

IN THE MATTER OF THE PETITION TO CITE RESPONDENT ATTY. LORNA PATAJO-KAPUNAN FOR INDIRECT CONTEMPT OF COURT

A.C. No. 9923. October 09, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

Petitioner Atty. Raymund Palad initiated the present petition[1] to cite Atty. Lorna Patajo-Kapunan for indirect contempt in view of the latter's statement on air pertaining to the former's suspension from the practice of law, thus, violating the confidentiality rule under Section 18, Rule 139-B of the Rules of Court.

The Petition

In his petition, Atty. Palad essentially alleged:

On December 14, 2012, the Integrated Bar of the Philippines (IBP) Board of Governors issued a Resolution in CBD Case No. 09-2498 entitled "Hayden Kho, Jr., complainant v. Raymund P. Palad, respondent," recommending his suspension from the practice of law. He moved for reconsideration. As Hayden Kho's counsel, Atty. Patajo-Kapunan manifested that she would no longer comment on the motion for reconsideration.[2]

On April 23, 2013, around 6:30 o'clock in the morning, he received a text message from a friend, informing him that "Pilipino Star Ngayon" carried a news article on his supposed one-year suspension from the practice of law. He immediately wrote then Chief Justice Ma. Lourdes P.A. Sereno requesting an investigation of the persons who prematurely released the information.[3]

On May 8, 2013, about 8 o'clock in the morning, he received more calls from his friends, informing him that Atty. Patajo-Kapunan was on a phone patch live interview on DZMM Teleradyo with Noli de Castro. There, she volunteered information that he had indeed been suspended from the practice of law for one (1) year. He was able to secure and transcribe an audio recording of the interview.[4]

Atty. Patajo-Kapunan violated Rule 139-B of the Rules of Court ordaining that disciplinary proceedings against lawyers are confidential. Further, at the time of her interview, there was yet no Supreme Court decision confirming his suspension from the practice of law. By reason of Atty. Patajo--Kapunan's premature and inaccurate disclosure, she should be penalized with indirect contempt of court.[5]

Atty. Patajo-Kapunan's Comment

Atty. Patajo-Kapunan basically ripostes:

During the radio interview, she did not maliciously reveal that Atty. Palad had been suspended from the practice of law. In fact, she never mentioned his name because she did not want the listeners to identify him. She never had any resentment or spite against him. She even tried to dissuade her client Hayden Kho, Jr. from filing the

disbarment case against Atty. Palad. She also instructed the lawyers of her firm to assume a passive role in the disbarment case against him.[6]

She did not make the statement in question out of the blue. She alluded to the suspension of "the lawyer of Katrina Halili" after she was asked by Noli de Castro to discuss the different applications of Republic Act No. 9995 (RA 9995)[7] and Republic Act No. 10175 (10175).[8] RA 10175 was the result of the investigation conducted by Philippine Senate into the Katrina Halili-Hayden Kho, Jr. incident.[9]

She did not know that petitioner's suspension was still under consideration by the Court. The information she gathered was based on what was circulated in the social circles. She made an inaccurate statement at that time. She also relied on the news article which appeared on "Pilipino Star Ngayon" dated April 23, 2013. At the time of the interview, she assumed it was already a fair and faithful report of a judicial proceeding.[10]

Atty. Palad had filed a complaint for grave slander against her on May 10, 2013 with the Office of the City Prosecutor, Quezon City. Per Resolution dated August 6, 2013, the same was dismissed.[11]

Atty. Palad's Reply

Atty. Palad replied, in the main:

As senior partner of her firm Kapunan Garcia and Castillo Law Office, Atty. Patajo-Kapunan cannot simply pass on the blame to any of her partners or associates to justify her malicious imputation against him during her radio interview last May 8, 2013. As lead counsel for Hayden Kho, Jr., it was impossible for her not to be aware of the developments in the administrative case against him then pending before the IBP Board of Governors. Even showbiz news reporter Ricardo F. Lo of the Philippine Star published an article on April 23, 2013 that he had filed a motion for reconsideration before the IBP Board of Governors regarding his recommended suspension.[12]

He was the only lawyer who represented Katrina Halili and Atty. Patajo-Kapunan knew it. She was maliciously referring to him when she announced on air that Katrina Halili's lawyer had been suspended from the practice of law.[13]

During the interview, Atty. Patajo-Kapunan was discussing the travails of her other client Marjorie Barreto, whose alleged nude photos had been circulating online. She discussed the application of RA 9995 and how this law could be applicable to anyone responsible who violated the privacy of an individual. She said "it (RA No. 9995) covers everyone yung violation of the rights of the privacy eh, the lawyer of Katrina has been suspended by the Supreme Court." In uttering those words, her clear intention was to publicly humiliate, ridicule, and malign him. There was no connection between Marjorie Barreto's problems and the administrative case against him.[14]

Atty. Patajo-Kapunan's Rejoinder

In her rejoinder, Atty. Patajo-Kapunan reiterated that she was truly unaware of the developments regarding Atty. Palad's administrative case. She had delegated to her lawyers the handling of the administrative case against Atty. Palad. She also did not get updates about the administrative case because she made it clear to her partners and associates that she did not have any desire for the disbarment proceedings against petitioner to push through. She did not act with malice when she made that particular utterance.[15]

Thereafter, the parties submitted their respective memoranda.[16]

Issue

Should Atty. Patajo-Kapunan be held liable for indirect contempt of court for violating Rule 139-B of the Rules of Court?

