NICASIO I. ALCANTARA, PETITIONER, VS. VICENTE C. PONCE AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. 156183. February 28, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] from a decision[2] and resolution[3] of the Court of Appeals (CA).

In 1997, respondent Vicente C. Ponce filed a string of criminal complaints against petitioner Nicasio I. Alcantara and his family, hereafter the Alcantaras, including one for estafa against petitioner in the Makati Prosecutor's Office docketed as I.S. No. 97-39547. In essence, respondent Ponce alleged that petitioner had swindled him out of 3,000,000 shares of Floro Cement Corporation.

It was in the course of the preliminary investigation of the complaint for estafa that respondent Ponce, shortly after giving his sur-rejoinder affidavit,[4] submitted to the investigating prosecutor a newsletter[5] purporting to be a belated annex to the affidavit. It was prefaced with the quotation "For every extraordinary fortune there is a great crime" and the text:

> An example is Marcos. We need not discuss this.
>
> Second example is the Alcantaras.

a) Overshipment of log; b) Land grabbing;

c) Corruption of public office; d) Corporate grabbing.

The newsletter then went on to discuss SEC Case No. 2507 which, in the sur-rejoinder affidavit, respondent Ponce described as being the forefather of all the cases he had filed against the Alcantaras. In SEC Case No. 2507 which the Securities and Exchange Commission en banc decided against him, Ponce accused the Alcantaras of defrauding him of his shares in Iligan Cement Corporation.

On December 3, 1997, petitioner filed a complaint for libel against respondent Ponce with the Makati Prosecutor's Office[6] in connection with the aforesaid newsletter. He claimed that: (1) the statements therein were defamatory; (2) respondent had circulated it in the Makati Prosecutor's Office and (3) the newsletter could not be considered an annex to the sur-rejoinder because respondent had not attached it to the said affidavit but had given it thereafter.

The preliminary investigation was conducted by City Prosecutor Imelda P. Saulog. On March 17, 1998, Prosecutor Saulog issued a resolution[7] finding probable cause for libel and recommending the filing of an information[8] in court. Thereafter, the case was filed with the Regional Trial Court of Makati and raffled to Judge Tranquil Salvador of Branch 63.

However, respondent Ponce filed a petition for review with the Secretary of Justice, who reversed the City

Prosecutor in a resolution dated February 28, 2000.[9] This reversal was based on the finding that the newsletter was a privileged communication, having been submitted to the investigating prosecutor Benjamin R. Bautista as an intended annex to respondent's sur-rejoinder. The Secretary of Justice thus directed the withdrawal of the information.

Petitioner filed a motion for reconsideration[10] but it was denied.[11]

Petitioner elevated the matter via petition for certiorari to the CA where it was docketed as CA-G.R. SP No. 61543. In a decision dated August 29, 2002, the CA found that the Secretary of Justice committed grave abuse of discretion, set aside the latter's resolution and directed the reinstatement of the criminal case.[12] After unsuccessfully moving for reconsideration in the Department of Justice, respondent Ponce attempted to elevate the matter to the Supreme Court by way of a petition for review on certiorari. The case was docketed as G.R. No. 157105. However, we denied respondent Ponce's motion for extension for time to file his petition[13] as well as his subsequent motions for reconsideration.

In the meantime, however, before CA-G.R. SP No. 61543 was decided, the Office of the Makati City Prosecutor, in deference to the resolution of the Justice Secretary, filed a motion to withdraw information, which the trial court granted on September 28, 2001.[14] The trial court ruled that the absence of the essential element of publicity precluded the commission of the crime of libel. Petitioner moved for reconsideration of the withdrawal but the trial court denied the motion in an order dated March 21, 2002.[15]

On June 17, 2002, petitioner filed another petition for certiorari in the CA, docketed as CA-G.R. SP No. 71189. In this case, the CA rendered the assailed decision.

The principal question for our consideration is whether or not the CA, in its decision in CA-G.R. SP No. 71189, gravely erred in finding that Judge Salvador had not committed grave abuse of discretion for granting the withdrawal of the information for libel against respondent Ponce.

The crime of libel, as defined in Article 353 of the Revised Penal Code,[16] has the following elements:

> (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition, status or circumstance;
>
> (2) publicity or publication;
>
> (3) malice;
>
> (4) direction of such imputation at a natural or juridical person, or even a dead person and
>
> (5) tendency to cause the dishonor, discredit or contempt of the person defamed.

