

CIRSE FRANCISCO “CHOY” TORRALBA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 153699. August 22, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a petition for review on certiorari of the Decision[1] promulgated on 22 May 2002 of the Court of Appeals in CA-G.R. CR No. 24818 which affirmed, with modification, the trial court's[2] decision finding petitioner Cirse Francisco "Choy" Torralba guilty of the crime of libel in Criminal Case No. 9107.

Culled from the records are the following facts:

Petitioner Torralba was the host of a radio program called "Tug-Ani ang Lungsod" which was aired over the radio station DYFX in Cebu City. On 12 September 1994, an information for libel was filed before the Regional Trial Court (RTC) of Tagbilaran City against petitioner Torralba. The information states:

The undersigned, City Prosecutor II, City of Tagbilaran, Philippines, hereby accuses CIRSE FRANCISCO "CHOY" TORRALBA for the crime of Libel, committed as follows:

That, on or about the 11th day of April, 1994, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, with deliberate and malicious intent of maligning, impeaching and discrediting the honesty, integrity, reputation, prestige and honor of late CFI Judge Agapito Y. Hontanosas, who was during his [lifetime] a CFI Judge of Cebu and a man of good reputation and social standing in the community and for the purpose of exposing him to public hatred, contempt, disrespect and ridicule, in his radio program "TUG-ANI AND LUNGSOD" (TELL THE PEOPLE) over radio station DYFX, openly, publicly and repeatedly announce[d] the following: "KINING MGA HONTANOSAS, AGAPITO HONTANOSAS UG CASTOR HONTANOSAS, MGA COLLABORATOR SA PANAHON SA GUERRA. SA ATO PA, TRAYDOR SA YUTANG NATAWHAN." X X X. "DUNAY DUGO NGA PAGKATRAYDOR ANG AMAHAN NI MANOLING HONTANOSAS," which in English means: "THESE HONTANOSAS, AGAPITO HONTANOSAS AND CASTOR HONTANOSAS, ARE COLLABORATORS DURING THE WAR. IN OTHER WORDS, THEY ARE TRAITORS TO THE LAND OF THEIR BIRTH." X X X. "THE FATHER OF MANOLING HONTANOSAS HAD TREACHEROUS BLOOD," and other words of similar import, thereby maliciously exposing the family of the late Judge Agapito Hontanosas including Atty. Manuel L. Hontanosas,[3] one of the legitimate children of [the] late CFI Judge Agapito Y. Hontanosas to public hatred, dishonor, discredit, contempt and ridicule causing the latter to suffer social humiliation, embarrassment, wounded feelings and mental anguish, to the damage and prejudice of said Atty. Manuel L. Hontanosas in the amount to be proved during the trial of the case.

Acts committed contrary to the provisions of Article 353 of the Revised Penal Code in relation to Article 355 of the same Code.

City of Tagbilaran, Philippines, September 8, 1994.

(SGD.) ADRIANO P. MONTES

City Prosecutor II

APPROVED:

(SGD) MARIANO CAPAYAS

City Prosecutor[4]

Upon arraignment on 12 March 1996, petitioner Torralba pleaded not guilty to the crime he was charged with.[5]

On 14 May 1998, petitioner Torralba filed before the RTC, Branch 1, Tagbilaran City, where Crim. Case No. 9107 was raffled off, a motion for consolidation[6] alleging therein that private complainant Atty. Manuel Hontanosas (Atty. Hontanosas) filed a total of four (4) criminal cases for libel against petitioner Torralba, three of which - Crim. Cases No. 8956, No. 8957, and No. 8958 - were then pending with the RTC, Branch III, Tagbilaran City. As the evidence for the prosecution as well as the defense were substantially the same, petitioner Torralba moved that Crim. Case No. 9107 be consolidated with the three other cases so as to save time, effort, and to facilitate the early disposition of these cases.

