

MARITES DANGUILAN-VITUG, PETITIONER, VS. THE COURT OF APPEALS, HON. RAMON MABUTAS, JR., PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH XLII, MANILA, AND MARGARITA...

G.R. No. 103618. May 20, 1994

Ponente: ROMERO, J.

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ROMERO, J.:

Petitioner, Marites Danguilan-Vitug, wrote an article entitled "Why Cory is Soft on Her Relatives" which was published on October 2, 1988 in Focus: A Chronicle Magazine, a Sunday supplement of the Manila Chronicle. The pertinent portion of the article reads as follows:

"x x x x x x x x x x

In a meeting with the President in Malacañang, a group of traders from Zamboanga City complained about her sister-in-law, Tingting Cojuangco and her dominant role in the barter trade. She was referred to, in that meeting, as the 'barter trade queen.' Cory Aquino listened and asked for evidence.

A Malacañang aide observes: "She's faced with a dilemma. She has contradicted herself. 'The decision to dismiss Maceda and Mercado on the basis of soft evidence has been overturned by the strong push for proof in the case of her sister-in-law and those of other officials, too.

In the instance of Tingting Cojuangco, claims the aide, the most the President has done - with a lot of pain on her part - has been to keep a distance from her sister-in-law, 'almost ostracizing her.' She has not shown up in events important to Tingting, such as the latter's graduation from the National Defense College, among others. Yet, this has meant little to the public who seeks due process for the accused.

x x x x x x x x x x."[1]

Private complainant, Margarita Cojuangco filed a complaint for libel before the Manila Prosecutor's Office. After preliminary investigation, the city prosecutor on May 9, 1989, recommended the filing of the information for libel before the Regional Trial Court of Manila. Accordingly, an information was filed against petitioner. On June 30, 1989, petitioner filed a petition for review with the Department of Justice. In a resolution dated April 30, 1990, the Secretary of Justice dismissed the charge for libel. However, upon motion of Margarita Cojuangco, the said resolution was reversed and the filing of the information was sustained.

On May 17, 1990, petitioner filed before the sala of Judge Ramon Mabutas, Jr. a Motion to Quash the information on the ground that there was no libel since the subject article was absolutely privileged as it was a mere expression of opinion and a fair comment on matters of public concern and interest. There was also no proof that it was written with actual malice. As a second ground for the quashal of the information, petitioner averred that the prosecutors had no authority to file the information because the Secretary of Justice committed grave abuse of discretion in reversing his prior resolution.

Respondent trial judge denied the Motion to Quash averring that the grounds cited by petitioner are matters of defense. The motion for reconsideration filed by petitioner was similarly denied and arraignment was scheduled on August 6, 1991.

Thereafter, Marites Danguilan-Vitug filed a special civil action for certiorari and prohibition with preliminary injunction with the Court of Appeals. The petition was dismissed in a decision, the dispositive portion of which reads as follows:

"WHEREFORE, considering all the foregoing premises, this petition is DISMISSED with costs against the petitioner.

SO ORDERED."[2]

Hence, this petition which is anchored on the following arguments:

"I

The disputed article is a non-defamatory expression of opinion on a matter of public interest

II

The opinion is based on true facts

III

There is no genuine issue as to the existence of actual malice

IV

The Department of Justice violated petitioner's right to non-discriminatory enforcement of penal laws"[3]

Meanwhile, in a resolution dated March 17, 1993, the Supreme Court granted the Motion for Leave to File Brief for Petitioner dated February 18, 1993, by intervenors Melinda Quintos de Jesus, Sheila Coronel, Malou Mangahas, Ramon Isberto, and Rina Jimenez-David (De Jesus, et al.) praying that they be heard as friends of the Court or as intervenors. On the same day, the court also noted the Motion for Leave of Court to Appear as Amicus Curiae filed by Atty. Perfecto V. Fernandez. De Jesus, et al., in their brief for petitioner, cited the following as grounds for granting the petition:

"I

The presumptions of malice and of falsity, when applied to libel prosecutions arising from publication of matters of public concern, abridge the freedom of expression and the right of the people to information on matters of public concern;

II

The presumptions of malice and of falsity, when applied against a person accused of a libel arising from publication of a matter of public concern, violate the constitutional right of an accused to be presumed innocent;

III

Vitug's article is not defamatory."[4]

On the other hand, Atty. Perfecto V. Fernandez argued in his motion that in cases of privileged publications, the information must expressly allege specific or actual malice for the libel charge to be sufficient. Moreover, the allegation should be supported by prima facie evidence, as absence thereof would make the information invalid since it amounts to no crime being charged.

