

RAFAEL S. MERCADO, PETITIONER, VS. COURT OF FIRST INSTANCE OF RIZAL, BRANCH V, CITY FISCAL OF QUEZON CITY, AND VIRGINIA M. MERCADO, RESPONDENTS.*G.R. No. L-38753. August 25, 1982*

Ponente: FERNANDO, C.J.

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The relevant question in this suit is whether or not the landmark case of *United States v. Bustos*,^[1] enunciating the doctrine that the free speech and free press guarantees of the Constitution constitute a bar to prosecutions for libel arising from a communication addressed to a superior complaining against the conduct of a subordinate, is impressed with significance. The information in this certiorari, mandamus and prohibition proceeding to quash an information for libel quoted in full the alleged offensive telegram. Thus: "[Secretary David Consunji Department of Public Works and [Communications] Manila In line with President Marcos appeal to give information on undesirable employees in the government service to achieve the objectives of the New Society request that investigation image of the activities of Mrs. Virginia Mercado of Public Service Commission as we have reason to believe that she has enriched herself thru corrupt practices considering that she has properties and spending above what her salary can afford with the husband jobless stop If investigation confirms this we trust you take necessary action stop In case you need further details wire me at 101 Mariano Cuenco Quezon City and I will give further details stop Expecting prompt action on this matter. Rafael Mercado]"^[2] It closed with the assertion that Virginia Mercado, private respondent, "never enriched herself in office." There was first a motion to dismiss filed by petitioner Ramon Mercado on the ground of the telegram being a privileged communication. It was denied by the lower court. Thereafter, through another counsel, came a motion to quash, alleging that the facts charged do not "constitute an offense." Again, it met with a denial. A motion for reconsideration having proved futile, the present proceeding was instituted.

This Court required comment from respondents. In the comment submitted, the stress was on the absence of any privilege, there being malice and bad faith. As stated therein: "The communication in issue was made by the petitioner with evident malice and bad faith, a matter explicitly stated in the information filed with the respondent Court, and the pretense that it was made allegedly in line with the President's appeal to give information on undesirable employees in the government service, cannot cover up such fact. Malice in fact and bad faith on the part of the petitioner, and/or that he was motivated by vengeance and ill-will in making the said communication, is shown by, and can be established by the prosecution thru the testimony of the private respondent and the following documentary evidence: a) On October 14, 1972, petitioner filed a letter-complaint with the Chairman of the Board of Transportation, against the private respondent, for alleged grave violations of the Rep. Act No. 2260 and civil service rules [with a true copy of the said complaint attached]; b) Fourteen (14) days after the filing of the aforementioned administrative complaint by petitioner against the private respondent, the said petitioner sent the subject libelous telegram or communication to the Secretary of Public Works and Communication, which was indorsed for investigation to the said Board of Transportation on October 31, 1972, by first indorsement of the

said Department Secretary, dated Oct. 31, 1972 to the Chairman of the Board of Transportation [with a true copy of the said first indorsement attached]; c) On November 23, 1972, the petitioner filed an amended administrative complaint against the private respondent with the same Board of Transportation docketed therein as Adm. Case No. 72-1, charging the private respondent with dishonesty, pursuit of private business or corrupt practices, and misconduct or discourtesy [with a true copy of the said amended complaint attached]; d) The private respondent, submitted her answer to the said administrative charges, and after due hearing, the Board of Transportation rendered a decision on June 26, 1973, finding the herein private respondent as innocent of the charges, and dismissing the complaint filed against her [with a true copy of the said decision attached]; e) On July 17, 1973 petitioner, as complainant therein, filed a motion for reconsideration of the decision of the Board of Transportation, but the said Board, in an order issued on August 29, 1973, denied said motion for reconsideration for lack of merit [with a copy of said order attached]; f) While the Administrative Case No. 72-1 was pending determination before the Board of Transportation, petitioner, to further harass and malign the good character and reputation of the private respondent, filed with the Constabulary Highway Patrol Group (CHPG), a complaint against the private respondent and her husband Lorenzo M. Mercado accusing them of selling a Ford Willys engine, which was carnapped. The said office, however, after due hearing, issued a resolution on February 9, 1973, recommending that the said case be closed for lack of evidence [with a copy of the said resolution attached]; g) Also during the pendency of the administrative complaint filed by petitioner against the private respondent in the Board of Transportation, petitioner filed with the Criminal Investigation Service (CIS), PC, Camp Crame, Quezon City, a complaint for corrupt practices against the private respondent; and after due investigation the CIS, in answer to the letter of private respondent's counsel, dated March 24, 1973 [with a true copy attached], re-requesting information about the result of the said investigation, sent a letter to said counsel, dated March 27, 1973, advising him that the said case is considered closed for insufficiency of evidence [with a copy of the said letter attached]."[3]

The comment was considered as answer and the case was set for hearing. Prior to such hearing, there was a motion by petitioner to file memorandum in lieu of oral argument. As the motion was not acted upon before the date set for hearing, the parties appeared. Preliminary questions were asked. They were then required to file simultaneously their memoranda. Instead of just filing a memorandum, petitioner had a motion to admit amended petition enclosing with such motion the amended petition. The memorandum filed by him was on the basis thereof. The amendments, however, did not affect the fundamental question raised as to whether or not the telegram being qualifiedly privileged should be the basis for the special civil action for certiorari, mandamus and prohibition. Respondents in due time, after seeking an extension, filed their memorandum. Thereafter, petitioner even submitted a manifestation, in effect reiterating contentions previously made.

