

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. ERNESTO SILVELA, DEFENDANT AND APPELLEE.

G.R. No. 10610. May 26, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Ernesto A. Silvela was arrested in Iloilo upon a sworn complaint of Rosalia Bermejo Palauar, which had been preliminarily investigated by the City Fiscal thereof.

Said complaint alleged that the accused,

"* * * signed, sent and addressed two unsealed letters to the undersigned containing a certain false, malicious and defamatory libel tending to injure and impeach the honesty, virtue, honor, reputation and integrity of the undersigned, by then and there willfully, maliciously and criminally branding, calling and imputing to the undersigned among others as "Pompom, Naga Business, Naga Prostitute, Prostitute, * * * which appear in two letters sent and addressed by the accused to the undersigned on September 21, 1955 and September 25, 1955 which defamatory and libelous letters are hereunder quoted verbatim as follows:

"MY DEAR MISS ROSALIA PALAUAR:

Allow me to take the cudgel in responding your well-written and threatening letter because I am an integral member of the family of the man you alleged to have smeared your profession and your degree of Master of Arts, major in English. * * * How proud you are to announce to everybody that you have said degree and yet how ignorant you are even of the simple term "libel", Libel, for your information, is a written or printed defamation or slander. What a paradox! You don't know the very word, libel, and yet you have the nerve to frighten my brother-in-law of its consequences-of the great fine and the long imprisonment! You should have had consulted a lawyer before writing that ignominious letter of yours; he could have had informed you that the most appropriate case you can bring to court if there is any truth to your allegation is "oral defamation." * * *. I intended to return to my job this Sunday but I am postponing said trip in order to hear for myself the case I encourage you to bring to court at your earliest convenience. However, before bringing it to court, may I advise you to change the word naga-business to naga prostitute; otherwise you will become a laughing stock in court. You know, the most appropriate English term for "pom-pom" is prostitute. '* * *."

"DEAR MISS ROSALIA B. PALAUAR:

I am afraid, Madam, your mind is exceedingly polluted with your guilt or you simply cannot understand English sentences. I was only advising you to change the word, "naga business" to "naga-prostitute" since the equivalent English word for "pompom" is prostitute but in your last letter, according to you, I called you "pompom" or "naga-business." How irrelevant you are.

You further told me to rectify the term, prostitute. Well, I am really sorry. I cannot acquiesce to your kind request. I have been trained in my profession to be exact to the smallest fraction; hence, I always call a spade, a spade, and a shovel, a shovel. Besides, I cannot pick a more refined term for your implied idea of a "pompom." At any rate, I mean every word I say and I'm conscious of its consequences."

Before his arraignment, Silvela moved to quash, contending that the facts charged did not constitute an offense. Over the fiscal's opposition, the judge dismissed the case explaining that "upon reading carefully the two letters quoted in the complaint, it does not appear that defamatory words have been directed against the complainant."

We read the letters differently. As admitted by the defendant, he first answered a letter of complainant to his brother-in-law wherein she had apparently threatened to sue the latter for having called her "naga-business" or "pompom." Now, in this first letter, defendant practically says, "my brother-in-law should have called you 'prostitute' the most appropriate English term."

The second letter responded to complainant's reply to the first. In this reply, complainant requested defendant to rectify the term "prostitute" which he had applied to her. Yet defendant answered:

"I cannot acquiesce to your kind request. I have been trained in my profession to be exact to the smallest fraction; I always call a spade a spade, and a shovel, a shovel * * * I mean every word I say and I'm conscious of its consequences." (*Italics Ours.*)

It is clear in our opinion that defendant as much as said, "If I called you 'prostitute' I decline to retract. I say what I mean, and I mean what I say." Defendant refused to withdraw the dagger: instead, he plunged it deeper, to the hilt.

Of course, it is unnecessary to add that calling a young lady pursuing graduate courses a "prostitute" is libelous.

His Honor apparently viewed the imputations in the letter as purely impersonal, not applying to the complainant herself. As we have already stated, the offensive imputations obviously referred to the addressee of the letter, who was therein called a prostitute.

