

LUMEN POLICARPIO, PLAINTIFF AND APPELLANT, VS. THE MANILA TIMES PUBLICATION CO., INC., ET AL., DEFENDANTS AND APPELLEES.

G. R. No. L-16027. May 30, 1962

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from a decision of the Court of First Instance of Manila dismissing plaintiff's complaint and defendants' counterclaim, without special pronouncement as to costs. Originally certified to the Court of Appeals, the record on appeal was subsequently forwarded to us in view of the amount involved in the complaint (P300,000.00).

Plaintiff Lumen Policarpio seeks to recover P150,000.00, as actual damages, P70,000, as moral damages, P60,000, as correctional and exemplary damages, and P20,000, as attorney's fees, aside from the costs, by reason of the publication in the Saturday Mirror of August 11, 1956, and in The Daily Mirror of August 13, 1956, of two (2) articles or news items which are claimed to be per se defamatory, libelous and false, and to have exposed her to ridicule, jeopardized her integrity, good name and business and official transactions, and caused her grave embarrassment, untold and extreme moral, mental and physical anguish and incalculable material, moral, professional and business damages. The defendants are The Manila Times Publishing Co., Inc., as publisher of The Saturday Mirror and The Daily Mirror, which are newspapers of general circulation in the Philippines, and Constante C. Roldan, Manuel V. Villa-Real, E. Aguilar Cruz and Consorcio Borje as the reporter or author of the first article and the managing editor, the associate editor and the news editor, respectively, of said newspapers.

After its motion to dismiss the complaint had been denied by the Court of First Instance of Manila, in which the present action was initiated, the defendants filed a joint answer admitting the formal allegations of the complaint, denying the other allegations thereof, alleging special defenses and setting up a counterclaim for P10,000, as attorney's fees and expenses of litigation. In due course, later on, said court rendered the aforementioned decision, upon the ground that plaintiff had not proven that defendants had acted maliciously in publishing the aforementioned articles, although portions thereof were inaccurate or false.

Plaintiff is a member of the Philippine bar. On August 11 and 13, 1956, and for sometime prior thereto, she was executive secretary of the local UNESCO National Commission. As such officer, she had preferred charges against Herminia D. Reyes, one of her subordinates in said Commission, and caused her to be separated from the service. Miss Reyes, in turn, preferred counter-charges which were referred to Col. Crisanto V. Alba, a Special Investigator in the Office of the President. Pending completion of the administrative investigation, which began in June, 1956, Miss Reyes filed with the Office of the City Fiscal of Manila, on August 8, 1956, a complaint against the plaintiff for alleged malversation of public funds and another complaint for alleged estafa thru falsification of public documents, which were scheduled for investigation by said office on August 22, 1956, at 2:00 p.m. Meanwhile, or on August 11, 1956, the following appeared, with a picture of the plaintiff, in the front page of The Saturday Mirror:

"WOMAN OFFICIAL SUED

PCAC RAPS L. POLICARPIO ON FRAUDS

Unesco Official Head Accused on Supplies, Funds Use by-Colleague

By Constante C. Roldan

"Lumen Policarpio, executive secretary of the Unesco national commission here, was charged with malversation and estafa in complaints filed with the city fiscal's office by the Presidential Complaints and Action Commission today.

"The Criminal action was Initiated as a result of current administrative investigation against the Unesco official being conducted by Col. Crisanto V. Alba, Malacanan technical assistant, on charges filed by Herminia D. Reyes, a Unesco confidential assistant. The Unesco commission functions under the Office of the President.

"Fiscal Manases G. Reyes, to whom the cases were assigned, immediately scheduled preliminary investigation of the charges on August 22 at 2 p.m. Colonel Alba, in turn, indicated that the administrative phase of the inquiry will continue Monday and then resume on August 21 at Malacanan Park. The Palace Investigator said there are other charges, but would not specify these.

"Alba said Miss Reyes had testified on circumstances supposedly substantiating the malversation charge. Testimony had allegedly indicated that the accused had used Unesco stencils for private and personal purposes. Specification reputedly said that Miss Policarpio had taken stencils from the Unesco storeroom and used these for French lessons not at all connected with Unesco work; for the preparation of contracts of sale pianos in her business establishments; for preparation of invitations sent to members of the League of Women Voters of which she is one of the officers.

"Cited as witnesses on this charge are Miss Reyes, Francisco Manalo of Barrio Salabat, Taal, Batangas, Federico Vergara and Pablo Armesto both of the Unesco.

"Regarding the charge of estafa through falsification of public documents allegedly also committed sometime in 1955, Miss Policarpio was accused of having collected expenses for supposed trips. The accusation said the Unesco official had sought reimbursement of expenses for a trip to Baler, Quezon, on Aug. 19, last year, representing expenses of her car when in fact she supposedly rode in an army plane.

"Testimony indicated that a newspaper-woman who was a supposed co-passenger had even written about the plane trip in her newspaper column. The same voucher also allegedly collected expenses for going to a Unesco Bayambang (Pangasinan) project, although records reputedly showed that she was absent in that conference.

