

OGIE DIAZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 159787. May 25, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals (Eleventh Division) dated March 15, 2002, in CA-G.R. CR No. 22545.

On October 16, 1992, the Office of the City Prosecutor of Manila filed with the Regional Trial Court, Branch 2, Manila an Information for libel against Manny Pichel and Ogie Diaz (Ogie Frias in real life), petitioner. The Information, docketed as Criminal Case No. 92-1113377, reads:

That on or about December 28, 1991, in the City of Manila, Philippines, the said accused being then the Managing Editor and writer, respectively of *Bandera*, a newspaper of general circulation, conspiring and confederating together and mutually helping each other, with the malicious purpose of impeaching the integrity, honor and reputation of one FLORINDA BAGAY, and with the evident intent of exposing her to public interest, hatred, contempt, and ridicule, did then and there willfully, unlawfully, and feloniously write and publish, or cause to be written and published in the movie section of said newspaper an article which reads in part as follows:

Ilang beses na nakaladkad ang pangalan ng isang Miss S sa buhay ni Philip Henson ang lalaking mahilig makipagsex sa asawa. Nasulat na sa ibang tabloid na limang beses diumanong ginalaw ni Philip ang babaing kine-claim na "nabuntis ako ni Philip."

Dahil sa pahayag na yon ay nagpaliwanang at nagbigay pa ng detalye si Philip. Nagpa-interbyu siya sa ilang piling reporters.

At muli, babanggitin lang namin ang kanyang mga pahayag tungkol sa pagkakasangkot niya sa buhay ni Miss S.

Inamin ni Philip na limang beses niyang ginalaw si Miss S. Pero hindi ko pinasok ang akin sa ano niya dahil siya rin ang may ayaw.

Ang sabi niya kasi sa akin, isa siyang malinis na babae at hindi siya basta-basta nagpapaganoon. So ang ginawa namin, ipit method.

Yung ipitin niya iyong akin sa dalawa niyang hita kunwari sa ano niya nakapasok habang nagpa-pump ako.

Siya pa nga ang nagturo sa akin ng iba't ibang posisyon, e yung helicopter at saka ang galing niyang bumlow job. Sanay na sanay siya.

Kahit itanong nyo pa kay Ray Ravelo. Nagalaw din siya ni Rey, pahayag ni Philip at kami mismo ang nakarinig ng mga linyang iyon sa isa naming pag-uusap sa Jaloux Disco.

In which words and phrases, which were used by many people, the said accused meant and intended to convey as in fact, they meant and conveyed false and malicious imputations that the said Florinda Bagay is a sexual pervert and possesses lascivious and immoral habits, the accused well knowing that said imputations are devoid of truth and without foundation in fact whatsoever, highly libelous and offensive to the good name, character, and reputation of the said Florinda Bagay.

Contrary to law.

Upon being arraigned on June 8, 1993, petitioner Ogie Diaz and his co-accused Pichel, assisted by counsel, pleaded not guilty. After the pre-trial, the case was heard on the merits.

Florinda Bagay, complaining witness, testified that she is a graduate of medical secretarial course. She tried her luck in the movies under the guidance of her godmother, Mila Parawan, a writer covering the entertainment industry. Florinda adopted and used "Patricia Santillan" as her screen name.

During her brief stint in the movies, she met Philip Henson, an aspiring bit player. A whirlwind romance between them followed and on June 16, 1988, they started living together. On March 9, 1991, she gave birth to a girl she named Maria Briana Bagay. By that time, her relationship with Philip Henson ended.

Florinda claimed she was the "Miss S" alluded to in petitioner's column "Pakurot" considering that her screen name is "Patricia Santillan."

One Nonette Lim called her attention to the article and she felt embarrassed. Mila Parawan showed her the item. Her family and neighbors also read it. As a result, she was forced to stop her studies as a medical technology student at the United Doctors' Medical Center.

Florinda further testified that at the time the article came out, she and Philip were no longer living together.

Mila Parawan also took the witness stand and corroborated Florinda's testimony. She further testified that after Philip and Florinda parted ways, her former press relations officer, who used the nom de plume "Isko Peta," wrote an item entitled "Ibinulgar namin ang babaeng inanakan ni Philip Henson" which appeared in the December 2, 1991 issue of Artista Magazine. Philip believed that Florinda released their story to the press. He then caused the publication of the libelous article against her.

Mila Parawan added that Florinda came from a well respected family in their community. Thus, she could not have done the acts being imputed to her.

On cross-examination, Mila Parawan stated she was certain the "Miss S" referred to in the article is Florinda because petitioner and Pichel, her good friends, told her that "Miss S" is her "alaga" (ward).

Pichel testified that he had been a journalist covering show business for the past 21 years. He denied having met or known the complaining witness. He also denied being the editor of Bandera. He was only its lay-out artist, a part time job.

Petitioner Ogie Diaz admitted that while he wrote the column "Pakurot" where the alleged libelous statements appeared, however, he did not know the complaining witness or "Miss S." The source of his article was Philip Henson.

The defense also presented as witness two movie journalists - Ernie Pecho and Mario Bautista. Both had more than 50 years covering the entertainment industry.