Nevertheless, it may be added that the obnoxious writing need not mention the libeled party by name (*Causin vs. Jakosalem*, 5 Phil., 155) the prosecution being permitted to prove by evidence that a vague or general imputation of dishonorable conduct referred to the complainant or complainants. In one of the most famous libel cases, an editorial about "Birds of Prey," criticising "man, who besides being eagles, having the characteristics of the vulture, the owl and the vampire, etc. etc.," was held to be libelous notwithstanding its having failed to identify the aggrieved parties; because proof aliunde showed that it referred to them. (*Worcester vs. Ocampo*, 22 Phil., 42.)

In this instance, the fiscal asserted that he could and would prove at the trial, that the offensive words referred to the complainant, as the complaint averred.

What evidence could the Fiscal adduce to prove the connecting link? Probably the complainant's letters to defendant and to his brother-in-law, the terms of which as we surmised, will undoubtedly reveal the connection—if still needed—between the insulting words and the person to whom they alluded.

Furthermore, the motion to quash must be deemed to have admitted the allegations of the complaint, one of which states that defendant wilfully, maliciously called the complainant, or imputed to her, the words "pompom," "naga-business," "naga-prostitute," and "prostitute."

During our deliberations, the question of "publication" cropped up. Although it was not raised by the defendant, it was a proper subject of inquiry, since publication constitutes one of the essential elements of the crime of libel.'

We were quoted *Lopez vs. Delgado*, 8 Phil., 26, wherein the malicious defamation having been inclosed in a sealed envelope and sent by special messenger to the plaintiff by the defendant, it was held that no libel had been committed, since the letter was not published; but we noticed that whereas there the envelope was "sealed," here it was "unsealed."

And later we found *U.S. vs. Griño*, 36 Phil., 738, wherein the accused signed and sent to the offended party a letter (not shown to be sealed) charging the latter with having illicit relations with her (accused's) husband. She was held guilty of having "published" the libelous writing.

Now, if sending a letter "not shown to be sealed" is publication, sending of an "unsealed letter" as in this case, should a fortiori be held to be publication. The *Griño* case accords with American jurisprudence:

"As a general rule, in the absence of a statute to the contrary, a communication of the defamatory matter to the person defamed is a sufficient publication to constitute a criminal offense." (53 *Corpus Juris Secundum*, Libel and Slander, sec. 284.)

"While publication within the rules relating to civil liability implies communication of the libel or slander complained of to a person other than the victim, its meaning; is considerably broader in criminal prosecutions; the authorities appear to agree that in such cases, impartation of the defamation, to anyone at all-even to the person defamed-constitutes such a publication as will support an indictment, specially when done with an intent 'to provoke a breach of the peace. Thus, it has several times been held that publication may be effected within the meaning of the law by enclosing libelous matter in. sealed envelope and mailing or delivering it to the person therein denounced." (33 *American Jurisprudence*, pp. 293-294.) *Italics Ours.*

This is not to declare the *Lopez* case modified or superseded by the *Griño* decision. The former involved a civil litigation for damages, as to which the prevailing view seems to be: "If the defamatory matter is not seen or heard by anyone except the defamer and the defamed, damages to character reputation can not result since a man's reputation is the estimate in which others hold him, and not what he himself thinks." (Many cases cited in annotation at p. 239 of 24 *American Law Reports Annotated*.)

Wherefore, having found the letters to contain libelous matter which in the eyes of the law had been published, we must reverse, and hereby reverse, the appealed decision. The record will be remanded to the court below for further proceedings. With costs against appellee.

Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L. and Endencia, JJ., concur.

DISSENTING

FELIX, J.,

I really do not understand why there can be any difference of opinion among the members of this Court on the only question at issue. The matter could be easily disposed of unanimously if We were to read the 2 questioned letters quoted *infra* as they are written, instead of allowing our imagination to inject into them words, phrases or intentions that cannot be found anywhere therein.