Ruling

The power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders. This contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication. It should not be availed of unless necessary in the interest of justice.[17]

There are two (2) types of contempt of court: (i) direct contempt and (ii) indirect contempt. Direct contempt consists of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before it. It includes: (i) disrespect to the court, (ii) offensive behavior against others, (iii) refusal, despite being lawfully required, to be sworn in or to answer as a witness, or to subscribe an affidavit or deposition. It can be punished summarily without a hearing.[18]

Indirect contempt is committed through any of the acts enumerated under Section 3, Rule 71 of the Rules of Court, thus:

Section 3. Indirect contempt to be punished after charge and hearing. — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt;

(a)

Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b)

Disobedience of or resistance to a lawful writ, process, order, or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c)

Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d)

Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e)

Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served;

(g)

The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings. (3a)

Here, Atty. Palad argues that Atty. Patajo-Kapunan should be cited for indirect contempt for violating Section 18, Rule 139-B of the Rules of Court, viz:

Section 18. Confidentiality. Proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases.

Law is a profession and not a trade. Lawyers are held to high standards as officers of the court, and subject to heightened regulation to ensure that the legal profession maintains its integrity and esteem. As part of the legal profession, lawyers are generally prohibited from advertising their talents, and are expected to rely on their good reputation to maintain their practice. The confidentiality rule is intended, in part, to prevent the use of disbarment proceedings as a tool to damage a lawyer's reputation in the public sphere. Thus, the general rule is that publicly disclosing disbarment proceedings may be punished with contempt.[19]

Section 18, Rule 139-B of the Rules of Court is not a restriction on the freedom of the press. If there is a legitimate public interest, media is not prohibited from making a fair, true, and accurate news report of a disbarment complaint. In the absence of a legitimate public interest in a disbarment complaint, members of the media must preserve the confidentiality of disbarment proceedings during its pendency. Disciplinary proceedings against lawyers must still remain private and confidential until their final determination. Only the final order of this Court shall be published like its decisions in other cases.[20]

Here, Atty. Patajo-Kapunan is charged with allegedly violating this confidentiality rule when she made the following statement on air:

Noli: Ah yun pong nangyari kay Hayden Kho may relasyon bang ganun?

Atty. Lorna: Yung Republic Act 9995 po ay resulta ng public hearing na ginawa noon ng committee nila Revilla at saka ni Jinggoy tungkol sa spread nung sex video nay un noh, but at that time there was no such law so yung in aid legislation ito ang nangyari noong 2009.

Noli: So ito ay babala rin po, aah, sa mga nag-uupload ng sex video na may batas na RA 9995?

Atty. Lorna: RA 9995 po yes, photo and sex video kaya voyeurism yan noh

Noli: Lalo na kung ikaw ang kumuha?

Atty. Lorna: Lalo na o kung ikaw ang kumuha at ikaw ang nag spread noh, aah, in case of Hayden naka pending pa yung criminal case against those who aah, uploaded and downloaded and made viral the video then no aah, yung kaso naman na domestic violence against Dr. Kho eh na dismissed na at ang in fact this is to show you that it (R.A. No. 9995) covers everyone yung violation of the rights of the privacy eh, the lawyer of Katrina has been suspended by the Supreme Court.(emphasis supplied)[21]

In the related case of *Palad v. Solis*,^[22] Atty. Palad also filed a complaint for indirect contempt against Lolit Solis, Salve Asis, Al Pedroche, and Ricardo Lo for publishing stories pertaining to his alleged one-year suspension from the practice of law. We ruled there that Atty. Palad represented a matter of public interest and thus attained the status of a public figure:

In the case at bar, the highly-publicized controversy involving petitioner's client, who is a public figure, roused the public's attention, as the footage was made available to anyone who has access to internet. The case involved the issue on photo or video voyeurism on the internet which is considered a subject of public interest. The public concern was focused on the event, the conduct of the personalities, and the content, effect and significance of the conduct, and not on the mere personalities. Thus, petitioner represents a matter of public interest.

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As a general rule, disciplinary proceedings are confidential in nature until their final resolution and the final decision of this Court. However, in this case, the disciplinary proceeding against petitioner became a matter of public concern considering that it arose from his representation of his client on the issue of video voyeurism on the internet. The interest of the public is not in himself but primarily in his involvement and participation as counsel of Halili in the scandal. Indeed, the disciplinary proceeding against petitioner related to his supposed conduct and statements made before the media in violation of the Code of Professional Responsibility involving the controversy.

