

CIRIACO ‘BOY’ GUINGGUING,PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 128959. September 30, 2005

Ponente: TINGA, J.

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TINGA, J.:

The liberty of the press is indeed essential. Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.

-Benjamin Franklin[1]

The right of free expression stands as a hallmark of the modern democratic and humane state.[2] Not only does it assure a person's right to say freely what is thought freely, it likewise evinces the polity's freedom from psychological insecurity. This fundamental liberty is translated into the constitutional guarantee that no law shall be passed abridging the freedom of speech, of expression, or the press,[3] contained in the Bill of Rights,[4] which itself obtains a position of primacy in our fundamental law.[5]

Criminal libel laws present a special problem. At face value, they might strike as laws passed that abridge the freedom of speech, expression, or the press. Whatever seeming conflict between these two precepts has long been judicially resolved with the doctrine that libelous speech does not fall within the ambit of constitutional protection. Nonetheless, in ascertaining what class of materials may be considered as libelous, the freedom of expression clause, its purposes as well as the evils it guards against, warrant primordial consideration and application.

Before this Court is a Petition for Review under Rule 45 of the 1997 Rules of Civil Procedure, assailing the Decision[6] and the Resolution[7] of the Court of Appeals (CA) dated 29 July 1996 and 3 October 1996, respectively, in CA-G.R. CR No. 16413. The CA affirmed with modification[8] the decision[9] rendered by the Regional Trial Court (RTC), Branch 7 of Cebu City, finding Ciriaco "Boy" Guingguing (petitioner) and Segundo Lim (Lim) guilty beyond reasonable doubt of the crime of libel. This petition for certiorari was filed by petitioner alone, hence the verdict of guilt with respect to Lim had already become final and executory.

The antecedent facts follow.

This case originated from a criminal complaint for libel filed by Cirse "Choy" Torralba (complainant) against Lim and petitioner under Criminal Case No. CBU-26582. Complainant was a broadcast journalist who handled two programs for radio stations DYLA and DYFX. The radio stations were based in Cebu City but the programs were aired over a large portion of the Visayas and Mindanao.[10]

On 13 October 1991, Lim caused the publication of records of criminal cases filed against complainant as well as photographs[11] of the latter being arrested. These were published by means of a one-page advertisement paid for by Lim in the Sunday Post, a weekly publication edited and published by petitioner. The Sunday Post was

circulated in the province of Bohol, as well as in the Visayas and Mindanao.[12] The full text of the advertisement which was the basis of the information[13] for libel reads:

REQUEST FOR PUBLIC SERVICE

ATTN: RADIOMAN CHOY TORRALBA, STATION DYFX, CEBU CITY

TEXT: IN THE INTEREST OF PUBLIC SERVICE, PLEASE DO ENLIGHTEN ME REGARDING THE DISPOSITION OF THE FOLLOWING WHICH APPEAR HEREUNDER. THE CASES WERE FOUND IN THE BLOTTER OF THE CEBU CITY POLICE DEPARTMENT. PLEASE DO TELL ME THE STATUS OF THOSE CASES, WHETHER THEY HAVE BEEN DISMISSED, ARCHIVED AND/OR PENDING.

Name: CIRSE 'CHOY' TORRALBA

CRIM. CASE NO. R-43035

FOR: MALICIOUS MISCHIEF

DATE FILED: MAY 10, 1979

COMPLAINANTS: DR. JOVENAL ALMENDRAS

ADDRESS: ALMENDRAS ST., MABOLO, CEBU CITY

MR. VICTORIANO VELOSO

ADDRESS: 117 HIPODROMO, MABOLO, CEBU CITY

DISPOSITION: PENDING ARREST

CRIM. CASE NO. 17984-R

FOR : ESTAFA

DATE FILED: July 12, 1982

COMPLAINANTS: MR. PIO Y. GO AND

MRS. ROSALITA R. ROLDAN

ADDRESS: c/o 2[nd] Floor Martinez Bldg.

(ALPHA MKTG., INC.),

Jones Ave., Cebu City

DISPOSITION: PENDING ARREST

CRIM. CASE NO. 14843-R

FOR: SERIOUS PHYSICAL INJURIES

DATED FILED: APRIL 28, 1980

COMPLAINANTS:

ADDRESS:

DISPOSITION: PROVISIONALLY DISMISSED

DATED: APRIL 14, 1991

NOT TOO LONG AGO, I RECEIVED THE FOLLOWING NEWSPAPER CLIPPING COURTESY OF A CEBU CITY CONCERNED CITIZEN. THE CAPTION STORY BELOW TELLS ALL. IF YOU KNOW WHO THE BUSINESSMAN ALLUDED TO IN THE CAPTION, PLEASE DO TELL ME.

[Thereafter followed by a picture of a person with face blotted out being arrested and an inset picture of the same person with face likewise blotted out, being detained, these pictures being followed by the caption, which states]:

'ESTAFA CASE. Members of Cebu City Police Intelligence group under Lt. Col. Eduardo Ricardo arrested last night a businessman (extreme left) for his alleged involvement in estafa case filed by APOCEMCO. Left photo a member of the team serves the warrant of arrest order issued by CEBU RTC Judge German Lee.