This case involves the determination of whether the facts averred in the complaint filed by Miss Rosalia Bermejo Palauar against Ernesto A. Silvela in the Court of First Instance of Iloilo purporting to charge the defendant with the crime of libel, do or do not really accuse him of that crime, or of any other offense. Nothing better to determine this question than to copy the complaint in full as I do hereunder. It reads as follows:

"That on or about the period comprised between September 21 and 25, 1955, in the City of Iloilo, Philippines,

and within the jurisdiction of this Court, said accused without any justifiable motive, with deliberate intent of impeaching the reputation, virtue and credit of the undersigned, Rosalia Bermejo Palauar, a person of good standing in the community pursuing Post Graduate Course at the University of San Agustin, did then and there wilfully, unlawfully, criminally and maliciously cast dishonor, contempt and ridicule to the undersigned with malicious intent of exposing the undersigned to public hatred, contempt, ridicule, discredit and dishonor, said accused signed; sent and addressed two unsealed letters to the undersigned containing a certain false, malicious and defamatory libel tending to injure and impeach the honesty, virtue, honor, reputation and integrity of the undersigned, by then and there wilfully, maliciously and criminally branding, calling and imputing to the undersigned, among others as "Pompom, Naga Business, Naga Prostitute, Prostitute"; which words translated into English, mean more or less as follows: 'Prostitute, engaged in prostitution, is a prostitute, harlot, strumpet', which appear in two letters sent and addressed by the accused to the undersigned on September 21, 1955 and September 25, 1955, which defamatory and libelous letters are hereunder quoted verbatim as follows:

'Lapuz Norte, Iloilo City

September 21, 1955

Miss Rosalia Bermejo Palauar
Lapuz Norte, Iloilo City

MY DEAR MISS ROSALIA PALAUAR:

Allow me to take the cudgel in responding your well-written and threatening letter because I am an integral member of the family of the man you alleged to have smeared your profession and your degree of Master of Arts, major in English.

Well, it is indeed a pleasure to reply to a woman of 'your distinction' and having a degree of Master of Arts, major in English. The only regrettable fact there in attaching 'the degree of Master of Arts major in English' is your apparent unworthiness of said degree (or are still pursuing it?); consequently bringing only disgrace and shame to your beloved Alma Mater. How proud you are to announce to everybody that you have said degree and yet how ignorant you are even of the simple term 'libel'. Libel, for your information,, is a writ or printed defamation or slander. What a paradox. You don't know the very word, libel, and yet you have the nerve to frighten my brother-in-law of its consequences-of the great fine and the long imprisonment! You should have had consulted a lawyer before writing that ignominious letter of yours; he could have had informed you that the most appropriate case you can bring to court if there is any trust to your allegation is 'oral defamation.' Oh Miss Palauar, have you forgotten the moral lesson of the story of the Three Visayans ir. the high school Prose and Poetry, a little learning is a dangerous thing, or '. . . drink deep in the Persian spring, or reveal not your little learning', says one of the most famous poem. Perhaps, you barely got 75% in all your subjects, hence this is primarily the reason of your not retaining a single moral lesson of the countless stories you might have read.

I finished only Civil Engineering in Cebu Institute of Technology and had. taken only 6 units of college English but I can well say that I deserve my degree and I am not ignorant of the common English terms. I intended to return to my job this Sunday but I am postponing said trip in order to hear for myself the case I encourage you to bring to court at your earliest convenience. However, before bringing it to court, may I advise you to change the word naga-business to naga-prostitute; otherwise you will become a laughing stock in court. You know, the most appropriate English term for 'pompom' is prostitute.

Finally, I am looking forward to some more letters from you and I promise that I will always be accommodating and courteous enough to respond every letter from a 'lady' like you.

Yours truly,

(Sgd.) E A S

ERNESTO A. SILVELA"

"Lapuz Norte, Iloilo City
September 25, 1955

Miss Rosalia Bermejo Palauar
Lapuz Norte, Iloilo City

DEAR MISS ROSALIA B. PALAUAR:

I am afraid, madam, your mind is exceedingly polluted with your guilt or you simply cannot understand English sentences. I was only advising you to change the word, 'naga-business' to 'naga-prostitute' since the equivalent English word for 'Pompom' is prostitute but in your last letter, according to you, I called you 'pompom' or 'naga-business'. How irrelevant you are:

You further told me to rectify the term, prostitute. Well I am really sorry. I cannot acquiesce to your kind request. I have been trained in my profession to be exact to the smallest fraction; hence I always call a spade, a spade, and a shovel, a shovel. Besides, I cannot pick a more refined term for your implied idea of a 'pompom'. At any rate, I mean every word I say and I'm conscious of its consequences.

