

## ERWIN TULFO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND ATTY. CARLOS T. SO, RESPONDENTS.

*G.R. No. 161032. September 16, 2008*

Ponente: VELASCO JR., J.

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### VELASCO JR., J.:

The freedom of the press is one of the cherished hallmarks of our democracy; but even as we strive to protect and respect the fourth estate, the freedom it enjoys must be balanced with responsibility. There is a fine line between freedom of expression and libel, and it falls on the courts to determine whether or not that line has been crossed.

#### The Facts

On the complaint of Atty. Carlos "Ding" So of the Bureau of Customs, four (4) separate informations were filed on September 8, 1999 with the Regional Trial Court in (RTC) Pasay City. These were assigned to Branch 112 and docketed as Criminal Case Nos. 99-1597 to 99-1600, and charged petitioners Erwin Tulfo, as author/writer, Susan Cambri, as managing editor, Rey Salao, as national editor, Jocelyn Barlizo, as city editor, and Philip Pichay, as president of the Carlo Publishing House, Inc., of the daily tabloid Remate, with the crime of libel in connection with the publication of the articles in the column "Direct Hit" in the issues of May 11, 1999; May 12, 1999; May 19, 1999; and June 25, 1999.[1] The four informations read as follows:

#### Criminal Case No. 99-1598

That on or about the 11[th] day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 11, 1999, its daily column "DIRECT HIT", quoted hereunder, to wit:

PINAKAMAYAMAN SA CUSTOMS

Ito palang si Atty. Ding So ng Intelligence Division ng Bureau of Customs and [sic] pinakamayaman na yata na government official sa buong bansa sa pangungurakot lamang diyan sa South Harbor.

Hindi matibag ang gagong attorney dahil malakas daw ito sa Iglesia ni Kristo.

Hoy, So! . . nakakahiya ka sa mga INC, ikaw na yata ang pinakagago at magnanakaw na miyembro nito.

Balita ko, malapit ka nang itiwalag ng nasabing simbahan dahil sa mga kalokohan mo.

Abangan bukas ang mga raket ni So sa BOC.

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having

illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[2]

Criminal Case No. 99-1599

That on or about the 12[th] day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 12, 1999, in daily column "DIRECT HIT", quoted hereunder, to wit:

SI ATTY. SO NG BOC

"LINTEK" din sa pangungurakot itong Ding So ng Bureau of Customs Intelligence Unit sa South Harbor.

Daan-daang libong piso ang kinikita ng masiba at matakaw na si So sa mga importer na ayaw ideklara ang totoong laman ng mga container para makaiwas sa pagbayad ng malaking customs duties at taxes.

Si So ang nagpapadrino sa mga pag-inspection ng mga container na ito. Siyempre-binibigyan din niya ng salapi yung ibang mga ahensiya para pumikit na lang at itikom ang kanilang nga [sic] bibig diyan sa mga buwayang taga BOC.

Awang-awa ako sa ating gobyerno. Bankrupt na nga, ninanakawan pa ng mga kawatan tulad ni So.

Ewan ko ba rito kay Atty. So, bakit hindi na lang tumayo ng sarili niyang robbery-hold-up gang para kumita ng mas mabilis.

Hoy So.. hindi bagay sa iyo ang pagiging attorney . . . Mas bagay sa iyo ang pagiging buwayang naka korbata at holdaper. Magnanakaw ka So!!"

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[3]

Criminal Case No. 99-1600

That on or about 19[th] day of May, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on May 19, 1999, in daily column "DIRECT HIT", quoted hereunder, to wit:

x x x x

"Tulad ni Atty. Ding So ng Bureau of Customs Intelligence Division, saksakan din ng lakas itong si Daniel Aquino ng Presidential Anti-Smuggling Unit na nakatalaga sa South Harbor.

Tulad ni So, magnanakaw na tunay itong si Aquino.

Panghihingi ng pera sa mga brokers, ang lakad nito.

Pag hindi nagbigay ng pera ang mga brokers, maiipit ang pagr-release ng kanilang kargamento."

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[4]

Criminal Case No. 99-1597

That on or about 25[th] day of June, 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "REMATE", a tabloid published daily and of general circulation in the Philippines, did then and there willfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant, ATTY. CARLOS "DING" T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on June 25, 1999, its daily column "DIRECT HIT", quoted hereunder, to wit:

x x x x

Nagfile ng P10 M na libel suit itong si Atty. Carlos So ng Bureau of Customs laban sa inyong lingkod at ilang opisyaales ng Remate sa Pasay City Court. Nagalit itong tarantadong si Atty. So dahil binanatan ko siya at inexpose ang kagaguhan niya sa BOC.

Hoy, So . . . dagdagan mo pa ang pagnanakaw mo dahil hindi kita tatantanan. Buhay ka pa sinusunog na ang iyong kaluluwa sa impyerno.

WHEREIN said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.[5]

On November 3, 1999, Tulfo, Salao, and Cambri were arraigned, while Barlizo and Pichay were arraigned on December 15, 1999. They all pleaded not guilty to the offenses charged.

At pre-trial, the following were admitted by petitioners: (1) that during the four dates of the publication of the questioned articles, the complaining witness was not assigned at South Harbor; (2) that the accused and complaining witness did not know each other during all the time material to the four dates of publication; (3) that Remate is a newspaper/tabloid of general circulation in the Philippines; (4) the existence and genuineness of the Remate newspaper; (5) the column therein and its authorship and the alleged libelous statement as well as the editorial post containing the designated positions of the other accused; and (6) the prosecution's qualified admission that it is the duty of media persons to expose corruption.[6]

The prosecution presented four witnesses, namely: Oscar M. Ablan, Atty. James Fortes, Jr., Gladys Fontanilla, and complainant Atty. So. The prosecution presented documentary evidence as well.