"Witnesses cited on the charge include Aurelio Savalbaro, a Philippine Air Force pilot, Lt. Clemente Antonio and others, also of the PAF.

"Miss Policarpio becomes the second high-ranking woman government official to face charges involving financial disbursements in their office. The first was Sen. Pacita M. Gonzales who is still under charge of mis-spending funds of the Social Welfare Administration and the UNAC while she had charge of these.

"The complainant, Miss Reyes, was earlier ordered relieved from her Unesco post by Miss Policarpio on charges including conduct 'unbecoming a lady', and as a result had not been paid her salary. She appealed to Malacanan which dismissed her suit and later she sued before Judge Rafael Amparo to compel payment of her salary. The court also rejected her plea on the ground that she had not exhausted all administrative remedies, the Palace not having made a clearcut decision on her case."

The Daily Mirror of August 13, 1956, likewise, carried on its first page—with a picture of plaintiff and of Miss Reyes, taken during the administrative investigation being conducted by Col. Alba—another news item, reading:

"PALACE OPENS INVESTIGATION OF RAPS AGAINST POLICARPIO

Alba Probes Administrative Phase of Fraud Charges
Against Unesco Woman Official; Fiscal Sets Prelim Quiz
Of Criminal Suit on Aug. 22

"The administrative phase of two-pronged investigation of Miss Lumen Poliearpio, head of the Unesco national commission here, opened in Malacanan before Col. Crisanto V. Alba.

"The judicial inquiry of charges filed by Herminia D. Reyes, also the complainant in the Malacanan case before the Presidential Complaints and Action Commission, will be conducted by Fiscal Manases G. Reyes on Aug. 22 at 2 p.m.

"Miss Policarpio stands accused by Reyes of having malversed public property and of having fraudulently sought reimbursement of supposed official expenses.

"Colonel Alba, at the start of his investigation at the Malacanan Park, clarified that neither he nor the PCAC had initiated the criminal action before the city fiscal's office. The complaint before the fiscal was started by an information sheet naming Herminia D. Reyes as complainant and citing other persons as witnesses. Fiscal Reyes set preliminary investigation of these charges for Aug. 22.

"Miss Reyes, technical assistant of the Unesco, stated at the Palace inquiry that during 1956 Miss Poliearpio allegedly used several sheets of government stencils for her private and personal use, such as for French lessons, contracts of sale of pianos and for invitations of the League of Woman Voters of which she (Miss Poliearpio) is an officer. The Unesco commission here functions under the Office of the President.

"The charge was filed with the PCAC, and the FCAC endorsed it to Colonel Alba for investigation.

"Miss Policarpio this morning was not represented by any lawyer. Federico Diaz, lawyer representing complainant Miss Reyes, petitioned for the suspension of Miss Policarpio, executive secretary of the Unesco.

"Alba did not act immediately on the petition. He said he was holding a hearing on the petition on August 15.

"During this morning's investigation three witnesses appeared. The first witness was Atty. Antonio Lopez of the PCAC who brought with him 18 sheets of stencil which were allegedly used by Miss Policarpio for her personal use. These sheets were admitted as temporary exhibits.

"The second witness was Federico Vergara of the Unesco who said that he received four of the 18 sheets, but he could not identify which of the sheets he had received.

"The third witness was Francisco Manalo who certified on the charge of oppression in office against Miss Policarpio.

"The other charge of Miss Reyes corresponded to supposed reimbursements sought by Miss Policarpio for a trip to Quezon Province and to Pangasinan. On the first, Miss Reyes' complaint alleged the Unesco official had asked for refund of expenses for use of her car when, Miss Reyes claimed, she had actually made the trip aboard an army plane.

"Miss Reyes also said Miss Policarpio was absent from the Bayambang conference for which she also sought allegedly refund of expenses.

"The complainant had previously been ordered relieved of her Unesco post by Miss Policarpio and had later sued at the Palace and before the Court for payment of her salary."

The title of the article of August 11, 1956—"Woman official sued"—was given prominence with a 6-column (about

11 inches) banner headline of one-inch types. Admittedly, its sub-title—"PCAC raps L. Policarpio on fraud"—printed in bold one-centimeter types, is not true. Similarly, the statement in the first paragraph of the article, to the effect that plaintiff "was charged with malversation and estafa in complaints filed with the city fiscal's office by the Presidential Complaints and Action Commission"—otherwise known as PCAC—is untrue, the complaints for said offenses having been filed by Miss Reyes. Neither is it true that said "criminal action was initiated as a result of current administrative investigation" as stated in the second paragraph of the same article.

