

**MIGUEL CUENCO, PLAINTIFF-APPELLANT, VS. MANUEL CUENCO,
JOSE P. VELEZ, JESUS P. VELEZ, FEDERICO A. REYES, DIOSCORO B.
LAZARO AND NICOLAS JUMAPAO,
DEFENDANTS-APPELLANTS-APPELLEES.**

G.R. No. L-29560. March 31, 1976

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Appeal from the decision of the Court of First Instance of Cebu (3rd Branch) in Civil Case No. 5842, entitled "Miguel Cuenco, plaintiff, vs. Manuel Cuenco, Jose P. Velez, Jesus P. Velez, Federico A. Reyes, Dioscoro B. Lazaro, and Nicolas Jumapao, defendants", the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, judgment is hereby rendered, dismissing the complaint against the defendants, Dr. Manuel Cuenco, Jesus Velez, Jose Velez, Attorney Nicolas Jumapao; and condemning Dioscoro Lazaro to pay the plaintiff damages in the sum of Two Thousand Pesos. Without special pronouncement as to costs. IT IS SO ORDERED."

Plaintiff-appellant Miguel Cuenco appealed directly to this Court as the amount of damages claimed in Civil Case No. 5842 was P1,000,000, while defendants-appellants Dioscoro B. Lazaro and Nicolas Jumapao appealed the same case to the Court of Appeals, but the Acting Clerk of Court of the Court of First Instance of Cebu forwarded the record of Civil Case No. R-5842 to this Court on Sept. 14, 1968, including the Record on Appeal of defendants-appellants Dioscoro B. Lazaro and Nicolas Jumapao because the value in controversy is one million pesos and Section 17 of the Judiciary Act then gave exclusive jurisdiction to this Court over civil cases involving said amount.

The deaths of defendants-appellees Dr. Manuel Cuenco and Jesus P. Velez and the corresponding substitution of their heirs as parties to this case were noted in this Court's resolution of October 16, 1974.

I. FACTS

The facts clearly appearing from the record are:

1. On November 15, 1958, plaintiff Miguel Cuenco filed a complaint against defendants Manuel Cuenco, Jose P. Velez, and Federico A. Reyes, president, secretary-treasurer, general manager, respectively, and simultaneously members of the board of directors of the Bisaya Land Transportation Co., Inc.; Jesus P. Velez, another director of said corporation; Dioscoro B. Lazaro, as publisher and business manager of "The Republic Daily", a newspaper published in Cebu City, with general circulation in the province of Cebu and other parts of the Philippines. The complaint alleges that plaintiff, as a private citizen and public official, is well known and held in public esteem not only in Cebu City but also throughout the Philippines and abroad, having been for many years a member of the Philippine Legislature as representative for the Fifth District of Cebu, as then incumbent Congressman for said district; as member of the Philippine Bar, and as a business executive, being a director and vice-president of the

Bisaya Land Transportation Co. Inc.; that on or about August 3, 1958, the defendants "conspiring and confederating among themselves", caused to be printed, published and circulated, in Issue No. 182, Volume X of the "The Republic Daily", bearing date of August 3, 1958, an article fully reproduced as follows:

"Rep. Cuenco Sued
Solon Faces Rap
For Pay Frauds
'Bisaya Cites 3 Causes of Action;
Seeks Return of Illegal Collections

"Rep. Miguel Cuenco was yesterday sued by the Bisaya Land Transportation Company Inc., for alleged illegal and unlawful collections made by him on the company, amounting to thousands of pesos.

"Part of these collections was allegedly obtained by the defendant in violation of a constitutional inhibition.

"Congressman Cuenco, according to the complaint, had allegedly collected a total of P18,700 from the plaintiff, of which he was formerly assistant manager in charge of the shipping department.

"In the same suit, the transportation firm asked the court to order the defendant to pay it an additional sum of P5,000 representing attorney's fees which the plaintiff said it had obligated to pay its counsel.

"Cuenco was recently dismissed by the plaintiff as assistant manager in charge of its shipping department to protect the interest of the co in company.

"The company sought refund for the allegedly unlawful collections. The complaint cited three causes of action for the suit.

"The first cause of action was that the defendant allegedly overdrew his salary, including other emoluments, during the period from January 1, 1956 to May 31, 1958, at the rate of P1,300 instead of P1,000 a month, allegedly without authority from the board of directors of the company.

"The second cause of action was the defendants' alleged collection of attorney's fees amounting to P10,000 for his allegedly unauthorized appearance as counsel for the company in a tax case.

"The plaintiff said Cuenco's appearance as counsel was not authorized by the company and that he was not entitled to attorney's fees because being an incumbent member of Congress he cannot lawfully and legally collect any amount from the plaintiff under the constitution.

"The complaint follows in full:

"Comes now the plaintiff, thru its undersigned counsel, and to this Honorable Court respectfully states that:

"FIRST CAUSE OF ACTION

"1. Plaintiff is a corporation duly organized and existing under the laws of the Philippines, with principal office at San Jose Street, City of Cebu, Philippines; defendant is of legal age, married to Fara Ramia Ledesma, with residence and postal address at corner F. Ramos Street and Mango Avenue, City of Cebu, Philippines, where he may be served with summons.

"2. Defendant was formerly Assistant Manager in charge of the shipping department of plaintiff corporation with an authorized total salary, including other emoluments, in the sum of P1,000 per month, as per resolution of plaintiff's board of directors dated December 29, 1955.

"3. From January 1, 1956 to May 31, 1958, inclusive or a period of twenty-nine (29) months without authority from the board of directors of herein plaintiff, defendant overdrew his salary including other emoluments, by collecting and receiving from plaintiff at the rate of One Thousand Three Hundred Pesos (P1,300) instead of

only One Thousand Pesos (P1,000) per month, thereby making an unauthorized and illegal collection in the total sum of Eight Thousand Seven Hundred Pesos (P8,700).