By the way, I was expecting another threat from you or a sarcastic note. I was awfully disappointed to find neither of them in your letter. On the other hand, I consider it a good sign. You know, I hate to have enemies, especially a woman like you but frankly, I also abhor women who are gullible and who immediately jump to conclusion, much more threaten an individual; nevertheless, it is never late. You choose from either of these two alternatives:

(1) Go on with your silly notion of bringing your allegation to court and face public disgrace and insult as an aftermath, or

(2) Forget everything, and we will be good neighbors and friends.

If you choose the former, go ahead. I will only request you to file it at the earliest possible date and inform me of said date, so that I can extend my leave of absence from the school. I am teaching at Cebu. I don't want the school to entertain the idea that I am violating the stipulation of the provision of the contract as embodied in the scholarship granted to me while still studying. They might think I am having another job here. However, if you choose the later, I will be more than willing to meet you at any convenient place where you and I alone can talk matters amicably.

I hope I have straightened everything and may I hear from you on Monday morning.

Truly yours,

(Sgd.) EAS
ERNESTO A. SILVELA"

when in truth and fact the above-quoted letters are false, untrue and malicious."

Upon arraignment the accused filed a Motion to Quash on the ground that the facts charged in the complaint do not constitute an offense, which motion was opposed by the City Fiscal. Acting on these pleadings, the Court by order of December 21, 1955, dismissed the complaint with costs de oficio. The City Fiscal filed a Motion for Reconsideration, which was also opposed by the accused and denied by the Court; hence this appeal.

In this instance, the only question raised by the Solicitor General is that:

The Court erred in granting the motion to quash on the ground that the facts charged do not constitute an

offense and thereby dismissing the case.

The record does not show that defendant-appellee filed any brief in this instance.

According to the trial Judge in order that the crime of libel may be committed, the following- elements must concur:

- Defamatory imputation which causes dishonor or discredit;
- Malice, either in law or in fact;
- Publication; and
- Victim must be identifiable.

And reasoning out this proposition, His Honor said that from

"the 2 letters quoted in the complaint it does not appear that defamatory words have been directed against the complainant. Nowhere in the quoted letters does it appear that the defendant has defamed or insulted the complainant. * * *. If there is any imputation of immoral character in the letters, still the imputation is impersonal and does not point to the complainant as the person alluded to."

"Where the article is impersonal on its face and does not single out individuals, there is lacking that identification of the offended party which the law requires (Uy Tioco et al. vs. Yang Shu Wen et al., 32 Phil. 624 People vs. Andrada, 37 Off. Gaz. 1783)."

The portions of the letters that according to the complaint contain libelous matter, are the following;

However, before bringing it to court, may I advise you to change the word 'naga-business' to 'naga-prostitute'; otherwise you will become a laughing stock in court. You know, the most appropriate English term for 'pompom' is 'prostitute'. (First letter)

In the second letter of the defendant, quoted in the complaint, the following is contained:

"I am afraid, madam, your mind is exceedingly polluted with your guilt or you simply cannot understand English sentences, I was only advising you to change the word, 'naga-business' to 'naga-prostitute', but in your last letter, according to you, I called you 'pompom' or naga-business'. How irrelevant you are." (Second letter)

As may be seen from the foregoing quoted portions of the letters in question, the first letter was in answer to another from the complainant (the contents of which do not appear on record), wherein apparently defendant advised the complainant to change the word "naga-business" (used in said complainant's answer addressed to defendant's brother-in-law and not to defendant herein and which the latter had never used or said before), to "naga-prostitute", because otherwise complainant, who had been boasting of holding the degree of Master of Arts, major in English, would be the laughing stock in court for not using (the complainant, not the defendant) the most appropriate word to express the idea of "pompom" or prostitute. As the said first letter is written the alleged libelous words can by no means be said to refer to complainant, especially if consideration is given to the contents of the second letter (which will be discussed later on) wherein defendant denies the imputation that he ever called her a "pompom" or "naga-business". But from the majority Decision, I copy the following:

