

**LU CHU SING AND LU TIAN CHIONG, PLAINTIFFS, AND APPELLANTS,
VS. LU TIONG GUI (ALIAS LU TIONG KEE), DEFENDANT AND
APPELLEE.**

G.R. No. L-122. May 11, 1946

Ponente: OZAETA, J.

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OZAETA, J.:

This is an appeal from an order of the Court of First Instance of Manila dismissing plaintiffs' complaint, upon motion of the defendant, on the ground that the facts therein alleged did not constitute a cause of action.

The material allegations of the complaint may be briefly stated as follows: The plaintiff Lu Chu Sing is the father of his coplaintiff, Lu Tian Chiong. In April 1945 Lu Tian Chiong entered the service of the defendant as a cook. On May 29, 1945, the defendant's home at 1160-F Magdalena street, Trozo, Manila, was robbed. The defendant imputed to the plaintiff Lu Tian Chiong complicity in that robbery "and for that reason Lu Tian Chiong was charged with said offense and the corresponding complaint was filed in the City Fiscals Office by the defendant against said plaintiff Lu Tian Chiong, for which the latter was arrested and detained in the police station of Meisic for five days and was only released after posting a cash bond in the amount of P2,000. After the city fiscal had conducted the corresponding investigation the criminal charge was dropped for lack of evidence. The imputation that the plaintiff Lu Tian Chiong had some connection with the robbery above mentioned "affected the integrity and honesty of the plaintiff and caused damages to him, for whenever he applies for any position in any Chinese establishment here in Manila, he is always rejected, inasmuch as he is considered as undesirable element or a person of bad character because of the complaint above referred to, notwithstanding the fact that the Chinese community in the Philippines knows that Lu Tian Chiongs father, the other plaintiff, Lu Chu Sing, was, before the war, a businessman of good reputation," owning several 'industrial and mercantile establishments in Manila. The defendant, knowing that the plaintiff Lu Tian Chiong had nothing to do with the robbery above mentioned, maliciously filed the criminal charge against the said plaintiff in the City Fiscals Office, for the sole purpose of soiling the good names of the plaintiffs, and particularly ruining and destroying completely the good reputation and credit of the plaintiff Lu Chu Sing as a businessman and, consequently, the latter has suffered damages in the amount of not less than P20,000; and besides, the plaintiffs were forced to hire the services of an attorney who defended the plaintiff Lu Tian Chiong in the City Fiscal Office, for which services the plaintiffs had paid the sum of P1,000." The prayer was that the court declare the criminal charge filed by the defendant in the City Fiscalfs Office against the plaintiff Lu Tian Chiong to be malicious, "and consequently it ruined and destroyed the good reputation and credit of the plaintiff Lu Chu Slug, for which he suffered damages," and that the defendant be adjudged "to pay the plaintiffs the sum of P21,000 as such damages, or any amount that this Honorable Court may determine, and to pay the costs of this suit."

Defendant's contention, which the lower court declared to be well founded, is that plaintiffs' action is predicated upon an allegation of defamation or libel, but that since the repeal of Act No. 277 by article 367 of the Revised Penal Code no more civil aotion for defamation or libel lies; and that even supposing for a moment that civil

responsibility still exists in cases of defamation and libel, this action could not prosper because the complaint filed by the defendant against the plaintiff Lu Tian Chiong in the City Fiscal's Office partook of the nature of a privileged communication.

The plaintiffs on the other hand maintain that their action is not based on libel or defamation but on malicious prosecution.

The questions to determine are (1) the nature of the obligation which the plaintiffs seek to enforce against the defendant and (2) whether the plaintiffs may recover upon such obligation under the allegations of the complaint.

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Obligations are created by law, by contract, by quasi-contract, and by unlawful acts or omissions or by those in which any kind of fault or negligence occurs. (Article 1089, Civil Code.) The obligation which the plaintiffs herein seek to enforce is apparently one created by or arising from an unlawful act—an obligation ex delicto.