Plaintiff maintains that the effect of these false statements was to give the general impression that said investigation by Col. Alba had shown that plaintiff was guilty, or, at least, probably guilty of the crimes aforementioned, and that, as a consequence, the PCAC had filed the corresponding complaints with the city fiscal's office. She alleges, also, that although said article indicates that the charges for malversation and for estafa through falsification against her referred, respectively, to the use by her of UNESCO stencils allegedly for private and personal purposes, and to the collection of transportation expenses, it did not mention the fact that the number of stencils involved in the charge was only 18 or 20, that the sum allegedly misappropriated by her was only P54, and that the falsification imputed to her was said to have been committed by claiming that certain expenses for which she had sought and secured reimbursement were incurred in trips during the period from July 1, 1955 to September 30, 1955, although the trips actually were made, according to Miss Reyes, from July 8 to August 31, 1955. By omitting these details, plaintiff avers, the article of August 11, 1956, had the effect of conveying the idea that the offenses imputed to her were more serious than they really were. Plaintiff, likewise, claims that there are other inaccuracies in the news item of August 13, 1956, but, we do not deem it necessary to dwell upon the same for the determination of this case.

Upon the other hand, defendants contend that, although the complaints in the city fiscal's office were filed, not by the PCAC, but by Miss Reyes, this inaccuracy is insignificant and immaterial to the case, for the fact is that said complaints were filed with said office. As regards the number of sheets of stencil allegedly misused and the amount said to have been misappropriated by plaintiff, as well as the nature of the falsification imputed to her, defendants argue that these "details" do not affect the truthfulness of the article as a whole, and that, in any event, the insignificant value of said sheets of stencil and the small amount allegedly misappropriated, would have had, if set forth in said article, a greater derogatory effect upon the plaintiff, aside from the circumstance that defendants had no means of knowing such "details".

It appears, however, that prior to August 11, 1956, Col. Alba had already taken the testimony of Antonio P. Lopez, Francisco Manalo and Federico Vergara, as witnesses for Miss Reyes. Hence, defendants could have ascertained the "details" aforementioned, had they wanted to. Indeed, some of the defendants and/or their representatives had made appropriate inquiries from Col. Alba before said date, and some "details"—though not those adverted to above—appear in the article then published, whereas the number of sheets of stencil allegedly misused was mentioned in the news item of August 13, 1956.

Moreover, the penalty prescribed by law for the crime either of estafa or of embezzlement depends partly upon the amount of the damage caused to the offended party (Articles 315 to 318, Revised Penal Code). Hence, the amount or value of the property embezzled is material to said offense.

Again, it is obvious that the filing of criminal complaints with the city fiscal's office by another agency of the Government, like the PCAC, particularly after an investigation conducted by the same, imparts the idea that the probability of guilt on the part of the accused is greater than when the complaints are filed by a private individual, specially when the latter is a former subordinate of the alleged offender, who was responsible for the dismissal of the complainant from her employment. It is only too apparent that the article published on August 11, 1956, presented the plaintiff in a more unfavorable light than she actually was.

It goes without saying that newspapers must enjoy a certain degree of discretion in determining the manner in which a given event should be presented to the public, and the importance to be attached thereto as a news item, and that its presentation in a sensational manner is not per se illegal. Newspaper may publish news items relative to Judicial, legislative or other official proceedings, which are not of confidential nature, because the public is entitled to know the truth with respect to such proceedings, which, being official and non-confidential, are open to public consumption. But, to enjoy immunity, a publication containing derogatory information must be not only true, but, also, fair, and it must be made in good faith and without any comments or remarks.

Defendants maintain that their alleged malice in publishing the news items in question has not been established by the plaintiff. However, Article 354 of the Revised Penal Code, provides:

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

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

"2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report of speech delivered in said proceedings, or of any other act performed by public officers in the exercise of other functions."

In the case at bar, aside from containing information derogatory to the plaintiff, the article published on August 11, 1956, presented her in a worse predicament than that in which she, in fact, was. In other words, said article was not a fair and true report of the proceedings therein alluded to. What is more, its subtitle—"PCAC raps L. Policarpio on fraud"—is a comment or remark, besides being false. Accordingly, the defamatory imputations contained in said article are "presumed to be malicious."

Then too, how could defendants claim to have acted with good intentions or justifiable motive in falsely stating that the complaints had been fled with the Office of the City Fiscal by the PCAC as a result of the administrative investigation of Col. Alba? Either they knew the truth about it or they did not know it. If they did, then the publication would be actually malicious. If they did not, or if they acted under a misapprehension of the facts, they were guilty of negligence in making said statement, for the consequences of which they are liable solidarity (Articles 2176, 2194, 2208 and 2219[I], Civil Code of the Philippines; 17 R.C.L. sec. 95, p. 349).

We note that the news item published on August 13, 1956, rectified a major inaccuracy contained in the first article, by stating that neither Col. Alba nor the PCAC had filed the aforementioned complaints with the city fiscal's office. It, likewise, indicated the number of sheets of stencil involved in said complaints. But, this rectification or clarification does not wipe out the responsibility arising from the publication of the first article, although it may and should mitigate it (*Jimenez vs. Reyes*, 27 Phil. 52). For this reason, we feel that the interest of justice and of all parties concerned would be served if the defendants indemnify the plaintiff in the sums of P3,000, by way of moral damages, and P2,000, as attorney's fees.

Wherefore, the decision appealed from is hereby reversed and another one shall be entered sentencing the defendants herein to pay jointly and severally to the plaintiff the aforementioned sum of P3,000, as moral damages, and P2,000, by way of attorney's fees, in addition to the costs. It is so ordered.

Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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