'As admitted by the defendant, the first answered a letter of complainant to defendant's brother-in-law wherein she had apparently threatened to sue the latter for having called her 'naga-business' or 'pompom'. Now, in his first letter, defendant practically (?) says, 'my brother-in-law should have called you 'prostitute' the most appropriate English term' "

In the first place nowhere in the first letter of the defendant does he admit that complainant threatened to sue his

brother-in-law for having called her "naga-business" or "pompom". In the second place, has the defendant practically or otherwise said or intended to say such a thing? My previous explanation on this matter relieves me from commenting any further on such flagrant sprout of a powerful imaginative mind, for certainly the first letter of the defendant does not mention anything of the kind.

Defendant's second letter was in response to complainant's reply to his first. The majority Decision quotes some portions of the second paragraph of that second letter which I now quote in full supplying the omitted parts "which I write in capital letters:

"YOU FURTHER TOLD ME TO RECTIFY THE TERM, PROSTITUTE. Well, I AM REALLY SORRY. I can not acquiesce to your kind request. I have been trained in my profession to be exact to the smallest fraction; HENCE, I always call a spade, a spade, and a shovel, a shovel. BESIDES, I CAN NOT PICK A MORE REFINED TERM FOR YOUR IMPLIED IDEA OF A 'POMPOM'. AT ANY RATE, I mean every word I say and I am conscious of its consequences."

It will not be amiss to state at this juncture that in the first paragraph of said second letter defendant also writes:

"I am afraid, madam, your mind is exceedingly polluted with your guilt or you simply cannot understand English sentences. I was only advising you to change the word, 'naga-business' to 'naga-prostitute' since the equivalent English word for 'pompom' is 'prostitute', but in your last letter, according to you, I called you 'pompom' or naga-busiess1. How irrelevant you, are.",

which clearly involves a denial of complainant's imputation that he had called her a "pompom" or prostitute. In the majority Decision it is insisted that defendant said this much, i.e.:

"If I called you 'pompom' or 'prostitute' I decline to retract my words. I say what I mean, and I mean what I say. Defendant refused to withdraw the dagger: instead, lie plunged it deeper, to the hilt".

The subscribers to the majority opinion surely deserve the degree of mind-readers. Of course I cannot and will not deny that calling a young lady pursuing a graduate course a prostitute is libelous. But has the defendant really called her such nasty and depredatory name?

"A libel cannot be committed except against some definite person who must, be properly identified (People vs. Andrada, 37 Off. Gaz., 1783). * * *. But where no one was named or accurately described in the article complained of, it is not sufficient if the offended party recognized himself as the person attacked; it must be shown that at least one third person would so identify him as the object of the libelous publication (Kunkle vs. Cablenews-American and Lyons, 42 Phil., 757). Where the article is impersonal on its face and does not single any individuals, there is lacking that identification of the offended, party which the law requires (Uy Tioco, et al., vs. Yang Shu Wen., et al., 32 Phil., 624; People vs. Andrada, supra).

The situation depicted in the 2 letters quoted in the information is that the defendant-who did not know the complainant and who does not appear to have ever met her personally or had any previous trouble with her-officiously took the side of his brother-in-law and upon reading complainant's letter threatening his said relative with a suit in court, sarcastically commented upon the meaning of the words used by the complainant herself or written in her letter, and merely suggested the words that in his opinion were apt to convey the meaning of what complainant intended to say. This certainly does not constitute any imputation (malicious or otherwise) of a crime, vice or defect, real or imaginary, or of any act, condition, status or circumstance tending to cause dishonor, discredit or contempt of the offended party.

