

FERNANDO SAZON Y RAMOS, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 120715. March 29, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us is a petition for review on certiorari to set aside the decision of the Court of Appeals (Special Third Division) in CA-G.R. C.R. No. 13777 which affirmed the decision of the Regional Trial Court, Branch 161 of Pasig City, in Criminal Case No. 58939, convicting the petitioner of the crime of libel.

The relevant antecedents are not disputed.

Petitioner Fernando Sazon and private complainant Abdon Reyes were both residents of the PML Homes in East Drive, Parang Marikina, Metro Manila. They were likewise members of the PML-Parang Bagong Lipunan Community Association, Inc. (PML-BLCA), an association of homeowners of PML Homes. The association had a monthly newsletter, the PML-Homemaker, of which the petitioner was the editor.

On December 11, 1983, the PML-BLCA held an election for the members of its board of directors. Among those who ran in the election were the private complainant and the petitioner. The petitioner was elected as a director. He was likewise elected by the new board as president of the homeowners' association. The private complainant lost in said election.

Unable to accept defeat, the private complainant, on January 16, 1984, wrote a letter to the Estate Management Office of the Home Financing Corporation (EMO-HFC) protesting the election of the petitioner as a director and president of the homeowners' association. He alleged that the election was a nullity because of: (1) the lack of authority of the petitioner to call for such an election; (2) the absence of a quorum; and (3) lack of the required notice to the homeowners. -

On January 18, 1984, the private complainant wrote his co-homeowners explaining to them his election protest and urging them not to recognize the petitioner and the other members who won in the election.

Meanwhile, in response to the election protest, the EMO-HFC ordered the PML-BLCA to conduct a referendum to be supervised by the EMO-HFC. The private complainant then notified his co-homeowners about this development and requested them to attend a general meeting with the representatives of the EMO-HFC which was to be held before the referendum.

Soon after the general meeting, several copies of a leaflet called the "PML Scoop" were received by the homeowners. The leaflet was entitled "Supalpal si Sazon," obviously referring to the affirmative action taken by the EMO-HFC in connection with the private respondent's election protest. At about the same time, the phrase "Sazon, nasaan ang pondo ng simbahan?" was seen boldly written on the walls near the entrance gate of the subdivision. There was no proof, however, as to who was responsible for these writings.

Thinking that only private complainant was capable of these acts, petitioner Sazon started writing, publishing, and circulating newsletters to his co-homeowners, culminating in the appearance in the February 10, 1984 issue of the PML-Homemakers of the following article:

"USAPAN NG BOARD v. ABDON NAG-COLLAPSE SA ESTATE MANAGEMENT OFFICE

Dala ng mahigpit na pakiusap ng Estate Management Office (EMO) na gawin ang lahat na nararapat upang magkaroon ng katahimikan at pagkakaisa ang mga tiga PML Homes, ang Board Secretary, Mr. Pacis at President F.R. Sazon ay nagpaunlak na pagbigyan ang kahilingan ng ating kasama na si Abdon Reyes.

Ang kahilingan: Anyayahan ang EMO-HFC na magconduct ng Plebiscite or Referendum para sa possibility ng isa pang halalan ng Board of Directors.

Sa meeting na dinaluhan ni Abdon Reyes na nagdala ng isang cameraman at may kasamang pagyayabang at kaunting panggolpe de gulat (na tila бага puro tanga yata ang akala niya sa mga kausap), ipinipilit pa rin nitong ang Board sa PML Parang ay binubuo pa rin nuong mga taong inilukluk ng developer na nag 1-2-3.

Halos pag-pupukpuhin ng bag ng mga kababaihang nagsisama sa miting ang ating pobreng super kulit na walang pakialam sa mga taga atin.

Ang mga nagsipagbigay suporta sa Pangulo at Board Secretary ay sina Gng. Cavarosa, Gng. Triffie Ladisla, Gng. Nitz Rodriguez at Dra. Sazon.

