

ROQUE VICARIO Y MENDEZ, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 124491. June 01, 1999

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

ROQUE VICARIO Y MENDEZ was charged with libel by the Provincial Prosecutor of Catarman, Northern Samar, with Judge Proceso Sidro of the Municipal Circuit Trial Court of Mondragon-San Roque, Northern Samar, as complaining witness. According to the Information, the crime was committed when Vicario allegedly distributed and circulated in the vicinity of the Northern Samar Provincial Hospital in Catarman photocopies of page 7 of the 20 March 1992 issue of the Philippine Daily Inquirer which contained the following article[1] -

SAMAR JUDGE WHO POCKETED BOND CHARGED WITH GRAFT

OMBUDSMAN Conrado Vasquez yesterday filed with the Sandiganbayan graft charges against a Northern Samar judge who pocketed the P1,000.00 cash bond posted by a respondent in one of several cases pending in his sala.

Charged was Judge Proceso Sidro of the Northern Samar municipal circuit trial court in Mondragon.

Investigation showed that Sidro failed to deposit the cash bond with his clerk-of-court, and refused to return the money even after the accused who filed the bond was already acquitted in the case.

Private complainant Sidro alleged that petitioner's act greatly prejudiced his reputation as a member of the bench and caused him great distress. Petitioner Vicario on the other hand disclaimed responsibility for the distribution of the alleged libelous article, at the same time asserting that the libel suit against him was ill-motivated for he had filed a criminal charge for graft and corruption against Judge Sidro before the Ombudsman and an administrative complaint for dishonesty with the Supreme Court, both due to the latter's unjustified refusal and failure to return petitioner's cash bond of P1,000.00.

After trial, the court a quo found petitioner Vicario guilty of libel and sentenced him to pay a fine of P200.00 with subsidiary imprisonment in case of insolvency.[2] The trial court justified its decision by declaring that while no evidence was presented to show that Vicario distributed copies of the news article to several persons, at least he gave one photocopy to prosecution witness Amador Montes which amounted to publication, and that this act was tainted with malice as it stemmed from Vicario's hatred, as evident from the manner his testimony was delivered, towards complaining witness Sidro.[3]

On 28 February 1996 respondent Court of Appeals affirmed in toto the decision of the trial court.[4] Hence, this petition for review on certiorari predicated on the following propositions[5] -

First. The news item in question is a privileged matter and since it was published in the Philippine Daily Inquirer, a nationally circulated newspaper, without any intervention of petitioner, his act of giving a copy to a

person named Amador Montes is not a libelous act;

Second. Respondent court gravely erred in concluding that Amador Montes saw petitioner distributing copy of the aforesaid issue of the Philippine Daily Inquirer;

Third. Respondent court gravely erred in considering the affidavit-complaint petitioner filed with the Ombudsman which was completely immaterial and impertinent to the issue of whether or not the act of petitioner in giving a copy of the Philippine Daily Inquirer to Amador Montes where the news item was published, constitutes the crime of libel;

Fourth. Respondent court seriously erred in citing authorities which are not applicable in deciding whether petitioner's act of giving a copy of the Philippine Daily Inquirer to Amador Montes constituted the crime of libel;

Fifth. Respondent court gravely erred in adopting the conclusion of the trial court that petitioner's act of giving a copy of the Philippine Daily Inquirer to Amador Montes was motivated by his intense hatred against Judge Sidro, it being clear that such act was an insufficient and inadequate evidence of the alleged intense hatred of petitioner; and,

Sixth. Respondent court gravely erred, in the final analysis, in not acquitting petitioner on the ground of reasonable doubt.

Two (2) main issues are laid before us: (a) whether the act of merely distributing a photocopy of an article in a newspaper reporting that graft charges had been filed against a judge named therein constitutes libel, and (b) whether Vicario's act was proved beyond reasonable doubt.

Libel is defined as 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 discredit or cause the dishonor or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[6] Thus, the elements of libel are: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice.[7]

The evidence on record clearly shows that the elements above enumerated have not been satisfactorily established as to conclude that libel was committed by petitioner. Thus, we rule in his favor. For an incongruity exists between the evidence on one hand, and the findings of fact and of law by the trial court and the appellate court on the other, which we must reconcile, if not rectify.

