

STANLEY J. FORTICH, PETITIONER, VS. COURT OF APPEALS AND FELIX T. GALLERON, RESPONDENTS.

G.R. No. 120769. February 12, 1997

Ponente: KAPUNAN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-120769/>

KAPUNAN, J.:

For over five years since August 1973, petitioner Stanley J. Fortich was employed as an area salesman of the soft drinks division of the San Miguel Corporation in Dipolog City, a job which required him to collect various sums of money from the retailers and buyers of the company along his designated route.

On June 5, 1979, petitioner received a Memorandum ordering him to stop plying his route and collecting the sums owed by customers to the company for the stated reason of his alleged "NONISSUANCE (SIC) OF EITHER CHANGE REFUND NOR OFFICIAL RECEIPT FOR EMPTIES RETRIEVED FROM OUTLETS WITH TEMPORARY CREDIT SALES." [1] The order grounding petitioner, signed by herein respondent Felipe T. Carreon in his capacity as District Sales Supervisor, likewise directed petitioner to instead report directly "to the sales office every working day at the prescribed company time." [2]

Following up on his first memorandum and alleging that petitioner misappropriated the amount of P1,605.00 from his collections (through non-issuance of invoices to several customers) private respondent, on June 11, 1975, submitted a second inter-office memorandum addressed to the Regional Sales Manager summarizing the findings of an initial investigation he conducted on the matter, which he concluded with the following paragraph:

"In addition, I would like to further inform management that S/M Stanley Fortich is an avid mahjong player and a cockfighting enthusiast. In spite of several advices, there seems to be no change in his lifestyle. Also, respondent had a similar case last September 11, 1978." [3]

After further investigation by the company which found petitioner guilty of misappropriating company funds, petitioner was preventively suspended from his job. The order suspending petitioner also decreed his dismissal "upon receipt of clearance from the Ministry of Labor." [4]

Claiming that the above-quoted second memorandum issued by the private respondent was "willfull, malicious and done in gross bad faith," [5] petitioner, on September 28, 1979 filed a complaint for "Damages Arising from Libel" with the Court of First Instance (now Regional Trial Court) of Zamboanga Del Norte. In his complaint, he alleged that:

xxx

[T]he defendant has pictured the plaintiff in his report (Annex "B") as a thief, corrupt or dishonest man and even going to the extent of exposing in public the alleged vices of the plaintiff such as mahjong and cockfighting.

[T]he defendant is guilty of gross bad faith and malice in the highest degree for making and publishing a false, and libelous report for the purpose of putting down the good name and reputation of the plaintiff and his family.

xxx[6]

Petitioner then prayed that the trial court grant the total amount of P171,000.00 to him as moral and exemplary damages, attorney's fees and expenses of litigation.

On November 5, 1990, the Regional Trial Court rendered its decision[7] in favor of herein petitioner, the dispositive portion of which states the following:

PREMISES CONSIDERED, the Court hereby renders judgment -

1. Ordering the defendant to pay to the plaintiff the following sums: (a) P150,000.00 for moral damages; (b) P50,000.00 for exemplary damages; (c) P20,000.00 for attorney's fees and (d) P1,000.00 for litigation expenses;
2. Dismissing the defendant's counterclaim for lack of merit; and
3. Ordering the defendant to pay the costs.[8]

Principally contending in his assignment of errors that no actual malice existed or had been shown in respect to the questioned (second) memorandum and that in any case, the assailed letter was protected by the privileged communication rule, the private respondent appealed the trial court's decision to the Court of Appeals.

On February 21, 1995, respondent court reversed the trial court's decision on the ground that the memorandum was not libelous being "within the ambit of privileged communications." Motion for Reconsideration was denied by the Court of Appeals on May 31, 1995, hence, the instant petition for review on certiorari.

The appeal is not impressed with merit.

The provisions of law applicable to the case at bar are embodied in Articles 353 and 354 of the Revised Penal Code which state the following:

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.

Art. 354. Requirement for 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, except in the following cases:

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.

Nothing in the evidence on record would suggest that the key elements of publicity found in the definition of libel in Article 353 of the Revised Penal Code are present in the case before us.