On February 24, 1993, Margarita Cojuangco filed a petition (motion) for contempt against Rina Jimenez-David for writing in her column, AT LARGE, an article entitled "Challenging the Libel Law"[5] published in the February 23, 1993 issue of the Philippine Daily Inquirer. Respondent-movant alleges that the publication was designed to influence or to interfere with the disposition of the court in the case at bar and that the publication cast doubt on her character and reputation. Rina Jimenez-David refutes the charge by saying that what she wrote only expressed a general proposition that a libel action is usually regarded as a threat and restriction to newspapers that has a chilling effect on the journalistic community; that her article was not meant to influence the Court; that the statements merely pointed out that Margarita Cojuangco filed libel suits against other persons; that the article simply made a comment that libel suits are used by the powerful to intimidate a free and responsible media; that the article was covered by the rights to a free press and free expression and that to be subject to punishment, it should present a clear and present danger or a serious and imminent threat to the administration of justice.

At the core of this petition is the propriety of the denial of the motion to quash.

Was the allegedly privileged nature of the communication a ground for quashing the information?

We answer in the negative. The Court of Appeals correctly stated, thus:

"A reading of the Motion to Quash filed by the petitioner before the respondent courts shows that indeed, as correctly found by the respondent court, the grounds cited in support thereof are matters of defense which have to be proven during the trial. The respondent judge certainly committed no grave abuse of discretion in denying the Motion to Quash. In fine, the claims of the petitioner in support of this petition that the disputed article is a non-defamatory expression of opinion on a matter of public interest; that said opinion is based on true facts; that there is no malice on the part of the author (sic) are matters which need adequate proof and proper appreciation by the trial court and are issues that cannot be passed upon through mere arguments. x x x."[6]

We find no reason to depart from said conclusion. Section 3, Rule 117[7] of the Revised Rules of Court enumerates the grounds for quashing an information. Specifically, paragraph (g) of said provision states that the accused may move to quash the complaint or information where it contains averments which, if true, would constitute a legal excuse or justification. Hence, for the alleged privilege to be a ground for quashing the information, the same should have been averred in the information itself and secondly, the privilege should be absolute, not only qualified.[8] Where, however, these circumstances are not alleged in the information, quashal is not proper as they should be raised and proved as defenses.[9] With more reason is it true in the case of merely qualifiedly privileged communications because such cases remain actionable since the defamatory communication is simply presumed to be not malicious, thereby relieving the defendant of the burden of proving good intention and justifiable motive. The burden is on the prosecution to prove malice.[10] Thus, even if the qualifiedly privileged nature of the communication is alleged in the information, it cannot be quashed especially where prosecution opposes the same so as not to deprive the latter of its day in court, but prosecution can only prove its case after trial on the merits.[11] In *People v. Gomez*[12] we held, inter alia:

"The claim of the accused x x x that the letter is privileged communication is not a ground for a motion to

quash. It is a matter of defense which must be proved after trial of the case on the merits."

In view of the above considerations, we rule that this petition is not the appropriate vehicle for the arguments raised by De Jesus, et al. and Atty. Perfecto V. Fernandez. They are properly to be considered in the trial on the merits of this case.

Regarding the alleged lack of authority of the officers who filed the information, suffice it to say that the assailed resolution of the Secretary of Justice reversing the dismissal of the charge for libel reveals no such abuse of discretion as would deprive him of authority to sustain the filing of the information against petitioner.

With respect to the motion for contempt filed by Margarita Cojuangco against Rina Jimenez-David, we believe that the article written by the latter is not such as to impede, obstruct, or degrade the administration of justice. The allegedly contemptuous article merely restates the history of the case and reiterates the arguments which Rina Jimenez-David, together with some other journalists have raised before this Court in their Brief for Petitioner Vitug. We do not find in this case the contemptuous conduct exhibited by the respondent in *In re Torres*[13] where the respondent, being a newspaper editor, published an article which anticipated the outcome of a case in the Supreme Court, named the author of the decision, and pointed out the probable vote of the members of the Court although in fact, no such action had been taken by the court; and in *In re Kelly*[14] where respondent, having been convicted of contempt of court, published a letter during the pendency of his motion for a re-hearing of the contempt charge. In said letter, he severely criticized the court and its action in the proceeding for contempt against him. In contrast to the aforementioned publications, Rina Jimenez-David's article cannot be said to have cast doubt on the integrity of the court or of the administration of justice. If at all, it was a mere criticism of the existing libel law in the country. In view of the above considerations, we are constrained to deny the motion for contempt.