ANOTHER CLIPPING WHICH IDENTIFIED BUSINESSMAN CHOY TORRALBA TO HAVE BEEN

SERVED A WARRANT OF ARREST IN A (P)LUSH UPTOWN HOTEL IN CEBU CITY BY OPERATIVES OF THE CEBU CITY POLICE. NOW TELL ME, IS IT YOU THE SAME CHOY TORRALBA REFERRED TO IN THE CAPTION STORY. IF INDEED YOU ARE THE ONE AND THE SAME WHO APPEARED IN THE PICTURE BELOW, PLEASE TO (sic) INFORM ME.:

[Thereafter followed by another picture, this time, the face of the person being arrested is clearly shown to be that of Cirse Choy Torralba, followed by this caption.]

SERENE EVENING: The otherwise serene evening enjoyed by businessman Choy Torralba (left) in a plush uptown Hotel was disturbed by operatives (right) of the Cebu City Police under P/Lt/Col. Eduardo Ricardo just to serve on the former a warrant of arrest issued by Cebu RTC Judge German Lee relative to the suit filed by Apocemco against the businessman (PR)

THANK YOU, AND MY BEST REGARDS.

PAID SPACE BY: (sgd.) SEGUNDO LIM[14]

Asserting inter alia that he had been acquitted and the case/s referred to had already been settled, complainant sought Lim and petitioner's conviction for libel. At the same time, he asked for moral, compensatory and exemplary damages as well as attorney's fees because the publication allegedly placed him in public contempt and ridicule. It was claimed that the publication was also designed to degrade and malign his person and destroy him as a broadcast journalist.[15]

Lim, in his defense, claimed that complainant was allegedly making scurrilous attacks against him and his family over the airwaves. Since Lim had no access to radio time, he opted for paid advertisements via newspaper to answer the attacks,[16] as a measure of self-defense. Lim also argued that complainant, as a media man and member of the fourth estate, occupied a position almost similar to a public functionary and should not be onion-skinned and be able to absorb the thrust of public scrutiny.[17]

After trial, the lower court concluded that the publication complained of was indeed libelous.[18] Declaring that malice is the most important element of libel, it held that the same was present in the case because every defamatory publication prima facie implies malice on the part of the author and publisher towards the person subject thereof.[19] The lower court gave no credence to Lim and petitioner's argument that the publication was resorted to in self-defense.

The trial court likewise disregarded the insulative effects of complainant's status as a mediaman to the prosecution of the criminal libel charge. The publication of a calumny even against public officers or candidates for public office, according to the trial court, is an offense most dangerous to the people. It deserves punishment because the latter may be deceived thereby and reject the best and deserving citizens to their great injury.[20] It further held that a private reputation is as constitutionally protected as the enjoyment of life, liberty and property such that anybody who attacks a person's reputation by slanderous words or libelous publications is obliged to make full compensation for the damage done.[21]

On appeal, the CA modified the penalty imposed but it affirmed the RTC's finding of guilt. The CA likewise held that self-defense was unavailing as a justification since the defendant should not go beyond explaining what was previously said of him. The appellate court asserted that the purpose of self-defense in libel is to repair, minimize or remove the effect of the damage caused to him but it does not license the defendant to utter blow-for-blow scurrilous language in return for what he received. Once the defendant hits back with equal or more scurrilous remarks unnecessary for his defense, the retaliation becomes an independent act for which he may be liable.[22] For this reason, the CA refused to sanction the invocation of self-defense.

Petitioner now comes before this Court praying for the reversal of the judgment against him. Petitioner contends inter alia that as editor-publisher of the Sunday Post and as a member of the fourth estate, the lower courts' finding of guilt against him constitutes an infringement of his constitutional right to freedom of speech and of the press.[23] Petitioner likewise faults the lower courts' failure to appreciate their invocation of self-defense.

For resolution of this Court, therefore, is the fundamental question of whether the publication subject matter of the instant case is indeed libelous. While the findings and conclusions of the lower courts are rigid in their application of the strict letter of the law, the issue seems more complex than it appears at first blush. The Court is compelled to delve deeper into the issue considering that libel principles formulated at one time or another have waxed and waned through the years, in the constant ebb and flow of judicial review.[24] A change in the factual milieu of a case is apt to evoke a change in the judgment applicable. Viewed in this context, the petition has merit and the judgment appealed from must be reversed.

Criminal Libel vis-à-vis the Guarantee of Free Speech

Under our law, criminal 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 cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.[25] 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.[26]

Originally, the truth of a defamatory imputation was not considered a defense in the prosecution for libel. In the landmark opinion of England's Star Chamber in the *Libelis Famosis* case in 1603, two major propositions in the prosecution of defamatory remarks were established: first, that libel against a public person is a greater offense than one directed against an ordinary man, and second, that it is immaterial that the libel be true.[27] These propositions were due to the fact that the law of defamatory libel was developed under the common law to help government protect itself from criticism and to provide an outlet for individuals to defend their honor and reputation so they would not resort to taking the law into their own hands.[28]

Our understanding of criminal libel changed in 1735 with the trial and acquittal of John Peter Zenger for seditious libel in the then English colony of New York. Zenger, the publisher of the *New-York Weekly Journal*, had been charged with seditious libel, for his paper's consistent attacks against Colonel William Cosby, the Royal Governor of New York. In his defense, Zenger's counsel, Andrew Hamilton, argued that the criticisms against Governor Cosby were "the right of every free-born subject to make when the matters so published can be supported with truth." [29] The jury, by acquitting Zenger, acknowledged albeit unofficially the defense of truth in a libel action. The Zenger case also laid to rest the idea that public officials were immune from criticism.[30]

