SEGUNDO S. LIM, PETITIONER, VS. COURT OF APPEALS, HON. SIMEON P. DUMDUM, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 7, CEBU CITY, THE PEOPLE OF THE PHILIPPINES, AND CIRS...

G.R. NO. 147524. June 20, 2006

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

In Criminal Case No. CBU-26582, petitioner Segundo S. Lim, together with Boy "BG" Guingguing, were found guilty of libel by the Regional Trial Court of Cebu City, Branch 7, in a Decision dated May 17, 1994, the dispositive portion of which reads as follows:

> WHEREFORE, the court finds accused, SEGUNDO LIM and BOY ï¿½BGï¿½ GUINGGUING, 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.[1]

The criminal case for libel was filed by private respondent Cirse "Choy" Torralba after petitioner caused the publication of records of criminal cases filed against Torralba, including photographs of his arrest, through a one-page advertisement paid for by petitioner in the Sunday Post, a weekly publication edited and published by petitioner's co-accused, Boy "BG" Guingguing.

On appeal, the Court of Appeals (CA) affirmed the conviction in a Decision dated July 29, 1996, although the penalty was modified. The decretal portion of the decision reads:

> WHEREFORE, premises considered, accused-appellants are sentenced to an indeterminate penalty of 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. Except as thus MODIFIED, the decision appealed from is AFFIRMED en [sic] toto, with costs against accused-appellants.
>
> SO ORDERED.[2]

Petitioner filed a petition for review with the Court docketed as G.R. No. 126701 but this was denied in a Resolution dated December 4, 1996 due to petitioner's failure to comply with Revised Circular No. 1-88 in that the petition did not contain a certified true copy of the resolution denying petitioner's motion for reconsideration.[3] Said resolution became final and executory and entry of judgment was made on March 20, 1997.[4]

Meanwhile, petitioner's co-accused, Boy "BG" Guingguing, filed with the Court a petition for review dated April

4, 1997, docketed as G.R. No. 128959, and entitled Ciriaco "Boy" Guingguing v. The Honorable Court of Appeals and the People of the Philippines.

Thereafter, in an Order dated May 26, 2000, the trial court granted a motion filed by the private prosecutor praying for the promulgation of the judgment of conviction against petitioner. Promulgation was set on June 6, 2000.[5] Petitioner filed a motion for reconsideration but this was denied by the trial court in its Resolution dated September 18, 2000.[6]

Thus, petitioner filed a special civil action for certiorari and prohibition with the CA, docketed as CA-G.R. SP No. 60952. On February 5, 2001, the CA promulgated its decision in the above-mentioned case, denying due course and dismissing the petition. The dispositive portion of the decision provides:

> WHEREFORE, the foregoing considered, the petition is denied due course and is hereby DISMISSED. The temporary restraining order issued on 03 October 2000 became functus oficio after the expiration of 60 days from its issuance.
>
> SO ORDERED.[7]

Consequently, in an Order dated March 19, 2001, the trial court, upon motion of the State and the private prosecutor, set the promulgation of the judgment of conviction of petitioner on April 26, 2001.[8]

In the meantime, petitioner filed a motion for reconsideration with the CA but the same was denied in a Resolution dated June 22, 2001 for lack of merit.[9]

The foregoing antecedents constrained petitioner to file the present petition for certiorari and prohibition with urgent prayer for the issuance of a writ of preliminary injunction or temporary restraining order.

In a Resolution dated April 27, 2001, the Court granted petitioner's prayer for the issuance of a temporary restraining order enjoining the trial court from enforcing its Order dated March 19, 2001. In the same resolution, respondents were required to file their comment to the petition.[10]

Petitioner asserts that his co-accused Guingguing's petition before the Court (G.R. No. 128959) is still pending resolution and considering that their respective liabilities are interwoven, prudence dictates that a final decision by the Court in G.R. No. 128959 should be awaited.[11] Notably, these are the same arguments that petitioner raised in his petition with the CA and opposition to the private prosecution's motion for promulgation of judgment before the trial court.