WHEREFORE, in view of the foregoing, this petition is DENIED for lack of merit. Likewise, the motion for contempt filed by respondent against Rina Jimenez-David is DENIED on the same ground.

SO ORDERED.

Bidin, and Melo, JJ., concur.

Feliciano, (Chairman), J., see dissenting opinion.

Vitug, J., see separate opinion.

[1] Rollo, p. 34.

[2] Rollo, p. 31.

[3] Rollo, pp. 15-16.

[4] Rollo, p. 216.

[5] Said article runs as follows:

"TINGTING Cojuangco, who is now governor of Tarlac but was a private citizen at the time, sued for libel on Nov. 4 that year. Though Ms. Cojuangco failed to prove that Vitug's article was false and written with malice, the prosecutor ruled that the article was malicious.

On April 10, 1990, the Department of Justice reversed the prosecutor and directed him to withdraw the Information, finding that 'There is no evidence to prove that the questioned publication was prompted by ill-will or spite...'

But a year or so later, on March 19, 1991, the DOJ, on the same evidence, reversed itself and directed the prosecutor to file an Information for libel against Vitug, holding that Vitug and her co-respondents should prove their innocence at the trial.

Vitug's motion to quash the information was denied by judge Mabutas, which decision was later upheld by the Court of Appeals. Vitug has appealed the CA's ruling to the Supreme Court.

In our (De Jesus et al) brief, we expressed our belief that 'to require Vitug and her co-accused 'to prove their innocence' at the trial, as ruled by DOJ, abridges the freedom of expression and the right of the people to information on matters of public concern. It also violates the constitutional right of an accused to be presumed innocent.'

THE Vitug case, which is now ready for resolution before the Supreme Court, will, it is hoped, challenge the 'presumption of malice' contained in current libel law.

In the brief, we said that, as practicing journalists, we have an interest in the case because if Vitug is forced to go to trial, it would have a 'chilling effect' on the journalistic community.

Ms. Cojuangco's suit against Vitug, for your information, is not the only one she has filed against a journalist who has offended her. After she became the target of media scrutiny owing to her prominent role in Mindanao politics and the barter trade, Ms. Cojuangco slapped multi-million peso libel suits against everyone writing disparagingly about her (including the INQUIRER). The tactic apparently worked because she soon faded from the media spotlight.

Sylvia Mayuga, who was sued for two columns she wrote in the Globe and in the INQUIRER, and who is now facing trial, points out that ever since the suits were filed, she has been 'prevented from writing another line about her or her activities while the case awaits decision.'

But another columnist, Jarius Bondoc of the Manila Times, revealed that Ms. Cojuangco agreed to drop her suit against him upon the intercession of a high government official who happens to be related (by marriage) to Bondoc.

This just shows that though libel is deemed the ordinary citizen's defense against the all-powerful media, it is much too often used as a tool by the even more powerful to intimidate, silence and co-opt an otherwise free and responsible media."

[6] Rollo, p. 30.

[7] Sec. 2. Motion to Quash - Grounds. - The defendant may move to quash the complaint or information on any of the following grounds.

- a) That the facts charged do not constitute an offense;
- b) That the court trying the case has no jurisdiction of the offense charged or of the person of the defendant;
- c) That the officer who has filed the information has no authority to do so;
- d) That it does not conform substantially to the prescribed form;
- e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses.

- f) That the criminal action or liability has been extinguished;
- g) That it contains averments which, if true, would constitute a legal excuse or justification;
- h) That the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense.

[8] REGALADO, REMEDIAL LAW COMPENDIUM, 1989, Vol. 2, p. 321.

[9] Ibid.

[10] People v. Montori, No. L-16772, November 30, 1962, 6 SCRA 801.

[11] Duque v. Santiago, No. L-16916, November 29, 1962, 6 SCRA 661.

[12] No. L-32815, June 25, 1980, 98 SCRA 181.

[13] 55 Phil. 799.

[14] 35 Phil. 944 (1916).

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Dissenting OPINION

Feliciano, J.:

I agree with the conclusion expressed by my learned brother Vitug, J. in his separate dissenting opinion. That conclusion is that the portion of the article written by petitioner, assailed in the complaint for libel, is not defamatory.

