

**NICANOR T. JIMENEZ, ET AL., PLAINTIFFS-APPELLANTS, VS.
BARTOLOME CABANGBANG, DEFENDANT-APPELLEE.***G.R. No. 15905. August 03, 1966*

Ponente: CONCEPCION, J.

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This is an ordinary civil action, originally instituted in the Court of First Instance of Rizal, for the recovery, by plaintiffs Nicanor T. Jimenez, Carlos J. Albert and Jose L. Lukban, of several sums of money, by way of damages for the publication of an allegedly libelous letter of defendant Bartolome Cabangbang. Upon being summoned, the latter moved to dismiss the complaint upon the ground that the letter in question is not libelous, and that, even if were, said letter is a privileged communication. This motion having been granted by the lower court, plaintiffs interposed the present appeal from the corresponding order of dismissal. The issues before us are: (1) whether the publication in question is a privileged communication; and, if not, (2) whether it is libelous or not. The first issue stems from the fact that, at the time of said publication, defendant was a member of the House of Representatives and Chairman of its Committee on National Defense, and that pursuant to the Constitution:

"The Senators and Members of the House of Representatives shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of the Congress, and in going to and returning from the same; and for any speech or debate therein, they shall not be questioned in any other place." (Article VI, Section 15.)

The determination of the first issue depends on whether or not the aforementioned publication falls within the purview of the phrase "speech or debate therein" - that is to say, in Congress - used in this provision.

Said expression refers to utterances made by Congressmen in the performance of their official functions, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question. [1]

The publication involved in this case does not belong to this category. According to the complaint herein, it was an open letter to the President of the Philippines, dated November 14, 1958, when Congress presumably was not in session, and defendant caused said letter to be published in several newspapers of general circulation in the Philippines, on or about said date. It is obvious that, in thus causing the communication to be so published, he was not performing his official duty, either as a member of Congress or as officer of any Committee thereof. Hence, contrary to the finding made by His Honor, the trial Judge, said communication is not absolutely privileged.

Was it libelous, insofar as the plaintiffs herein are concerned? Addressed to the President, the communication began with the following paragraphs:

"In the light of the recent developments which however unfortunate had nevertheless involved the Armed

Forces of the Philippines and the unfair attacks against the duly elected members of Congress of engaging in intriguing and rumormongering, allow me, Your Excellency, to address this open letter to focus public attention to certain vital information which, under the present circumstances, I feel it my solemn duty to our people to expose.

"It has come to my attention that there have been allegedly three operational plans under serious study by some ambitious AFP officers, with the aid of some civilian political strategists."

Then, it describes the "allegedly three (3) operational plans" referred to in the second paragraph. The first plan is said to be "an insidious plan for a massive political build-up" of then Secretary of National Defense, Jesus Vargas, by propagandizing and glamorizing him in such a way as to "be prepared to become a candidate for President in 1961". To this end, the "planners" are said to "have adopted the sales-talk that Secretary Vargas is 'Communists' Public Enemy No. 1 in the Philippines." Moreover, the P4,000,000.00 "intelligence and psychological warfare funds" of the Department of National Defense, and the "Peace and Amelioration Fund" - the letter says - are "available to adequately finance a political campaign". It further adds:

"It is reported that the 'Planners' have under their control the following: (1) Col. Nicanor Jimenez of NICA, (2) Lt. Col. Jose Lukban of NBI, (3) Capt. Carlos Albert (PN) of G-2 AFP, (4) Col. Fidel Llamas of MIS, (5) Lt. Col. Jose Regala of the Psychological Warfare Office, DND, and (6) Major Jose Reyna of the Public Information Office, DND. To insure this control, the 'Planners' purportedly sent Lt. Col. Job Mayo, Chief of MIS, to Europe to study and while Mayo was in Europe, he was relieved by Col. Fidel Llamas. They also sent Lt. Col. Deogracias Caballero, Chief of Psychological Warfare Office, DND, to USA to study and while Caballero was in USA, he was relieved by Lt. Col. Jose Regala. The 'Planners' wanted to relieve Lt. Col. Ramon Galvezon, Chief of CIS (PC) but failed. Hence, Galvezon, is considered a missing link in the intelligence Network. It is, of course, possible that the officers mentioned above are unwittingly tools of the plan of which they may have absolutely no knowledge." (Underscoring ours.)