As found by the trial court, there was no evidence at all to show that petitioner was the source of the statements contained in the news item published by the Philippine Daily Inquirer. Indeed, for not only was the news item by itself bereft of this information, the records also confirmed its absence. This is why it was incorrect for the appellate court to find that "the news item was patently culled from the Affidavit-Complaint of the appellant imputing a criminal act on Judge Sidro filed with the Ombudsman (emphasis ours)" when no basis, factual or legal, exists for so ruling. To be sure, the Affidavit-Complaint was merely a narration of the facts constituting the cause of action of petitioner. Its contents never appeared in the news article which spoke only of the filing by the Ombudsman with the Sandiganbayan of graft charges against Judge Sidro after its investigation of a complaint that the judge refused to return the cash bond of an accused after the latter's acquittal in a criminal case. There is no specific reference therein to petitioner nor to his Affidavit-Complaint. Since it has not been established that he caused the publication of the subject article nor was the source thereof, it would be inappropriate to conclude that through the disputed news item he ascribed a criminal act to Judge Sidro. Parenthetically, it would have been more accurate for the appellate court to state that the news article was culled from the resolution of the Ombudsman directing the filing of a criminal charge based on the results of his investigation of a complaint

leveled against the named judge. But then, if it did, it would have been left with no basis at all to hold, as in fact it did, that Vicario maliciously imputed a discreditable act to respondent judge, and there would be no more justification for the finding that the first element of libel was established.

The trial court also opined that no suit arising from the publication was filed against the newspaper because what appears settled is that the item was merely a fair and true report, with no comments or remarks, of official or judicial proceedings which are not classified as confidential. Again, a perusal of the subject news item confirms this fact. Then the trial court proceeded to state that the accused (petitioner) however publicized the newspaper item because "shown by competent and relevant evidence was the giving (by Vicario) of a xerox copy of the publicized item to Amador Montes." But was petitioner indeed guilty of republication of a libelous article?

In his appeal, petitioner disputes the existence of the elements of publication and malice,[8] arguing that inasmuch as he was not the author or originator of the subject article in the Philippine Daily Inquirer he could not be liable for its publication. The Court of Appeals brushed aside this proposition, declaring in the main that by having the news item machine copied and furnishing prosecution witness Montes a copy thereof, accused-appellant thereby endorsed and adopted the news item and hence was answerable therefor. We note the American citations relied upon by the appellate court to support its conclusions. However, we deem these as not authoritative, much less persuasive upon the Court, considering further that there are dissimilarities in the facts between the cited cases and this case before us.

Contrary to the perception of the appellate court, there was no evidence at all offered to show that petitioner himself photocopied the article. Nor was evidence sufficiently adduced to prove that he himself distributed photocopies of the news item to so many people, prompting the trial court to rule as hearsay the testimony on the matter by Judge Sidro and his protege Amador Montes. This puts to doubt whether petitioner himself gave a copy of the publication to Montes. Notably, Montes was not even named by the judge as one of the original witnesses listed in the complaint he filed for preliminary investigation. The witness named therein was a certain Hermito Pahimnayan who was never presented in court despite his having executed an affidavit which was attached to Sidro's criminal complaint in the Municipal Trial Court. This affidavit described not the incident of 22 May 1992 on which the charge for libel was based but one which occurred sometime in 1991 or a year earlier during which Vicario was said to have shown Pahimnayan a copy of his administrative complaint against Judge Sidro. Moreover, in the affidavit executed by Judge Sidro which he also attached to his complaint, he declared that it was Romeo Pinangay, his court messenger, who gave him a copy of Philippine Daily Inquirer and informed him that Roque Vicario distributed clippings of the news item to everyone in the premises of the hospital. Amador Montes was never mentioned in this affidavit; much less was he made to execute any affidavit to support the criminal complaint of Judge Sidro. This much he admitted on the witness stand.[9] Other than the testimony of Montes himself, an acknowledged subaltern of the judge, no one else was presented to establish the fact of distribution by petitioner of copies of the alleged offensive news article. The prosecution could have offered other witnesses with more objective dispositions than Montes, but it did not do so. With these doubts subsisting, it was therefore reversible error of the courts below to conclude that petitioner was liable for the republication of the news article alleged to be libelous.

A person's liability for libel need not, admittedly, stem from the fact that he was the original publisher of the discreditable act. The maker of a libelous republication or repetition, although not liable for the results of the primary publication, is liable for the consequence of a subsequent publication which he makes or participates in making. It is no justification that the defamatory matter is previously published by a third person,[10] provided malice is present. Granting *arguendo* the correctness of the finding by the lower courts that petitioner did at least distribute a machine copy of the article to one Amador Montes, an acknowledged "batos"[11] of Judge Sidro, was

there sufficient basis to ascribe malice in his act?

The trial court rationalized that "the accused has all the motivations to do so (i.e., distribute a copy to Montes) because of his intense hatred against complainant, manifested even by the very manner he gave testimony, who would not return to him an amount that he had to borrow from a loan shark (there is nothing to show that the same was returned to the accused). x x x Even so, such actuation x x x in disseminating through Montes is removed from the protection accorded to a privileged communication under the foregoing circumstances." This is flawed reasoning, a veritable non sequitur. It is established doctrine that the malice that attends the dissemination of the article alleged to be libelous must attend the distribution itself. It cannot be merely a resentment against a person, manifested unconnectedly several months earlier or one displayed at a much later date, as what happened in this case. A fine-tooth comb dissection of the testimony of prosecution witness Amador Montes reveals none that would indicate, much less hint at, the attitude and mental frame of Vicario at the time he allegedly handed over the photocopy of the news item in question to Montes. If at all, as can be gathered from the testimonial narration, Vicario's attitude could only be described as noncommittal.