The majority of the Court further states: "In this instance, the fiscal asserted that he could and would prove at the trial, that the offensive words referred to the complainant, as the complaint averred", and I join the majority of this Court in asking the same question-"what evidence could the fiscal adduce to prove the connecting link?" To this,

said majority plunges into a sea of suppositions and possibilities that they call probabilities, but as I have stated before, defendant did not know the complainant, did not have any contact or relation nor had any altercation with her, and under such circumstances there can be no evidence other than the letters that were copied in full in the complaint, to determine their meaning and import. Consequently, there can be no evidence aliunde and the fiscal could not, therefore, make any revelation other than his irrelevant and inadmissible opinion, or supply the alleged missing link between the insulting words and the person to whom they were alluded. Of course, under the Rules of Court, a motion to quash must be deemed to have admitted the averments of the complaint and although one of them states that defendant wilfully, maliciously and criminally called the complainant or imputed to her the words "pompom", "naga-business", "naga-prostitute" and prostitute, the majority forgets that this portion of the complaint is nothing but a conclusion of the fiscal and not a narration of the acts constituting the elements of the offense of libel that perforce have to be eviscerated from the very letters in question. That is the reason why the trial Judge, correctly from my viewpoint, held that the nasty words used in defendant's letters are purely impersonal and not pointing to the complainant as the person alluded to. Such being the case, the complaint against the defendant must be fatally defective for it fails to impute to any person in particular, a crime, vice, defect, act, condition, status or circumstances tending to cause him dishonor, discredit or contempt. Therefore, the order appealed from must be upheld even on this count alone.

"* * * * *

At the deliberation of this case, I also submitted the question of publication of the libel. It could not be raised by the Solicitor General because to do so would tend to defeat the purpose of the appeal, and it was not raised by defendant-appellee because he filed no brief in this instance. I will now proceed to answer the arguments adduced on this point in the majority Decision.

Upon reading the complaint, I find that it does not aver or show that said libelous matter was published and, therefore, the element of publication is wanting in the case at bar. The only averment in the complaint that may have any bearing on the point of publication is that:

"said accused (wilfully, unlawfully, criminally and maliciously) signed; sent and addressed two unsealed letters to the undersigned containing a certain false, malicious and defamatory libel tending to injure and impeach, etc."

without stating that the letters were published or read by other persons. The mere act of sending or addressing 2 unsealed letters to the complainant is not an averment of publication. From Professor Ambrosio Padilla's Revised Penal Code, Annotated, I quote the following citation he makes of our decision in the case of *Lopez vs. Delgado*, 8 Phil., 26:

"This is an action for the libel wherein the plaintiff prayed for damages for an alleged malicious defamation in writing enclosed in an envelope and sent by special messenger to the plaintiff by the defendant. HELD: It is true that the messenger might have torn open the envelope and acquainted himself with the contents, but it is difficult to conceive of any case where one knowingly parts with the immediate control of libelous matter, wherein it could not be said that it is possible that in some way or another it might thereby become exposed to be read or seen by another. To hold that publication of a libel may be presumed in all cases where one knowingly parts with the immediate custody thereof, under circumstances which by any POSSIBILITY expose it to be read or seen by another, would be equivalent to holding that publication will be presumed in all cases where one parts with the immediate custody of an alleged libel. The publication of a libel should not be presumed from the mere fact that the immediate control thereof has been parted with, unless it appears that there was a reasonable probability that it was thereby exposed to be read or seen by third person. It cannot fairly be said that when the defendant inclosed the alleged libelous matter in a sealed envelope, addressed to the plaintiff, and sent it by messenger, he parted with its custody under circumstances which suggest a

reasonable probability that it was thereby exposed to be read or seen by third person."

The doctrine in the case of *Lopez vs. Delgado*, supra, was reiterated in the case of *U.S. vs. Ramos*, 28 Phil., 219, wherein it was held:

"* * * Even granting that the letter was libelous, its transmittal to the offended party in a closed envelope did not amount to a publication of its contents."