The Zenger case is crucial, not only to the evolution of the doctrine of criminal libel, but also to the emergence of the American democratic ideal. It has been characterized as the first landmark in the tradition of a free press, then a somewhat radical notion that eventually evolved into the First Amendment[31] in the American Bill of Rights and also proved an essential weapon in the war of words that led into the American War for Independence.[32]

Yet even in the young American state, the government paid less than ideal fealty to the proposition that Congress shall pass no law abridging the freedom of speech. The notorious Alien and Sedition Acts of 1798[33] made it a crime for any person who, by writing, speaking or printing, should threaten an officer of the government with damage to his character, person, or estate. The law was passed at the insistence of President John Adams, whose Federalist Party had held a majority in Congress, and who had faced persistent criticism from political opponents belonging to the Jeffersonian Republican Party. As a result, at least twenty-five people, mostly Jeffersonian

Republican editors, were arrested under the law. The Acts were never challenged before the U.S. Supreme Court, but they were not subsequently renewed upon their expiration.[34]

The massive unpopularity of the Alien and Sedition Acts contributed to the electoral defeat of President Adams in 1800. In his stead was elected Thomas Jefferson, a man who once famously opined, "Were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter." [35]

There is an important observation to be made about the quality of the American press during the time of Jefferson, one that is crucial to the contemporaneous understanding of the "freedom of expression" clause at the time of its inception. The tenor of the public debate during that era was hardly polite. About the impending election of Jefferson, the New England Courant predicted that "murder, robbery, rape and adultery and incest will be openly taught and practiced, the air will be rent with cries of distress, the soil soaked with blood and the nation black with crimes." [36] After Jefferson was elected, rumors spread about his dalliances with his slave, Sally Hemmings, adding more fodder to his critics. The thirteen-year old William Cullen Bryant, who would grow up to become a prominent poet and abolitionist, published the following doggerel: "Thy country's ruin and thy country's shame!/ Go wretch! Resign the Presidential chair/Disclose thy secret measures foul and fair.../ Go scan, philosopher, thy [Sally's] charms/And sink supinely in her sable arms." [37]

Any comprehensive history of the American media during the first few decades of the existence of the United States would reveal a similar preference in the media for such "mad-dog rhetoric." [38] These observations are important in light of the misconception that freedom of expression extends only to polite, temperate, or reasoned expression. The assailed decision of the RTC betrays such a perception, when it opined that the subject advertisement was libelous "because by the language used, it had passed from the bounds of playful gist, and intensive criticism into the region of scurrilous calumny and intemperate personalities." [39] Evidently, the First Amendment was designed to protect expression even at its most rambunctious and vitriolic form as it had prevalently taken during the time the clause was enacted.

Nonetheless, juristic enforcement of the guarantee of freedom of expression was not demonstrably prominent in the United States during most of the 1800s. Notably, the prevalent philosophy then was that the Bill of Rights did not apply to the different federal states. [40] When the US Supreme Court was confronted with substantial First Amendment issues in the late 1800s and early 1900s, it responded by repeatedly declining to protect free speech. [41] The subsequent enactment of the due process clause in the Fourteenth Amendment eventually allowed the U.S. Supreme Court to accept, in *Gitlow v. New York* [42] that the First Amendment was protected from impairment by the States, thus allowing for a more vigorous enforcement of the freedom of expression clause in the twentieth century. [43]

The most important American ruling on libel, arguably from which modern libel law emerged [44] was *New York Times v. Sullivan*, [45] penned by the liberal lion Justice William Brennan, Jr. In ascertaining whether the New York Times was liable for damages in a libel action, the U.S. Supreme Court had acknowledged that the writing in question, an advertisement published in the paper [46] extolling the virtues of the civil rights movement, had contained several factual inaccuracies in describing actions taken by Montgomery, Alabama officials on civil rights protesters. [47] The Court even concluded that at most, there was a finding against the New York Times of negligence in failing to discover the misstatements against the news stories in the newspaper's own files. [48]

Nonetheless, the U.S. Supreme Court squarely assessed the import of the First Amendment freedoms in the prosecution of criminal libel. Famously, the precedent was established that a public official may not successfully sue for libel unless the official can prove actual malice, which was defined as "with knowledge that the statement

was false or with reckless disregard as to whether or not it was true." [49] By this standard, it was concluded that factual errors aside, actual malice was not proven to sustain the convictions for libel. Moreover, leeway was allowed even if the challenged statements were factually erroneous if honestly made. [50]

Shortly after *New York Times* was promulgated, its principles were extended by the U.S. Supreme Court to criminal libel actions in *Garrison v. Louisiana*. [51] The decision, also penned by Justice Brennan, commented on the marked decline in the common resort to criminal libel actions:

Where criticism of public officials is concerned, we see no merit in the argument that criminal libel statutes serve interests distinct from those secured by civil libel laws, and therefore should not be subject to the same limitations. At common law, truth was no defense to criminal libel. Although the victim of a true but defamatory publication might not have been unjustly damaged in reputation by the libel, the speaker was still punishable since the remedy was designed to avert the possibility that the utterance would provoke an enraged victim to a breach of peace . . .