The factual antecedents are undisputed. The only issue is whether or not the controversial newsletter constituted privileged communication, which would exempt it from libel.

According to the Special Fifth Division of the CA:

> It is a settled principle in this jurisdiction that statements made in the course of judicial proceedings are absolutely privileged. This absolute privilege remains regardless of the defamatory tenor and the presence of malice if the same are relevant, pertinent or material to the cause in hand or subject of the inquiry. The lone requirement imposed to maintain the cloak of absolute privilege is the test of relevancy.
>
> In this case, a reading of the Sur-Rejoinder Affidavit, contrary to petitioner's submission, instantly shows that there was sufficient reference to the "newsletter" which justified the Justice Secretary and respondent Judge in holding that private respondent actually intended the said article to be included as an annex attached to said

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pleading and that the same was merely omitted and belatedly submitted to Prosecutor Bautista during the preliminary investigation. Such "sufficient reference" is shown by the fact that the newsletter is about SEC Case No. 2507 the very same case being discussed by private respondent in pages 8 to 12 of his Sur-Rejoinder Affidavit and hence, petitioner's claim that Annex "F" mentioned together with Annex "E", both articles showing the "devious maneuvering" of petitioner in the said case, refers to another article. And even if the supposed Exhibit "F" could refer also to that article "So The Public May Know," such circumstance will not exclude the subject "newsletter" as an intended annex to the said pleading as in fact private respondent explicitly mentioned "articles" without stating that there were only two (2) particular articles being referred or which of those articles caused to be published by his counsel.

As the Justice Secretary opined and which position the respondent Judge adopted, the "newsletter" containing the defamatory statement is relevant and pertinent to the criminal complaint for estafa then under preliminary investigation. The crime of estafa involves deceit, dishonesty and other fraudulent acts. The inclusion in the Sur-Rejoinder Affidavit of the "newsletter" discussing the alleged "corporate grabbing" by petitioner will tend to support private respondent's case of estafa against petitioner insofar as such alleged "corporate grabbing" will highlight or manifest petitioner's propensity for dishonest dealing or fraudulent machinations. There is therefore no doubt that the subject "newsletter" is relevant and pertinent to the criminal complaint for estafa, and hence the same comes within the protective cloak of absolutely privileged communications as to exempt private respondent from liability for libel or damages.

In determining the issue of relevancy of statements made in judicial proceedings, courts have adopted a liberal attitude by resolving all doubts in favor of relevancy. Thus, in People vs. Aquino, our Supreme Court has emphasized that "it is the rule that what is relevant or pertinent should be liberally construed to favor the writer, and the words are not to be scrutinized with microscopic intensity. The doctrine of privileged communication has a practical purpose.

xxx xxx xxx

Publication in libel means making the defamatory matter, after it has been written, known to someone other than the person to whom it has been written. There is publication if the material is communicated to a third person. What is material is that a third person has read or heard the libelous statement, for "a man's reputation is the estimate in which others hold him, not the good opinion which he has of himself." Our Supreme Court has established the rule that when a public officer, in the discharge of his or her official duties, sends a communication to another officer or to a body of officers, who have a duty to perform with respect to the subject matter of the communication, such communication does not amount to publication. Applying this rule by analogy to the present case, private respondent's submission of the "newsletter" intended as an annex to his Sur-Rejoinder Affidavit in I.S. No. 97-39547 to Prosecutor Bautista who was then conducting the preliminary investigation in said case, does not amount to publication for the reason that the sending of such material was made specifically for the purpose of including the same as evidence in the preliminary investigation. That such submission was belatedly made does not take out the material from the absolutely privileged communication rule. Prosecutor Bautista had a legal duty to perform with respect to the subject communication, which is to consider the same along with the other evidence submitted by private respondent as complainant in I.S. no. 97-39547, in determining the existence of probable cause for the commission of the crime of estafa and that petitioner as accused-defendant therein should be tried for such offense. Under the circumstances and in the lawful exercise of private respondent's right to present evidence in support of his accusations against petitioner in the criminal complaint for estafa, We fail to see how such submission of documentary evidence omitted from the annexes to the Sur-Rejoinder Affidavit, could amount to publication that would give rise to private respondent's liability for a libel charge especially when there is no proof of the alleged circulation of copies of the subject "newsletter" except to the City Prosecutor's Office of Makati wherein I.S. No. 97-39547 was then in the preliminary investigation stage. Petitioner's feeble argument that Prosecutor Bautista remains a third person because the subject "newsletter" was never included or formally offered as evidence, hardly convinces Us to