Civil obligations arising from crimes are governed by the provisions of the Penal Code. (Article 1092, Civil Code.) Article 100 of the Revised Penal Code provides that every person criminally liable for a felony is also civilly liable. Civil and criminal actions arising from the same offense may be instituted separately. (Section 1 [b], Rule 107.) The civil action for damages arising from a felony may be brought before the criminal action for said felony, but in case the latter is instituted the former shall be stayed, pending final judgment in the criminal action. (Alba vs. Acuña and Frial, 53 Phil. 380.)

What is the felony alleged to have been committed by the defendant against the plaintiffs by reason of which the latter seek to enforce civil liability against the former? According to the plaintiffs it is malicious prosecution or false accusation; according to the defendant and the lower court It is defamation or libel.

Let us first consider plaintiffs' contention. Articles 326 and 327 of the old Penal Code, which respectively defined and penalized the crime of false accusation, were not re-enacted in the Revised Penal Code but, since the old Penal Code has been repealed, they must be deemed to have been abrogated.

Article 363 of the Revised Penal Code, which penalizes any person who by any act not constituting perjury shall directly incriminate or impute to an innocent person the commission of a crime, does not apply to false accusations but to acts tending directly to cause false accusations, such as "planting" evidence and the like. (People vs. Rivera, 59 Phil. 236.) In the case last cited (page 242) this court said:

"It is to be noted that article 326 of the old Penal Code contains the provision that the accuser could be prosecuted only on the order of the court, when the court was convinced upon the trial of the principal cause that there was sufficient basis for a charge of false accusation. Article 363 of the Revised Penal Code contains no such safeguard. If we extended said article by interpretation to administrative and judicial proceedings, it is apparent that we would open the door to a flood of prosecutions in cases where the defendants were acquitted. There is no reason to believe that the legislature intended such a result."

Under the Revised Penal Code one who falsely accuses another of a crime may be held liable either for libel or for perjury, depending upon the manner or form in which the act is committed. (See concurring opinion of Mr. Justice Diaz in People vs. Rivera, supra.)

Plaintiffs' legal theory of their case is therefore untenable.

The facts alleged by the plaintiffs against the defendant fall within the purview of article 353 of the Revised Penal Code, which defines difamação (incorrectly translated as libel) to be "a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to

cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead." Article 355 punishes libel with imprisonment or a fine, or both, "in addition to the civil action which may be brought by the Offended party." Article 358 penalizes oral defamation or slander.

It is not clear from the complaint in this case whether the alleged false imputation or charge of robbery made by the defendant against the plaintiff Lu Tian Chiong was written or oral. The allegation in paragraph 8 of the complaint to the effect that the defendant, knowing that the plaintiff Lu Tian Chiong had nothing to do with the robbery, "maliciously filed the criminal charge against the said plaintiff in the City Fiscal's Office, for the sole purpose of soiling the good names of the plaintiffs," is not sufficiently specific to enlighten us on that point, for a complaint may be presented to the City Fiscal's Office either verbally or in writing. Usually the complainant simply gives to the employee in the City Fiscal's Office in charge of preparing the charge slips the data required for an investigation.

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Assuming, as counsel for the defendant and the trial court did, that the allegedly false imputation or charge against the plaintiff Lu Tian Chiong was written and therefore constituted a libel, the question is then presented as to whether the plaintiffs may recover damages from the defendant upon the facts alleged in the complaint. Before scrutinizing the facts let us examine the law.