In its order dated 25 May 1998,[7] the motion for consolidation filed by petitioner Torralba was granted by the RTC, Branch 1, Tagbilaran City.

During the trial on the merits of the consolidated cases, the prosecution presented as witnesses Segundo Lim, private complainant Atty. Hontanosas, and Gabriel Sarmiento.

Lim testified that he was one of the incorporators of the Tagbilaran Maritime Services, Inc. (TMSI) and was at that time the assigned manager of the port in Tagbilaran City. According to him, sometime during the Marcos administration, petitioner Torralba sought TMSI's sponsorship of his radio program. This request was approved by private complainant Atty. Hontanosas who was then the president of TMSI. During the existence of said sponsorship agreement, the management of TMSI noticed that petitioner Torralba was persistently attacking former Bureau of Internal Revenue Deputy Director Tomas Toledo and his brother Boy Toledo who was a customs collector. Fearing that the Toledos would think that TMSI was behind the incessant criticisms hurled at them, the management of TMSI decided to cease sponsoring petitioner Torralba's radio show. In effect, the TMSI sponsored "Tug-Ani ang Lungsod" for only a month at the cost of P500.00.

Soon thereafter, petitioner Torralba took on the management of TMSI. Lim testified that petitioner Torralba accused TMSI of not observing the minimum wage law and that said corporation was charging higher handling rates than what it was supposed to collect.

On 17 December 1993, private complainant Atty. Hontanosas went on-air in petitioner Torralba's radio program to explain the side of TMSI. The day after said incident, however, petitioner Torralba resumed his assault on TMSI and its management. It was petitioner Torralba's relentless badgering of TMSI which allegedly prompted Lim to tape record petitioner Torralba's radio broadcasts. Three of the tape recordings were introduced in evidence by the prosecution, to wit:

Exhibit B

-

tape recording of 19 January 1994[8]

Exhibit C

-

tape recording of 25 January 1994[9]

Exhibit D

-

tape recording of 11 April 1994[10]

During his testimony, Lim admitted that he did not know how to operate a tape recorder and that he asked either his adopted daughter, Shirley Lim, or his housemaid to record petitioner Torralba's radio program. He maintained, however, that he was near the radio whenever the recording took place and had actually heard petitioner Torralba's radio program while it was being taped. This prompted petitioner Torralba to pose a continuing objection to the admission of the said tape recordings for lack of proper authentication by the person who actually made the recordings. In the case of the subject tape recordings, Lim admitted that they were recorded by Shirley Lim. The trial court provisionally admitted the tape recordings subject to the presentation by the prosecution of Shirley Lim for the proper authentication of said pieces of evidence. Despite petitioner Torralba's objection to the formal offer of these pieces of evidence, the court a quo eventually admitted the three tape recordings into evidence.[11]

It was revealed during Lim's cross-examination[12] that petitioner Torralba previously instituted a criminal action for libel[13] against the former arising from an article published in the Sunday Post, a newspaper of general circulation in the provinces of Cebu and Bohol. In said case, Lim was found guilty as charged by the trial court[14] and this decision was subsequently affirmed, with modification, by the Court of Appeals in its decision promulgated on 29 July 1996 in CA-G.R. CR No. 16413 entitled, "People of the Philippines v. Segundo Lim and Boy Guinguing."[15] In our resolution of 04 December 1996, we denied Lim's petition for review on certiorari.[16]

For his part, private complainant Atty. Hontanosas testified that he was at that time the chairman and manager of TMSI; that on 20 January 1994, Lim presented to him a tape recording of petitioner Torralba's radio program aired on 18 January 1994 during which petitioner Torralba allegedly criticized him and stated that he was a person who could not be trusted; that in his radio show on 25 January 1994, petitioner Torralba mentioned that "he was now [wary] to interview any one because he had a sad experience with someone who betrayed him and this "someone" was like his father who was a collaborator"; that on 12 April 1994, Lim brought to his office a tape recording of petitioner Torralba's radio program of 11 April 1994 during which petitioner Torralba averred that the Hontanosas were traitors to the land of their birth; that Judge Agapito Hontanosas and Castor Hontanosas were collaborators during the Japanese occupation; and that after he informed his siblings regarding this, they asked him to institute a case against petitioner Torralba.[17]

