicity. - Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
2. 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.

The letter comes under Item 1 as it was addressed by the petitioner to the ASAC Chairman to complain against the conduct of his men when they raided the Chinese tourists' rooms in the Tokyo Hotel. It was sent by the petitioner mainly in his capacity as a lawyer in the discharge of his legal duty to protect his clients. While his principal purpose was to vindicate his clients' interests against the abuses committed by the ASAC agents, he could also invoke his civic duty as a private individual to expose anomalies in the public service. The complaint was addressed to the official who had authority over them and could impose the proper disciplinary sanctions. Significantly, as an index of good faith, the letter was sent privately, directly to the addressee, without any fanfare or publicity.

As for the news report, it is difficult to believe that the petitioner, an ordinary citizen without any known ties to the newspapers, could have by himself caused the publication of such an explosive item. There is no prima facie showing that, by some kind of influence he had over the periodical, he succeeded in having it published to defame the ASAC agents. It does not appear either that the report was paid for like an advertisement. This looks instead to be the result of the resourcefulness of the newspaper in discovering matters of public interest for dutiful disclosure to its readers. It should be presumed that the report was included in the issue as part of the newspaper's coverage of important current events as selected by its editorial staff.

At any rate, the news item comes under Item 2 of the above-quoted article as it is a true and fair report of a judicial proceeding, made in good faith and without comments or remarks. This is also privileged. Moreover, it is

not correct to say, as the Solicitor General does, that Article 354 is not applicable because the complaint reported as filed would not by itself alone constitute a judicial proceeding even before the issues are joined and trial is begun. The doctrine he invokes is no longer controlling. The case of *Choa Tek Hee v. Philippine Publishing Co.*,^[19] which he cites, has been superseded by *Cuenco v. Cuenco*,^[20] where the Court categorically held:

We are firmly convinced that the correct rule on the matter should be that a fair and true report of a complaint filed in court without remarks nor comments even before an answer is filed or a decision promulgated should be covered by the privilege. (Emphasis provided)

It may also be argued that the complaint, standing by itself, is a public record and may be published as such under Rule 135, Section 2 of the Rules of Court unless the court directs otherwise in the interest of morality or decency.

It is true that the matters mentioned in Article 354 as exceptions to the general rule are not absolutely privileged and are still actionable. However, since what is presumed is not malice but in fact lack of malice, it is for the prosecution to overcome that presumption by proof that the accused was actually motivated by malice. Absent such proof, the charge must fail.

We are not unmindful of the contention that the information should not be dismissed outright because the prosecution must first be given a chance to introduce evidence to overcome the presumption. This is indeed the normal procedure. However, where it appears from the allegations in the information itself that the accused acted in good faith and for justifiable ends in making the allegedly libelous imputations, and in pertinent pleadings, there is no need to prolong the proceedings to the prejudice of the defendant. The Court can and should dismiss the charge without further ado, as we held in *People v. Andres*:^[21]

The prosecution claims 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 (*Lu Chu Sing, et al. vs. Lu Tiong Gui*, 76 Phil. 669).

When in the information itself it appears 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 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.

As has already been said by this Court: "As to the degree of relevancy or pertinency necessary to make alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety." Having this in mind, it can not be said that the trial court committed a reversible error in this case of finding that the allegations in the information itself present a case of an absolutely privileged communication justifying the dismissal of the case.

The two exceptions provided for under Article 354 are based on the wider guarantee of freedom of expression as an institution of all republican societies. This in turn is predicated on the proposition that the ordinary citizen has a right and a duty to involve himself in matters that affect the public welfare and, for this purpose, to inform himself of such matters.

The vitality of republicanism derives from an alert citizenry that is always ready to participate in the discussion and resolution of public issues. These issues include the conduct of government functionaries who are accountable

to the people in the performance of their assigned powers, which after all come from the people themselves. Every citizen has a right to expect from all public servants utmost fidelity to the trust reposed in them and the maximum of efficiency and integrity in the discharge of their functions. Every citizen has a right to complain and criticize if this hope is betrayed.

It is no less important to observe that this vigilance is not only a right but a responsibility of the highest order that should not be shirked for fear of official reprisal or because of mere civic lethargy. Whenever the citizen discovers official anomaly, it is his duty to expose and denounce it, that the culprits may be punished and the public service cleansed even as the rights violated are vindicated or redressed. It can never be overstressed that indifference to ineptness will breed more ineptness and that toleration of corruption will breed more corruption. The sins of the public service are imputable not only to those who actually commit them but also to those who by their silence or inaction permit and encourage their commission.

The responsibility to review the conduct of the government functionaries is especially addressed to the lawyer because his training enables him, better than most citizens, to determine if the law has been violated or irregularities have been committed, and to take the needed steps to remedy the wrong and punish the guilty.