Instead of filing a comment, the Office of the Solicitor General (OSG) submitted a Manifestation in Lieu of Comment (With Recommendation for the Reversal of the Assailed Order/Ruling), wherein it agrees with petitioner that promulgation of the judgment of conviction should be stayed pending resolution of G.R. No. 128959 by the Court. Citing Rule 122, Section 11 of the Rules of Criminal Procedure, the OSG opines that the petitioner's conviction is not yet final and executory despite entry of judgment, and that in case the Court renders a judgment of acquittal in favor of Guingguing, then petitioner should benefit from it. There would be an inconsistency, according to the OSG, if petitioner were held guilty of libel while Guingguing is not despite that the charge arose from the same written article.[12] Reasons of justice and equity also dictate the stay of the promulgation and execution of judgment, the OSG states.[13]

On September 5, 2005, the Court required the parties to submit their respective Memoranda.[14]

In what seems to be providential for petitioner, the Court rendered a decision[15] in G.R. No. 128959 on September 30, 2005, acquitting Guingguing of the charge of libel. The Court quotes the pertinent portions of the Decision, viz.:

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> 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. 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:
>
> x x x
>
> 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." 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 Courtï¿½s 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."
>
> x x x
>
> 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.[16] (Emphasis supplied)

Respondent then filed his Memorandum on December 12, 2005,[17] praying for the denial of the petition and for the Court to direct the trial court to promulgate the CA Decision dated July 29, 1996 in CA-G.R. CR No. 16413, sentencing petitioner and Guingguing with an indeterminate penalty of 2 months and 1 day of arresto mayor, as minimum to 1 year, 8 months and 21 days of prision correccional, as maximum.

The OSG filed its Memorandum on March 2, 2006,[18] reiterating its recommendation that the trial court's Order dated March 19, 2001 in Criminal Case No. CEB-26582 and the CA Decision dated February 5, 2001 in CA-G.R. SP No. 60952 be reversed and set aside. Petitioner, meanwhile, filed an "Adoption/Manifestation/Memorandum"

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on March 28, 2006, adopting completely the OSG's Memorandum.[19]

Initially, the issue in this case was whether the promulgation and execution of petitioner's judgment of conviction should be stayed pending resolution of G.R. No. 128959. However, with the subsequent rendition of judgment of acquittal in favor of Guingguing in G.R. No. 128959, the initial issue became moot and academic, and the question that now arises is whether petitioner should benefit from Guingguing's acquittal.

As earlier stated, both petitioner and the OSG laterally argue that in the event of Guingguing's acquittal, petitioner should likewise be acquitted, based on Rule 122, Section 11(a) of the Revised Rules of Criminal Procedure, as amended, which states:

> SEC. 11. Effect of appeal by any of several accused.-
>
> (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter.

Private respondent however, contends that said provision is not applicable to petitioner inasmuch as he appealed from his conviction, and the provision states that a favorable judgment shall be applicable only to those who did not appeal.

A literal interpretation of the phrase "did not appeal," as espoused by private respondent, will not give justice to the purpose of the provision. It should be read in its entirety and should not be myopically construed so as to defeat its reason, i.e., to benefit an accused who did not join in the appeal of his co-accused in case where the appellate judgment is favorable. In fact, several cases rendered by the Court applied the foregoing provision without regard as to the filing or non-filing of an appeal by a co-accused, so long as the judgment was favorable to him.