[However], preference for the civil remedy, which enabled the frustrated victim to trade chivalrous satisfaction for damages, has substantially eroded the breach of peace justification for criminal libel laws. In fact, in earlier, more violent times, the civil remedy had virtually pre-empted the field of defamation; except as a weapon against seditious libel, the criminal prosecution fell into virtual desuetude. [52]

Then, the Court proceeded to consider whether the historical limitation of the defense of truth in criminal libel to utterances published "with good motives and for justifiable ends:" [53]

. . . The "good motives" restriction incorporated in many state constitutions and statutes to reflect Alexander Hamilton's unsuccessfully urged formula in *People v. Croswell*, liberalized the common-law rule denying any defense for truth. . . . In any event, where the criticism is of public officials and their conduct of public business, the interest in private reputation is overborne by the larger public interest, secured by the Constitution, in the dissemination of truth. . . .

Moreover, even where the utterance is false, the great principles of the Constitution which secure freedom of expression in this area preclude attaching adverse consequences to any except the knowing or reckless falsehood. Debate on public issues will not be uninhibited if the speaker must run the risk that it will be proved in court that he spoke out of hatred; even if he did speak out of hatred, utterances honestly believed contribute to the free interchange of ideas and the ascertainment of truth. . . . [54]

Lest the impression be laid that criminal libel law was rendered extinct in regards to public officials, the Court made this important qualification in *Garrison*:

The use of calculated falsehood, however, would put a different cast on the constitutional question. Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity. At the time the First Amendment was adopted, as today, there were those unscrupulous enough and skillful enough to use the deliberate or reckless falsehood as an effective political tool to unseat the public servant or even topple an administration. That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the known lie as a tool is at once with odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected. [55]

Another ruling crucial to the evolution of our understanding was *Curtis Publishing Co. v. Butts*, [56] which expanded the actual malice test to cover not just public officials, but also public figures. The U.S. Supreme Court, speaking through Chief Justice Warren, stated that:

[D]ifferentiation between 'public figures' and 'public officials' and adoption of separate standards of proof for

each have no basis in law, logic, or First Amendment policy. Increasingly in this country, the distinctions between governmental and private sectors are blurred. . . . [I]t is plain that although they are not subject to the restraints of the political process, 'public figures', like 'public officials', often play an influential role in ordering society. And surely as a class these 'public figures' have as ready access as 'public officials' to mass media of communication, both to influence policy and to counter criticism of their views and activities. Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of "public officials." The fact that they are not amenable to the restraints of the political process only underscores the legitimate and substantial nature of the interest, since it means that public opinion may be the only instrument by which society can attempt to influence their conduct.[57]

The public figure concept was later qualified in the case of *Gertz v. Welch, Inc.*,[58] which held that a private person should be able to recover damages without meeting the New York Times standard.[59] In doing so, the US Supreme Court recognized the legitimate state interest in compensating private individuals for wrongful injury to reputation.[60]

The prominent American legal commentator, Cass Sunstein, has summarized the current American trend in libel law as follows:

[C]onsider the law of libel. Here we have an explicit system of free speech tiers. To simplify a complex body of law: In the highest, most-speech protective tier is libelous speech directed against a "public figure". Government can allow libel plaintiffs to recover damages as a result of such speech if and only if the speaker had "actual malice"—that is, the speaker must have known that the speech was false, or he must have been recklessly indifferent to its truth or falsity. This standard means that the speaker is protected against libel suits unless he knew that he was lying or he was truly foolish to think that he was telling the truth. A person counts as a public figure (1) if he is a "public official" in the sense that he works for the government, (2) if, while not employed by government, he otherwise has pervasive fame or notoriety in the community, or (3) if he has thrust himself into some particular controversy in order to influence its resolution. Thus, for example, Jerry Falwell is a public figure and, as a famous case holds, he is barred from recovering against a magazine that portrays him as having had sex with his mother. Movie stars and famous athletes also qualify as public figures. False speech directed against public figures is thus protected from libel actions except in quite extreme circumstances.[61]

It may also be noted that this heightened degree of protection afforded to free expression to comment on public figures or matters against criminal prosecution for libel has also gained a foothold in Europe. Article 10 of the European Convention on Human Rights and Fundamental Freedoms provides that "[e]veryone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers." [62] The European Court of Human Rights applied this provision in *Lingens v. Austria*,[63] in ruling that the Republic of Austria was liable to pay monetary damages "as just satisfaction" to a journalist who was found guilty for defamation under the Austrian Criminal Code.[64] The European Court noted:

[Article 10] is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no 'democratic society'. . . . These principles are of particular importance as far as the press is concerned. Whilst the press must not overstep the bounds set, inter alia, for the 'protection of the reputation of others', it is nevertheless incumbent on it to impart information and ideas on political issues just as on those in other areas of public interest. Not only does the press have the task of imparting such information and ideas: the public also has the right to receive them. . . . [65]

The international trend in diminishing the scope, if not the viability, of criminal libel prosecutions is clear. Most pertinently, it is also evident in our own acceptance in this jurisdiction of the principles applied by the U.S. Supreme Court in cases such as *New York Times* and *Garrison*.