Ablan testified that he had read the four columns written by Tulfo, and that the articles were untrue because he had known Atty. So since 1992 and had worked with him in the Customs Intelligence and Investigation Service Division of the Bureau of Customs. He further testified that upon reading the articles written by Tulfo, he concluded that they referred to Atty. So because the subject articles identified "Atty. Carlos" as "Atty. `Ding' So" of the Customs Intelligence and Investigation Service Division, Bureau of Customs and there was only one Atty. Carlos "Ding" So of the Bureau of Customs.[7]

Fontanilla, Records Officer I of the Bureau of Customs, testified that she issued a certification in connection with these cases upon the request of Atty. So.[8] This certification stated that as per records available in her office, there was only one employee by the name of "Atty. Carlos T. So" who was also known as "Atty. Ding So" in the Intelligence Division of the Customs Intelligence and Investigation Service or in the entire Bureau of Customs.[9]

Atty. Fortes testified that he knew Atty. So as a fellow member of the Iglesia Ni Kristo and as a lawyer, and that having read the articles of Tulfo, he believed that these were untrue, as he knew Atty. Carlos "Ding" So.[10]

Atty. So testified that he was the private complainant in these consolidated cases. He further testified that he is also known as Atty. "Ding" So, that he had been connected with the Bureau of Customs since October 1981, and that he was assigned as Officer-in-Charge (OIC) of the Customs Intelligence and Investigation Service Division at the Manila International Container Port since December 27, 1999. He executed two complaint-affidavits, one dated June 4, 1999 and the other dated July 5, 1999, for Criminal Case Nos. 99-1598 to 99-1600. Prior to this, he also filed 14 cases of libel against Raffy Tulfo, brother of petitioner Erwin Tulfo. He testified that petitioner Tulfo's act of imputing upon him criminality, assailing his honesty and integrity, caused him dishonor, discredit, and contempt among his co-members in the legal profession, co-officers of the Armed Forces of the Philippines, co-members and peers in the Iglesia ni Kristo, his co-officers and employees and superior officers in the Bureau of Customs, and among ordinary persons who had read said articles. He said it also caused him and his family sleepless nights, mental anguish, wounded feelings, intrigues, and embarrassment. He further testified that he included in his complaint for libel the officers of Remate such as the publisher, managing editor, city editor, and national editor because under Article 360 of the Revised Penal Code (RPC), they are equally responsible and liable to the same extent as if they were the author of the articles. He also testified that "Ding" is his nickname and that he is the only person in the entire Bureau of Customs who goes by the name of Atty. Carlos T. So or Atty. Carlos "Ding" So.[11]

In his defense, petitioner Tulfo testified that he did not write the subject articles with malice, that he neither knew Atty. So nor met him before the publication of the articles. He testified that his criticism of a certain Atty. So of the South Harbor was not directed against the complainant, but against a person by the name of Atty. "Ding" So at the South Harbor. Tulfo claimed that it was the practice of certain people to use other people's names to advance their corrupt practices. He also claimed that his articles had neither discredited nor dishonored the complainant because as per his source in the Bureau of Customs, Atty. So had been promoted. He further testified that he did not do any research on Atty. So before the subject articles, because as a columnist, he had to rely on his source, and that he had several sources in the Bureau of Customs, particularly in the South Harbor.[12]

Petitioner Salao testified that he came to know Atty. Carlos "Ding" So when the latter filed a case against them. He testified that he is an employee of Carlo Publishing House, Inc.; that he was designated as the national editor of the newspaper Remate since December 1999; that the duties of the position are to edit, evaluate, encode, and supervise layout of the news from the provinces; and that Tulfo was under the supervision of Rey Briones, Vice President for Editorial and Head of the Editorial Division. Salao further testified that he had no participation in the subject articles of Tulfo, nor had he anything to do with the latter's column.[13]

Petitioner Cambri, managing editor of Remate, testified that she classifies the news articles written by the reporters, and that in the Editorial Division, the officers are herself; Briones, her supervisor; Lydia Bueno, as news and city editor; and Salao as national editor. She testified that petitioner Barlizo is her subordinate, whose duties and responsibilities are the typesetting, editing, and layout of the page assigned to her, the Metro page. She further testified that she had no participation in the writing, editing, or publication of the column of Tulfo because the column was not edited. She claimed that none among her co-accused from the Remate newspaper edited the columns of Tulfo, that the publication and editing of the subject articles were the responsibility of Tulfo, and that

he was given blanket authority to write what he wanted to write. She also testified that the page wherein Tulfo's column appeared was supervised by Bueno as news editor.[14]

Petitioner Pichay testified that he had been the president of Carlo Publishing House, Inc. since December 1998. He testified that the company practice was to have the columnists report directly to the vice-president of editorials, that the columnists were given autonomy on their columns, and that the vice-president for editorials is the one who would decide what articles are to be published and what are not. He further testified that Tulfo was already a regular contributor.[15]

#### The Ruling of the RTC

In a Decision dated November 17, 2000, the RTC found petitioners guilty of the crime of Libel. The dispositive portion reads as follows:

WHEREFORE, the Court finds the accused ERWIN TULFO, SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO and PHILIP PICHAY guilty beyond reasonable doubt of four (4) counts of the crime of LIBEL, as defined in Article 353 of the Revised Penal Code, and penalized by prision correccional in its minimum and medium periods, or a fine ranging from P200.00 Pesos to P6,000.00 Pesos or both, under Article 355 of the same Code.