Kung di dahil sa pakiusap nina Messr's. ABNER PACAIGUE at HOMER AGNOTE, kasama na ng Board Secretary at Pangulo, malamang ay nagulpi sana ang mandurugas.

Dahil sa patuloy na kabulastugan ni Abdon, ang meeting na ginaganap sa EMO kaninang umaga ay nag-collapse nang malaman na may ikinalat na liham ang mandurugas, na nagsasabing di umano ay hindi tutoo ang ibinabalita ng 'Homemaker' na siya ay turned-down sa HFC.

Matagal na po tayong niloloko ng magkasamang Abdon at Evangeline Lopez. Dahil sa tagal ay alam na tuloy natin kung papaanong maipapatigil ang kanilang kabulastugan.

Sila rin ang mastermind sa paninirang pun sa Pangulo sa pamamagitan ng pag-susulat ng panira sa mga pader natin. Diumano'y itinatanong daw nila kung saan dinala ang pondo ng simbahan. Bakit hindi sila tumungo sa kinaukulan: Treasurer, Auditor, at iba pang officials.

UPHELD PO ANG ATING BOARD, ITO AY MABUBUWAG LANG KUNG INYONG NANAISIN.

Mag-iingat po tayo sa panlilinlang ng mga taong gaya ni Abdon at Vangie.

UNITED WE STAND DIVIDED WE FALL LET'S UNITE AND FIGHT EVIL!!!

F.R. SAZON - Editor"[1]

Aggrieved by the aforequoted article, the private complainant initiated the necessary complaint against the petitioner, and on May 25, 1984, an Information was filed before the trial court charging the petitioner with libel.

On March 18, 1992, the trial court rendered its decision finding the petitioner guilty of the crime charged, and accordingly sentenced him, thus:

"WHEREFORE, foregoing considered, the accused is found guilty beyond reasonable doubt of the crime charged and is hereby sentenced to suffer imprisonment of FOUR (4) months and ONE (1) day of arresto mayor as minimum to TWO (2) years, FOUR (4) months and ONE (1) day of prision correccional as maximum, with the accessory penalties provided by law, and to pay a fine of P200.00 in accordance with Art. 353, in relation to Art. 355 of the Revised Penal Code.

With costs against the accused.

SO ORDERED."[2]

The petitioner appealed said decision to the Court of Appeals. On June 19, 1995, the appellate court dismissed the appeal and affirmed the decision of the trial court.

Hence, petitioner brought the present action, and in seeking a reversal of the challenged decision, he claims that the Court of Appeals, erred:

"1. x x x IN NOT HOLDING THAT THE QUESTIONED ARTICLE (EXHIBIT "A") IS IN THE NATURE OF A PRIVILEGED COMMUNICATION AND HENCE, PROTECTED AND NOT ACTIONABLE.

2. x x x IN NOT HOLDING THAT THE WORDS IN CONTROVERSY ARE NOT DEFAMATORY OF PRIVATE COMPLAINANT AS THEY ARE NON-ACTIONABLE EPITHETS WRITTEN WITHOUT MALICE.

3. x x x IN NOT HOLDING THAT THE QUESTIONED ARTICLE DID NOT CAUSE DAMAGE TO PRIVATE COMPLAINANT'S REPUTATION.

4. GRANTING ARGUENDO THAT ACCUSED-PETITIONER'S CONVICTION IS WARRANTED, x x x IN NOT LIMITING THE PENALTY IMPOSED UPON HIM TO FINE ALONE WITHOUT IMPRISONMENT x x x."[3]

In fine, the principal issue posited in this petition is whether or not the questioned article written by the petitioner is libelous.

We rule in the affirmative.

Article 353 of the Revised Penal Code defines libel in this wise:

"ART. 353. Definition of libel. - A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."