"4. Defendant ceased to be Assistant Manager in charge of the Shipping department of plaintiff corporation on June 12, 1958, and immediately thereafter plaintiff demanded from him the refund of the aforesaid sum of P8,700 representing the unauthorized and overdrawn salary and other emoluments but defendant refused and still refuses to pay back to plaintiff said amount in spite of repeated demands.

"SECOND CAUSE OF ACTION

"1. Plaintiff reproduces here the allegations in paragraphs 1 and 2 of the First Cause of Action.

"2. During the year 1953, defendant, while an incumbent member of Congress, collected and actually received from plaintiff in four installments the total sum of Ten Thousand Pesos (P10,000) which he claimed to be his attorney's fees for allegedly appearing as counsel for said plaintiff in the latter's tax case before the Bureau of Internal Revenue.

"3. Defendant's alleged appearance as plaintiff's counsel in aforesaid tax case with the Bureau of Internal Revenue was without authority from the board of directors of plaintiff corporation; neither is defendant entitled to the aforesaid sum of P10,000 knowing as he does, that as an incumbent member of Congress he cannot lawfully and legally collect any amount from plaintiff for his alleged appearance in view of the Constitutional inhibition embodied in par. 2, Sec. 3, Article VI of the Constitution of the Philippines, the pertinent portion of which provides as follows:

'(2) * * * nor shall any such Member appear as counsel before the Electoral Commission or any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party or collect any fee for his appearance in any administrative proceedings or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office, * * *.'

"4. Plaintiff has demanded from defendant the sum of P10,000, corresponding to his illegal and unlawful collection from the former of alleged attorney's fees, but defendant refused and still refuses to pay back to plaintiff the said amount.

"THIRD CAUSE OF ACTION

"1. Plaintiff reproduces herein the allegations in paragraphs 1 and 2 of the First Cause of Action.

"2. On account of defendant's illegal, malicious and unreasonable refusal to refund to plaintiff the aforementioned sums of P8,700 and P10,000 which he had improperly and illegally taken from said plaintiff as averred in the First and Second Causes of Action, said plaintiff was compelled to engage the professional services of its undersigned counsel in order to institute the instant case; plaintiff has obligated to pay to its undersigned counsel the sum of P5,000 as attorney's fees".

that the "plain imputations and innuendoes" made by aforequoted headlines and articles, "are false, untrue, and malicious and known to defendants to be so, and their publication and circulation by defendants was made for no other purpose than to ridicule, defame, belittle and put the business, credit and social, professional and official reputation of plaintiff in a bad light and to impeach plaintiff's honesty and integrity"; that in so far as defendants Manuel Cuenco, Jose P. Velez, Jesus P. Velez and Federico A. Reyes are concerned, it was a "malicious scheme" to retaliate against plaintiff for the latter's having filed a complaint together with other stockholders of the Bisaya Land Transportation Co. Inc. for mandamus and injunction against said defendants in the Court of First Instance of Manila (Civil Case No. 36498); that when the aforequoted headlines and article were printed, published and circulated by the defendants, the aforementioned complaint had not yet been the subject of any judicial action;

that the aforequoted headlines and article "which falsely and maliciously impute moral delinquency, corruption, lack of integrity and illegal, felonious, unethical and dishonorable conduct" on the part of plaintiff, "have tended to and did cause injury to the honor and good name of plaintiff, and have brought upon him public contumely and social humiliation and caused him mental suffering, wounded feelings and other similar injury"; that these aforesaid headlines and articles show "a malicious and premeditated intent to defame, vilify and ridicule plaintiff, in utter disregard or disrespect to his privacy and peace of mind"; that as a result of said publication plaintiff suffered actual and moral damages in the amount of P800,000, exemplary damages of P100,000, and attorney's fee of P100,000;

2. That on December 8, 1958, defendants Manuel Cuenco, Jose P. Velez, Jesus P. Velez and Federico A. Reyes answered the complaint specifically denying paragraphs 2, 4, 5, 6, 7 and 8 of the same; that "they have no connection or relation, whether individually or as a group, with the newspaper, 'The Republic Daily' nor its alleged publisher and business manager, defendant Dioscoro B. Lazaro"; that "they had nothing to do with the publication in 'The Republic Daily' of this newspaper article complained of" and "they have no knowledge of how the newspaper articles came to be published by the 'The Republic Daily' nor of the contents of the newspaper article as allegedly published"; that "they were not responsible for the innuendoes allegedly contained in the newspaper article and they specifically deny that the newspaper article carried the imputation and innuendoes complained of"; that "the causes of action contained in the complaint of the Bisaya Land Transportation Co. Inc. against herein plaintiff (Miguel Cuenco) and allegedly reported by 'The Republic Daily' are true and were made subject of the complaint of the said transportation company in good faith and with the sole purpose of protecting its interest"; that "the alleged publication of the causes of action of the Bisaya Land Transportation Co. Inc. against herein plaintiff (Miguel Cuenco) was not as part of a malicious scheme, so far as defendants are concerned, to retaliate against plaintiff (Miguel Cuenco) for the latter's having filed the complaint for mandamus and injunction against them in the Court of First Instance of Manila docketed as Civil Case No. 36498 of said court"; that "when the publication complained of was allegedly made, the complaint of Bisaya Land Transportation Co. Inc. against herein plaintiff had been the subject of judicial action"; that defendants have no knowledge "that the publication complained of has tended to and did cause injury to the honor and good name of plaintiff and has brought upon him public contumely and social humiliation and caused him mental suffering, wounded feeling and other similar injuries"; that they have no knowledge of the truth of the allegations respecting "damages allegedly suffered by plaintiff"; that as affirmative defenses, the facts reported in the publication complained of are true and "the publication itself was obviously made with good intention and justifiable motive"; that it is a "fair and true report, made in good faith, without any comments or remarks, of a judicial proceeding and/or facts related to the discharge by plaintiff of his official functions"; that the "filing by Bisaya Land Transportation Company Inc. of its complaint against herein plaintiff was a corporate act for which defendants are not individually and personally liable"; that by way of counterclaim, "plaintiff's action is clearly unfounded and to defend themselves defendants have engaged the services of counsel for the stipulated amount of P100,000"; that they ask for the dismissal of the complaint and judgment in their favor for P100,000 as attorney's fees and other expenses of litigation;