Applying the Indeterminate Sentence Law, the Court hereby sentences EACH of the accused to suffer imprisonment of SIX (6) MONTHS of arresto mayor, as minimum, to FOUR (4) YEARS and TWO (2) MONTHS of prision correccional, as maximum, for EACH count with accessory penalties provided by law.

Considering that the accused Erwin Tulfo, Susan Cambri, Rey Salao, Jocelyn Barlizo and Philip Pichay wrote and published the four (4) defamatory articles with reckless disregard, being, in the mind of the Court, of whether it was false or not, the said articles libelous per se, they are hereby ordered to pay, jointly and severally, the sum of EIGHT HUNDRED THOUSAND (P800,000.00) PESOS, as actual damages, the sum of ONE MILLION PESOS (P1,000,000.00), as moral damages, and an additional amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00), by way of exemplary damages, all with subsidiary imprisonment, in case of insolvency, and to pay the costs.

SO ORDERED.[16]

#### The Ruling of the Court of Appeals

Before the Court of Appeals (CA), Tulfo assigned the following errors:

- THE LOWER COURT ERRED IN IGNORING THE UNREBUTTED TESTIMONY OF THE APPELLANT THAT HE DID NOT CRITICIZE THE PRIVATE COMPLAINANT WORKING AT THE NAIA. HE CRITICIZED ANOTHER PERSON WORKING AT THE SOUTH HARBOR. HENCE, THE ELEMENT OF IDENTITY IS LACKING.
- THE LOWER COURT ERRED IN IGNORING THE LACK OF THE ESSENTIAL ELEMENT OF DISCREDIT OR DISHONOR, AS DEFINED BY JURISPRUDENCE.
- THERE WAS NO MALICE AGAINST THE PRIVATE COMPLAINANT ATTY. CARLOS "DING" SO.[17]

His co-accused assigned the following errors:

A

The trial court seriously erred in holding accused Susan Cambri, Rey Salao, Jocelyn Barlizo and Philip Pichay liable for the defamations contained in the questioned articles despite the fact that the trial court did not have

any finding as to their participation in the writing, editing and/or publication of the questioned articles.

B

The trial court seriously erred in concluding that libel was committed by all of the accused on the basis of its finding that the elements of libel have been satisfactorily established by evidence on record.

C

The trial court seriously erred in considering complainant to be the one referred to by Erwin Tulfo in his articles in question.[18]

In a Decision[19] dated June 17, 2003, the Eighth Division of the CA dismissed the appeal and affirmed the judgment of the trial court. A motion for reconsideration dated June 30, 2003 was filed by Tulfo, while the rest of his co-accused filed a motion for reconsideration dated July 2, 2003. In a Resolution dated December 11, 2003, both motions were denied for lack of merit.[20]

Petitions for Review on Certiorari under Rule 45

Tulfo brought this petition docketed as G.R. No. 161032, seeking to reverse the Decision of the CA in CA-G.R. CR No. 25318 which affirmed the decision of the RTC. Petitioners Cambri, Salao, Barlizo, and Pichay brought a similar petition docketed as G.R. No. 161176, seeking the nullification of the same CA decision.

In a Resolution dated March 15, 2004, the two cases were consolidated since both cases arise from the same set of facts, involve the same parties, assail the same decision of the CA, and seek identical reliefs.[21]

Assignment of Errors

Petitioner Tulfo submitted the following assignment of errors:

I

Assuming that the Prosecution presented credible and relevant evidence, the Honorable CA erred in not declaring the assailed articles as privileged; the CA erred in concluding that malice in law exists by the court's having incorrectly reasoned out that malice was presumed in the instant case.

II

Even assuming *arguendo* that the articles complained of are not privileged, the lower court, nonetheless, committed gross error as defined by the provisions of Section 6 of Rule 45 by its misappreciation of the evidence presented on matters substantial and material to the guilt or innocence of the petitioner.[22]

Petitioners Cambri, Salao, Barlizo, and Pichay submitted their own assignment of errors, as follows:

A - The Court of Appeals Seriously Erred In Its Application of Article 360 Of The Revised Penal Code By Holding Cambri, Salao And Barlizo Liable For The Defamatory Articles In The May 11, 12, 19 And June 25, 1999 Issues Of Remate Simply Because They Were Managing Editor, National Editor And City Editor Respectively Of Remate And By Holding Pichay Also Liable For Libel Merely Because He Was The President Of Carlo Publishing House, Inc. Without Taking Into Account The Unrebutted Evidence That Petitioners Had No Participation In The Editing Or Publication Of The Defamatory Articles In Question.

B - The Court Of Appeals Committed Grave Abuse Of Discretion In Manifestly Disregarding The Unrebutted Evidence That Petitioners Had No Participation In The Editing Or Publication Of The Defamatory Articles In Question.

C - The Court Of Appeals Seriously Misappreciated The Evidence In Holding That The Person Referred To In

The Published Articles Was Private Complainant Atty. Carlos So.[23]

### Our Ruling

The petitions must be dismissed.

The assignment of errors of petitioner Tulfo shall be discussed first.

In his appeal, Tulfo claims that the CA erred in not applying the ruling in *Borjal v. Court of Appeals*.<sup>[24]</sup> In essence, he argues that the subject articles fall under "qualifiedly privileged communication" under *Borjal* and that the presumption of malice in Art. 354 of the RPC does not apply. He argues that it is the burden of the prosecution to prove malice in fact.

