TONY N. FIGUEROA AND ROGELIO J. FLAVIANO, PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 159813. August 09, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court is the Decision[1] dated October 11, 2002 of the Court of Appeals (CA) in CA-G.R. CR No. 17235, affirming in toto an earlier decision of the Regional Trial Court (RTC) of Davao City, Branch 17, which found herein petitioners guilty of the crime of libel.

The antecedent facts:

On March 24, 1992, in the RTC of Davao City, the city prosecutor of Davao, at the instance of one Aproniano Rivera, filed an Information[2] for libel under Article 355 in relation to Article 360 of the Revised Penal Code against the herein petitioners, Tony N. Figueroa and Rogelio J. Flaviano. Docketed in the same court as Criminal Case No. 25,957-92 and raffled to Branch 17 thereof, the Information alleges as follows:

> That on or about April 9, 1991, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, Tony VN. Figueroa, writer under the column entitled "Footprints" of the People's Daily Forum, conspiring, confederating and helping one another with his co-accused Rogelio J. Flaviano, Publisher-Editor of the same magazine, with malicious intent of impeaching the honesty, integrity, character as well as the reputation and the social standing of one Aproniano Rivera and with intent to cast dishonor, discredit and contempt upon said Aproniano Rivera, willfully, unlawfully and feloniously published in the People's Daily Forum, a news publication as follows:
> "Bangkerohan public market these days is no different from the US Times Square. Bullies, thugs, hooligans and gyppers roam with impunity, some using organizational clout as a ploy to keep themselves from obvious exposure. Some leeches, like a certain Aproniano "Rey" Rivera, our sources say, are lording it over like the city's sprawling vegetable and meat complex has become an apportioned bailiwick.
>
> "Rivera, apparently a non-Visayan pseudobully flaunting with his tag as president of a vendor's federation, has intimated a good number of lowly hawkers. This is a confirmed fact, our sources believe. And our independent eveasdroppers [sic] have come with a similar perception of a man who continues to lead a federation when, in the first place, he has no business being in Davao or in Bankerohan.
>
> "Often, Mr. "Re" (King?) Rivera strolls the stretches which criss-cross the Bankerohan confines with the arrogance of a tribal chieftain; the only differences, however, are that: he uses no G-strings, speaks in some strange Luzon lingo and twang, and has no solid leadership. Our reports have finely outlined the mechanics of Rivera's tactics despite assertions the man is nothing but a paper tiger conveniently propped up by federation members loyal to his sometime indecent role as a sachem.
>
> "This man, the sources add, is backed by powerful city government hooligans who, it was reported, have direct hand in the planned manipulation in the distribution of stalls to privileged applicants. Even if he has reportedly

> sold his interest in the public market, which should be reason enough for him to resign from his position, Rivera still carries the false aura of intimidating poor vendors and imposing his insensible remarks about what must be done about the governance of Bangkerohan.
>
> "Sometimes its hard to compel a man with Rivera's mind about the nuances of honorable resignation. May iba d'yan na pakapalan na lang ng mukha!"
>
> xxx xxx xxx
>
> "Rivera, however, must be consoled in knowing he's not alone with his dirty antics. Romy Miclat, a president of a meat vendors group in Bankerohan, and his board member, Erning Garcia, have tacitly followed the way of the thugs, floating little fibs to gullible victims. Our moles have gathered the due are seeling [sic] the new public market stalls for P9,000 with the assurances that the buyer gets a display area ordinarily occupied by two applicants. A lot more have fallen prey to the scheme, and more the blindly swallowing all the books the two are peddling.
>
> "This dilemma has been there for so long, but the city hall, RCDP, and the city council have continuously evaded the vicious cabal of men out to derail the raffling of the stalls to applicants. Some believe strongly this is odd, but they can only whimper at their helplessness against power-brokers who have taken over the dominance of Bangkerohan. One of the likely victims in this filthy machination are the sinapo vendors who have become explosively furious over the snafu they are facing because of the manipulation of stalls inside Bangkerohan.
>
> "Insiders continuo[u]sly tell of woeful tales about how they have been given runarounds by many so-called public servants, but they have maintained their composures quite curiously. They are talking, however, of anger which, our sources [s]ay, may end up with a bloody retaliation. This probability is looming more lucid every day the officials handling the Bangkerohan stall mess are condoning their plight. Even politicos are oddly silent about the whole controversy for some unknown reasons. It looks like the alleged schemes perpetrated by Rivera, Miclat and Garcia will remain unperturbed, no thanks to power-brokers."

which newspaper was read by the people throughout Davao City, to the dishonor, discredit and contempt upon said Aproniano Rivera.