3. That on December 8, 1958, plaintiff filed an Amended Complaint including Atty. Nicolas Jumapao as defendant, being "a lawyer and an assistant attorney of the Cebu Law Office of Senator Mariano Jesus Cuenco, general counsel of the Bisaya Land Transportation Co. Inc.," as among the defendants who "conspiring and confederating among themselves, caused to be printed, published, and circulated" the allegedly libelous publication mentioned in the complaint;

4. That on December 9, 1958, defendant Dioscoro B. Lazaro filed his answer denying the allegations of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10 of the complaint, stating that "the said publication does not contain any

innuendoes or imputations or implications that plaintiff has committed several frauds against the Bisaya Land Transportation Co. Inc., that plaintiff has violated the canons of the law profession, that he has illegally collected attorney's fees from the said company, that plaintiff has committed acts prejudicial to the company, and that as member of Congress has feloniously committed a violation of the Constitution"; that by publishing the newspaper item subject matter of the complaint, defendant "did not make any representation that the facts alleged in the complaint of the Bisaya Land Transportation Co. Inc. are true" and defendant "simply reported the fact of filing of the complaint of the Bisaya Land Transportation Co. Inc. and the allegations thereof" in good faith and pursuant to his understanding of his duty as a newspaperman to report to his readers events and occurrences of general interest; that he was "not motivated by any purpose to ridicule, defame, belittle and put the business credit and social, professional and official reputation of plaintiff in a bad light and to impeach plaintiff's honesty and integrity"; that as affirmative defenses, the "publication, subject matter of the complaint, is a true and fair report, made in good faith, without any comments or remarks of a judicial proceeding"; that the "matters reported in the publication are true (although herein defendant has no personal knowledge thereof at the time of the publication but he will prove their truth at the trial) and were published by defendant with good intention and justifiable motive"; that by way of counterclaim, defendant alleges that the complaint is clearly unfounded and defendant "suffered actual, compensatory, and moral damages of not less than P50,000, representing injury to herein defendant's integrity, prestige and reputation among the publishers and newspapermen in the City and Province of Cebu and in the whole Philippines"; that lie had to engage the services of counsel for P10,000; that he prays for dismissal of the complaint and judgment in his favor for P50,000 damages and P10,000 attorney's fees;

5. On December 15, 1958, defendants Manuel Cuenco, Jose P. Velez, Jesus P. Velez, Federico A. Reyes and Nicolas Jumapao filed their answer to the amended complaint, substantially the same as the answer filed on December 8, 1958 before the complaint was amended to include Atty. Nicolas Jumapao, denying knowledge of allegations in paragraphs 2, 4, 5, 6, 7, 8, 9, 10, 11 of the amended complaint; stating as affirmative defenses that "the facts reported in the publication complained of are true and the publication itself was obviously made with good intention and justifiable motive", that "it is fair and true report, made in good faith, without any comments or remarks, of a judicial proceeding and/or of facts related to the discharge by plaintiff of his official functions", and that "the filing by the Bisaya Land Transportation Co. Inc. of its complaint against plaintiff was a corporate act for which defendants are not individually and personally liable"; that by way of counterclaim, defendants claim that plaintiff's action is clearly unfounded and they had to engage the services of counsel for P100,000; hence their prayer to have the complaint dismissed, for judgment against the plaintiff of P100,000 as attorneys fees in addition to expense of litigation;

6. On December 18, 1958, defendant Dioscoro B. Lazaro filed an answer to the amended complaint, denying allegations contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 of the complaint, stating that "he neither conspired nor confederated with his co-defendants or any other persons whomsoever, in the printing, publication and circulation" of the questioned newspaper items; that by publishing the same, "defendant acted in good faith pursuant to his understanding of his duty as a newspaperman to report to his readers events and occurrences of general interest"; that as affirmative defenses, "the publication, subject matter of the amended complaint, is a true and fair report, made in good faith, without any comments or remarks of a judicial proceeding" and "the matters reported in the publication are true" and were published "with good intention and justifiable motive"; asking by way of counterclaim because the complaint is "clearly unfounded" and defendant suffered "actual, compensatory, and moral damages", the amount of P50,000 representing injury to defendant's "integrity, prestige, and reputation among the publishers and newspapermen in the City and Province of Cebu and in the whole Philippines", and P10,000 as attorney's fees; and praying for the dismissal of the complaint and judgment in defendant's favor for the aforementioned amounts;

7. On December 26, 1958, plaintiff filed his answer to the counterclaim of defendants Manuel Cuenco, Jose P. Velez, Jesus P. Velez, Federico A. Reyes and Nicolas Jamapao, stating that "plaintiff has clearly valid and just causes of action against defendants", denying defendants' claim for 'P100,000 attorney's fees, reiterating his prayer contained in the amended complaint and praying for the dismissal of the counterclaim;

8. On December 29, 1958, plaintiff filed his answer to defendant Lazaro's counterclaim, stating that "plaintiff has clearly valid and just causes of action against all the defendants", that he has no knowledge of defendant Lazaro's allegations "that moral damages was suffered" and "defendant has engaged services of attorney for the sum of P10,000", reiterating the prayer in his amended complaint and praying for the dismissal of the counterclaim;

9. That on February 18, 1964, defendants filed an ex-parte motion to dismiss pursuant to Sec. 3, Rule 17 of the Rules of Court "plaintiff having failed to prosecute his action for an unreasonable length of time", and for judgment against plaintiff on defendants' counterclaim embodied in their answer to the amended complaint;