This case must be distinguished from *Borjal* on several points, the first being that *Borjal* stemmed from a civil action for damages based on libel, and was not a criminal case. Second, the ruling in *Borjal* was that there was no sufficient identification of the complainant, which shall be differentiated from the present case in discussing the second assignment of error of Tulfo. Third, the subject in *Borjal* was a private citizen, whereas in the present case, the subject is a public official. Finally, it was held in *Borjal* that the articles written by Art Borjal were "fair commentaries on matters of public interest."<sup>[25]</sup> It shall be discussed and has yet to be determined whether or not the articles fall under the category of "fair commentaries."

In passing, it must be noted that the defense of Tulfo's articles being qualifiedly privileged communication is raised for the first time in the present petition, and this particular issue was never brought before either the RTC or the CA. Thus, neither the RTC nor the CA had a chance to properly consider and evaluate this defense. Tulfo now draws parallels between his case and that of Art Borjal, and argues that the prosecution should have proved malice in fact, and it was error on the part of the trial and appellate courts to use the presumption of malice in law in Art. 354 of the RPC. This lays an unusual burden on the part of the prosecution, the RTC, and the CA to refute a defense that Tulfo had never raised before them. Whether or not the subject articles are privileged communications must first be established by the defense, which it failed to do at the level of the RTC and the CA. Even so, it shall be dealt with now, considering that an appeal in a criminal proceeding throws the whole case open for review.

There is no question of the status of Atty. So as a public official, who served as the OIC of the Bureau of Customs Intelligence and Investigation Service at the Ninoy Aquino International Airport (NAIA) at the time of the printing of the allegedly libelous articles. Likewise, it cannot be refuted that the goings-on at the Bureau of Customs, a government agency, are matters of public interest. It is now a matter of establishing whether the articles of Tulfo are protected as qualified privileged communication or are defamatory and written with malice, for which he would be liable.

### Freedom of the Press v. Responsibility of the Press

The Court has long respected the freedom of the press, and upheld the same when it came to commentaries made on public figures and matters of public interest. Even in cases wherein the freedom of the press was given greater weight over the rights of individuals, the Court, however, has stressed that such freedom is not absolute and unbounded. The exercise of this right or any right enshrined in the Bill of Rights, indeed, comes with an equal burden of responsible exercise of that right. The recognition of a right is not free license for the one claiming it to run roughshod over the rights of others.

The Journalist's Code of Ethics adopted by the National Union of Journalists of the Philippines shows that the press recognizes that it has standards to follow in the exercise of press freedom; that this freedom carries duties and responsibilities. Art. I of said code states that journalists "recognize the duty to air the other side and the duty

to correct substantive errors promptly." Art. VIII states that journalists "shall presume persons accused of crime of being innocent until proven otherwise."

In the present case, it cannot be said that Tulfo followed the Journalist's Code of Ethics and exercised his journalistic freedom responsibly.

In his series of articles, he targeted one Atty. "Ding" So of the Bureau of Customs as being involved in criminal activities, and was using his public position for personal gain. He went even further than that, and called Atty. So an embarrassment to his religion, saying "ikaw na yata ang pinakagago at magnanakaw sa miyembro nito." [26] He accused Atty. So of stealing from the government with his alleged corrupt activities. [27] And when Atty. So filed a libel suit against him, Tulfo wrote another article, challenging Atty. So, saying, "Nagalit itong tarantadong si Atty. So dahil binabantayan ko siya at in-expose ang kagagahan niya sa [Bureau of Customs]." [28]

In his testimony, Tulfo admitted that he did not personally know Atty. So, and had neither met nor known him prior to the publication of the subject articles. He also admitted that he did not conduct a more in-depth research of his allegations before he published them, and relied only on his source at the Bureau of Customs.

In his defense before the trial court, Tulfo claimed knowledge of people using the names of others for personal gain, and even stated that he had been the victim of such a practice. He argued then that it may have been someone else using the name of Atty. So for corrupt practices at the South Harbor, and this person was the target of his articles. This argument weakens his case further, for even with the knowledge that he may be in error, even knowing of the possibility that someone else may have used Atty. So's name, as Tulfo surmised, he made no effort to verify the information given by his source or even to ascertain the identity of the person he was accusing.

The trial court found Tulfo's accusations against Atty. So to be false, but Tulfo argues that the falsity of contents of articles does not affect their privileged character. It may be that the falsity of the articles does not prove malice. Neither did Borjal give journalists carte blanche with regard to their publications. It cannot be said that a false article accusing a public figure would always be covered by the mantle of qualified privileged communication. The portion of Borjal cited by Tulfo must be scrutinized further:

Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy. In *Bulletin Publishing Corp. v. Noel* we held -

A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the New York Times doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of "actual malice" on the part of the person making the libelous statement. [29] (Emphasis supplied.)

Reading more deeply into the case, the exercise of press freedom must be done "consistent with good faith and reasonable care." This was clearly abandoned by Tulfo when he wrote the subject articles. This is no case of mere

error or honest mistake, but a case of a journalist abdicating his responsibility to verify his story and instead misinforming the public. Journalists may be allowed an adequate margin of error in the exercise of their profession, but this margin does not expand to cover every defamatory or injurious statement they may make in the furtherance of their profession, nor does this margin cover total abandonment of responsibility.

Borjal may have expanded the protection of qualified privileged communication beyond the instances given in Art. 354 of the RPC, but this expansion does not cover Tulfo. The addition to the instances of qualified privileged communications is reproduced as follows:

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.[30] (Emphasis supplied.)