Particularly, this Court has accepted the proposition that the actual malice standard governs the prosecution of criminal libel cases concerning public figures. In *Adiong v. COMELEC*,^[66] the Court cited *New York Times* in noting that "[w]e have adopted the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials."^[67] The Court was even more explicit in its affirmation of *New York Times* in *Vasquez v. Court of Appeals*.^[68] Speaking through Justice Mendoza:

For that matter, even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice — that is, with knowledge that it was false or with reckless disregard of whether it was false or not. This is the gist of the ruling in the landmark case of *New York Times v. Sullivan*, which this Court has cited with approval in several of its own decisions.^[69] This is the rule of "actual malice." In this case, the prosecution failed to prove not only that the charges made by petitioner were false but also that petitioner made them with knowledge of their falsity or with reckless disregard of whether they were false or not.^[70]

The Court has likewise extended the "actual malice" rule to apply not only to public officials, but also to public figures. In *Ayer Productions Pty. Ltd. v. Capulong*,^[71] the Court cited with approval the following definition of a public figure propounded by an American textbook on torts:

A public figure has been defined as a person who, by his accomplishments, fame, or mode of living, or by adopting a profession or calling which gives the public a legitimate interest in his doings, his affairs, and his character, has become a 'public personage.' He is, in other words, a celebrity. Obviously to be included in this category are those who have achieved some degree of reputation by appearing before the public, as in the case of an actor, a professional baseball player, a pugilist, or any other entertainer. The list is, however, broader than this. It includes public officers, famous inventors and explorers, war heroes and even ordinary soldiers, an infant prodigy, and no less a personage than the Grand Exalted Ruler of a lodge. It includes, in short, anyone who has arrived at a position where public attention is focused upon him as a person.^[72]

Ayer did not involve a prosecution for libel, but a complaint for injunction on the filming of a dramatized account of the 1986 EDSA Revolution. Nonetheless, its definition of a public figure is important to this case, as it clearly establishes that even non-governmental officials are considered public figures. In fact, the definition propounded in *Ayer* was expressly applied by the Court in *Borjal v. Court of Appeals*^[73] in ascertaining whether the complainant therein was a public figure, thus warranting the application of the actual malice test.^[74]

We considered the following proposition as settled in this jurisdiction: that in order to justify a conviction for criminal libel against a public figure, it must be established beyond reasonable doubt that the libelous statements were made or published with actual malice, meaning knowledge that the statement was false or with reckless disregard as to whether or not it was true. As applied to the present petition, there are two main determinants: whether complainant is a public figure, and assuming that he is, whether the publication of the subject advertisement was made with actual malice. Sadly, the RTC and the CA failed to duly consider both propositions.

Complainant Is a Public Figure

There should be little controversy in holding that complainant is a public figure. He is a broadcast journalist hosting two radio programs aired over a large portion of the Visayas and Mindanao. Measured against the definition provided in *Ayer*, complainant would definitely qualify as a public figure. Complainant even asserted

before the trial court that his broadcast was listened to widely, hence, his notoriety is unquestionable.

Complainant's standing as a public figure is further militated by the contextual circumstances of the case. The newspaper in question, the Sunday Post, is particularly in circulation in the areas where complainant's broadcasts were aired. Certainly, it cannot be denied that the target audience of the newspaper were the same persons who may have listened regularly to the complainant's broadcast. Even if the sphere of complainant's renown is limited in geography, it is in the same plane as the circulation of the offending newspaper. The extent of complainant's ability to influence hearts and minds through his broadcasts need not be established, only that he has such capacity and willingness to exert an influence. Complainant's volition to practice the radio broadcasting profession necessarily thrusts him in the public sphere.

Actual Malice Not Proven

As it has been established that complainant was a public figure, it was incumbent upon the prosecution to prove actual malice on the part of Lim and petitioner when the latter published the article subject matter of the complaint. Set otherwise, the prosecution must have established beyond reasonable doubt that the defendants knew the statements in the advertisement was false or nonetheless proceeded with reckless disregard as to publish it whether or not it was true.

It should thus proceed that if the statements made against the public figure are essentially true, then no conviction for libel can be had. Any statement that does not contain a provably false factual connotation will receive full constitutional protection.^[75] An examination of the records of this case showed that the précis of information contained in the questioned publication were actually true. Thus, complainant himself testified:

Q

But is it true that these cases published in Exhibit "F-1" are actually existing or previous cases?

A

At the time of the publication those cases were terminated, long terminated.

Q

But is it true that in fact, there was a criminal case No. R-43035 for Malicious Mischief filed May 10, 1979 against you?

FISCAL ROCAMORA:

Your Honor, I believe the witness did not understand the question.

COURT: (to Stenographer)

Read back the question.

Q

Is it true that in fact, there was a criminal case No. R-43035 for Malicious Mischief filed May 10, 1979, against you?

A

I really do not know about that accusation.

COURT:

Proceed.

ATTY. FLORIDO:

Q

When you came across the publication, did you check if in fact there was a case docketed with that number against you? Did you check?

A

I did not.

Q:

Now, is it true that there was a criminal case against you for Estafa docketed as criminal case No. 17984-R filed July 21, 1982 where the complaints were Pio Go and Mrs. Rosalita Roldan?

A:

Yes.

Q:

Is it true that there was also a criminal case filed against you numbered 14843-R for Serious Physical Injuries, date filed April 28, 1980 which in this publication appears provisionally dismissed April 14, 1991?

A:

That case, I do not have any idea about it.