10. That pursuant to the trial court's order of February 18, 1964, asking plaintiff to show cause why defendants' motion should not be granted, plaintiff, in his opposition to defendants' motion to dismiss dated March 5, 1964, stated that in the trial court there is another libel suit (Civil Case No. R-6558) filed against plaintiff in this case (Miguel Cuenco) by defendants in this case and the same case was commenced April 12, 1960, without having been tried, plaintiffs therein (defendants in Civil Case No. 5842) having moved to set the same for hearing only on February 10, 1964; that plaintiff Miguel Cuenco never moved for the dismissal of said case (R-6558) "out of his sense of fairness", "aware as he was that the attention and energies of defendants had been actually devoted to several other cases between them and herein plaintiff" (quo warranto action for dissolution of Bisaya Transportation Co., Inc., Civil Case No. 39766 of C.F.I. Manila, pending in the Court of Appeals as C.A.-G.R. 33266-R; criminal cases for perjury commenced by plaintiff against Jose and Jesus P. Velez, numbering 20 in all, Nos. 52517-52536, C.F.I. Manila); that both Mariano Jesus Cuenco and plaintiff were busy as members of Congress and plaintiff took into account the lingering illness and subsequent death of defendant Manuel Cuenco's father, the late Mariano Jesus Cuenco; that the defendants' motion to dismiss should be denied;

11. That respondent Court in its order dated March 12, 1964, denied defendants' motion to dismiss;

12. That after trial, the respondent Court rendered its decision on August 12, 1967, now before this Court for review.

II. BASIS OF QUESTIONED DECISION

The trial court rightfully predicated its decision on conclusions reached after an evaluation of the evidence presented by both plaintiff and defendants on the following issues:

"(1) Did, defendant Dioscoro Lazaro compose and publish the news article and headlines in question (Exhs. A-1 and A-4) alone or did the other defendants also aid and conspire in composing and publishing the same?

"(2) Are the news article and headlines in question libelous?

"(3) Are the said news article and headlines privileged?

"(4) Is the plaintiff entitled to damages?

"(5) Are the defendants entitled to recover on their counterclaim?"

As to the first issue which is a question of fact, the trial court concluded that plaintiff's allegation of conspiracy among the defendants in causing to be printed, published and circulated the allegedly libelous publication to "ridicule, defame, belittle and put the business, credit and social, professional and official reputation of plaintiff in

a bad light and to impeach plaintiff's honesty and integrity", has not been sufficiently and convincingly proven, and that defendant Dioscoro Lazaro composed and published the news article in question alone; that the news article and headlines are not privileged because the complaint shown in Civil Case No. R-5665 as published in the questioned publication is not a part of judicial proceeding without any corresponding answer of the complaint nor court action on the same; that the complaint as reproduced in the questioned publication is libelous per se because it imputes to plaintiff Miguel Cuenco illegal acts and wrong doings; that the act of defendant Lazaro in causing the publication of the questioned news item is not motivated by malice and he should be made liable only for nominal damages; that plaintiff was entitled to damages because his good reputation was adversely affected by the publication and "ordinarily he would be entitled to a substantial award for damages as a result of the publication" but because of the circumstances found by the respondent court mitigating the act of defendant Lazaro, the respondent court found the award of P2,000 as satisfactory to serve the ends of justice.

III. ALLEGED ERRORS COMMITTED BY RESPONDENT COURT

Plaintiff's principal contentions in his numerous assignment of errors are that the trial court erred in finding defendant Dioscoro B. Lazaro as the only one who wrote and published the questioned article and headlines, without conspiring with the other defendants and in holding that there was no conspiracy among the defendants; in holding that although the questioned publication is not privileged and libelous per se, it was not established by clear evidence that the publication was done with malice; that there are mitigating circumstances in favor of defendant Lazaro to warrant a nominal award of only P2,000.

On the other hand, defendants-appellants Dioscoro Lazaro and Nicolas Jumapao claim that the lower court erred in holding that the publication of the news article reproducing the complaint in a judicial proceeding is not privileged; in considering the complaint in question as libelous per se and finding defendant Lazaro liable for libel with the publication of the complaint; in condemning defendant Lazaro to pay plaintiff two thousand pesos; in not awarding damages to appellant Nicolas Jumapao as prayed for in his counterclaim.

IV. ISSUE OF CONSPIRACY IN PUBLICATION

The principal issue of whether or not plaintiff was able to present sufficient evidence to prove the existence of conspiracy among the defendants in the publication of the alleged libelous newspaper article is to Our mind the crucial one that renders insignificant all other issues raised, for its proper determination is the key to the possible liability of defendants in this case.

Plaintiff's version of the publication of the questioned article as he tried to prove by evidence presented in the lower court is that said publication is not the work of defendant Dioscoro B. Lazaro alone but rather the result of a conspiracy among the defendants "in order to ridicule and defame him (plaintiff) as an act of revenge against him". Plaintiff's version is that "at about eight o'clock in the morning of August 2, 1958 (Saturday) Dr. Manuel Cuenco and Attorney Nicolas Jumapao came to the Office of Dioscoro B. Lazaro in the ground floor of the Republic Building on the corner of Colon and D. Jakosalem Streets, Cebu City"; that "Dr. Cuenco told Lazaro that he had an article about Congressman Miguel Cuenco"; that "he then requested Attorney Jumapao to go upstairs and tell Mrs. Palicte to come downstairs, for he would give her a dictation (she was working in the law office of Senator Cuenco which is located in the upper floor)"; that "she came down alone"; that "Attorney Jumapao stayed in the law office"; that "Dr. Cuenco then dictated to her an article"; that "he also gave her a previously prepared article about Congressman Cuenco, the plaintiff"; that "she then typewrote the combined articles"; "and after finishing them, she handed the paper to Dr. Cuenco"; that "he gave the same to Lazaro, who, in turn delivered them to Ignacio Pogoy, the linotypist for typing on the linotype machine"; that "Ildefonso Guisadio, one of the 'minervistas' employed by Lazaro, made a 'galley' proof of the article this was the work of

Filemon Perez, the typesetter; but he was busy elsewhere"; that "Guisadio then brought the 'galley' proof to Lazaro for proof reading"; that "after it was done, the corrected article was given to Perez who set the types ('emplantar'), after which Guisadio loaded it on his press or 'minerva' and thus printed page 2 of Exh. 'A', which contains the continuation of the article 'Solon Faces Rap For Pay Frauds' from page one (1)"; that "Captain Federico Reyes came to the office of Lazaro in the Republic Building at four o'clock in the afternoon of August 2, 1958, he asked for the news article of Dr. Cuenco, he read page two (2) of the printed article (Exh. A-4) which was already finished, he tried to read the 'cut' of page one but he could not decipher its contents, so he asked for the original which was dictated by Dr. Cuenco, then he read it, after which he left".