For an imputation then to be libelous, the following requisites must concur:

- "(a) it must be defamatory;
- (b) it must be malicious;
- (c) it must be given publicity; and
- (d) the victim must be identifiable."[4]

Petitioner concedes the existence of the third and fourth requisites in the case at bench. Accordingly, only the first and second elements need to be discussed herein.

Petitioner insists that the allegedly offensive words found in the subject article are not actually defamatory. According to petitioner, the word "mandurugas" and other words and phrases used in the questioned article do not impute to private complainant any crime, vice or defect which would be injurious or damaging to his name and reputation. As far as petitioner is concerned, the descriptive words and phrases used should be considered as mere epithets which are a form of non-actionable opinion, because while they may express petitioner's strong emotional feelings of dislike, they do not mean to reflect adversely on private complainant's reputation.

We do not agree. In libel cases, the question is not what the writer of an alleged libel means, but what the words used by him mean.[5] Here, the defamatory character of the words used by the petitioner are shown by the very recitals thereof in the questioned article. No evidence aliunde need be adduced to prove it. Petitioner used the

following words and phrases in describing the private complainant: "mandurugas," "mag-ingat sa panlilinlang," "matagal na tayong niloloko," "may kasamang pagyayabang," "ang ating pobreng super kulit," "patuloy na kabulastugan," "mastermind sa paninirang puri," etc.[6] Jurisprudence has laid down a test to determine the defamatory character of words used in the following manner, viz:

"Words calculated to induce suspicion are sometimes more effective to destroy reputation than false charges directly made. Ironical and metaphorical language is a favored vehicle for slander. A charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue, or reputation, or to hold the person or persons up to public ridicule. x x x." [7]

This test was satisfied in the case at bench. Branding private complainant Reyes "mandurugas," et al. most certainly exposed him to public contempt and ridicule. No amount of sophistical explanation on the part of petitioner can hide, much less erase, the negative impression already created in the minds of the readers of the libelous material towards private complainant. Respondent Court of Appeals is, thus, correct in holding that "these words and phrases ('mandurugas,' et al.) are indisputably defamatory for they impute upon the private complainant a condition that is dishonorable and shameful, since they tend to describe him as a swindler and/or a deceiver." (Italics Ours).[8]

Petitioner also maintains that there was no malice in this case. He argues that the prosecution failed to present evidence demonstrating that the accused was prompted by personal ill-will or spite or that he did not act in response to duty but acted merely to cause harm to private complainant. Consequently, the prosecution failed to discharge its burden of proving malice on the part of the accused beyond all reasonable doubt.

We are not persuaded. The general rule laid down in Article 354 of the Revised Penal Code provides that:

"Art. 354. Requirement of publicity. - 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. x x x"

Prescinding from this provision, when the imputation is defamatory, as in this case, the prosecution need not prove malice on the part of the defendant (malice in fact), for the law already presumes that the defendant's imputation is malicious (malice in law). The burden is on the side of the defendant to show good intention and justifiable motive in order to overcome the legal inference of malice. Unfortunately, petitioner miserably failed to discharge this burden in the case before us.

Petitioner however submits that malice should not be presumed in the instant case, but must be proved as a fact (malice in fact), since the questioned article is a privileged communication covered under the two exceptions enumerated under Article 354, viz:

- "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 or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions."

Petitioner avers that he wrote the article not to malign the private complainant, but merely to correct the misinformation being circulated by Reyes and some quarters within the community about the petitioner and the association he heads. He did it therefore, in response to some moral, social or civic duty as he was at that time the President of their homeowners' association and editor of its newsletter. Hence, the article falls under the first exception of Article 354.

The argument has no basis. In *Daez v. Court of Appeals*[9] we held that:

"As a rule, it is the right and duty of a citizen to make a complaint of any misconduct on the part of public officials, which comes to his notice, to those charged with supervision over them. Such a communication is qualifiedly privileged and the author is not guilty of libel. The rule on privilege, however, imposes an additional requirement. Such complaints should be addressed solely to some official having jurisdiction to inquire into the charges, or power to redress the grievance or has some duty to perform or interest in connection therewith."