Q:

Did you inquire from the appropriate Court when you received a copy of this to find out if it is true that these cases were filed against you?

A:

As far as I know, in fact, I never received any subpoena or anything about this case.

Q:

Yes, but did you upon receipt of Exhibit "F-1", did you inquire from the Court whether it is true that these cases had been recorded as filed against you?

A:

Well, as far as I know like the Estafa case, I was already long been acquitted in that case.

Q:

You did not answer the question. Will you please answer.

COURT: (to witness)

Q:

The question is, did you inquire from the Court concerned whether that case exist?

A:

Yes.

COURT:

Proceed.

ATTY. FLORIDO:

Q:

And you discovered that they were true that this was provisionally dismissed with reference to 14843-R for Serious Physical Injuries. You made inquiries?

A:

Yes.

Q:

And you also know that Dr. Jovenal Almendras your godfather in the wedding had also filed a case of Malicious Mischief against you?

A:

I know but that was in the past.

Q:

Yes, I know that that was in the past, but that is true?

A:

Yes.

Q:

So, there is nothing false so far as Exhibit "F-1"?

A:

There is no question about that but that is malicious.

Q:

Let me see. On the lefthand side of the bottom it says. "Not too long ago, I received the following newspaper clippings courtesy of the Cebu City concerned citizens. The caption story below tells all. If you know who the businessman alluded to in the caption. Please do tell me and then, there is a photograph a reprint from Sun Star publication. Do you confirm that?"[76]

x x x

Q:

But is it true that you were arrested per this photograph and I quote. "In a plush uptown hotel was disturbed by operatives (right) of the Cebu City Police under Police Lieutenant Col. Eduardo Ricardo just to serve on the former a warrant of arrest issued by the Cebu RTC Judge German Lee relative to the suit filed by Apocemco against a businessman". Is it true that you were arrested?

A:

Yes.

Q:

So this photograph is genuine photograph?

A:

Yes.

Q:

And you claimed that you have a good reputation and that good reputation had been soiled by the accused in this case. Let me ask you concerning your reputation then. Is it not a fact that aside from this record of criminal cases appearing in Exhibit "F-1", you have also been at one time or another been accused of several other criminal cases both in and out of the City of Cebu?

A:

Yes, before, 10 years, 15 years ago.

Q:

And in the Municipal Trial Court in Cities alone in Cebu City, you have the following per certificate which we marked as Exhibit "2". Criminal Case Nos. 14843-R for Serious Physical Injuries, Torralba Cirse "Choy"; 17984-R, for Estafa; Torralba Cirse R. R-43035 for Malicious Mischief. You will confirm that the same Cirse Torralba and/or Choy Torralba and/or Cirse R. Torralba mentioned in this certificate refer to your person?

A:

Yes.

Q:

Now, aside from these criminal cases in the Municipal Trial Courts in Cities, in Cebu City, you also have 1, 2, 3, 4, 5, 6, 7, 8, 9 criminal cases before the Regional Trial Court of Cebu per certificate that I marked as Exhibit "3". Is that correct?

A:

Yes, but all those cases have already been either acquitted or dismissed. I will present the certification.

Q:

Specifically, these cases has something to do with your character. Let me count 1, 2, 3, 4, 5 cases for Estafa, the 6th case for issuance of a bouncing check, the 7[th] case is a case for issuance of a bouncing check; and the 9[th] is also for issuance of a bouncing check. You will confirm that?

....

COURT: (to witness)

Q:

What happened to those cases?

A:

I was acquitted your Honor. I was acquitted in all those cases, some are dismissed, and fortunately, your Honor, I do not have any conviction.[77]

From the foregoing, it is clear that there was nothing untruthful about what was published in the Sunday Post. The criminal cases listed in the advertisement as pending against the complainant had indeed been filed. It may have been inconvenient for the complainant that these matters may have been divulged, yet such information hardly falls within any realm of privacy complainant could invoke, since the pendency of these criminal charges are actually matters of public record.

The information, moreover, went into the very character and integrity of complainant to which his listening public has a very legitimate interest. Complainant hosts a public affairs program, one which he himself claimed was imbued with public character since it deals with "corruptions in government, corruptions by public officials, irregularities in government in comrades." [78] By entering into this line of work, complainant in effect gave the public a legitimate interest in his life. He likewise gave them a stake in finding out if he himself had the integrity and character to have the right to criticize others for their conduct.

In convicting the defendants, the lower courts paid particular heed to Article 354 of the Revised Penal Code, which provides that "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...". We hold that this provision, as applied to public figures complaining of criminal libel, must be construed in light of the constitutional guarantee of free expression, and this Court's precedents upholding the standard of actual malice with the necessary implication that a statement regarding a public figure if true is not libelous. The provision itself allows for such leeway, accepting as a defense "good intention and justifiable motive." The exercise of free expression, and its concordant assurance of commentary on public affairs and public figures, certainly qualify as "justifiable motive," if not "good intention."

It cannot be helped if the commentary protected by the Bill of Rights is accompanied by excessive color or innuendo. Certainly, persons in possession of truthful facts are not obliged to present the same in bland fashion. These true facts may be utilized to convince the listener/reader against a particular position, or to even dissuade one against accepting the credibility of a public figure. Dry facts, by themselves, are hardly stirring. It is the commentary thereupon that usually animates the discourse which is encouraged by the Constitution as integral to the democratic way of life. This is replete in many components of our daily life, such as political addresses, televised debates, and even commercial advertisements.