Defendants' version is that "the defendant, Dioscoro Lazaro, is the publisher of the Republic Daily, a provincial newspaper published in Cebu City"; that "at about eleven thirty o'clock in the morning of August 2, 1958, a Saturday, he was in the office of the Clerk of Court of the Court of First Instance in the Capitol Building, Cebu City and chanced to read the complaint of the corporation against Congressman Cuenco, plaintiff herein"; that "he was attracted by the complaint because of its news value - the subject being a prominent congressman, he asked Jesus Rama, a clerk in the said office, for an extra copy, he was told there was none, so he asked for permission to copy it, which was granted, he then copied it on the typewriter of Rodis; the docket clerk"; that "although Lazaro is the publisher and he employs several reporters to supply news materials, he had to do his beat, covering the Provincial Capitol"; that "he did not prepare the news article immediately, upon reaching his office in the Republic Building, he kept the copy of the complaint in his drawer and attended to his other work, the complaint against Congressman Cuenco was a front page item, as it could wait"; that "it was in the evening, after supper, of August 2, 1958 that he composed the headlines and the news article" (Exhs. A-1, A-2 to A-4); that "as a sort of safety gap, he wrote 'allegedly' and 'alleged' to modify the news and to convey the idea that he, as newspaperman or reporter, did not necessarily subscribe to the truth or falsity of the news item - in this case the complaint, Exhibit 2"; that "he also wrote the succeeding eight paragraphs"; that "the standard procedure in preparing the story - followed by newspapermen - is to get it from the complaint or to copy it, as in this case"; that "as for the size of letters of the headlines, that depends on the importance of the news item, the bigger the news, the bigger the headings, in this case the news involved Congressman Cuenco, and news about a complaint against a congressman is always good news"; that "after composing the news article, he gave it to Ignacio Pogoy, the linotypist, Pogoy copied it on the linotype machine and after making the 'slug' he delivered the same to Filemon Perez, the typesetter, who took a 'galley' proof on a flat galvanized sheet, (a 'slug' is a term applied to lead or metal in which the news articles are linotyped, the 'galley' proof is the proof obtained by placing the 'slug' on a flat galvanized sheet and taking the proof)"; that "the 'galley' proof was given to Germel Papica who then proof-read it, after it was done it was returned to Ignacio Pogoy who made the corrections on the 'slug', then, Perez set the types and made the mold, after which it was taken to the press operator or 'minervista' for printing"; that "the linotyping, proof reading, making of the mold of page (1) took place after midnight of August 2, 1958"; that "Guisadio did not print said page one (1), (Exhs. A, A-1 to A-3, A-5), (admitted by Guisadio)"; that "page one contained the latest news item, Pogoy typed them on the linotype machine, Papica proof-read the 'galley' proof, and Perez set the mold of the first page after midnight and not before"; that "page two could not be printed before midnight and before page one was finished"; that defendant Federico Reyes has nothing to do with the publication of the news article in question (Exhs. A, A-1 to A-5), he was never in the office of Dioscoro Lazaro in the afternoon of August 2, 1958, nor did he meet Ildefonso Guisadio on said date"; that "likewise, Dr. Manuel Cuenco has nothing to do with the said publication, he did not appear in the office of Dioscoro Lazaro in the morning of August 2, 1958 nor did he ever meet Attorney Jumapao and Mrs. Palicte on said date nor did he dictate any news article to her in the office of Lazaro, he does not know Ildefonso Guisadio; in the morning of August 2, 1958 he and Attorney Pacquiao were in the sala of Judge Amador Gomez in the Capitol Building at 8:30 o'clock; Attorney Pacquiao was set to argue his opposition to the motion of Representative Cuenco regarding his fees in the