The phrases "dominant role in the barter trade" and " 'barter trade queen' " do not, by themselves, and in the context of the newspaper account, appear defamatory; they do not constitute an imputation of a crime or of a vice or defect, nor do they tend "to cause the dishonor, discredit or contempt" of private respondent. It may be noted that the barter trade in the southern portion of our country was not, in itself, a criminal enterprise; in fact, it was an activity regulated, and therefore authorized, by law subject to certain limitations.[1] The reference to former President Corazon C. Aquino keeping herself at a distance from private respondent, is similarly, in itself, not defamatory. It might be that such reference did cause private respondent some personal embarrassment. In *Bulletin Publishing Corporation, etc., et al. v. Hon. Judge Edilberto Noel, etc., et al.*, [2] this Court said:

"Private respondents' feelings and sensibilities have obviously been hurt and offended by the reference to Amir Mindalano as a commoner and as having lived for a time with an American family. Personal hurt or embarrassment or offense, even if real, is not, however, automatically equivalent to defamation. The law against defamation protects one's interest in acquiring, retaining and enjoying a reputation 'as good as one's character and conduct warrant' 14 in the community and it is to community standards -- not personal or family standards -- that a court must refer in evaluating a publication claimed to be defamatory.

The term 'community' may of course be drawn as narrowly or as broadly as the user of the term and his purposes may require. The reason why for purposes of the law on libel the more general meaning of community must be adopted in the ascertainment of relevant standards, is rooted deep in our constitutional law. That reason relates to the fundamental public interest in the protection and promotion of free speech and expression, an interest shared by all members of the body politic and territorial community. A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest, wherever they may take place within the nation and as well in the outside world, with minimum fear of being hauled to court by one group or another (however defined in scope) on

criminal or civil charges for libel, so long as the newspaper respects and keep within the standards of morality and civility prevailing within the general community. Any other rule on defamation, in a national community like ours with many, diverse cultural, social, religious and other groupings, is likely to produce an unwholesome 'chilling effect' upon the constitutionally protected operations of the press and other instruments of information and education. 15"[3]

My respectful suggestion is that *Bulletin Publishing Corporation v. Noel* is applicable in the case at bar. The fact that the *Bulletin* case involved a civil complaint for damages, rather than a criminal prosecution for libel as in the case at bar, constitutes, to my mind, a distinction without a difference. For neither a criminal complaint nor a civil suit for damages would, at the threshold, lie if the expressions complained of are not defamatory in nature.

It is also submitted, with respect, that while the tone of the newspaper account is somewhat informal and chatty, the subject matter of the newspaper account is a matter of legitimate interest to the public at large. The newspaper account purports to be a report on a meeting between the former President of the Philippines and a group of traders or merchants in the Office of the President. Indeed, the account may be viewed as relating more to the former President of the Philippines than to private respondent.

I vote to grant the Petition for Certiorari.

[1] See, e.g., Memorandum Order No. 24 dated 24 July 1986 by the President of the Philippines and Executive Order No. 427 dated 12 October 1990 (86 Official Gazette 9442; December 1990).

[2] 167 SCRA 255 (1988).

[3] 167 SCRA at 264-265; citations omitted; emphases supplied.

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SEPARATE OPINION

VITUG, J.:

The published article that has occasioned the charge against the petitioner, quoting from the majority opinion, reads:

"X X X X X X X X X X

"In a meeting with the President in Malacañang, a group of traders from Zamboanga City complained about her sister-in-law, Tingting Cojuangco and her dominant role in the barter trade. She was referred to, in that meeting, as the 'barter trade queen.' Cory Aquino listened and asked for evidence.

"A Malacañang aide observes: "She's faced with a dilemma. She has contradicted herself. "The decision to dismiss Maceda and Mercado on the basis of soft evidence has been overturned by the strong push for proof in the case of her sister-in-law and those of other officials, too.

"In the instance of Tingting Cojuangco, claims the aide, the most the President has done - with a lot of pain on her part - has been to keep a distance from her sister-in-law, 'almost ostracizing her.' She has not shown up in events important to Tingting, such as the latter's graduation from the National Defense College, among others. Yet, this has meant little to the public who seeks due process for the accused."

While I have no misgivings at all on the profound disquisitions made by Mme. Justice Florida Ruth P. Romero on

the issues of law raised, I most humbly submit, however, that what should in the first place be primordial is whether or not the newspaper account could be considered defamatory. I must say I fail to see it as such.

Accordingly, I vote to grant the petition.

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