The expansion speaks of "fair commentaries on matters of public interest." While Borjal places fair commentaries within the scope of qualified privileged communication, the mere fact that the subject of the article is a public figure or a matter of public interest does not automatically exclude the author from liability. Borjal allows that for a discreditable imputation to a public official to be actionable, it must be a false allegation of fact or a comment based on a false supposition. As previously mentioned, the trial court found that the allegations against Atty. So were false and that Tulfo did not exert effort to verify the information before publishing his articles.

Tulfo offered no proof for his accusations. He claimed to have a source in the Bureau of Customs and relied only on this source for his columns, but did no further research on his story. The records of the case are bereft of any showing that Atty. So was indeed the villain Tulfo pictured him to be. Tulfo's articles related no specific details or acts committed to prove Atty. So was indeed a corrupt public official. These columns were unsubstantiated attacks on Atty. So, and cannot be countenanced as being privileged simply because the target was a public official. Although wider latitude is given to defamatory utterances against public officials in connection with or relevant to their performance of official duties, or against public officials in relation to matters of public interest involving them, such defamatory utterances do not automatically fall within the ambit of constitutionally protected speech.[31] Journalists still bear the burden of writing responsibly when practicing their profession, even when writing about public figures or matters of public interest. As held in *In Re: Emil P. Jurado*:

Surely it cannot be postulated that the law protects a journalist who deliberately prints lies or distorts the truth; or that a newsman may escape liability who publishes derogatory or defamatory allegations against a person or entity, but recognizes no obligation bona fide to establish beforehand the factual basis of such imputations and refuses to submit proof thereof when challenged to do so. It outrages all notions of fair play and due process, and reduces to uselessness all the injunctions of the Journalists' Code of Ethics to allow a newsman, with all the potential of his profession to influence popular belief and shape public opinion, to make shameful and offensive charges destructive of personal or institutional honor and repute, and when called upon to justify the same, cavalierly beg off by claiming that to do so would compromise his sources and demanding acceptance of his word for the reliability of those sources.[32]

The prosecution showed that Tulfo could present no proof of his allegations against Atty. So, only citing his one unnamed source. It is not demanded of him that he name his source. The confidentiality of sources and their importance to journalists are accepted and respected. What cannot be accepted are journalists making no efforts to

verify the information given by a source, and using that unverified information to throw wild accusations and besmirch the name of possibly an innocent person. Journalists have a responsibility to report the truth, and in doing so must at least investigate their stories before publication, and be able to back up their stories with proof. The rumors and gossips spread by unnamed sources are not truth. Journalists are not storytellers or novelists who may just spin tales out of fevered imaginings, and pass them off as reality. There must be some foundation to their reports; these reports must be warranted by facts.

Jurado also established that the journalist should exercise some degree of care even when writing about public officials. The case stated:

Clearly, the public interest involved in freedom of speech and the individual interest of judges (and for that matter, all other public officials) in the maintenance of private honor and reputation need to be accommodated one to the other. And the point of adjustment or accommodation between these two legitimate interests is precisely found in the norm which requires those who, invoking freedom of speech, publish statements which are clearly defamatory to identifiable judges or other public officials to exercise bona fide care in ascertaining the truth of the statements they publish. The norm does not require that a journalist guarantee the truth of what he says or publishes. But the norm does prohibit the reckless disregard of private reputation by publishing or circulating defamatory statements without any bona fide effort to ascertain the truth thereof. That this norm represents the generally accepted point of balance or adjustment between the two interests involved is clear from a consideration of both the pertinent civil law norms and the Code of Ethics adopted by the journalism profession in the Philippines.[33]

Tulfo has clearly failed in this regard. His articles cannot even be considered as qualified privileged communication under the second paragraph of Art. 354 of the RPC which exempts from the presumption of malice "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 any statement, report, or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions." This particular provision has several elements which must be present in order for the report to be exempt from the presumption of malice. The provision can be dissected as follows:

In order that the publication of a report of an official proceeding may be considered privileged, the following conditions must exist:

(a)

That it is a fair and true report of a judicial, legislative, or other official proceedings which are not of confidential nature, or of a statement, report or speech delivered in said proceedings, or of any other act performed by a public officer in the exercise of his functions;

(b)

That it is made in good faith; and

(c)

That it is without any comments or remarks.[34]

The articles clearly are not the fair and true reports contemplated by the provision. They provide no details of the acts committed by the subject, Atty. So. They are plain and simple baseless accusations, backed up by the word of one unnamed source. Good faith is lacking, as Tulfo failed to substantiate or even attempt to verify his story before publication. Tulfo goes even further to attack the character of the subject, Atty. So, even calling him a disgrace to his religion and the legal profession. As none of the elements of the second paragraph of Art. 354 of

the RPC is present in Tulfo's articles, it cannot thus be argued that they are qualified privileged communications under the RPC.

Breaking down the provision further, looking at the terms "fair" and "true," Tulfo's articles do not meet the standard. "Fair" is defined as "having the qualities of impartiality and honesty."<sup>[35]</sup> "True" is defined as "conformable to fact; correct; exact; actual; genuine; honest."<sup>[36]</sup> Tulfo failed to satisfy these requirements, as he did not do research before making his allegations, and it has been shown that these allegations were baseless. The articles are not "fair and true reports," but merely wild accusations.

Even assuming *arguendo* that the subject articles are covered by the shield of qualified privileged communication, this would still not protect Tulfo.

In claiming that his articles were covered by qualified privileged communication, Tulfo argues that the presumption of malice in law under Art. 354 of the RPC is no longer present, placing upon the prosecution the burden of proving malice in fact. He then argues that for him to be liable, there should have been evidence that he was motivated by ill will or spite in writing the subject articles.