collision case involving the M/V Doña Filomena of the corporation and M/V Igadi; the motion was not called for hearing immediately because other motions or incidents preceded it; and he and Attorney Pacquiao had to wait until later in the morning, it was finally argued, and after hearing both sides, the Court directed the movant to file an independent action to collect his fees so as to give opportunity to the Bisaya to set up and prove the counterclaim against the movant"; that "after the discussion Dr. Manuel Cuenco left for his house in Lahug, Cebu City, ahead of Atty. Pacquiao"; that Atty. Jumapao "has nothing to do with the publication of the news article in the Republic Daily on August 3, 1958 (Exhs. A, A-I to A-5); in the morning of August 2, 1958, he did not go to the office of Dioscoro Lazaro in the first floor of the Republic Building, Cebu City, it is not true that he and Dr. Manuel Cuenco were at Lazaro's office in the said morning and that he told Mrs. Palicte to go downstairs to receive a dictation from Dr. Cuenco"; that before the filing of Civil Case No. 5665, Atty. Jumapao and plaintiff Cuenco were good friends, and "sometime in June 1958 he (Jumapao) learned from Atty. Pacquiao that the Bisaya was contemplating to file suit against Congressman Cuenco to recover excess salaries allegedly collected by him illegally and attorney's fees which he also allegedly collected illegally for appearing as counsel of the corporation before the BIR in a tax case, so being a friend of the Congressman (plaintiff) and in fairness to him, on June 4, 1958, he (Jumapao) sent a radiogram to him advising him of the contemplated plan to file the suit (Exh. Y), he had no intention of threatening him (Congressman Cuenco), (complaint in Civil Case No. 5665, which is bodily copied in the questioned publication of August 3, 1958, is a reiteration of the grounds of the opposition of the Bisaya corporation to the motion of Congressman Cuenco for the collection of his fees in the collision case); that "the majority of the board of directors of the corporation (Bisaya) decided to file the Civil Case No. 5665 against Congressman Cuenco (Exh. 2), and being one of the attorneys of the corporation, Atty. Jumapao signed the complaint"; that when plaintiff Cuenco filed the original complaint in this case on November 15, 1958, Atty. Jumapao was not named a defendant; that "about the end of November, 1958, he (Jumapao) and Congressman Cuenco met on the inner road of the capitol in front of the Sala of Judge Villasor of this court, Congressman Cuenco then told him (Jumapao) to 'lay-off' or to make the defendants settle his demands, (subsequently Attorney Edilberto Ignacio, one of the plaintiff's counsel, told Attorney Jumapao to have the defendants settle plaintiff's (Cuenco) demand of P1,000,000 which is the value of his shares in the corporation), Atty. Jumapao told him (Congressman Cuenco) that he had neither influence nor power over the defendants to have them agree to his demands, and as for 'laying off' or staying away from the case, he could not accede to his request because he (Jumapao) and Dr. Cuenco are good friends and he has no reason to separate from him"; that "on December 11, 1958 he (Jumapao) received a summons from the Court, he thus came to know that on December 8, 1958 the plaintiff filed his amended complaint, including Atty. Jumapao as a new defendant"; that before he (Jumapao) testified, in this case the plaintiff threatened him with disbarment proceeding if he declared for the defendants, this did not deter him".

The trial court believed defendants' version of the publication of the questioned article, thus concluding that there was no conspiracy among the defendants, and defendant Lazaro was solely responsible for its publication on the following grounds:

(1) Defendants' version is "more in accord with the truth and with the rules of probabilities than Guisadio's (principal witness for plaintiff)". "According to Guisadio, he printed page two (2) of the newspaper, the Republic Daily (Exh. A) before noon of August 2, 1958. Indeed, according to him, when Captain Federico Reyes went to the office of Lazaro at 2 or 4 o'clock in the afternoon to see the article composed by Dr. Manuel Cuenco, he read the continuation of the article and the heading 'Solon Faces Rap For Pay Frauds' in print on page two (2) of the newspaper (Exh. A-4) but, according to Lazaro, Pogoy, Papica and Perez, witnesses of the defendants, page (2) could not have been printed ahead of page one (1) because another article entitled 'Jail Sino Lass, etc.' (Exh. 3-A) was commenced on page one (Exh. 3); and the particular news item was received in the evening and not earlier. Guisadio himself admitted that page one of Exh. A was printed after eight o'clock

in the evening after his shift. Guisadio gave no convincing reason why page two (2) should be printed ahead of page one. On the other hand, Lazaro, Pogoy, Perez and Papica gave cogent reasons. According to them, pages 2 and 12 are generally reserved for the continuation of articles or news reports coming late which cannot be accommodated on page one and of necessity are printed later. The news reports or articles on page one must first be composed and finished before pages 2 and 12 are begun. Also, it is not practical to commence the continuation without first knowing the ends of the unfinished news articles or reports to be continued on pages two and twelve. In an endeavor to discover which of the versions (between Guisadio's and Pogoy, et al.'s) is in accord with the facts and with the rule of probabilities, the trial court examined pages 1, 1-a and the other pages of Exh. A, the issue of August 3, 1958 of the Republic Daily, and applied the theory of each side. Thus, on page one (1) the following news articles are continued on page 12; 'Capa Probe, etc.', 'Three Die In Violence Rash', 'Alien Measures Mulled Monday', and 'Hold Release of School Outlays'. It would be absurd to print page 12 ahead of page 1, since the news articles or reports thus contained on page 12 are commenced on page 1. Guisadio, himself corroborates this fact. (Sn. pp. 718-719, La Paz). Similarly, it is not probable that page 2 would be printed ahead of page 1 because some news items, like 'Jail Sino Lass For Opium Use' (Exh. 3) and the headings and the news article in question (Exhs. A-1, A-2, A-3, A-5) are begun on page 1 and continued on page 2 (Exhs. A-4, 3-A). The claim of Guisadio that:

* * * whenever the news item would arrive early those appearing on page 1, those items would be printed first and stop, the continuation of the same should fall on page 2 because if the news item would arrive late this news item which are appearing on page 1, the continuation of the news item should be continued on page 12 inasmuch as the shift guide switches page 2 of the issue which are inside pages should be printed first' (Sn. pp. 718-719 La Paz)

would be impractical and against the rule of probabilities. Also, according to Guisadio, he finished printing Exhibit A-4 of page 2 at eleven o'clock in the morning of August 2, 1958 so that when Captain Reyes came to the office of Lazaro at 2 or 4 o'clock in the afternoon he read Exh. A-4 in print; that the 'molde' of Exhs. A-1, A-2, A-3 and A-5 was already finished which Captain Reyes tried to decipher but unsuccessfully; so he asked for the original of the article dictated by Dr. Manuel Cuenco which he thus read. But the news items of 'Jail Sino Lass For Opium Use' (Exh. 3) was received in the evening. Inferentially he means to say that, like the printing of page 1, after the printing of Exh. A-4, it was stopped in the afternoon and then it was resumed in the evening. If we follow him, the 'molde' of pages 1 and 2 underwent a readjustment, at least once, to accommodate the news about the 'Sino Lass' which is a late arrival; and as many times also pages 1 and 2 would have to be pressed for the printing of the late news. To state the proposition is to dispose of its absurdity. Not only is it wasteful of time and energy – an operation that could be achieved in one single exertion – but it is also contrary to the usual operating procedure and to common sense";

