

**JESUS WYLENGCO, PETITIONER-APPELLANT, EPIFANIA GUEZON
VDA. DE CABIGTING, ERLINDA CRISTOBAL VIRAY, SPECIAL
COUNSEL OF ANGELES CITY AND ELLER CRISTOBAL VIRAY,
SPECIAL COUNSEL AT T...**

G.R. No. L-24199. November 29, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This appeal on a question of law is interposed by Jesus Wylengco from the decision of the Court of First Instance of Pampanga dismissing Civil Case No. 2679 on the ground that the refusal of the City Fiscal of Angeles City to grant the appellant's motion to dismiss, or to desist from proceeding with, the preliminary investigation in Criminal Case I.S. No. 693 amounted to a grave abuse of discretion.

It appears that due to a typhoon which hit Pampanga sometime before July 22, 1964, some of the bamboo trees growing on the residential lot of Jesus Wylengco at Sto. Entierro Street, Angeles City, fell or leaned heavily towards the adjoining lot owned by Epifania Guezon Vda. de Cabigting, causing considerable damage to her concrete fence. The latter asked her neighbor for permission to cut the bamboos so she could repair her damaged fence. The permission was granted. Cabigting spent her own money cutting the bamboo trees but did not remove the main trunks remaining on the ground. Evidently her failure to do so made Wylengco angry, for at noontime on July 22, 1964, he went to Cabigting's yard and uttered defamatory remarks at her in the Pampango dialect, as follows: "Obat emo pepaloco ding pun, et emo pepalinis, puñieta ca, anac puta, puta nayda mo, malandi." Translated into English the remarks were: "Why did you not have the trunks removed, why didn't you have them cleaned, you daughter of a whore and woman of loose morals." Many other words of similar import were added, all in the presence of and within the hearing of many persons, including Cabigting's daughters, one of whom had to be sent to call a peace officer.

Two days later, on July 24, 1964, a complaint for serious oral defamation (I.S. No. 693) was filed by Epifania Guezon Vda. de Cabigting against Jesus Wylengco with the City Fiscal's Office of Angeles City.

At the preliminary investigation of the case on October 13, 1964 before Special Counsel Erlinda Cristobal Viray, one of the respondents herein, Cabigting admitted on cross-examination that Wylengco was very angry when he uttered the defamatory remarks in question. This was corroborated by Pelagia Vda. de Mabini, the lone witness for the complainant. Fourteen days later, or on October 27, Cabigting rested her case before the Special Counsel, pre-senting as part of her evidence the sworn statement she had executed before the police of Angeles City dated July 24, 1964 (Annex "A" of the petition). On the same day Wylengco, through counsel, moved to dismiss the complaint on the ground that inasmuch as according to Cabigting the alleged defamatory statements were uttered in the heat of anger they would constitute merely the crime of slight oral defa-mation, and since no information had been filed within two months from July 22, 1964, when said remarks were uttered, the crime of slight oral defamation as defined in Article 358 of the Revised Penal Code had already prescribed.

On November 10, 1964 Special Counsel Viray denied the motion to dismiss and directed Wylengco to present his evidence on November 23 and December 2, 1964. Wylengco filed a motion for reconsideration reiterating the same grounds alleged in his motion to dismiss. This second motion was likewise denied. On November 25, 1964, Wylengco filed a petition for certiorari and prohibition with writ of preliminary injunction in the Court of First Instance of Pampanga, seeking to restrain the respondents Special Counsel and the City Fiscal of Angeles City from proceeding with the preliminary investigation of Criminal Case I.S. No. 693, and praying further that after hearing the resolution of respondent Special Counsel Viray dated November 10, 1964 be declared null and void.

On December 2, 1964 the trial court issued the writ of preliminary injunction asked for. After the respondents filed their answer the trial court, on December 23, 1964, rendered judgment on the pleadings and on the memoranda of the parties, dismissing the petition and dissolving the writ of preliminary injunction.

The issue presented in this appeal is whether or not the respondent Special Counsel Erlinda C. Viray acted with grave abuse of discretion or in excess of her jurisdiction when she denied Wylengco's motion to dismiss and directed the preliminary investigation to proceed.

The record shows that in denying the motion to dismiss and the motion for reconsideration, the respondent Special Counsel who conducted the preliminary investigation did not rule squarely on the question of prescription raised by Wylengco, but directed him to present his evidence, if he so desired, so as to enable her to appreciate more clearly the facts of the case based on the testimony of both parties. The denial of the motion to dismiss was in effect a ruling that in the opinion of the investigating counsel the evidence before her at that stage of the case did not justify the dismissal, or at least the grounds relied upon in the motion were not indubitable, for which reason she wanted to hear the evidence for herein petitioner. Such ruling cannot be considered as an abuse of discretion or in excess of jurisdiction. It was neither arbitrary nor oppressive. As pointed out by the Solicitor General, the doctrine relied upon by the appellant in his brief (*People vs. Doronila*, 40 O.G. 231; *People vs. Modesto*, 40 O.G. 128), to the effect that defamatory words uttered in the heat of anger with some provocation on the part of the offended party would constitute only slight oral defamation, would not apply in this case where there is no evidence that there was such provocation at all.

In deciding the petition for certiorari and prohibition the lower court did not have the criminal charge for trial before it. The merits thereof were not in issue, particularly the question of whether the statements attributed to Wylengco constituted serious or slight oral defamation and whether the case had already prescribed. The only issue before the court was whether respondent Special Counsel had acted with or without jurisdiction or grave abuse of discretion in denying the petitioner's motion to dismiss. The action taken by the Special Counsel was within her discretion in the matter. At any rate, such action did not deprive Wylengco of his right to raise the defense of prescription at the trial after the elevation of the case to the court.

WHEREFORE, the decision appealed from is hereby affirmed and because the present appeal has merely served to delay final disposition of the case, the appellant is assessed treble costs.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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