In order to constitute malice, ill will must be personal. So if the ill will is engendered by one's sense of justice or other legitimate or plausible motive, such feeling negatives actual malice.[12] The anger observed by trial court to have been shown by the petitioner towards private complainant at the time the former offered his testimony in defense of libel cannot be properly considered as malice, either in fact or in law, that accompanied the dissemination of an alleged libelous publication. For the anger discerned of petitioner on the witness stand could also mean anger not only borne out of a sense of justice frustrated by the continued refusal of Judge Sidro to return to him his cash bond, but also at being criminally sued in court for an act which he stoutly believed was not imputable to him. This state of mind cannot be appropriately considered malice and applied retroactively to the time of the distribution of the alleged libelous article unless clear and convincing evidence shows otherwise; and, there is no such contrary evidence in the case at bar. Since there is no indication about the cause of such display of "intense hatred" by the petitioner for Judge Sidro, the Court will grant him the benefit of the doubt under the "equipoise doctrine." [13]

There was nothing defamatory in the news item. This much was found by the trial court itself, noting that the published article was merely a factual report about the filing by the Ombudsman of the charge of corruption against the judge with the Sandiganbayan. Of course, it does not necessarily mean that if the news article complained of is not libelous because it is a privileged matter, he who repeats the publication is likewise free from accountability for the re-utterance. We recognize that a person's liability for libel does not necessarily proceed from the fact that he was the original publisher of the discreditable act. The maker of a libelous republication or repetition, although not liable for the results of the primary publication, is liable for the consequences of a subsequent publication which he makes or participates in making so long as the elements of libel are satisfied. But in every case malice must be present, something which has not been shown in the case at bar.

The law presumes that malice is present in every defamatory imputation. However, on this score, Art. 354 of the Revised Penal Code provides an exemption -

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 x x x x 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 (emphasis supplied).

Paragraph 2 aforementioned refers to a qualifiedly privileged communication, the character of which is a matter of

defense that may be lost by positive proof of express malice on the part of the accused. Once it is established that the article is of a privileged character, the onus of proving actual malice rests on the plaintiff who must then convince the court that the offender was prompted by malice or ill will. When this is accomplished the defense of privilege becomes unavailing.[14] Since the prosecution failed to establish express malice on the part of petitioner by positive proof, its cause perforce must fail.

WHEREFORE, this petition is GRANTED. The decision of the Regional Trial Court of Catarman, Northern Samar, dated 11 March 1993 finding petitioner guilty of libel, and that of the Court of Appeals dated 28 February 1996 affirming his conviction are REVERSED and SET ASIDE. Petitioner ROQUE VICARIO Y MENDEZ is ACQUITTED of the crime charged.

SO ORDERED.

Puno, Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Exhs. "A" and "A-1," Records, p. 8.

[2] Decision penned by Judge Cesar R. Cinco, RTC-Br. 20, Catarman, Northern Samar.

[3] Id., pp. 48-53.

[4] Rollo, pp. 40-47.

[5] Petition, p. 16, Rollo, p. 23.

[6] Art. 353, Revised Penal Code.

[7] Daez v. Court of Appeals, G.R. No. 47971, 31 October 1990, 191 SCRA 61, 67.

[8] Petition, p. 19, Rollo, p. 32.

[9] TSN, 4 August 1993, p. 18.

[10] Reyes, Leonardo P., Fundamentals of Libel Law, 1986, pp. 14-15, citing *Sourbier v. Brown*, 123 N.E. 802, 188 Ind. 544; *Coffey v. Midland Broadcasting Co.*, D.C. Mo. 8 F Supp. 889; *Wayne Works v. Hicks Body Co.*, 55 N.E. 2d 382, 115 Ind.

[11] "Batos" is the local Waray term for "factotum."

[12] Aquino, Ramon C., *The Revised Penal Code*, Vol. III, Bk. II, 1997 Ed., citing *People v. de los Reyes, Jr.*, 47 OG 3569.

[13] The "equipoise doctrine" is the rule which states that when the evidence of the prosecution and the defense are so evenly balanced the appreciation of such evidence calls for the tilting of the scales in favor of the accused. Thus, the evidence for the prosecution must be heavier to overcome the presumption of innocence of the accused. The constitutional basis of the rule is the Bill of Rights which finds expression in Sec. 1, par. (a), Rule 115 of the 1985 Rules on Criminal Procedure as amended (see *People v. Argawamon*, 215 SCRA 652; *People v. Ramilla*, G.R. No. 101435, 8 November 1993; *People v. De la Iglesia*, G.R. Nos. 110991-92, 24 Feb. 1995).

[14] *Santos v. Court of Appeals*, No. L-45031, 21 October 1991, 203 SCRA 110, 114.

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