> hold that there was actual publication for purpose of finding a prima facie case for libel against the private respondent. He must be reminded that the case for estafa was still at the preliminary investigation stage and there is no requirement of a "formal offer" of such documentary evidence or supporting documents to establish probable cause (citations omitted).[17]

Since the newsletter was presented during the preliminary investigation, it was vested with a privileged character. While Philippine law is silent on the question of whether the doctrine of absolute privilege extends to statements made in preliminary investigations or other proceedings preparatory to the actual trial, the U.S. case of Borg v. Boas[18] makes a categorical declaration of the existence of such protection:

> It is hornbook learning that the actions and utterances in judicial proceedings so far as the actual participants therein are concerned and preliminary steps leading to judicial action of an official nature have been given absolute privilege. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime xxx [A] written charge or information filed with the prosecutor or the court is not libelous although proved to be false and unfounded. Furthermore, the information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation. (Emphasis ours)

The ruling in Borg is persuasive in this jurisdiction. We see no reason why we should not adopt it.

Furthermore, the newsletter qualified as "a communication made bona fide upon any subject-matter in which the party communicating has an interest . . . made to a person having a corresponding interest or duty, although it contained [in]criminatory matter which without this privilege would be slanderous and actionable."[19]

While the doctrine of privileged communication can be abused, and its abuse can lead to great hardships, to allow libel suits to prosper strictly on this account will give rise to even greater hardships. The doctrine itself rests on public policy which looks to the free and unfettered administration of justice.[20] It is as a rule applied liberally.[21]

The one obstacle that those pleading the defense of privileged communication must hurdle is the test of relevancy. Under this test, a matter alleged in the course of the proceedings need not be in every case material to the issues presented but should be legitimately related to the issues or be so pertinent to the controversy that it may become the subject of inquiry in the course of trial.[22]

Here, the controversial statements were made in the context of a criminal complaint against petitioner, albeit for other, separate acts involving greed and deceit, and were disclosed only to the official investigating the complaint. Liberally applying the privileged communication doctrine, these statements were still relevant to the complaint under investigation because, like the averments therein, they also involved petitioner's alleged rapacity and deceitfulness.

WHEREFORE, the instant petition is hereby DENIED and the September 13, 2002 decision and November 21, 2002 resolution of the Court of Appeals in CA-G.R. SP No. 71189 AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C. J., (Chairperson), Sandoval-Gutierrez, and Garcia, JJ., concur.
Azcuna, J., on official leave.

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[1] Under Rule 45 of the Rules of Court.

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[2] Dated September 13, 2002 in CA-G.R. SP No. 71189, penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Remedios Salazar-Fernando and Amelita G. Tolentino of the Special Fifth Division of the Court of Appeals; rollo, pp. 41-49.

[3] Dated November 21, 2002 (affirming the September 13, 2002 decision) in CA-G.R. SP No. 71189, penned by Associate Justice Martin S. Villarama, Jr. and concurred in by Associate Justices Remedios Salazar-Fernando and Amelita G. Tolentino of the Special Fifth Division of the Court of Appeals; rollo, p. 51.

[4] Rollo, pp. 351-362.

[5] Id., pp. 117-118.

[6] Id., pp. 61-65.

[7] Id., pp. 488-490.

[8] Id., pp. 491-492.

[9] Id., pp. 493-497.

[10] Id., pp. 498-513.

[11] Id., p. 560.

[12] Id., pp. 563-571.

[13] Id., p. 808.

[14] Id., p. 573.

[15] Id., p. 574.

[16] Art. 353. Definition of libel. - A libel is 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.

[17] Id., pp. 46-48.

[18] 231 F 2d 788 (1956).

[19] U.S. v. Bustos, 37 Phil. 731 (1918), citing Harrison v. Bush, 1 Jur [N.S.], 846.

[20] People v. Sesbreno, 215 Phil. 411 (1984).

[21] Malit v. People, 199 Phil. 532 (1982); People v. Alvarez, 122 Phil. 238 (1965).

[22] Armovit v. Purisima, 203 Phil. 6225 (1982).

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