When he was cross-examined by petitioner Torralba's counsel, private complainant Atty. Hontanosas disclosed that he did not actually hear petitioner Torralba's radio broadcasts and he merely relied on the tape recordings presented to him by Lim as he believed them to be genuine.[18]

Sarmiento testified that he was the former court stenographer and interpreter of RTC, Branch 3, Tagbilaran City, and that he translated the contents of the tape recordings in 1994 upon the request of private complainant Atty. Hontanosas.

The defense presented, as its sole witness, petitioner Torralba himself. Petitioner Torralba maintained that he was a member of the Kapisanan ng mga Brodkaster ng Pilipinas and other civic organizations in Cebu. In the course of

his profession as a radio broadcaster, he allegedly received complaints regarding the services of TMSI particularly with respect to the laborers' low pay and exorbitant rates being charged for the arrastre services. As he was in favor of balanced programming, petitioner Torralba requested TMSI to send a representative to his radio show in order to give the corporation an opportunity to address the issues leveled against it; thus, the radio interview of private complainant Atty. Hontanosas on 17 December 1993.

When petitioner Torralba was cross-examined by private complainant Atty. Hontanosas,[19] he denied having called former CFI Judge Hontanosas a traitor during his 11 April 1994 radio broadcast. Petitioner Torralba admitted, though, that during the 17 December 1993 appearance of private complainant Atty. Hontanosas in his radio program, he did ask the latter if he was in any way related to the late CFI Judge Hontanosas. Petitioner Torralba averred that he posed said question as mere backgrounder on his interviewee.

On 24 August 2000, the trial court rendered an omnibus decision[20] acquitting petitioner Torralba in Crim. Cases No. 8956, No. 8957, and No. 8958 but holding him guilty of the crime of libel in Crim. Case No. 9107. The dispositive portion of the trial court's decision reads:

WHEREFORE, in view of all the foregoing, the Court hereby ACQUITS from criminal liability herein accused Cirse Francisco Choy Torralba of the charges alluded in Criminal Cases Nos. 8956, 8957, and 8958 being an exercise of legitimate self-defense, as afore-discussed. Consequently, the corresponding cash bonds of the accused in said cases as shown by OR No. 5301156, No. 5301157, and No. 5301158, all dated February 23, 2000, issued by the Clerk of Court of Multiple Salas in the amount of P4,200.00 each representing cash deposits therefore are hereby cancelled and released.

However, the Court finds the same accused GUILTY beyond reasonable doubt in Crim. Case No. 9107 for his unwarranted blackening of the memory of the late Hon. CFI Judge Agapito Y. Hontanosas through the air lanes in his radio program resulting to the dishonor and wounded feelings of his children, grandchildren, relatives, friends, and close associates. For this, the Court hereby sentences the accused to imprisonment for an indeterminate period of FOUR MONTHS of Arresto Mayor to THREE YEARS of Prision Correccional medium period pursuant to Art. 353 in relation to Art. 354 and Art. 355 of the Revised Penal Code under which the instant case falls. Furthermore, he is ordered to indemnify the heirs of the late Judge Agapito Y. Hontanosas for moral damages suffered in the amount of ONE MILLION PESOS (P1,000,000.00), as prayed for, considering their good reputation and high social standing in the community and the gravity of the dishonor and public humiliation caused.[21]

Petitioner Torralba seasonably filed an appeal before the Court of Appeals which, in the challenged decision before us, affirmed, with modification, the findings of the court a quo, thus:

WHEREFORE, the appealed Decision of the court a quo is AFFIRMED with the modification that accused-appellant is hereby sentenced to suffer imprisonment of four (4) months of arresto mayor to two (2) years, eleven (11) months and ten (10) days of prision correccional and to pay moral damages in the amount of P100,000.00.[22]

Hence, the present recourse where petitioner Torralba raises the following issues:

I

THE HONORABLE COURT OF APPEALS SPEAKING THROUGH ITS SPECIAL FIFTEENTH DIVISION GRAVELY ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT A QUO (WITH MODIFICATION), CONVICTING PETITIONER-APPELLANT [TORRALBA] FOR THE CRIME OF LIBEL AS DEFINED AND PENALIZED UNDER ARTICLES 353 AND 355 OF THE REVISED PENAL CODE BASED SOLELY ON THE ALLEGED TESTIMONY OF SEGUNDO LIM . . . AS BORNE OUT BY THE STENOGRAPHIC NOTES WOULD NOT SUPPORT THE FINDING THAT HE TESTIFIED

ON THE MALICIOUS IMPUTATIONS PURPORTEDLY MADE BY PETITIONER-APPELLANT [TORRALBA] IN CRIMINAL CASE NO. 9107.

II

THE HONORABLE COURT OF APPEALS SERIOUSLY COMMITTED AN ERROR IN ADMITTING IN EVIDENCE AN UNAUTHENTICATED AND SPURIOUS TAPE RECORD OF A RADIO BROADCAST (EXHIBIT "D") ALLEGEDLY BY HEREIN PETITIONER-APPELLANT [TORRALBA] ON THE BASIS OF WHICH THE LATTER WAS CONVICTED FOR THE CRIME OF LIBEL.

III

ASSUMING WITHOUT ADMITTING THAT PETITIONER-APPELLANT [TORRALBA] MADE UTTERANCES CONTAINED IN THE TAPE RECORD MARKED AS EXHIBIT "D," THE HONORABLE COURT SERIOUSLY ERRED IN NOT CONSIDERING THE PRIVILEGE[D] NATURE OF HIS ALLEGED STATEMENTS IN FEALTY ADHERRENCE TO THE LANDMARK DECISION OF THE HONORABLE SUPREME COURT IN BORJAL VS. CA, 301 SCRA 01 (JAN. 14, 1999).

IV

THE HONORABLE COURT OF APPEALS COMMITTED AN ERROR IN AWARDING DAMAGES AGAINST THE PETITIONER ABSENT ANY SHOWING OF EVIDENT BAD FAITH ON THE PART OF THE PETITIONER-APPELLANT [TORRALBA] WHO ACTED WITH UBERIMA FIDES (OVERWHELMING GOOD FAITH) IN EXERCISING THE CONSTITUTIONALLY ENSHRINED FREEDOM OF THE PRESS (ARTICLE 2220, NEW CIVIL CODE).[23]

This Court deems it proper to first resolve the issue of the propriety of the lower court's admission in evidence of the 11 April 1994 tape recording. Oddly, this matter was not addressed head-on by the Office of the Solicitor General in its comment.

Petitioner Torralba vigorously argues that the court a quo should not have given considerable weight on the tape recording in question as it was not duly authenticated by Lim's adopted daughter, Shirly Lim. Without said authentication, petitioner Torralba continues, the tape recording is incompetent and inadmissible evidence. We agree.

It is generally held that sound recording is not inadmissible because of its form[24] where a proper foundation has been laid to guarantee the genuineness of the recording.[25] In our jurisdiction, it is a rudimentary rule of evidence that before a tape recording is admissible in evidence and given probative value, the following requisites must first be established, to wit:

(1)

a showing that the recording device was capable of taking testimony;

(2)

a showing that the operator of the device was competent;

(3)

establishment of the authenticity and correctness of the recording;

(4)

a showing that changes, additions, or deletions have not been made;

(5)

a showing of the manner of the preservation of the recording;

(6)

identification of the speakers; and

(7)

a showing that the testimony elicited was voluntarily made without any kind of inducement.[26]