Firstly, the assailed letter was obviously part and parcel of the initial investigation surrounding the non-remittance of collections by petitioner. The right hand caption of the memorandum clearly shows the phrase "Inter-office Memorandum,"[9]implying confidentiality. Secondly, petitioner was unable to prove that the letter was circulated or publicized, much less read by officers of the corporation other than those involved in the investigation or those directly supervising the petitioner's work. While imputation of a vice or defect on the petitioner's character might have been apparent from the second to the last paragraph of the memorandum, the imputation was never really made publicly.

More importantly, petitioner in the court below was not able to establish satisfactorily that the issuance of the letter and its offending paragraph was motivated by malice. As respondent Court of Appeals correctly held:

Neither does this Court find positive proof that the appellant was motivated by malice in the issuance of the memorandum claimed to be libelous, addressed to the proper officials of San Miguel Corporation. In other words, the onus of proving actual malice is placed on the plaintiff- appellee who must convince the Court that the offender was prompted by malice or ill will. Once this is accomplished, the defense of privilege is unavailing. (Naneric D. Santos vs. The Court of Appeals, et. al., 203 SCRA 110, 114.) Our ruling is buttressed by the fact that no proof has been adduced to show that the subject Memorandum was released to persons other than the officials concerned. x x x.[10]

Malice exists when there is an intentional doing of a wrongful act without just cause. An imputation is legally malicious if done without any reason that would justify a normally conscientious man in so making the imputation.[11] While the law presumes every defamatory imputation to be malicious, there are exceptions to this rule. The record indicates that this case falls under the settled exceptions to the rule: the private respondent's inter-office memorandum falls within the ambit of privileged communication rule.

A privileged communication is one made bona fide upon any subject matter in which the party communicating has an interest, or in reference to which he has a duty.[12] Discussing the scope of this rule, former Chief Justice Fernando, in *Mercado v. CFI of Rizal*,[13] explained that:

x x x. Even when the statements are found to be false, if there is probable cause for belief in their truthfulness and the charge is made in good faith, the mantle of privilege may still cover the mistake of the individual. But the statements must be made under an honest sense of duty; x x x.

In the instant case, it is well-worth stressing that the private respondent was, as the District Sales Supervisor of the corporation's Dipolog office, the immediate supervisor of petitioner. In this capacity, respondent was charged with the duty to carry out and enforce company rules and policies, including the duty to undertake initial investigation of possible irregularities in customer accounts in order to suggest further action which could be taken by the company. In fact, the communications initially submitted by the private respondent to his superiors prompted the investigation which eventually led to petitioner's preventive suspension and to the decision by the company's proper officers to terminate the latter's employment. In making his earlier recommendation, the private respondent relied on the affidavits submitted by at least three of the company's clients (all attesting to irregularities)[14]and his initial though yet-unsubstantiated findings that respondent was an "avid mahjong player and a cockfight enthusiast." That the affidavits were subsequently found to have been gathered by the private respondent himself did not diminish their quality. Investigation necessarily includes the gathering and solicitation of information.

Even granting that the questioned memorandum - particularly the above quoted paragraph - contains statements which could be slanderous and therefore actionable were they not protected by the rule on privileged communications, still as no malice was shown, we agree with the respondent court's conclusion that the assailed memorandum report was an official act done in good faith, an honest innocent statement arising from a moral and legal obligation which the private respondent certainly owed to the company in the performance of his duties. The opinion which the private respondent expressed in the discharge of his duty might have skirted the boundary which usually separates innocent opinion from actionable defamation. Paradoxically, however, if he did not hazard the warning, though it might have subsequently turned out to be a reckless one, he would have been remiss in his responsibilities to the company. The rule on privileged communications allows the latitude of expression embodied in the private respondent's second memorandum.

WHEREFORE, there being no reversible error in the decision sought to be reviewed, the petition is hereby DENIED.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] Annex "A," Original Records, p. 9.

[2] Id.

[3] Id., Annex "B".

[4] Id., Annex "C".

[5] Id., p. 7.

[6] Id., at 6.

[7] Rollo, pp. 18-29.

[8] Id., at 28-29.

[9] Original Records, pp. 10-11.

[10] CA Rollo, CA-GR. CV No. 33099, p. 102.

[11] SIBAL, PHILIPPINE LEGAL ENCYCLOPEDIA, 544 (1986).

[12] Mercado v. CFI 116 SCRA 93 (1982).

[13] Id., at 99.

[14] Original Records, pp. 14-22.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.