In the instant case, none of the homeowners for whom the newsletter was published was vested with the power of supervision over the private complainant or the authority to investigate the charges made against the latter. Moreover, a written letter containing libelous matter cannot be classified as privileged when it is published and circulated among the public,[10] as what the petitioner did in this case.

In his final attempt to come under the protective mantle of privileged communication, petitioner alleges that the subject article likewise constitutes a fair and true report on the actions of a public official falling under the second exception of Article 354, since private complainant was a public relations consultant in the Department of Trade and Industry at the time the allegedly libelous article was published on February 10, 1984."[11]

On this point, the rule is that defamatory remarks and comments on the conduct or acts of public officers which are related to the discharge of their official duties will not constitute libel if the defendant proves the truth of the imputation. But any attack upon the private character of the public officer on matters which are not related to the discharge of their official functions may constitute libel.[12] This is clear by express provision of Article 354, exception number two (2) which refers to "any other act performed by public officers in the exercise of their functions."

A perusal of the petitioner's article reveals that it has no reference whatsoever to the performance of private complainant's position as a public relations consultant in the Department of Trade and Industry. The article attacked solely the private character of the complainant and delved on matters completely unrelated to his official functions. It cannot therefore fall under the protective coverage of privileged communication.

However, even assuming, *ex gratia argumenti*, that petitioner's article qualifies under the category of privileged communication, this does not still negate the presence of malice in the instant case. It is well to note that the existence of malice in fact may be shown by extrinsic evidence that the defendant bore a grudge against the offended party, or that there was rivalry or ill-feeling between them which existed at the date of the publication of the defamatory imputation or that the defendant had an intention to injure the reputation of the offended party as shown by the words used and the circumstances attending the publication of the defamatory imputation.[13] The circumstances under which the subject article was published by the petitioner serve to buttress the inference that petitioner was animated solely by revenge towards the private complainant on account of the leaflet entitled "Supalpal si Sazon," earlier circulated among the homeowners as well as the writings near the entrance gate of the subdivision, all of which petitioner believes to be the handiwork of the private complainant. Furthermore, the words used in the questioned article were mostly uncalled for, strongly sending the message that petitioner's objective was merely to malign and injure the reputation of the private complainant. This is certainly indicative of malice in fact on the part of the petitioner.

WHEREFORE, the decision of the Court of Appeals is hereby **AFFIRMED** with the modification that, in lieu of imprisonment and fine, the penalty to be imposed upon the petitioner shall be a fine of Three Thousand (P3,000.00) PESOS with subsidiary imprisonment in case of insolvency.

SO ORDERED.

Padilla, Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] Rollo, pp. 16-18.

[2] Rollo, pp. 18-19.

[3] Rollo, pp. 22-23.

[4] *Alonzo v. Court of Appeals*, 241 SCRA 51 [1995].

[5] *Aquino, Ramon C.*, *The Revised Penal Code, Volume Three*, 1988 edition, p. 514 citing *Encarnacion*, CA 48 O.G. 1817.

[6] Rollo, pp. 16-18.

[7] *Lacsa v. Intermediate Appellate Court*, 161 SCRA 427 [1988] citing *U.S. v. O'Connell*, 37 Phil. 767 [1918].

[8] Rollo, p.61.

[9] 191 SCRA 61 [1990].

[10] *Ibid.*, citing *Lacsa vs. IAC*, 161 SCRA 427 [1988].

[11] Rollo, pp. 29-30.

[12] *Reyes, Luis B.*, *The Revised Penal Code, Book Two, Thirteenth Edition*, pp. 86 1-862, citing *People v. Del Fierro and Padilla*, C.A. G.R. No. 3599-R, July 27, 1950.

[13] *Ibid.*, p. 857.

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