Professor Padilla in his said work also cites the decision in the cases of *People vs. Atencio*, CA-G. R. Nos. 11351-R to 11353-R, promulgated December 14, 1954, penned by the writer of this Dissenting Opinion when he was in the Court of Appeals, and quoted as follows:

"It has already been declared by the courts, that 'publication' is the communication of the defamatory matter to some third person or persons', and in the case of *Ocampo vs. Eyangelista*, et al. (CA-37 Off. Gaz. 2196), it was held that 'to publish is to make public, to make known to the people in general.' Of course, there are several modes of publication, but the essence of this requirement is that 'the law permits us to think as badly as we please of our neighbors so long as we keep our uncharitable thoughts to ourselves. So, merely composing a libel is not actionable unless it be published. The communication of libelous matter to the person defamed alone does not amount to publication, for that cannot injure his reputation. A man's reputation is the estimate in which others hold him; not the good opinions which he has of himself.' (Cameron 162 No. App. 110, 144 S. W. 171). 'The publication of a libel should not be presumed from the mere fact that the immediate control thereof has been parted with, unless it appears that there was a reasonable probability that it was thereby exposed to be read or seen by third persons.' (The quotation continues copying" the same portions of the case of *Lopez vs. Delgado* aforequoted-2 Padilla's Revised Penal Code, Annotated, 756).

The majority of the Court, however, advances the argument that in the case of *Lopez vs. Delgado*, 8 Phil., 26, a civil litigation for damages, it was held that the libelous matter was not published because the letter sent was "sealed", while in the case at bar they noticed that the letter was "unsealed" and to bolster their contention they cite the case of *U.S. vs. Grino*, 36 Phil., 738, as well as certain American authorities quoted from the *Corpus Juris Secundum* and the *American Jurisprudence*. So they conclude that if the sending of a letter "not shown to be sealed" constitute publication, the remittance of an "unsealed letter", as in this case, must a fortiori be held to be sufficient compliance with that requisite of publication. The majority of the Court has evidently failed to grasp the purpose and tendency of my citation of the cases of *Lopez vs. Delgado*, *U.S. vs. Ramos* and *People vs. Atencio*, supra, which are none others than the following: It is a fundamental principle of criminal law consecrated in our Bill of Rights that "in all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved" (Art. III, Section 1-17 of the Constitution). In consonance with this constitutional mandate, our Rules of Court consider as a disputable presumption "that a person is innocent of crime or wrong" (Section 69-[a], Rule 123). Now, I have stated before and it can be denied by no one, that a libel is not actionable unless it be published and that the communication of the libelous matter to the person defamed alone does not amount to publication for that cannot injure his or her reputation. A person's reputation does not depend on the good opinion which he has of himself or herself, for it constitutes the estimate in which others hold him, so that publication is a necessary element of the offense of libel and lack of any express allegation in the complaint that the libelous matter was published, or of statements conducive to such averment, such as that other person or persons besides the offended party have read the defamatory imputations, must necessarily render the complaint defective, especially when that complaint does not state that the libel was published but merely that defendant signed, sent and addressed two unsealed letters to the complainant.

It has been held not only in the case of *Lopez vs. Delgado*, but in several other cases, that publication of a libel shall not and cannot be presumed and for this reason I contend that the complaint charging any person with libel must assert not only that the offender parted with the custody of the libelous matter (even assuming that it may be

so considered) under circumstances that may point to a reasonable probability that "it was thereby exposed to be read or seen by third persons", but also that they were actually seen and read by persons other than the offended party. To do otherwise would be tantamount to a presumption of something that could or could not have taken place; as for example, in the case at bar the sending of the unsealed letters directly to the complainant may give rise to the "suspicion" that other persons might have read the contents thereof, but can it be presumed or said that that actually happened? I appeal to the sense of logic of the members of this Court, and if they are unable to assure, as I am certain they cannot assure, that the letters in the case at bar were read by other persons, then they would be erroneously setting a precedent whereby they presumed or approved the presumption of a fact or element of the crime of libel that may not exist, contrary to the mandate of the Constitution and of the Rules of Court. And there being absolutely no allegation in the complaint that the letters in question were published and considering, on the contrary, that the complaint contains averments indicative of their non-publication up to the time when they were received by the complainant, I maintain that the Government's appeal shall be dismissed and the order appealed from affirmed, without pronouncement as to costs.

Paras, C.J., concurs.

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