Among the means said to be used to carry out the plan, the letter lists, under the heading "other operational technique", the following:

- (a) Continuous speaking engagements all over the Philippines for Secretary Vargas to talk on "Communism" and "Apologetics" on civilian supremacy over the military;
- (b) Articles in magazines, news releases, and hundreds of letters - "typed in two (2) typewriters only" - to Editors of magazines and newspapers, extolling Secretary Vargas as the "hero of democracy in 1951, 1953, 1955 and 1957 elections";
- (c) Radio announcements extolling Vargas and criticizing the administration;
- (d) Virtual assumption by Vargas of the functions of the Chief of Staff and an attempt to pack key positions in several branches of the Armed Forces with men belonging to his clique;
- (e) Insidious propaganda and rumors spread in such a way as to give the impression that they reflect the feeling of the people or the opposition parties, to undermine the administration. Plan No. II is said to be a "coup d'etat", in connection with which the "planners" had gone no further than the planning stage, although the plan "seems to be held in abeyance and subject to future developments". Plan No. III is characterized as a modification of Plan No. I, by trying to assuage the President and the public with a loyalty parade, in connection with which Gen. Arellano delivered a speech challenging the authority and integrity of Congress, in an effort to rally the officers and men of the AFP behind him, and gain popular and civilian support.

The letter in question recommended: (1) that Secretary Vargas be asked to resign; (2) that the Armed Forces be divorced absolutely from politics; (3) that the Secretary of National Defense be a civilian, not a professional military man; (4) that no Congressman be appointed to said office; (5) that Gen. Arellano be asked to resign or

retire; (6) that the present chiefs of the various intelligence agencies in the Armed Forces, including the chiefs of the NICA, NBI, and other intelligence agencies mentioned elsewhere in the letter, be reassigned, considering that "they were handpicked by Secretary Vargas and Gen. Arellano", and that, "most probably, they belong to the Vargas-Arellano clique"; (7) that all military personnel now serving civilian offices be returned to the AFP, except those holding positions by provision of law; (8) that the Regular Division of the AFP stationed in Laur, Nueva Ecija, be dispersed by battalion strength to the various stand-by or training divisions throughout the country; and (9) that Vargas and Arellano should disqualify themselves from holding or undertaking an investigation of the planned "coup d'etat".

We are satisfied that the letter in question is not sufficient to support plaintiffs' action for damages. Although the letter says that plaintiffs are under the control of the unnamed persons therein alluded to as "planners", and that, having been handpicked by Secretary Vargas and Gen. Arellano, plaintiffs "probably belong to the Vargas-Arellano clique", it should be noted that defendant, likewise, added that "it is of course possible" that plaintiffs "are unwitting tools of the plan of which they may have absolutely no knowledge". In other words, the very document upon which plaintiffs' action is based explicitly indicates that they might be absolutely unaware of the alleged operational plans, and that they may be merely unwitting tools of the planners. We do not think that this statement is derogatory to the plaintiffs, to the point of entitling them to recover damages, considering that they are officers of our Armed Forces, that as such they are by law, under the control of the Secretary of National Defense and the Chief of Staff, and that the letter in question seems to suggest that the group therein described as "planners" include these two (2) high ranking officers.

It is true that the complaint alleges that the open letter in question was written by the defendant, knowing that it is false and with the intent to impeach plaintiffs' reputation, to expose them to public hatred, contempt, dishonor and ridicule, and to alienate them from their associates, but these allegations are mere conclusions which are inconsistent with the contents of said letter and cannot prevail over the same, it being the very basis of the complaint. Then too, when plaintiffs allege in their complaint that said communication is false, they could not have possibly meant that they were aware of the alleged plan to stage a coup d'etat or that they were knowingly tools of the "planners". Again, the aforementioned passage in the defendant's letter clearly implies that plaintiffs were not among the "planners" of said coup d'etat, for, otherwise, they could not be "tools", much less, unwittingly on their part, of said "planners".

WHEREFORE, the order appealed from is hereby affirmed.

SO ORDERED.

Reyes, JBL, Barrera, Dizon, Regala, Makalintal, Bengzon, JP, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Vera vs. Avelino, 43 Off. Gaz. , 597; Tenray vs. Brandhove, 341 U. U. 367; Coffin vs. Coffin, 4 Mass. 1.

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