

**GREGORIO I. ALCANTARA AND JUAN RUELO, PLAINTIFFS.
GREGORIO I. ALCANTARA, PLAINTIFF AND APPELLANT, VS.
NORBERTO S. AMORANTO, DEFENDANT AND APPELLEE.**

G.R. No. 12493, February 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of dismissal based upon the ground of prescription.

The record shows that on January 5, 1957, Gregorio I. Alcantara and Juan Ruelo filed in the Court of First Instance of Rizal the present action against defendant Norberto S. Amoranto, the incumbent mayor of Quezon City, for the recovery of damages allegedly suffered by them as a result of a libelous letter. It is alleged in paragraph 5 of the complaint—

"5. That on October 23, 1955 the defendant, with the intent of injuring the plaintiffs and of besmirching their good reputation addressed a letter to the Office of the President of the Philippines and caused the same to be published wherein he made the following libelous statements against the plaintiffs, to wit: 'complainants are trouble makers, drunkards, and have many pending cases against them.'"

Instead of answering, defendant moved to dismiss the complaint on the ground of prescription. It was argued that "from the face of the complaint the alleged defamatory imputations were made on October 23, 1955," so that when the complaint was filed on January 5, 1957, more than one year after the action may be brought had already elapsed. Plaintiffs opposed the motion alleging that while the defamatory statements are contained in a letter dated October 23, 1955, the said letter was first sent to the Office of the President by the defendant and endorsed to plaintiffs on December 5, 1955; that plaintiff Alcantara received a copy of the letter on January 5, 1956, while his co-plaintiff Ruelo received another copy on January 6, 1956; that the contents of the letter came to their knowledge only on January 6, 1956, when it was translated to them into Tagalog by a certain Honesto Vitug; and that the one-year period of prescription, which should commence from the day the action may be brought, must be computed from January 6, 1956, when the defamatory statements contained in the letter came to their knowledge.

Sustaining the motion to dismiss, the lower court on January 19, 1957 issued the following order:

"The time within which to file the action in the above-entitled case having already prescribed,

"As prayed for in the Motion to Dismiss filed by the defendant, the above-entitled case is ordered dismissed, without costs. So ordered."

Plaintiffs in due time filed a motion for reconsideration, which was opposed by defendant. On April 3, 1957, the motion was denied, the court holding that under paragraph 5 of the complaint the alleged libelous letter was sent and published by defendant since October 23, 1955 and that the motion for reconsideration states "foreign matters * * * which are not part of the complaint." From that order, only plaintiff Alcantara has appealed directly to this Court.

A civil action arising from libel prescribes in one year. (Article 1147, new Civil Code; *Tejuco vs. E. R. Squibb & Son Phil. Corp. et al.*, 103 Phil., 594; *Inciong et al., vs. Tolentino*,[*] 56 Off. Gaz. [50] 7618.) There being no special provisions which ordains otherwise, that period must be counted from the day the action could have been brought. (Article 1150, new Civil Code.) It is the legal possibility of bringing the action which determines the starting point for the computation of the period. (Tolentino's Civil Code, Vol. IV,1 p. 39, citing *Sentencia* of May 8, 1903 and *Manresa* 896.)

In the present proceedings, we do not think the lower court correctly applied the law in dismissing appellant's complaint on the ground of prescription. The one-year limitation prescribed by law should be counted, not from October 23, 1955, when the alleged libelous letter was sent to the Office of the President, but from January 8, 1956, when the contents thereof came to appellant's knowledge. A written defamation, it is true, becomes actionable upon its publication—that is to say, when communicated to third person or persons as the term is understood in the law of libel. It is evident, however, that the libelous matter must first be exhibited to the person libeled before the action could be brought. A person defamed, as pointed out by appellant, could hardly be expected to institute the proceedings for damages arising from libel when he has no knowledge of the said libel. It may not be amiss to state here that under the Revised Penal Code the period of prescription for defamation commences to run from the day on which the crime is discovered by the offended party. (*People vs. Aquino*, 68 Phil., 588.)

Defendant-appellee assails as unbelievable and self-serving appellant's claim that he actually learned of the alleged defamatory statements only when the letter containing them was translated to him on January 6, 1956. No evidence, however, appears to have been presented to show the contrary. And the lower court did not make any finding on the claim although it conducted hearings on the motion to dismiss and on the motion for reconsideration. Instead, it regarded said claim as "a foreign matter, which is not part of the complaint." Apparently, the court overlooked the fact that under the Rules a motion to dismiss is set for hearing precisely to allow the presentation of evidence in support of and against the contention of the defendant, except when the motion is based on the ground of lack of cause of action. (*Zobel vs. Abreu, et al.*, 98 Phil., 343; 52 Off. Gaz., [7] 3592; *Asejo vs. Leonso*, 78 Phil., 467.)

Wherefore, the order of dismissal appealed from is hereby set aside and the case in so far as appellant Alcantara's complaint is concerned is ordered remanded to the court below for further proceedings. Without costs.

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

[*] 106 Phil., 207.

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