The test to be followed is that laid down in *New York Times Co. v. Sullivan*,<sup>[37]</sup> and reiterated in *Flor v. People*, which should be to determine whether the defamatory statement was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not.<sup>[38]</sup>

The trial court found that Tulfo had in fact written and published the subject articles with reckless disregard of whether the same were false or not, as proven by the prosecution. There was the finding that Tulfo failed to verify the information on which he based his writings, and that the defense presented no evidence to show that the accusations against Atty. So were true. Tulfo cannot argue that because he did not know the subject, Atty. So, personally, there was no malice attendant in his articles. The test laid down is the "reckless disregard" test, and Tulfo has failed to meet that test.

The fact that Tulfo published another article lambasting respondent Atty. So can be considered as further evidence of malice, as held in *U.S. vs. Montalvo*,<sup>[39]</sup> wherein publication after the commencement of an action was taken as further evidence of a malicious design to injure the victim. Tulfo did not relent nor did he pause to consider his actions, but went on to continue defaming respondent Atty. So. This is a clear indication of his intent to malign Atty. So, no matter the cost, and is proof of malice.

Leaving the discussion of qualified privileged communication, Tulfo also argues that the lower court misappreciated the evidence presented as to the identity of the complainant: that Tulfo wrote about Atty. "Ding" So, an official of the Bureau of Customs who worked at the South Harbor, whereas the complainant was Atty. Carlos So who worked at the NAIA. He claims that there has arisen a cloud of doubt as to the identity of the real party referred to in the articles.

This argument is patently without merit.

The prosecution was able to present the testimonies of two other witnesses who identified Atty. So from Tulfo's articles. There is the certification that there is only one Atty. So in the Bureau of Customs. And most damning to Tulfo's case is the last column he wrote on the matter, referring to the libel suit against him by Atty. So of the Bureau of Customs. In this article, Tulfo launched further attacks against Atty. So, stating that the libel case was due to the exposés Tulfo had written on the corrupt acts committed by Atty. So in the Bureau of Customs. This last article is an admission on the part of Tulfo that Atty. So was in fact the target of his attacks. He cannot now point to a putative "Atty. Ding So" at South Harbor, or someone else using the name of Atty. So as the real subject of his attacks, when he did not investigate the existence or non-existence of an Atty. So at South Harbor,

nor investigate the alleged corrupt acts of Atty. So of the Bureau of Customs. Tulfo cannot say that there is doubt as to the identity of the Atty. So referred to in his articles, when all the evidence points to one Atty. So, the complainant in the present case.

Having discussed the issue of qualified privileged communication and the matter of the identity of the person referred to in the subject articles, there remains the petition of the editors and president of Remate, the paper on which the subject articles appeared.

In sum, petitioners Cambri, Salao, Barlizo, and Pichay all claim that they had no participation in the editing or writing of the subject articles, and are thus not liable.

The argument must fail.

The language of Art. 360 of the RPC is plain. It lists the persons responsible for libel:

Art. 360. Persons responsible.--Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The claim that they had no participation does not shield them from liability. The provision in the RPC does not provide absence of participation as a defense, but rather plainly and specifically states the responsibility of those involved in publishing newspapers and other periodicals. It is not a matter of whether or not they conspired in preparing and publishing the subject articles, because the law simply so states that they are liable as they were the author.

Neither the publisher nor the editors can disclaim liability for libelous articles that appear on their paper by simply saying they had no participation in the preparation of the same. They cannot say that Tulfo was all alone in the publication of Remate, on which the subject articles appeared, when they themselves clearly hold positions of authority in the newspaper, or in the case of Pichay, as the president in the publishing company.

As Tulfo cannot simply say that he is not liable because he did not fulfill his responsibility as a journalist, the other petitioners cannot simply say that they are not liable because they did not fulfill their responsibilities as editors and publishers. An editor or manager of a newspaper, who has active charge and control of its management, conduct, and policy, generally is held to be equally liable with the owner for the publication therein of a libelous article.[40] On the theory that it is the duty of the editor or manager to know and control the contents of the paper,[41] it is held that said person cannot evade responsibility by abandoning the duties to employees,[42] so that it is immaterial whether or not the editor or manager knew the contents of the publication.[43] In *Fermin v. People of the Philippines*,[44] the Court held that the publisher could not escape liability by claiming lack of participation in the preparation and publication of a libelous article. The Court cited *U.S. v. Ocampo*, stating the rationale for holding the persons enumerated in Art. 360 of the RPC criminally liable, and it is worth reiterating:

According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same by reason of his direct connection therewith and his cognizance of the contents thereof. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.

x x x x

In the case of *State vs. Mason* (26 L.R.A., 779; 26 Oreg., 273, 46 Am. St. Rep., 629), the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things (pp. 782, 783):

"The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence *prima facie* to charge the manager or proprietor with the guilt of its publication.

"The manager and proprietor of a newspaper, we think ought to be held *prima facie* criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent, x x x.

"One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefore, whether he was individually concerned in the publication or not, x x x. Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher; x x x.

"We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager."

In the case of *Commonwealth vs. Morgan* (107 Mass., 197), this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is *prima facie* presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, gave him no ground for exception. In this same case, Mr. Justice Colt, speaking for the court, said:

"It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published." (Wharton's Criminal Law, secs. 1627, 1649; 1 Bishop's Criminal Law, secs. 219, 221; *People vs. Wilson*, 64 Ill., 195; *Commonwealth vs. Damon*, 136 Mass., 441.)

The above doctrine is also the doctrine established by the English courts. In the case of *Rex vs. Walter* (3 Esp., 21) Lord Kenyon said that he was "clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for the acts of his servants or agents for misconduct in the management of the paper."