Since petitioner has become a public figure for being involved in a public issue, and because the event itself that led to the filing of the disciplinary case against petitioner is a matter of public interest, the media has the right to report the disciplinary case as legitimate news. The legitimate media has a right to publish such fact under the constitutional guarantee of freedom of the press. Respondents merely reported on the alleged penalty of suspension from the practice of law for a year against petitioner, and the supposed grounds relied upon. It appeared that the respondents, as entertainment writers, merely acted on information they received from their source about the petitioner who used to appear before the media in representing his actress client. Also, there was no evidence that the respondents published the articles to influence this Court on its action on the disciplinary case or deliberately destroy petitioner's reputation. Thus, they did not violate the confidentiality rule in disciplinary proceedings against lawyers.

Indeed, being a public figure, Atty. Palad is not completely immune from comment and scrutiny so long as these were made without malice or ill-motive. The defense of absence of actual malice, even when the statement turns out to be false, is available where the offended party is a public official or a public figure. Since the penal code and implicitly, the cybercrime law, mainly seek to target libel committed against private persons, the Court recognizes that these laws imply a stricter standard of "malice" to convict the author of a defamatory statement where the offended party is a public figure. Society's interest and the maintenance of good government demand a full discussion of public affairs.^[23]

Atty. Patajo-Kapunan's statement "it (RA No. 9995) covers everyone yung violation of the rights of the privacy eh, the lawyer of Katrina has been suspended by the Supreme Court" by itself cannot be considered a malicious statement against petitioner. For remarks directed against a public figure are privileged. In order to justify a conviction for libel (in this case, for indirect contempt) involving privileged communication, the prosecution must establish that the libelous statements were made or published with actual malice or malice in fact – the knowledge that the statement is false or with reckless disregard as to whether or not it was true.^[24]

To prove actual malice, it must be shown that the statement was made with the knowledge that it is false or with reckless disregard for the truth.^[25] To be considered to have reckless disregard for the truth, the false statements must have been made with a definite awareness that they are untrue.^[26] That the accused was negligent of the

facts is not enough.[27] The accused must have doubted the veracity of the statements that he or she was making.[28] Thus, errors and inaccuracies may be excused so long as they were made with the belief that what was being stated is true.[29]

As recognized in *Palad v. Solis*,[30] the news of Atty. Palad's alleged one-year suspension was written by recognized entertainment writers. The topic of his suspension had circulated in the news media and had been the subject of public discourse. Atty. Patajo-Kapunan merely reiterated what was already common knowledge among people who are interested in the topic, thus, she cannot be said to have made the utterance with actual malice.

More, the transcript of the interview reveals that Atty. Patajo-Kapunan's statement was spontaneous rather than premeditated. Her answers to the previous questions were not shown to have intended to lead up to the point where she could highlight Atty. Palad's suspension. There is no indication at all that it was calculated to demean, discredit, or embarrass Atty. Palad. Further, the fact that it was a live interview did not give Atty. Patajo-Kapunan enough time for circumspection to consider her answers. Thus, she may not be punished for blurting out a piece of information which was already swirling around the public's consciousness.

Verily, Atty. Palad failed to discharge his burden of proving that Atty. Patajo-Kapunan did utter the statement out of malice and with full knowledge that the statement was false.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Caguioa, Reyes, J., Jr., and Zalameda, JJ., concur.

[1] Rollo, pp. 2-16.

[2] *Id.* at 3.

[3] *Id.* at 4.

[4] *Id.* at 5.

[5] *Id.* at 13.

[6] *Id.* at 43-44.

[7] Anti-Photo and Video Voyeurism Act of 2009.

[8] Cybercrime Prevention Act of 2012.

[9] Rollo, p. 47.

[10] *Id.* at 47-48.

[11] *Id.* at 48.

[12] *Id.* at 81.

[13] *Id.* at 82.

[14] *Id.* at 86-87.

[15] *Id.* at 100-105.

[16] Id. at 117-133 and 139-154.

[17] In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong in the Latter's Capacity as Secretary of the Department of Public Works and Highways, Jimmie F. Tel-Equen, Petitioner, 529 Phil. 619, 625 (2006).

[18] Oca v. Custodio, 814 Phil. 641, 666 (2017).

[19] See Roque v. AFP, 805 Phil. 921, 939 (2017).

[20] Fortun v. Quinsayas, 703 Phil. 578, 595 (2013).

[21] Rollo, pp. 85-86.

[22] 796 Phil. 216-232 (2016).

[23] Disini, Jr. v. Secretary of Justice, 727 Phil. 28, 112-113 (2014).

[24] Co v. Muñoz, Jr., 722 Phil. 729, 742 (2013).

[25] Yuchengco v. Manila Chronicle Publishing Corp., 620 Phil. 697, 732 (2009).

[26] Flor v. People, 494 Phil. 439, 452 (2005).

[27] Id.

[28] Id.

[29] Id.

[30] Supra note 22.

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