In one case, it was held that the testimony of the operator of the recording device as regards its operation, his method of operating it, the accuracy of the recordings, and the identities of the persons speaking laid a sufficient foundation for the admission of the recordings.[27] Likewise, a witness' declaration that the sound recording represents a true portrayal of the voices contained therein satisfies the requirement of authentication.[28] The party seeking the introduction in evidence of a tape recording bears the burden of going forth with sufficient evidence to show that the recording is an accurate reproduction of the conversation recorded.[29]

These requisites were laid down precisely to address the criticism of susceptibility to tampering of tape recordings. Thus, it was held that the establishment of a proper foundation for the admission of a recording provided adequate assurance that proper safeguards were observed for the preservation of the recording and for its protection against tampering.[30]

In the case at bar, one can easily discern that the proper foundation for the admissibility of the tape recording was not adhered to. It bears stressing that Lim categorically admitted in the witness stand that he was not familiar at all with the process of tape recording[31] and that he had to instruct his adopted daughter to record petitioner Torralba's radio broadcasts, thus:

ATTY. HONTANOSAS:

q

Was this radio program of the accused recorded on April 11, 1994?

a

Yes, sir.

q

Who recorded the same radio program of April 11, 1994?

a

It was my adopted daughter whom I ordered to tape recorded the radio program of Choy Torralba.[32]

Clearly, Shirley Lim, the person who actually recorded petitioner Torralba's radio show on 11 April 1994, should have been presented by the prosecution in order to lay the proper foundation for the admission of the purported tape recording for said date. Without the requisite authentication, there was no basis for the trial court to admit the tape recording - Exhibit "D" - in evidence.

In view of our disallowance of the 11 April 1994 tape recording, we are constrained to examine the records of this case in order to determine the sufficiency of evidence stacked against petitioner Torralba, bearing in mind that in criminal cases, the guilt of the accused can only be sustained upon proof beyond reasonable doubt.

In his comprehensive book on evidence, our former colleague, Justice Ricardo Francisco, wrote that "[e]vidence of a message or a speech by means of radio broadcast is admissible as evidence when the identity of the speaker is established either by the testimony of a witness who saw him broadcast his message or speech, or by the witness' recognition of the voice of the speaker." [33]

The records of this case are bereft of any proof that a witness saw petitioner Torralba broadcast the alleged libelous remarks on 11 April 1994. Lim, however, stated that while petitioner Torralba's radio program on that date was being tape recorded by his adopted daughter, he was so near the radio that he could even touch the same. [34] In effect, Lim was implying that he was listening to "Tug-Ani ang Lungsod" at that time. In our view, such bare assertion on the part of Lim, uncorroborated as it was by any other evidence, fails to meet the standard that a witness must be able to "recognize the voice of the speaker." Being near the radio is one thing; actually listening to the radio broadcast and recognizing the voice of the speaker is another. Indeed, a person may be in close proximity to said device without necessarily listening to the contents of a radio broadcast or to what a radio commentator is saying over the airwaves.

What further undermines the credibility of Lim's testimony is the fact that he had an ax to grind against petitioner Torralba as he was previously accused by the latter with the crime of libel and for which he was found guilty as charged by the court. Surely then, Lim could not present himself as an "uninterested witness" whose testimony merits significance from this Court.

Nor is this Court inclined to confer probative value on the testimony of private complainant Atty. Hontanosas particularly in the light of his declaration that he did not listen to petitioner Torralba's radio show subject of this petition. He simply relied on the tape recording handed over to him by Lim.