The defendant's contention, which the lower court simply declared well founded, is that the civil action for libel or defamation has been completely abrogated. Its authority for such contention counsel cites the decision of the Court of Appeals in *Topacio vs. The Tribune Publishing Co.*, 40 O.G., 12th supp., 21, and the decision of the Supreme Court in *Ruiz vs. Topacio*, 40 O.G., 8th supp., 201. To avoid an erroneous impression we declare that defendant's contention is not entirely correct. The repeal of the old Libel Law (Act No. 277) did not abolish the civil action for libel. In the first place, there is the general provision of article 100 of the Revised Penal Code that every person criminally liable for a felony is also civilly liable, and article 104 of the same Code further provides that the civil liability includes (1) restitution, (2) reparation of the damage caused, and (3) indemnification for consequential damages. In the second place, article 355 of the same Code provides that besides the criminal action for libel the offended party may bring a civil action. Article 360 further provides that "the criminal action and the civil action for damages in cases of written defamations, as provided in this chapter, may be filed simultaneously or separately with the Court of First Instance of the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed."

Defendant's contention that the charge filed by him in the City Fiscal's Office was a privileged communication, is not a proper ground for the dismissal of the complaint. In the first place, it is a matter of defense. In the second place, the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case. (See article 354, Revised Penal Code.)

Under the provisions of section 11 of the old Libel Law (Act No. 277) the offended party was entitled to recover in a civil action "not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others." The Revised Penal Code, however, is silent in regard to the kind and nature of the damage recoverable in a civil action for libel. That being the case, may a libeled person recover from the libeler damages for injury to his feelings and reputation and punitive or exemplary damages, in addition to "the actual pecuniary damages sustained by him? Two commentators on the Revised Penal Code. Justice Albert and Judge Guevara, differ on that question. Justice Albert in his commentary (pages 845-846) apparently assumes that

the law in this respect has not been changed, for he says under the heading "Civil Liability" that "the person so libeled is entitled to recover in such civil action not only the actual pecuniary damages, but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeler and an example to others. Judge Guevara, however, notes that the Revised Penal Code is silent in regard to the kind and nature of the damages recoverable in a civil action for libel, and says: "This being the case, the inference is that only actual or pecuniary damage may be recovered in a civil action on a written defamation." (Guevara on the Revised Penal Code, 3d ed., 780.) A division of the former Court of Appeals composed of Presiding Justice Paras and Justices Hontiveros, imperial, and Albert rendered the opinion in the case of Topacio vs. The Tribune Publishing Co., 40 O.G., 12th supp., 21, that with the repeal of the old Libel Law and particularly of section 11 thereof only the actual pecuniary damages may now be recovered in a civil action for libel.

This Supreme Court has not yet had occasion to pass upon that question. Contrary to the assertion of counsel for the present appellee this Court did not decide that question, as it was not involved, in the case of Ruiz vs. Topacio, (70 Phil., 368).

The liability for punitive or exemplary damages recoverable in a civil action for libel under section 11 of Act No. 277 was purely statutory; it was an obligation created by law. Hence after the repeal of that law such damages can no longer be recovered.

But the liability for damages on account of injury to feelings and reputation in a civil action for libel is an Obligation ex delicto. such damages being compensatory of the injury inflicted by the wrongful act of defamation. They are recoverable under article 104 of the Revised Penal Code, which provides that the civil liability arising from the commission of a felony includes reparation of the damage caused and indemnification for consequential damages.

It has been held that the right to recover damages of all persons who have suffered injury by reason of the wrongful and unprivileged publication of a libel or slander can neither be abridged by statute nor lost by reason of difficulty in determining the amount that should be awarded. (33 Am. Jur., Libel and Slander, sec. 199, p; 188, citing: Hanson vs. Krehbiel, 68 Kan. 670, 64 L.R.A. 790; Park vs. Detroit Free Press Co., 72 Mich. 560, 1 L.R.A. 599; Osborn vs. Leach, 135 ET.C. 628, 66 L.R.A. 648; Byers vs. Meridian Printing Co., 84 Ohio St. 408, 38 L.R.A. [N.S.] 913; Kimball vs. Post Pub. Co., 199 Mass., 248, 19 L.R.A. [N.S.] 862; and Paxton vs. Woodward, 31 Mont. 195, 78 Pac. 215.) "There are two general classes of compensatory damages allowable for defamation: (1) general damages, or those which the law presumes to be the natural, proximate, and necessary result of the publication, and (2) special damages, or those which, although a natural and probable consequence thereof, are not assumed to be necessary or inevitable, and must be shown by allegation and proof. It has been said that the general damages presumed from the publication of libelous matter, while not susceptible of being accurately measured, are generally more substantial and real than those designated as actual, and measured accurately by the dollar standard." (Id., section 200, p. 189.)