Pecho testified that he has never heard the screen name "Patricia Santillan"; that reading the article in question would not give the reader any idea that "Miss S" is "Patricia Santillan"; and that in the movie world, the letter "S"

refers to "shabu," not to a person.

Bautista, for his part, stated that he has never heard of any actress or starlet named "Patricia Santillan." After reading the article, it never came to his mind that "Miss S" is one "Patricia Santillan."

Douglas Quijano, a long-time line producer and talent manager, testified that in his many years of managing movie and TV stars, he could not recall an actress named "Miss S." He has never heard of "Patricia Santillan."

On May 12, 1998, the trial court rendered its judgment convicting petitioner and Pichel of the crime charged. The dispositive portion reads:

WHEREFORE, in view of the above discussion and findings, the Court finds both accused Manny Pichel and Ogie Diaz guilty beyond reasonable doubt of the crime of libel, defined in Article 353 and penalized under Article 355 of the Revised Penal Code, as amended, and hereby sentences each of them to suffer an indeterminate penalty of SIX (6) MONTHS AND ONE (1) DAY as minimum to FOUR (4) YEARS AND TWO (2) MONTHS of prision correccional in its Minimum and Medium Periods, as maximum and to pay a fine of P3,000.00 each.

SO ORDERED.

On appeal, the Court of Appeals, in its Decision, sustained the conviction of petitioner but acquitted Pichel.

Petitioner timely filed a motion for reconsideration, but it was denied by the appellate court in its Resolution dated August 29, 2003.

Hence, the instant petition for review on certiorari.

The sole issue for our resolution is whether the subject article is libelous.

Article 353 of the Revised Penal Code, as amended, provides:

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.

This provision should be read in relation with Article 355 of the same Code which states:

ART. 355. Libel by means of writings or similar means. - A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

Thus, for an imputation to be libelous, the following requisites must be present: (a) it must be defamatory; (b) it must be malicious; (c) it must be given publicity; and (d) the victim must be identifiable.[2] Absent one of these elements, a case for libel will not prosper.

We find the first element present. In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural, and ordinary meaning as they would naturally be understood by the persons reading them, unless it appears that they were used and understood in another sense.[3] In the instant case, the article in question details the sexual activities of a certain "Miss S" and one "Philip Henson" who had a romantic liaison. In their ordinary sense, the words used cast aspersion upon the character, integrity, and reputation of "Miss S." The words convey that "Miss S" is a sexual libertine with unusually wanton proclivities in the bedroom. In a society such as ours, where modesty is still highly prized among young ladies, the behavior attributed to "Miss S" by the article in question had besmirched both her

character and reputation.

As to the element of malice, we find that since on its face the article is defamatory, there is a presumption that the offender acted with malice. In Article 354 of the same Code, 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. There is malice when the author of the imputation is prompted by personal ill-will or spite and speaks not in response to duty but merely to injure the reputation of the person who claims to have been defamed.[4] We agree with the Court of Appeals that there was neither good reason nor motive why the subject article was written except to embarrass "Miss S" and injure her reputation.

On the element of publication, there can be no question that the article appeared in the December 28, 1991 issue of *Bandera*, a local tabloid.

The last element of libel is that the victim is identified or identifiable from the contents of the libelous article. In order to maintain a libel suit, it is essential that the victim be identifiable, although it is not necessary that the person be named. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to, or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he was the person referred to.[5] *Kunkle v. Cablenews-American and Lyons*[6] laid the rule that this requirement is complied with where a third person recognized or could identify the party vilified in the article.

The libelous article, while referring to "Miss S," does not give a sufficient description or other indications which identify "Miss S." In short, the article fails to show that "Miss S" and Florinda Bagay are one and the same person.

Although the article is libelous, we find that Florinda Bagay could not have been the person defamed therein. In *Uy Tioco v. Yang Shu Wen*,[7] we held that where the requirement for an identified or identifiable victim has not been complied with, the case for libel must be dismissed.

WHEREFORE, we GRANT the petition. The challenged Decision of the Court of Appeals in CA-G.R. CR No. 22545 is REVERSED. Petitioner Ogie Diaz is ACQUITTED of the crime of libel. The bail on appeal posted for his temporary liberty is ordered CANCELLED.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 87-106. Per Justice Remedios A. Salazar-Fernando and concurred in by Justice Romeo J. Callejo, Sr. (now a retired member of this Court) and Justice Perlita J. Tria-Tirona (retired).

[2] *Novicio v. Aggabao*, G.R. No. 141332, December 11, 2003, 418 SCRA 138, 143, citing *Alonzo v. Court of Appeals*, 241 SCRA 51 (1995).

[3] *Novicio v. Aggabao*, *id.*

[4] *Alonzo v. Court of Appeals*, *supra*.

[5] *Borjal v. Court of Appeals*, G.R. No. 126466, January 14, 1999, 301 SCRA 1; *Corpus v. Cuaderno, Sr.*, No. L-16969, April 30, 1966, 16 SCRA 807; *People v. Monton*, No. L-16772, November 30, 1962, 6 SCRA 801.

[6] 42 Phil. 757 (1922).

[7] 32 Phil. 624 (1915).

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