As adverted earlier, the guarantee of free speech was enacted to protect not only polite speech, but even expression in its most unsophisticated form. Criminal libel stands as a necessary qualification to any absolutist interpretation of the free speech clause, if only because it prevents the proliferation of untruths which if unrefuted, would gain an undue influence in the public discourse. But in order to safeguard against fears that the public debate might be muted due to the reckless enforcement of libel laws, truth has been sanctioned as a defense, much more in the case when the statements in question address public issues or involve public figures.

In ascertaining the degree of falsity that would constitute actual malice, the Court, citing New York Times, has

even gone so far as acknowledging:

Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy. In *Bulletin Publishing Corp. v. Noel* we held —

A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the New York Times doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of "actual malice" on the part of the person making the libelous statement.[79]

To this end, the publication of the subject advertisement by petitioner and Lim cannot be deemed by this Court to have been done with actual malice. Aside from the fact that the information contained in said publication was true, the intention to let the public know the character of their radio commentator can at best be subsumed under the mantle of having been done with good motives and for justifiable ends. The advertisement in question falls squarely within the bounds of constitutionally protected expression under Section 4, Article III, and thus, acquittal is mandated.

WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision and Resolution of the Court of Appeals dated 29 July 1996 and 3 October 1996, respectively, in CA-G.R. CR No. 16413 are REVERSED and SET ASIDE insofar as they affect petitioner. The Decision of the Regional Trial Court of Cebu City, promulgated on 17 May 1994, as regards petitioner is likewise REVERSED and SET ASIDE and petitioner is ACQUITTED of the charge of libel therein. No costs.

SO ORDERED.

Puno (chairman), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Published under the pseudonym "Silence Dogood" in the New England Courant (July 2 to 9, 1722 edition).

[2] As a matter of fact, the principle is enshrined in Article 19 of the United Nations Declaration of Human Rights: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[3] See Section 4, Article III, CONSTITUTION.

[4] Article III, CONSTITUTION.

[5] See *People v. Tudtud*, G.R. No. 144037, 26 September 2003, 412 SCRA 142, 168; *Teves v. Sandiganbayan*, G.R. No. 154182, 17 December 2004, 447 SCRA 309, 335, J. Tinga, dissenting.

[6] Penned by Associate Justice Eduardo G. Montenegro, concurred in by Associate Justices Emeterio C. Cui and Jose C. De La Rama.

[7] Rollo, p. 27.

[8] The Court of Appeals lowered the penalty imposed to TWO (2) MONTHS and ONE (1) DAY of arresto mayor, as minimum to ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of prision correccional as maximum.

[9] "WHEREFORE, the court finds accused SEGUNDO LIM and BOY 'BG' GUINGGING, GUILTY beyond reasonable doubt, as principals of the crime of libel as charged in the information, defined and penalized in Art. 353 in relation to Art. 355 of the Revised Penal Code, and hereby sentences the said accused to a prison term of, ranging from, One (1) year, Eight (8) months and Twenty-one (21) days as minimum to, Two (2) years, Eleven (11) months and Eleven (11) days of prision correccional, as maximum; to indemnify the complainant, damages in the amount of P50,000.00 and to pay the costs.

SO ORDERED."

[10] RTC Records, p. 178.

[11] The two photographs were reprinted from the Sun Star Daily and the Freeman, newspapers of general circulation in Visayas and Mindanao.

[12] Rollo, p. 15.

[13] "That on or about the 13th day of October, 1991, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, with intent to besmirch, dishonor or discredit the person of one Cirse 'Choy' Torralba and to place him in public contempt and ridicule, did then and there write and publish or cause to be written and published on the Sunday Post, a newspaper of wide circulation in the provinces of Cebu and Bohol on its issue on October 13, 1991, specifically on page 8 thereof, the context of which is hereunder reproduced verbatim, as follows:

. . . .

to the damage and prejudice of the said Cirse "Choy" Torralba."

[14] Rollo, p. 13.

[15] RTC Records, p. 180.

[16] TSN, 19 November 1993, pp. 8-9; TSN, 20 January 1994, pp. 7-9.

[17] RTC Records, p. 183.

[18] Id. at 184.

[19] Supra. note 13.

[20] Id. at 185.

[21] Ibid.

[22] Rollo, p. 22.

[23] Id. at 6.

[24] Borjal v. Court of Appeals, 361 Phil. 1, 7 (1999).

[25] Art. 353 of the Revised Penal Code.

[26] Vicario v. Court of Appeals, et. al., 367 Phil. 292, 297 (1990); citing Daez v. Court of Appeals, G.R. No. 47971, 31 October 1990, 191 SCRA 61, 67.

[27] Supra note 24, citing Alfred H. Knight, THE LIFE OF THE LAW, Crown Publishers, Inc., New York, 1996, pp. 102, 230 and 231.

[28] Robert J. Wagman, THE FIRST AMENDMENT BOOK (1991) at 144.

[29] See "Record of the Trial of John Peter Zenger (from Zenger's 1736 Narrative)", at <<http://www.law.umkc.edu/faculty/project/ftrials/zenger/zengerrecord.html>>(Last visited, 27 September 2005).

[30] Wagman, supra note 28 at 146.

[31] Which reads: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances."