In People v. Artellero,[20] the Court extended the acquittal of Rodriguez's co-accused to him despite the withdrawal of his appeal, applying the Rule 122, Section 11(a), and considering that the evidence against both are inextricably linked, to wit:

> Although it is only appellant who persisted with the present appeal, the well-established rule is that an appeal in a criminal proceeding throws the whole case open for review of all its aspects, including those not raised by the parties. The records show that Rodriguez had withdrawn his appeal due to financial reasons. However, Section 11 (a) of Rule 122 of the Rules of Court provides that "[a]n appeal taken by one or more [of] several accused shall not affect those who did not appeal, except insofar as the judgment of the appellant court is favorable and applicable to the latter." As we have elucidated, the evidence against and the conviction of both appellant and Rodriguez are inextricably linked. Hence, appellant's acquittal, which is favorable and applicable to Rodriguez, should benefit the latter.

In People v. Arondain,[21] the Court found accused Arondain guilty only of homicide. Such verdict was applied to his co-accused, Jose Precioso, who was previously found guilty by the trial court of robbery with homicide, despite the fact that Precioso appealed but failed to file an appellant's brief. The Court also modified Precioso's civil liability although the additional monetary award imposed on Arondain was not extended to Precioso since it was not favorable to him and he did not pursue the appeal before the Court.

In People v. De Lara,[22] Eduardo Villas, together with several co-accused, were found by the trial court guilty of forcible abduction. During pendency of the review before the Court, Villas withdrew his appeal, hence his conviction became final and executory. Thereafter, the Court found Villas' co-accused guilty only of grave coercion. Applying Rule 122, Section 11(a), the Court also found Villas guilty of the lesser offense of grave coercion since it is beneficial to him.

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In People v. Escaño,[23] the Court granted a motion filed by accused Julian Deen Escaño, praying that the Court's Decision dated January 28, 2000, acquitting his co-accused Virgilio T. Usana and Jerry C. Lopez in Criminal Case No. 95-936 for violation of Section 4, Article II of Republic Act No. 6425, as amended, be applied to him. Escaño originally filed a Notice of Appeal with the trial court but later withdrew the same.

In the foregoing cases, all the accused appealed from their judgments of conviction but for one reason or another, the conviction became final and executory. Nevertheless, the Court still applied to them the favorable judgment in favor of their co-accused. The Court notes that the Decision dated September 30, 2005 in G.R. No. 128959 stated, "the verdict of guilt with respect to Lim [herein petitioner] had already become final and executory." In any event, the Court cannot see why a different treatment should be given to petitioner, given that the judgment is favorable to him and considering further that the Court's finding in its Decision dated September 30, 2005 specifically stated that "the publication of the subject advertisement by petitioner and Lim cannot be deemed by this Court to have been done with actual malice."

WHEREFORE, the petition for certiorari and prohibition is GRANTED. The Decision dated July 29, 1996 and Resolution dated October 3 1996, of the Court of Appeals in CA-G.R. CR No. 16413 are REVERSED and SET ASIDE. The Decision dated May 17, 1994 rendered by the Regional Trial Court of Cebu City, Branch 7, in Criminal Case No. CBU-26582 is also REVERSED and SET ASIDE. Petitioner Segundo S. Lim is hereby ACQUITTED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, p. 33.

[2] Id. at 47.

[3] Id. at 49-50.

[4] Id. at 51.

[5] Id. at 65.

[6] Id. at 83.

[7] Id. at 154.

[8] Id. at 161.

[9] Id. at 251.

[10] Id. at 163-164.

[11] Id. at 7-10.

[12] Id. at 244-246.

[13] Id. at 247-248.

[14] Rollo, pp. 256-257.

[15] Penned by Associate Justice Dante O. Tinga and concurred in by Associate Justices Reynato S. Puno, Ma. Alicia Austria-Martinez, Romeo J. Callejo, Sr. and Minita V. Chico-Nazario.

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[16] 471 SCRA 196, 219-226.

[17] Rollo, pp. 326-346.

[18] Id. at 357-376.

[19] Id. at 381-387.

[20] 395 Phil. 876, 889 (2000).

[21] 418 Phil. 354 (2001).

[22] 389 Phil. 756 (2000).

[23] 402 Phil. 730 (2001).

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