This was also the opinion of Lord Hale, Mr. Justice Powell, and Mr. Justice Foster.

Lofft, an English author, in his work on Libel and Slander, said:

"An information for libel will lie against the publisher of a papers, although he did not know of its being put into the paper and stopped the sale as soon as he discovered it."

In the case of *People vs. Clay* (86 Ill., 147) the court held that -

"A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally, and his liability is shared by the agent and all others who aid in publishing it." [45]

Under Art. 360 of the RPC, as *Tulfo*, the author of the subject articles, has been found guilty of libel, so too must *Cambri*, *Salao*, *Barlizo*, and *Pichay*.

Though we find petitioners guilty of the crime charged, the punishment must still be tempered with justice. Petitioners are to be punished for libel for the first time. They did not apply for probation to avoid service of sentence possibly in the belief that they have not committed any crime. In *Buatis, Jr. v. People*,<sup>[46]</sup> the Court, in a criminal case for libel, removed the penalty of imprisonment and instead imposed a fine as penalty. In *Sazon v. Court of Appeals*,<sup>[47]</sup> the accused was merely fined in lieu of the original penalty of imprisonment and fine. Freedom of expression as well as freedom of the press may not be unrestrained, but neither must it be reined in too harshly. In light of this, considering the necessity of a free press balanced with the necessity of a responsible press, the penalty of a fine of PhP 6,000 for each count of libel, with subsidiary imprisonment in case of insolvency, should suffice.<sup>[48]</sup> Lastly, the responsibilities of the members of the press notwithstanding, the difficulties and hazards they encounter in their line of work must also be taken into consideration.

The award of damages by the lower court must be modified. Art. 2199 of the Civil Code provides, "Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages." There was no showing of any pecuniary loss suffered by the complainant Atty. So. Without proof of actual loss that can be measured, the award of actual damages cannot stand.

In *Del Mundo v. Court of Appeals*, it was held, as regards actual and moral damages:

A party is entitled to an adequate compensation for such pecuniary loss actually suffered by him as he has duly proved. Such damages, to be recoverable, must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. We have emphasized that these damages cannot be presumed, and courts, in making an award must point out specific facts which could afford a basis for measuring whatever compensatory or actual damages are borne.

Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the sound discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219 and Article 2220 of the Civil Code. A causal relation, in fine, must exist between the act or omission referred to in the Code which underlies, or gives rise to, the case or proceeding on the one hand, and the resulting injury, on the other hand; i.e. the first must be the proximate cause and the latter the direct consequence thereof.<sup>[49]</sup>

It was the articles of Tulfo that caused injury to Atty. So, and for that Atty. So deserves the award of moral damages. Justification for the award of moral damages is found in Art. 2219(7) of the Civil Code, which states that moral damages may be recovered in cases of libel, slander, or any other form of defamation. As the cases involved are criminal cases of libel, they fall squarely within the ambit of Art. 2219(7).

Moral damages can be awarded even in the absence of actual or compensatory damages. The fact that no actual or compensatory damage was proven before the trial court does not adversely affect the offended party's right to recover moral damages.<sup>[50]</sup>

And while on the subject of moral damages, it may not be amiss to state at this juncture that Tulfo's libelous articles are abhorrent not only because of its vilifying and demeaning effect on Atty. So himself, but also because of their impact on members of his family, especially on the children and possibly even the children's children.

The Court can perhaps take judicial notice that the sense of kinship runs deeply in a typical Filipino family, such

that the whole family usually suffers or rejoices at the misfortune or good fortune, as the case may be, of any of its member. Accordingly, any attempt to dishonor or besmirch the name and reputation of the head of the family, as here, invariably puts the other members in a state of disrepute, distress, or anxiety. This reality adds an imperative dimension to the award of moral damages to the defamed party.

The award of exemplary damages, however, cannot be justified. Under Art. 2230 of the Civil Code, "In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party." No aggravating circumstances accompanied the commission of the libelous acts; thus, no exemplary damages can be awarded.

## Conclusion

The press wields enormous power. Through its widespread reach and the information it imparts, it can mold and shape thoughts and opinions of the people. It can turn the tide of public opinion for or against someone, it can build up heroes or create villains.

It is in the interest of society to have a free press, to have liberal discussion and dissemination of ideas, and to encourage people to engage in healthy debate. It is through this that society can progress and develop.

Those who would publish under the aegis of freedom of the press must also acknowledge the corollary duty to publish responsibly. To show that they have exercised their freedom responsibly, they must go beyond merely relying on unfounded rumors or shadowy anonymous sources. There must be further investigation conducted, some shred of proof found to support allegations of misconduct or even criminal activity. It is in fact too easy for journalists to destroy the reputation and honor of public officials, if they are not required to make the slightest effort to verify their accusations. Journalists are supposed to be reporters of facts, not fiction, and must be able to back up their stories with solid research. The power of the press and the corresponding duty to exercise that power judiciously cannot be understated.

But even with the need for a free press, the necessity that it be free does not mean that it be totally unfettered. It is still acknowledged that the freedom can be abused, and for the abuse of the freedom, there must be a corresponding sanction. It falls on the press to wield such enormous power responsibly. It may be a cliché that the pen is mightier than the sword, but in this particular case, the lesson to be learned is that such a mighty weapon should not be wielded recklessly or thoughtlessly, but always guided by conscience and careful thought.