[32] Kenneth Davis, DON'T KNOW MUCH ABOUT HISTORY: EVERYTHING YOU NEED TO KNOW ABOUT AMERICAN HISTORY BUT NEVER LEARNED (1990), at 41.

[33] 1 Stat. 596.

[34] In 1801. More than one-hundred fifty years later, Justice Brennan noted in *New York Times v. Sullivan*, 376 U.S. 254 (1964), "Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by Act of Congress on the ground that it was unconstitutional." Id. at 276.

[35] In a letter to Col. Edward Carrington dated 16 January 1787.

[36] See Gail Collins, SCORPION TONGUES: THE IRRESISTIBLE HISTORY OF GOSSIP IN AMERICAN POLITICS (1998) at 25.

[37] Id. at 29.

[38] See id. at 25.

[39] See Records, pp. 184-185.

[40] See Wagman, supra note 28 at 146.

[41] See Laurence H. Tribe, CONSTITUTIONAL CHOICES (1985), at 190.

[42] 268 U.S. 652 (1925).

[43] "This tentative incorporation of the First Amendment in the Fourteenth Amendment was accepted in subsequent decisions and moved from dictum to holding in *Fiske v. Kansas*, the first case to uphold a defendant's claim to protection under the First Amendment." Thomas Emerson, *The System of Freedom of Expression* (1970) at 103.

[44] See Wagman, *supra* note 28 at 146.

[45] 376 U.S. 254 (1964).

[46] Published by the Committee to Defend Martin Luther King, Jr.

[47] *New York Times v. Sullivan*, *supra* note 45 at 258-259.

[48] *Id.* at 287-288.

[49] *Id.* at 280.

[50] The U.S. Supreme Court held: "A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable 'self-censorship.' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred." *New York Times v. Sullivan*, *supra* note 45 at 279. Moreover, cited by way of footnote reference is the statement of John Stuart Mill that "Even a false statement may be deemed to make a valuable contribution to the public debate, since it brings about the clearer perception and livelier impression of truth, produced by its collision with error."

[51] 379 U.S. 64 (1964).

[52] *Id.* at 67-69.

[53] The phraseology, similarly adopted in Article 354 of the Revised Penal Code, was employed as a standard of defense for criminal libel in several American states. See Footnote 7, *Garrison v. Louisiana*, *ibid.*

[54] *Id.* at 72-74. (Emphasis supplied.)

[55] *Id.* at 75. Emphasis supplied. It seems that the provision of this distinction was the cause for three of the Justices sitting in the *Garrison* case, Justices Hugo Black, William O. Douglas, and Arthur Goldberg, to concur separately, holding the more absolutist view that the notion of seditious criminal libel was itself noxious to the Constitution.

[56] 388 U.S. 130 (1967).

[57] *Id.* at 163-164, CJ Warren, concurring. Nonetheless, this passage from the opinion of Chief Justice Warren acquired precedential value, four other Justices concurring in the views expressed therein. See *id.*, at 133.

[58] 418 U.S. 323 (1974).

[59] See Kathleen Sullivan and Gerald Gunther, *CONSTITUTIONAL LAW: FOURTEENTH EDITION* (2001) at 1036.

[60] *Gertz v. Welch, Inc.*, *supra* note 58 at 348.

[61] Cass Sunstein, *DEMOCRACY AND THE PROBLEM OF FREE SPEECH* (1995 ed.) at 9-10.

[62] Article 10(1), *EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS*.

[63] 9815/82 [1986] ECHR 7 (8 July 1986).

[64] Particularly, the defendant Lingens had criticized the former Austrian Chancellor Bruno Kreisky for protecting a political ally accused of having earlier served in the German SS.

[65] *Lingens v. Austria*, supra note 63, at par. 41.

[66] G.R. No. 103956, 31 March 1992, 207 SCRA 712.

[67] *Id.* at 716.

[68] 373 Phil. 238 (1999).

[69] Particularly cited are *Lopez v. Court of Appeals*, 145 Phil. 219 (1970); *Mercado v. Court of First Instance*, 201 Phil. 565 (1982); *Babst v. National Intelligence Board*, 132 SCRA 316, 325 (1984) (Fernando, C.J., concurring).

[70] *Vasquez*, supra note 68 at 254.

[71] G.R. Nos. 82380 and 82398, 29 April 1988, 160 SCRA 861.

[72] *Id.* at 874-875; citing PROSSER AND KEETON ON TORTS, (5th ed.) at 859-861.

[73] Supra note 24.

[74] The complainant in *Borjal* was the Executive Director of the First National Conference on Land Transportation, "to be participated in by the private sector in the transport industry and government agencies concerned in order to find ways and means to solve the transportation crisis." Applying the definition in *Ayer*, the Court concluded that the complainant was a public figure, and that the actual malice test found application.

[75] *Kathleen Sullivan and Gerald Gunther*, supra note 59 at 1032; citing *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990). The opinion therein of Chief Justice Rehnquist nonetheless qualifies, "a false statement of fact gains no constitutional immunity if the speaker simply adds the words 'I think'."

[76] TSN, 23 April 23 1993, pp. 8-9.

[77] TSN, 23 April 1993, pp. 6-11, 13.

[78] TSN, 15 March 1993, p. 40.

[79] *Borjal v. Court of Appeals*, supra note 24 at 26-27.

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