(2) "Neither is it believable that Guisadio printed page 8 containing the movie guides before the printing of pages 6 and 7 of Exh. A. Pages 6 and 7 are inside pages and are printed first; pages 5 and 8 being back pages, are not usually printed ahead – the obvious reason being that after the printing of pages 6 and 7 the sheet is folded to prepare it for the printing of pages 5 and 8 and there are 2,000 sheets or 400 pages";

(3) Guisadio's testimony is filled with "inherent improbabilities"; that the testimony of Guisadio of his alleged presence in the office of Lazaro in the morning of August 2, 1958 when Dr. Manuel Cuenco allegedly accompanied by Atty. Jumapao came to the office of Lazaro to dictate the questioned article, of his alleged presence in the same office in the afternoon when Captain Reyes allegedly came and read the printed article, his alleged presence in the printing press from 9 o'clock in the evening to dawn of August 3, 1958 when he allegedly witnessed the printing of Exhs. A-1, A-2, A-3 and A-5 by another 'minervista' were evidently concocted by Guisadio to give viability to the involvement of the other defendants in the composition and publication of the news article in question (Exhs. A-1, A-2, A-3, A-4, A-5);

(4) That "Guisadio 'is not a credible witness, he has no stable employment, he appears to be biased in favor of

the plaintiff, the trial court notes that he is very loyal to him, even after he finished his testimony he was seen in the courtroom several times during the continuation of the hearing, thereby evincing unusual interest, there is credible testimony that he was separated from Republic Daily for dishonesty, a man in his situation would have no scruples to volunteer questionable testimony to satisfy a grudge";

(5) That witness Guisadio's testimony, weakened as it is by the inherent improbabilities mentioned therein and by the doubtful credibility of its source cannot stand the combined testimony of Dr. Manuel Cuenco, Attorney Jumapao, Captain Reyes, Lazaro and others supporting defendants' version that Lazaro was the only one responsible for the questioned publication and there existed no conspiracy nor scheme to effect said publication;

(6) That with the complete collapse of plaintiff's version of the publication based upon the totally discredited testimony of witness Guisadio, the clear fact is that defendant Lazaro by his own admission was solely responsible for the composition and publication of the questioned article in the newspaper;

(7) "Even granting arguendo that the defendants, except Jumapao and Lazaro, had strong motive to injure the plaintiff, motive alone is not sufficient to establish a bad deed - in this case the composition and publication of the alleged libelous article and headlines", "consequently, the conspiracy to commit an evil deed or a crime should be established by convincing evidence, and if the inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the defendant and the other consistent with his guilt, then the evidence does not satisfy the test of moral certainty and lie is entitled to be acquitted (People vs. Julian Abana, Off. Gaz. for August 1946)";

(8) That the imputation to the defendants was vigorously denied by defendants Manuel Cuenco, Federico Reyes, and Atty. Jumapao to the complete satisfaction of the trial court.

A very close scrutiny of the evidence presented on this issue of conspiracy in publication together with the findings and conclusions of the trial court shows no detectable flaw committed either in the evaluation of evidence, the reasoning followed in approximating the correct conclusion on said evaluation nor in the eventual findings and conclusion reached by the lower court. The trial court had the opportunity of observing the demeanor of the different witnesses presented by the plaintiff and the defendants. When it reached the conclusion that it believed more in the veracity of defendants' version of how the questioned publication came out, after considering the credibility of the witnesses for the defendants and the inherent weakness of the testimony of the principal witness for the plaintiff (Guisadio) whose credibility was placed in doubt for reasons stated by the trial court, We are at a complete loss to see how We can question, much less alter, the trial court's stand. What is clear is that conspiracy among the defendants in the publication of the questioned newspaper article has not been established by a convincing preponderance of evidence. That lack of evidence, coupled with the presumptions of good faith and innocence of a wrong doing (Sec. 5(a) Rule 131, Rules of Court) in favor of the defendants, which has not been successfully destroyed by plaintiffs evidence, leads to no other conclusion than that defendant Lazaro, by his own admission, really prepared alone and caused the publication of the questioned article.

V. ON THE QUESTION OF THE PUBLISHED COMPLAINT IN CIVIL CASE NO. 5665, C.F.I. OF CEBU, BEING PRIVILEGED AND LIBELOUS PER SE

With the conclusion of the lower court that defendant Lazaro was solely responsible for the composition and publication of the questioned article sustained, it becomes imperative to determine whether or not said publication is libelous per se or privileged to determine the liability of defendant Lazaro for the composition and publication of the questioned article.

We meticulously examined the questioned newspaper article itself and even tried to place ourselves in the position of the plaintiff reading the questioned article. It consisted of the gist of the complaint in Civil Case No. 5665

(C.F.I. Cebu) and the complaint itself reproduced, without remarks nor comments. It cannot be questioned that the complaint itself contains charges against the plaintiff made by the Bisaya corporation and contained in a civil complaint filed in court of alleged wrongs committed by plaintiff that supposedly caused injury to the Bisaya corporation. They may reflect adversely on the reputation and the integrity of the herein plaintiff and are libelous "per se". To charge or accuse a man of wrongdoing in court even if there is a plea for redress of lawful grievance therein, when such publication is clearly defamatory, cannot but place him in ridicule and dishonor. We agree with the trial court's conclusion that the article is libelous "per se". Although the published article consisted of the gist and a verbatim copy of the complaint in Civil Case No. 5665 (C.F.I. Cebu), it impeached the virtue and reputation of the plaintiff, who was then a prominent member of the House of Representatives, by picturing him as having violated with impunity the very constitution he was sworn to uphold and defend. It also paints him as one who has cheated his client, the Bisaya corporation, by illegally collecting attorney's fees for his own personal benefit.

On the question of whether not the published complaint is privileged (because it is a part of judicial proceeding), the lower court found that it is not so because when the complaint in Civil Case No. 5665 was filed on August 2, 1958, defendant Dioscoro Lazaro copied the complaint before noon of the same date and had it published on August 3, 1958, and the publication of the complaint took place before the lower court had taken any action on the complaint and when defendant (plaintiff in this case) had not yet been summoned nor given an opportunity to answer the same. We do not see eye to eye with the trial court on this issue as We believe the newspaper article was privileged in nature.