Contrary to law.

On arraignment, petitioners as accused, assisted by counsel, entered a common plea of "Not Guilty." Thereafter, trial on the merits ensued.

On June 8, 1993, the RTC rendered its decision[3] finding both petitioners guilty as charged and accordingly sentenced them, thus:

> WHEREFORE, finding the evidence of the prosecution sufficient to prove the guilt of both accused, Tony Figueroa and Rogelio Flaviano, columnist and publisher-editor, respectively of the People's Daily Forum, of the offense charged, beyond reasonable doubt; their evidence adduced is not sufficient to afford their exoneration, pursuant to Art. 355 in relation to Art. 360 of the Revised Penal Code, without any mitigating ot [sic] aggravating circumstances, proved in the commission of the offense charged, imposing the indeterminate sentence law, both accused are hereby sentenced to suffer an indeterminate penalty of imprisonment of five months and one day of arresto mayor maximum as minimum penalty, to two years four months and 31 days of prision correccional minimum as maximum penalty with accessory penalty as provided for by law.
>
> Moreover, pursuant to Art. 100 in relation to Art. 104 of the Revised Penal Code, governing civil indemnity, both accused are ordered to pay jointly and solidarily the amount of P50,000.00 as moral damages to complainant, Aproniano Rivera and the amount of P10,000.00 by way of attorney's fees with costs.

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> Without any aggravating circumstances proved by the prosecution, in the commission of the offense charged exemplary damages against both accused, cannot be awarded. x x x
>
> SO ORDERED.

From the trial court's judgment of conviction, petitioners went to the CA whereat their appellate recourse was docketed as CA-G.R. CR No. 17235.

As stated at the threshold hereof, the CA, in the herein assailed Decision[4] dated October 11, 2002, affirmed that of the trial court, to wit:

> WHEREFORE, premises considered, the decision of the Regional Trial Court is hereby AFFIRMED in all respects.
>
> SO ORDERED.

Undaunted, petitioners are now with this Court via this petition for review on their submissions that the CA erred -

> - IN HOLDING THAT THE COLUMN ENTITLED "FOOTPRINTS" OF THE PEOPLE'S DAILY FORUM IS LIBELOUS OR DEFAMATORY TO PRIVATE COMPLAINANT APRONIANO RIVERA;
>
> - IN HOLDING THAT PRIVATE COMPLAINANT IS NOT A PUBLIC OFFICER, HENCE THE PUBLISHED ARTICLE CANNOT BE CONSIDERED TO BE WITHIN THE PURVIEW OF PRIVILEGED COMMUNICATION;
>
> - IN UPHOLDING THE AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES.

The petition lacks merit.

In praying for their acquittal, petitioners attempt to pass off the subject published article as one that portrays the condition of the Bankerohan Public Market in general. Citing Jimenez v. Reyes,[5] they challenge the finding of the two courts below on the libelous or defamatory nature of the same article which, to them, must be read and construed in its entirety. It is their posture that the article was not directed at the private character of complainant Aproniano Rivera but on the sorry state of affairs at the Bankerohan Public Market.

Petitioners' posture cannot save the day for them.

Our own reading of the entire text of the published article convinces us of its libelous or defamatory character. While it is true that a publication's libelous nature depends on its scope, spirit and motive taken in their entirety, the article in question as a whole explicitly makes mention of private complainant Rivera all throughout. It cannot be said that the article was a mere general commentary on the alleged existing state of affairs at the aforementioned public market because Rivera was not only specifically pointed out several times therein but was even tagged with derogatory names. Indubitably, this name-calling was, as correctly found by the two courts below, directed at the very person of Rivera himself.

If, as argued, the published article was indeed merely intended to innocently present the current condition of the Bankerohan Public Market, there would then be no place in the article for the needless name-calling which it is wrought full of. It is beyond comprehension how calling Rivera a "leech," "a paper tiger," a "non-Visayan pseudobully" with the "arrogance of a tribal chieftain" save for his speaking in "some strange Luzon lingo and twang" and who "has no business being in Davao or Bankerohan" can ever be regarded or viewed as comments free of malice. As it is, the tag and description thus given Rivera have no place in a general account of the situation in the public market, and cannot, by any stretch of the imagination, be construed to be anything other

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than what they really are: defamatory and libelous in nature, and definitely directed at the private character of complainant Rivera. For indeed, no logical connection can possibly be made between Rivera's Luzon origin and the conditions of the Bankerohan Public Market. Doubtless, the words used in the article reek of venom towards the very person of Rivera.

