

## AMELIA LAROBIS, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. No. 104189. March 30, 1993*

Ponente: QUIASON, J.

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### QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA-G.R. CR No. 10507, entitled "Amelia Larobis v. Hon. Rodrigo F. Lim, Jr., et al." promulgated on November 20, 1991 and the resolution of the same Court dated January 22, 1992, denying the motion for reconsideration of said decision.

In CA-G.R. No. 10507, the Court of Appeals affirmed the decision of the Regional Trial Court, Manolo-Fortich, Bukidnon, Br. XI, in Criminal Case No. 979 insofar as it found petitioner guilty of the crime of grave oral defamation but it modified the penalty imposed on petitioner to an imprisonment of "three (3) months of arresto mayor as minimum and one year and eight (8) months of prision correccional as maximum."

In Criminal Case No. 979, the Regional Trial Court rendered its decision dated January 9, 1991, affirming in toto the decision of the 2nd Municipal Circuit Trial Court of Manolo Fortich - Libona, Bukidnon, finding petitioner herein guilty beyond reasonable doubt of the crime of grave oral defamation and (a) sentencing her to suffer an imprisonment of an "Indeterminate Sentence of Four (4) months and one (1) day of arresto mayor in its maximum period to one (1) year and one (1) day of prision correccional minimum period", and (b) ordering her to pay the complainant the amounts of (i) P1,500.00 as attorney's fees, (ii) P3,500.00 as moral damages, and (iii) P100.00 as cost. (Rollo, p. 19)

The Court of Appeals and two trial courts found that petitioner had shouted, within hearing distance of several persons, the following words calculated to humiliate and to cast aspersion on the complainant:

"LIMBONGAN, MARO NGA MAGTUTUDLO, PATAY GUTOM, TIGULANG GIUBAN NA, BOGOK, HUGAWAN, IPASALBIDS KA NAKO NI DODONG AMORA." ("You are a cheat, a dishonest teacher, you are dead hungry, an old person with gray hair, dull, dirty, I will have you salvage(d) by Dodong Amora.") (Rollo, pp. 16 & 18)

In this petition, petitioner claims that the Court of Appeals erred in the evaluation of the evidence, particularly in its findings that her defamatory utterances were "calculated if not wholly premeditated" to insult the complainant, that there was no provocation on the part of the complainant, and that the utterances were not made in the heat of anger and obfuscation.

Petitioner has not shown any grounds to warrant a disturbance of the findings of facts of not one, not two but three different courts. (Padilla v. Court of Appeals, 157 SCRA 729 [1988]; Calalang v. Intermediate Appellate Court, 194 SCRA 514 [1991])

The sole legal question raised by petitioner is her claim that, at most, she is liable only for the crime of slight oral

defamation. (Rollo, p. 14)

Whether the offense committed is serious or slight oral defamation, depends not only upon the sense and grammatical meaning of the utterances but also upon the special circumstances of the case, like the social standing or the advanced age of the offended party. (Victorio v. Court of Appeals, 173 SCRA 645 [1989]; Balite v. People, 18 SCRA 280 [1966])

Elements that qualify the oral defamation to the graver offense are extant. Petitioner disregarded the respect due to the age and status of the complainant, who was 61 years old and has been a public school teacher for the past 32 years.

The offense, having been qualified to grave oral defamation by the aforementioned special circumstances, cannot be reduced to simple oral defamation by the claim that the slanderous words were said in the heat of anger. Besides, the slanderous words were uttered with evident intent, using the language of Balite v. People (18 SCRA 280) to "strike deep into the character of the victim."

In reviewing the penalty meted on petitioner, WE found that the Regional Trial Court erred in imposing the minimum penalty while the Court of Appeals erred in imposing the maximum penalty.

While petitioner did not raise said errors as issues in her appeal, this Court has the authority to review the same if their consideration is necessary in arriving at a just resolution of the case. (Miguel v. Court of Appeals, 29 SCRA 760 [1969]; Sociedad Europea de Financiacion, S.A. v. Court of Appeals, 193 SCRA 105 [1991])

The penalty imposed by Article 358 of the Revised Penal Code for grave oral defamation is arresto mayor in its maximum period to prision correccional in its minimum period.

In order to fix the minimum term of the penalty required by the Indeterminate Sentence Law, WE descend one degree lower from arresto mayor maximum to arresto mayor medium or an imprisonment of two (2) months and one (1) day to four (4) months. (Sec. 1, Act No. 4103 as amended by Act No. 4225; People v. Gonzales, 73 Phil. 549 [1942]) The Regional Trial Court did not follow this mandate of the law.

The Court of Appeals was correct in fixing the minimum term of the penalty to three (3) months of arresto mayor which is within the range of arresto mayor medium, instead of four (4) months and one (1) day of arresto mayor as fixed by the Regional Trial Court.

The Court of Appeals however erred in increasing the maximum term of the penalty from one (1) year and one (1) day of prision correccional as imposed by the Regional Trial Court, to one (1) year and eight (8) months of prision correccional. (Rollo, p. 24)

With respect to the imposition of the maximum term of the penalty, WE have to divide by three the number of days included in the penalty prescribed by law because the said penalty is composed only of two periods, i.e., arresto mayor maximum and prision correccional minimum. (Art. 65, Revised Penal Code) The rules on the application of the different circumstances attending the commission of an offense require three periods. (Art. 64, Revised Penal Code)

Dividing the penalty for grave oral defamation into three periods produces the following results:

Minimum - Four (4) months and one (1) day to one (1) year;

Medium: One (1) year and one (1) day to one (1) year and eight (8) months; and

Maximum: One (1) year, eight (8) months and one (1) day to two (2) years and four (4) months. (II Reyes, The Revised Penal Code, 12th ed., 1006)

There being neither mitigating nor aggravating circumstances present in this case, the maximum term of the penalty should be imposed in its medium period, i.e., within the range of one (1) year and one (1) day to one (1) year and eight (8) months. (Art. 65 (1), Revised Penal Code)

The maximum term of the penalty imposed by the Regional Trial Court is within the range of the medium period and there is no legal basis for the Court of Appeals to change it.

The courts should be careful in fixing penalties because any error may have dire consequences, as in this case wherein the prison term imposed on the accused has been increased erroneously. To unduly prolong the confinement of an accused, even by only one day, is unjust in any sense of the word.

WHEREFORE, the decision of the Court of Appeals is affirmed with the modification that the petitioner is sentenced to an indeterminate penalty ranging from three (3) months of arresto mayor to one (1) year and one (1) day of prision correccional. In all other respects, the civil liabilities imposed by the Regional Trial Court are affirmed.

**SO ORDERED.**

Cruz, (Chairman), Grino-Aquino, and Bellosillo, JJ., concur.

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