Defendants contend that the subject matter of the complaint in Civil Case No. 5665 is identical to that of the counterclaim of the Bisaya corporation contained in its opposition to the Motion of Atty. Miguel Cuenco (defendant in Civil Case No. 5665) for attorney's fees in the Bisaya-Ivaran Case (Civil Case No. 3040) and in the latter case, the Court (C.F.I. Cebu) had already taken action, so that the privileged character of the counterclaim in Civil Case No. 3040 can be extended to the complaint in Civil Case No. 5665. The lower court did not consider defendants' contention meritorious on the ground that the complaint in Civil Case No. 5665 is a distinct pleading from the counterclaim filed by defendants in the Bisaya-Ivaran Case (Civil Case No. 3040), although the trial court considered the "publicity of the counterclaim in the Ivaran case as a result of the hearing", "in mitigation of the damages to which the plaintiff (Miguel Cuenco) would be entitled to collect, for the opposition with the counterclaim had become privileged".

If the opposition with counterclaim filed by the defendants in the Ivaran case (Civil Case No. 3040) had become privileged (because of court action on the same) according to the trial court itself, and the contents of said counterclaim are the same as the contents of the published complaint in Civil Case No. 5665, We do not see any reason why on the mere ground that the complaint in Civil Case No. 5665 is a different pleading from the counterclaim in the Ivaran case (Civil Case No. 3040), the character of being privileged should not be extended to the complaint in Civil Case No. 5665.

The reason for the rule that pleadings in judicial proceedings are considered privileged is not only because said pleadings have become part of public record open to the public to scrutinize, but also due to the undeniable fact that said pleadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for the proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations substantially true because they can be supported by evidence presented in good faith, the contents of which would be under the scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein.

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. This Court ruled before that:

"Utterances made in the course of judicial proceedings, including all kinds of pleadings, petitions and motions belong to the class of communication that are absolutely privileged (Newel on the Law of Slander and Libel, 4th ed., pp. 388, 391-392, 407; 53 C.J.S. 165, 167, 173; 33 Am. Jur. 142-143, 144-145, 147; Tupas v. Parreño, L-12545 (April 30, 1959)". (Sison v. David, G.R. No. L-11268, January 28, 1961; 1 SCRA 60, 71).

In the case of Tolentino v. Baylosis (G.R. No. L-15742, January 31, 1961; 1 SCRA 396, 399-400), We stated:

"It is the generally accepted rule that counsel, parties or witnesses are exempted from liability in libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided that the statements are connected with, or relevant, pertinent or material to, the cause in hand or subject of inquiry (see 53 C.J.S. 170-171; Tupas v. Parreño, et al., G.R. No. L-12545, April 30, 1959, and authorities cited therein). For, as aptly observed in one case (referring to Santiago v. Calvo, 48 Phil. 919, quoting from Abbot v. National Bank of Commerce, 175 U.S. 409), while the doctrine of privileged communication is liable to be abused, and its abuse may lead to great hardships, yet to give legal sanction to such suits as the present would, we think, give rise to far greater hardships".

We likewise stated:

"In order that the matter alleged in a pleading may be privileged, it need not be in every case material to the issue presented by the pleadings.

"All doubts should be resolved in favor of its relevancy or pertinency, and for the purposes of relevancy the court will assume the alleged slanderous charges to be true, however false they may have been in fact". (Tolentino v. Baylosis, 1 SCRA 396)

Our conclusion is that the published complaint in Civil Case No. 5665, although considered libelous "per se", would fall under the protective mantle of privileged communication. It follows that its author (defendant Lazaro) cannot be held liable for its publication.

VI. COUNTERCLAIM OF DEFENDANT ATTY. JUMAPAO

Based on the lower court's finding of facts, which We have no reason to disturb, Atty. Jumapao had no connection with and participation or responsibility in the publication of the questioned article. Nor was he moved by personal ill-will or spite against the plaintiff and had no quarrel or misunderstanding with him and prior to 1958 Jumapao valued plaintiff's friendship. Jumapao was not previously included as a defendant in this case and plaintiff amended the complaint to include Jumapao only when the latter did not accede to plaintiff's request for him to "lay off" or stay away from Civil Case No. 5665 filed by the corporation (Bisaya) against plaintiff. Jumapao could not do as bidden because he was one of the attorneys of the corporation. Jumapao was even threatened with disbarment proceedings by plaintiff if he testified in said case.

While Atty. Jumapao might have been the victim of plaintiff's wrath, there seems to be no sufficient reason for holding the plaintiff liable in damages for including him as defendant in the amended complaint. The plaintiff had every reason to sue all persons whom he believed to have had something to do with the publication of the libelous article in question, and considering Atty. Jumapao's closeness to the defendant corporate officers and his connection with the case involving the Bisaya Land Transportation Company as a counsel for said corporation, the plaintiff was not altogether unjustified in including Atty. Jumapao as a defendant in this action. To hold otherwise and mulct plaintiff in damages would be practically imposing a penalty on the right to litigate.

It is noted that the judgment of the lower court says nothing about the liability of defendant Federico A. Reyes.

The result of this appeal renders it unnecessary to make any pronouncement on Reyes' liability, his co-defendants who are officers of the Bisaya Land Transportation Co., Inc. being absolved of any liability from the plaintiff's complaint.

WHEREFORE, the decision of the trial court dated August 12, 1967, is affirmed in so far as it dismissed plaintiff's complaint against the defendants Dr. Manuel Cuenco, Jesus Velez, Jose Velez and Atty. Nicolas Jumapao, and reversed in so far as it condemned defendant Dioscoro Lazaro to pay the plaintiff damages in the sum of two thousand pesos.

Costs against plaintiff-appellant.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

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