The respondents contend that the letter was written by the petitioner to influence the seizure proceedings which were then pending. Even assuming that to be true, such purpose did not necessarily make the letter malicious, especially if it is considered that the complaint against the ASAC agents could not be raised in the said proceedings. The ASAC Chairman, not the Collector of Customs, had jurisdiction to discipline the agents.

It should also be noted, as further evidence of lack of malice, that even after the seizure proceedings had been concluded in favor of the petitioner's clients, he pursued their complaint against the ASAC agents in the fiscal's office in Manila and then with the military authorities in Camp Aguinaldo, ending with the filing of the civil case for damages in the court of first instance of Manila.

It would be a sad day indeed if for denouncing venality in government, the citizen could be called to task and be himself punished on the ground of malicious defamation. If every accuser were himself to be accused for discharging his duty as he sees it, then will the wrong-doer have been granted in effect, and by this Court no less, an undeserved immunity for his misdeeds or omissions. The private individual would be barred from complaining about public misconduct. Every criticism he makes would be tainted with malice and pronounced as criminal. The next step may well be a conspiracy among those in the government to cover up each other's faults and to insulate themselves from the legitimate efforts of the people to question their conduct.

The second exception is justified under the right of every citizen to be informed on matters of public interest, which, significantly, was first recognized in the 1973 Constitution. Even if it were not, the right would still be embraced in the broader safeguard of freedom of expression, for the simple reason that the right to speak intelligently on "matters that touch the existing order" necessarily imports the availability of adequate official information on such matters. Surely, the exercise of such right cannot inspire belief if based only on conjectures and rumors and half-truths because direct access to the facts is not allowed to the ordinary citizen.

This right is now effectively enjoyed with the help of the mass media, which have fortunately resumed their role as an independent conduit of information between the government and the people. It is the recognized duty of the media to report to the public what is going on in the government, including the proceedings in any of its departments or agencies, save only in exceptional cases involving decency or confidentiality when disclosure may be prohibited. To protect them in the discharge of this mission, the law says that as long as the account is a fair and true report of such proceedings, and made without any remarks or comment, it is considered privileged and malice is not presumed. Its publication is encouraged rather than suppressed or punished.

This is one reason why the Court looks with disapproval on censorship in general as an unconstitutional abridgment of freedom of expression. Censorship presumes malice at the outset. It prevents inquiry into public affairs and curtails their disclosure and discussion, leaving the people in the dark as to what is happening in the public service. By locking the public portals to the citizen, who can only guess at the goings-on in the forbidden precincts, censorship separates the people from their government. This certainly should not be permitted. "A free press stands as one of the great interpreters between the government and the people," declared Justice Sutherland of the U.S. Supreme Court. "To allow it to be fettered is to fetter ourselves."

It is curious that the ones most obviously responsible for the publication of the allegedly offensive news report, namely, the editorial staff and the periodical itself, were not at all impleaded. The charge was leveled against the petitioner and, "curiouser" still, his clients who had nothing to do with the editorial policies of the newspaper. There is here a manifest effort to persecute and intimidate the petitioner for his temerity in accusing the ASAC agents who apparently enjoyed special privileges - and perhaps also immunities - during those oppressive times. The non-inclusion of the periodicals was a transparent hypocrisy, an ostensibly pious if not at all convincing pretense of respect for freedom of expression that was in fact one of the most desecrated liberties during the past despotism.

We are convinced that the information against the petitioner should never have been filed at all and that the respondent judge committed grave abuse of discretion in denying the motion to quash the information on the ground that the allegations therein did not constitute an offense. The petitioner is entitled to the relief he seeks from those who in the guise of law and through the instrumentality of the trial court would impose upon him this arrant tyranny.

ACCORDINGLY, the petition is GRANTED. The orders of the respondent judge dated March 23, 1977, and April 27, 1977, are SET ASIDE and Criminal Case No. Q-7045, in his court, is DISMISSED. Costs against the respondents.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Rollo, p. 128.

[2] Ibid, p. 130.

[3] Id., pp. 14-16.

[4] Id., pp. 133-136.

[5] Id., p. 245.

[6] Id., pp. 245-246.

[7] Id., p. 246.

[8] Id., pp. 117-118.

[9] Id., pp. 14-17.

[10] Id., p. 28.

[11] Id., pp. 18-23.

[12] Id., p. 32.

[13] Id., pp. 23, 27.

[14] Id., pp. 26-27.

[15] Id., pp. 112, 113-126.

[16] Id., p. 28.

[17] Now Rule 110, Section 13.

[18] See also Rule 117, Section 8, Rules of Court.

[19] 34 Phil. 447.

[20] 70 SCRA 23.

[21] 58 O.G. 3545.

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