A robust and independently free press is doubtless one of the most effective checks on government power and abuses. Hence, it behooves government functionaries to respect the value of openness and refrain from concealing from media corruption and other anomalous practices occurring within their backyard. On the other hand, public officials also deserve respect and protection against false innuendoes and unfounded accusation of official wrongdoing from an abusive press. As it were, the law and jurisprudence on libel heavily tilt in favor of press freedom. The common but most unkind perception is that government institutions and their officers and employees are fair game to official and personal attacks and even ridicule. And the practice on the ground is just as disconcerting. Reports and accusation of official misconduct often times merit front page or primetime treatment, while defenses set up, retraction issued, or acquittal rendered get no more, if ever, perfunctory coverage. The unfairness needs no belaboring. The balm of clear conscience is sometimes not enough.

Perhaps lost in the traditional press freedom versus government impasse is the fact that a maliciously false imputation of corruption and dishonesty against a public official, as here, leaves a stigmatizing mark not only on the person but also the office to which he belongs. In the ultimate analysis, public service also unduly suffers.

WHEREFORE, in view of the foregoing, the petitions in G.R. Nos. 161032 and 161176 are DISMISSED. The CA Decision dated June 17, 2003 in CA-G.R. CR No. 25318 is hereby AFFIRMED with the MODIFICATIONS that in lieu of imprisonment, the penalty to be imposed upon petitioners shall be a fine of six thousand pesos (PhP 6,000) for each count of libel, with subsidiary imprisonment in case of insolvency, while the award of actual damages and exemplary damages is DELETED. The Decision dated November 17, 2000 of the RTC, Branch 112 in Pasay City in Criminal Case Nos. 99-1597 to 99-1600 is modified to read as follows:

WHEREFORE, the Court finds the accused ERWIN TULFO, SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO, and PHILIP PICHAY guilty beyond reasonable doubt of four (4) counts of the crime of LIBEL, as defined in Article 353 of the Revised Penal Code, and sentences EACH of the accused to pay a fine of SIX THOUSAND PESOS (PhP 6,000) per count of libel with subsidiary imprisonment, in case of insolvency.

Considering that the accused Erwin Tulfo, Susan Cambri, Rey Salao, Jocelyn Barlizo, and Philip Pichay wrote and published the four (4) defamatory articles with reckless disregard whether it was false or not, the said articles being libelous per se, they are hereby ordered to pay complainant Atty. Carlos T. So, jointly and severally, the sum of ONE MILLION PESOS (PhP 1,000,000) as moral damages. The claim of actual and exemplary damages is denied for lack of merit.

Costs against petitioners.

**SO ORDERED.**

Carpio Morales, Nachura, and Brion, JJ., concur.

Quisumbing, (Chairperson), dissent, on the ground of sufficient proof lacking for "actual malice" required in libel case prosecution.

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[\*] Additional member as per August 27, 2008 raffle.

[1] Rollo (G.R. No. 161032), p. 39.

[2] Id. at 38-39.

[3] Id. at 39-40.

[4] Id. at 40-41.

[5] Id. at 41-42.

[6] Id. at 42.

[7] Id. at 43.

[8] Id. at 44.

[9] Rollo (G.R. No. 161176), p. 88.

[10] Rollo (G.R. No. 161032), p. 44.

[11] Id. at 45-46.

[12] Id. at 46-47.

[13] Id. at 48-49.

[14] Id. at 49-50.

[15] Id. at 50-51.

[16] Id. at 38-39.

[17] Id. at 52.

[18] Id. at 53.

[19] Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Rosemari D. Carandang.

[20] Rollo (G.R. No. 161032), p. 68.

[21] Rollo (G.R. No. 161176), p. 168.

[22] Rollo (G.R. No. 161032), pp. 16-17.

[23] Rollo (G.R. No. 161176), p. 20.

[24] G.R. No. 126466, January 14, 1999, 301 SCRA 1.

[25] Id. at 22.

[26] Rollo (G.R. No. 161032), p. 10.

[27] Id. at 11.

[28] Id. at 12.

[29] Supra note 24, at 30-31.

[30] Borjal, supra at 23.

[31] *Brillante v. Court of Appeals*, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541, 574.

[32] A.M. No. 93-2-037 SC, April 6, 1995, 243 SCRA 299, 332.

[33] Id. at 327.

[34] 2 Reyes, Luis B., *The Revised Penal Code* 858 (13thed., 1993).

[35] *Black's Law Dictionary* 595 (6th ed., 1990).

[36] Id. at 1508.

[37] 376 US 254, 11 L ed. 2[nd] 686.

[38] G.R. No. 139987, March 31, 2005, 454 SCRA 440, 456.

[39] 29 Phil. 595 (1915).

[40] *Smith v. Utley*, 92 Wis 133, 65 NW 744; *Faulkner v. Martin*, 133 NJL 605, 45 A2d 596; *World Pub. Co. v. Minahan*, 70 Okla 107, 173 P 815.

[41] *Faulkner*, supra.

[42] *World Pub. Co.*, supra.

[43] *Faulkner*, supra; *Goudy v. Dayron Newspapers, Inc.*, 14 Ohio App 2d 207, 43 Ohio Ops 2d 444, 237 NE2d 909.

[44] G.R. No. 157643, March 20, 2008.

[45] U.S. v. Ocampo, 18 Phil. 1, 50-52 (1910).

[46] G.R. No. 142409, March 24, 2006, 485 SCRA 275.

[47] G.R. No. 120715, March 29, 1996, 255 SCRA 692.

[48] Administrative Circular No. 08-2008. See *Fermin v. People*, G.R. No. 157643, March 28, 2008.

[49] G.R. No. 1045676, January 20, 1995, 240 SCRA 348, 356-357.

[50] *Patricio v. Leviste*, G.R. No. 51832, April 26, 1989, 172 SCRA 774, 781.

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