We shall now proceed to examine the facts alleged concerning the damages claimed by the plaintiffs:

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As to the plaintiff Lu Chu Sing. He claims to have suffered damages in the amount of not less than P20,000 because the defendant had knowingly, falsely, and Maliciously filed a charge for robbery in the City Fiscal's Office against his son, the plaintiff Lu Tian Chiong, "for the sole purpose of soiling the good names of the plaintiffs, and particularly ruining and destroying completely the good reputation and credit of the plaintiff Lu Chu Sing as a businessman. Even assuming that the defendant had libeled the son, it could not be held that the

father may recover damages on that account. In the eyes of the law the sin of the son is not imputable to the father. The son, who is of legal age, is sui juris with a personality separate and distinct from that of the father. Their rights and obligations are not merged. The name and reputation of one are not those of the other. An invasion of the right of the son is not an invasion of the right of the father.

Insofar, therefore, as the plaintiff Lu Chu Sing, the father, and his claim of P20,000 damages are concerned, we are clearly of the opinion that the complaint does not state facts sufficient to constitute a cause of action.

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As to the plaintiff Lu Tian Chiong. The allegations of the complaint as to him show that he was defamed by the defendant, who, it is alleged, knowingly, falsely, find maliciously charged him with complicity or participation in the crime of robbery; that because of such false and malicious imputation, whenever he applies for any position in any Chinese establishment in Manila he is always rejected as an undesirable element or a person of bad character. The complaint, however, does not allege any specific amount of damages for such injury to his own reputation. His counsel were apparently laboring under the erroneous assumption that the reputation of the son was inseparable from that of the father and that the damages suffered by the latter were necessarily suffered also by the former. Hence their joint action.

It results from all the foregoing that the complaint may and should be amended (a) by excluding therefrom Lu Chu Sing as party plaintiff, (b) by alleging specifically whether the defamation complained of by the plaintiff Lu Tian Chiong was libel or slander, i.e., whether it was written or oral, and (c) by alleging a specific amount of damages claimed by him for injury to his reputation. The lower court should have allowed the plaintiff Lu Tian Chiong to amend his complaint under section 3 of Rule 8, instead of dismissing it.

Wherefore, the order of dismissal is reversed and the case is ordered remanded to the court of origin for further proceedings in conformity with, this opinion, without any finding as to costs in this instance.

De Joya, Hilado, and Bengzon, JJ., concur.

CONCURRING

PERFECTO, J.:

We concur in the decision penned by Mr. Justice Ozaeta, although we except from the pronouncements contained in the following paragraphs of said decision:

"Under the Revised Penal Code one who falsely accuses another of a crime may be held liable either for libel or for perjury, depending upon the manner or form in which the act is committed. (See concurring opinion of Mr. Justice Diaz in *People vs. Rivera*, supra.)" (P. 5, decision.)

"Defendant's contention that the charge filed by him in the City Fiscal's Office was a privileged communication, is not a proper ground for the dismissal of the complaint. In the first place, it is a matter of defense. In the second place, the fact that a communication is privileged does not mean that it is not actionable; the privileged character simply does away with the presumption of malice, which the plaintiff has to prove in such a case. (See article 354, Revised Penal Code.)" (P. 8, decision.)

It is our opinion that a charge or an accusation filed in a fiscal's office, for prosecution purposes, no matter how groundless it may be, whether made verbally or in writing, cannot be taken as a basis for an action for libel against the accuser, and that if a communication is privileged, it cannot be criminally actionable. The protection

afforded by the privilege expressly sanctioned by law cannot be turned down by evidence.

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