Time and again, this Court has faithfully observed and given effect to the constitutional presumption of innocence which can only be overcome by contrary proof beyond reasonable doubt -- one which requires moral certainty, a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. [35] As we have so stated in the past -

... Accusation is not, according to the fundamental law, synonymous with guilt, the prosecution must overthrow the presumption of innocence with proof of guilt beyond reasonable doubt. To meet this standard, there is need for the most careful scrutiny of the testimony of the State, both oral and documentary, independently of whatever defense is offered by the accused. Only if the judge below and the appellate tribunal could arrive at a conclusion that the crime had been committed precisely by the person on trial under such an exacting test should the sentence be one of conviction. It is thus required that every circumstance favoring innocence be duly taken into account. The proof against him must survive the test of reason; the strongest suspicion must not be permitted to sway judgment. [36]

Confronted with what the State was able to present as evidence against petitioner Torralba, this Court is compelled to overturn the decision of the Court of Appeals due to insufficiency of evidence meriting a finding of guilt beyond reasonable doubt.

WHEREFORE, the petition is GRANTED. The Decision promulgated on 22 May 2002 of the Court of Appeals, affirming the omnibus decision dated 24 August 2000 of the Regional Trial Court, Branch 3, Tagbilaran City, is hereby REVERSED and SET ASIDE. Instead, a new one is entered ACQUITTING petitioner Cirse Francisco "Choy" Torralba of the crime of libel. The cash bond posted by said petitioner is ordered released to him subject to the usual auditing and accounting procedures. No costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

- [1] Penned by Associate Justice Eriberto U. Rosario, Jr. with Associate Justices Oswaldo D. Agcaoili and Danilo B. Pine concurring.
- [2] Per Presiding Judge Venancio J. Amila of Regional Trial Court of Bohol, Branch 3, Tagbilaran City.
- [3] Private complainant.
- [4] Records, pp. 1-2.
- [5] Records, p. 31.
- [6] Records, pp. 74-74-a.
- [7] Records, p. 77.
- [8] For Crim. Case No. 8958.
- [9] For Crim. Cases No. 8956 and No. 8957.
- [10] For Crim. Case No. 9107; Folder of Exhibits, p. 1.
- [11] Records, p. 97.
- [12] TSN, 03 September 1998, pp. 9-11.
- [13] Docketed as Crim. Case No. CBU-26582 in Regional Trial Court, Branch 7, Cebu City.
- [14] Exhibit "1" for petitioner Torralba; Folder of Exhibits, pp. 37-46.
- [15] Exhibit "2," Id. at 47-61.
- [16] Exhibit "2-A," Id. at 67-68.
- [17] TSN, 12 October 1998, pp. 2-4.
- [18] Id. at 6.
- [19] TSN, 29 July 1999, pp. 39-42.
- [20] Rollo, pp. 64-75.
- [21] Id. at 75.
- [22] Rollo, pp. 62-63.
- [23] Rollo, pp. 9-10.
- [24] 29 Am Jur 2d §583.
- [25] VII The Revised Rules of Court in the Philippines, Ricardo J. Francisco, p. 121 (1997 edition).
- [26] Ibid., citing 20 Am. Jur. 1961 Supplement 43; People v. Orpilla, CA-G.R. No. L-06591, 22 July 1971; XXXVI L.J. 284.
- [27] 58 ALR2d §4, citing Monroe v. United States, 98 App DC 228, 234 F2d 49.

[28] Ibid., citing Commonwealth v. Roller, 100 Pa Super 125.

[29] 29A Am Jur 2d §1233.

[30] 58 ALR 2d 1034, citing State v. Alleman, 218 La 821, 51 So2d 83.

[31] TSN, 07 August 1997, pp. 27-28.

[32] TSN, 03 September 1998, p. 6.

[33] Evidence, Ricardo J. Francisco, p. 13 (1996 edition).

[34] Supra, note 28.

[35] People of the Philippines v. Isidro Clores, et al., G.R. No. L-61408, 12 October 1983, 210 Phil 51.

[36] Amelita dela Cruz v. People of the Philippines, G.R. No. 150439, 29 July 2005, p. 32; People v. Dramayo, G.R. No. L-21325, 29 October 1971, 42 SCRA 59.

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