In the light of the above pleadings, this Court after a careful study, holds that certiorari to annul the order denying the motion to quash as well as the motion for reconsideration does not lie. Neither should respondent court be ordered to dismiss Criminal Case No. Q-2936, the criminal complaint for libel against petitioner. Nor should the court be prohibited from hearing the aforesaid criminal action. This petition lacks merit.

1. United States v. Bustos,[4] as mentioned at the outset, is a landmark decision. It is to the credit of the Supreme Court of the Philippines that such a ruling antedated by thirty-six years, a similar doctrine announced by the United States Supreme Court,[5] to the effect that a libel prosecution must likewise survive the test of whether or not the offending publication is within the guarantees of free speech and free press. To keep such guarantees, if not inviolate, at the very least truly meaningful, certainly calls for such an approach. The judiciary lives up to its mission by vitalizing and not denigrating constitutional rights. So it has been before. It should continue to be so.

2. Justice Malcolm, however, is careful to point out that qualified privilege, and this is one such instance, may

be "lost by proof of malice." [6] His opinion continues: "'A communication made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contained criminary matter which with-out this privilege would be slanderous and actionable.'" (Harrison vs Bush, 5 E. & B., 344; 1 Jur. [N.S.], 846; 25 L. J. Q. B., 25; 3 W.R., 474; 85 E.C.L., 344.)" [7] He then gave what was referred to by him as a "pertinent illustration of the application of qualified privilege," namely, "a complaint made in good faith and without malice in regard to the character or conduct of a public official when addressed to an officer or a board having some interest or duty in the matter. Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual. But the statements must be made under an honest sense of duty; a self-seeking motive is destructive. Personal injury is not necessary. All persons have an interest in the pure and efficient administration of justice and of public affairs. The duty under which a party is privileged is sufficient if it is social or moral in its nature and this person in good faith believes he is acting in pursuance thereof although in fact he is mistaken. The privilege is not defeated by the mere fact that the communication is made in intemperate terms. A further element of the law of privilege concerns the person to whom the complaint should be made. The rule is that if a party applies to the wrong person through some natural and honest mistake as to the respective functions of various officials such unintentional error will not take the case out of the privilege." [8] What casts doubt on the good faith of petitioner is a summary of his conduct, viz a viz private respondent: a letter complaint for grave violation of Republic Act No. 2260 and civil service rules was filed by him with the Chairman of the Board of Transportation on October 14, 1972. Fourteen days later, on October 28, 1972, the telegram subject of this litigation, was sent to the Secretary of Public Works and Communications. Then on November 23, 1972, there was an amended complaint with the Board of Transportation to include such charges as dishonesty, pursuit of private business or corrupt practices and misconduct. The Board of Transportation found private respondent innocent, in an order of June 26, 1973. There was a motion for reconsideration on July 17, 1973 filed by petitioner. It was denied on August 29, 1973 and during the pendency of such administrative case, petitioner not content, filed with the Constabulary Highway Patrol Group a complaint against private respondent and her husband, a relation, accusing them of selling a Ford Willys engine, which was carnapped. After due hearing, a resolution was issued recommending that said case be closed for lack of evidence. Again, during the pendency of such administrative complaint, petitioner filed with the Criminal Investigation Service, a complaint for corrupt practices against private respondent, like-wise found without support in the evidence submitted. The tenacity with which petitioner had pursued a course of conduct on its face would seem to indicate that a doubt could reasonably be entertained as to the bona fides of petitioner. The prosecution should be given the opportunity then of proving malice.

3. Respondents have in their favor a decision of this Court supporting their stand. In *People v. Monton*, [9] the question of whether or not a motion to quash based on a qualified privilege should be upheld was decided adversely against the claim of those accused of libel. This Court made clear that malice can be shown. It "simply puts the burden of doing so on the prosecution." [10] The ponencia of then Justice, later Chief Justice, Makalintal distinguished the Bustos decision, thus: "That case is not here applicable, because the acquittal of the accused therein on the ground that the defamatory imputation was qualifiedly privileged was adjudged only after trial, wherein the prosecution tried to establish, although unsuccessfully, the element of malice." [11] Further, the opinion stated: "It need only be added that in the instant case the information alleges that the defendants, appellees here, wrote and sent the subject letter to the President 'with malicious intent and evil motive of attacking, injuring and impeaching the character, honesty, integrity, virtue and reputation of one Jose J. Montecarlo * * * and with malicious intent of exposing (him) to public hatred, contempt, ridicule, discredit and dishonor, without any justifiable motive.' Under the foregoing allegation, the prosecution is entitled to go to trial and present the necessary evidence to prove malice; and the denial to it of the opportunity to do so, upon the defendants' motion to quash, constitutes reversible error." [12]

WHEREFORE, the petition is dismissed.

Concepcion Jr., Abad Santos, and Escolin, JJ., concur. Barredo, Guerrero, and De Castro, JJ., no part. Aquino, J., I concur. The petition should have been dismissed outright. No jurisdictional issue is involved.

[1] 37 Phil. 731 (1918).

[2] Annex B to Petition, 1.

[3] Comment of respondents, 10-12.

[4] 37 Phil. 731.

[5] Cf. *New York Times Co. v. Sullivan*, 376 US 254 (1964).

[6] 37 Phil. 742.

[7] *Ibid.*

[8] *Ibid.*, 742-743.

[9] 116 Phil. 1116 (1962).

[10] *Ibid.*, 1121.

[11] *Ibid.*

[12] *Ibid.*, 1121-1122.

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