Article 353 of the Revised Penal Code defines libel as follows:

> Art. 353. Definition of libel. - A libel is a public and malicious imputation of a crime, or 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.

Defamation, which includes libel and slander, means injuring a person's character, fame or reputation through false and malicious statements. It is that which tends to injure reputation or to diminish the esteem, respect, goodwill or confidence in the complainant or to excite derogatory feelings or opinions about him. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute.[6]

In the light of the numerable defamatory imputations made against complainant Rivera as a person, the article in dispute, even taken, as urged, in its totality, undeniably caused serious damage to his character and person and clearly injurious to his reputation.

At any rate, in libel cases, the question is not what the writer of the libelous material means, but what the words used by him mean.[7] Here, the defamatory character of the words used by the petitioners is shown by the very recitals thereof in the questioned article.

It is next contended by the petitioners that Rivera is a public officer. On this premise, they invoke in their favor the application of one of the exceptions to the legal presumption of the malicious nature of every defamatory imputation, as provided for under paragraph (2), Article 354 of the Revised Penal Code, to wit:

> Art. 354. Requirement for publicity. - 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, except in the following cases:
>
> xxx xxx xxx
>
> - A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Again, as correctly found by both the trial court and the CA, Rivera is not a public officer or employee but a private citizen. Hence, the published article cannot be considered as falling within the ambit of privileged communication within the context of the above-quoted provision of the Penal Code.

A public office is the right, authority and duty, created and conferred by law, by which an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer. The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involve a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; that some portion of the sovereignty of the country, either legislative, executive or judicial, attaches, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.[8]

Clearly, Rivera cannot be considered a public officer. Being a member of the market committee did not vest upon

him any sovereign function of the government, be it legislative, executive or judicial. As reasoned out by the CA, the operation of a public market is not a governmental function but merely an activity undertaken by the city in its private proprietary capacity. Furthermore, Rivera's membership in the market committee was in representation of the association of market vendors, a non-governmental organization belonging to the private sector.

Indeed, even if we were to pretend that Rivera was a public officer, which he clearly is not, the subject article still would not pass muster as Article 354(2), supra, of the Revised Penal Code expressly requires that it be a "fair and true report, made in good faith, without any comments or remarks." Even a mere cursory glance at the article reveals that it is far from being that.

Finally, petitioners assail the award by the two courts below of moral damages and attorney's fees in favor of Rivera.

The assault must fail. Article 2219(7) of the Civil Code is express in stating that moral damages may be recovered in case of libel, slander or any other form of defamation. From the very publication and circulation of the subject defamatory and libelous material itself, there can be no doubt as to the resulting wounded feelings and besmirched reputation sustained by complainant Rivera. The branding of defamatory names against him most certainly exposed him to public contempt and ridicule. As found by the trial court in its judgment of conviction:

> Complainant, when he read the subject publication, was embarrass on what was written against him, made more unpleasant on the occasion of the reunion of his son-in-law, who just arrived from the United States for the first time, was confronted of the above-defamatory publication. He was worried and depressed, about the comments against him, affecting his credibility and personality, as representative of many market organizations in Davao City.

Having been exposed to embarrassment and ridicule occasioned by the publication of the subject article, Rivera is entitled to moral damages and attorney's fees.

IN VIEW WHEREOF, the instant petition is DENIED and the assailed CA Decision dated October 11, 2002 is AFFIRMED.

Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Mariano M. Umali, with Associate Justices Ruben T. Reyes and Rebecca De Guia-Salvador concurring, Rollo, pp. 39-62.

[2] Rollo, pp. 68-70.

[3] Rollo, pp. 71-88.

[4] Supra note 1.

[5] 27 Phil 52 (1914).

[6] MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc., G.R. No. 135306, January 28, 2003, 396 SCRA 210, 218-219.

[7] Sazon v. Court of Appeals, G.R. No. 120715, March 29, 1996, 255 SCRA 692, 698.

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[8] Laurel v. Desierto, G.R. No. 145368, April 12, 2002, 381 SCRA 48, 61-62.

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