

**JEJOMAR C. BINAY, FOR AND INBEHALF OF HIS MINOR DAUGHTER,
JOANNA MARIE BIANCA S. BINAY, PETITIONER, VS. THE SECRETARY
OF JUSTICE, GENIVI V. FACTAO AND VICENTE G. TIROL,
RESPONDE...**

G.R. NO. 170643. September 08, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review assails the November 22, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP No. 75989, which affirmed the Resolutions dated July 2, 2002[2] and January 8, 2003[3] of the Secretary of Justice reversing the Makati City Prosecutor's finding of probable cause against private respondents and ordering the withdrawal of the information for libel filed in court against them, as well as the November 25, 2005 Resolution,[4] denying petitioner's** motion for reconsideration.

In the April 15-21, 2001 issue of Pinoy Times Special Edition, an article entitled "ALYAS ERAP JR." was published regarding the alleged extravagant lifestyle of the Binays and the assets that they acquired while in public office. Paragraph 25 of the article reads:

Si Joanne Marie Bianca, 13 ang sinasabing ampong anak ng mga Binay, ay bumibili ng panty na nagkakahalaga ng P1,000 ang isa, ayon sa isang writer ni Binay. Magarbo ang pamumuhay ng batang ito dahil naspoiled umano ng kanyang ama.

Based on this article, Elenita S. Binay, mother of the minor Joanna Marie Bianca,[5] filed a complaint[6] for libel against private respondents Vicente G. Tirol as publisher, and Genivi V. Factao as writer of the article, with the Office of the City Prosecutor of Makati. The pertinent portions of the complaint read:

X X X X

- GENIVI V. FACTAO, as writer of the said article, voluntarily, illegally, and with the object to insinuate and made it understood, and was in effect understood and interpreted by the public who read it, that the young lady referred to therein can be no other than my daughter Joanne, in this manner transmitting maliciously and intentionally to the public the impression that Joanne is a spoiled, spendthrift brat who would not mind or care to spend P1,000 for her underwear, all as already stated, with the object of destroying her reputation and discrediting and ridiculing her before the bar of public opinion.

- The said article, for whatever its avowed purpose may be, is clearly aimed at scurrilously attacking my husband Jejomar C. Binay. In which case, the insinuations directed at Joanne are clearly pointless and was done only for purposes of exposing Joanne to public contempt.

6.1. That the said article should specifically focus in on Joanne's panty is a clear and malicious invasion of her privacy and calculated to heap scorn and ridicule upon her. On top of this, there is no connection whatsoever to her being an adopted child despite which this was needlessly and maliciously highlighted.[7]

Joanna also submitted an affidavit[8] where she claimed that:

- The article was completely unmindful of the hurt and anguish I felt after it needlessly and maliciously highlighted my being an adopted daughter. Furthermore, the article is a blatant lie. I have never in my life bought an underwear costing P1,000.00 or more. On the contrary, I have always maintained to keep a simple and modest life as it is how my parents had brought me up. The questioned article has no valid object except to destroy my reputation and to discredit and to bring ridicule upon me before my peers and that of the public.

Private respondents did not file their counter-affidavits.

The City Prosecutor found a prima facie case for libel and recommended the filing of information against private respondents. The case[9] was filed with the Regional Trial Court of Makati City.

Alleging that they did not receive the subpoena and copy of the complaint, private respondents filed an omnibus motion to re-open the preliminary investigation. The City Prosecutor, however, denied private respondents' motion for reconsideration,[10] thus they filed a petition for review[11] with the Secretary of Justice.

On July 2, 2002, then Acting Justice Secretary Merceditas N. Gutierrez[12] reversed the City Prosecutor's findings and directed the withdrawal of the information filed in court.[13] Elenita's motion for reconsideration was denied in the Resolution[14] dated January 8, 2003, hence a petition for certiorari and prohibition[15] was filed with the Court of Appeals which rendered the assailed Decision dated November 22, 2004, denying the petition and sustaining the Justice Secretary's ruling that there was nothing libelous in the subject article. The dispositive portion of the Decision reads:

WHEREFORE, the present petition is dismissed for lack of merit and the Resolutions dated July 2, 2002 and January 8, 2003 of public respondent are affirmed in toto.

SO ORDERED.[16]

The Court of Appeals also denied Elenita's motion for reconsideration, hence this petition, raising the following issues:

- The CA erred in not holding that public respondent acted with grave abuse of discretion tantamount to lack or excess of jurisdiction.
- The CA erred in not holding that the public respondent gravely abused its discretion for not abiding by the ruling in Sazon vs. Court of Appeals which states that an attack upon the private character of a public officer on matters which are not related to the discharge of his official functions may be libelous.
- The CA erred in not holding that there is probable cause to indict private respondents for the crime of libel and that they are probably guilty thereof.[17]

In a resolution dated March 20, 2006, the Court granted the motion of Jejomar C. Binay to replace his wife, Elenita S. Binay, as petitioner and representative of their minor daughter Joanna.[18]

The issue to be resolved is whether there is prima facie evidence showing that the subject article was libelous.

Petitioner claims that the article is defamatory as it tends to, if not actually, injure Joanna's reputation and diminish the esteem, respect, and goodwill that others have of her. Petitioner alleges that there is no good intention or justifiable motive in publishing Joanna's status as an adopted child which is essentially a private concern and the purchase of an expensive intimate apparel, but to ridicule and to induce readers to lower their perception of Joanna.

On the other hand, private respondents allege that they did not harp on Joanna's status as an adopted child as the

same was mentioned only once in the article; that they did not intend to injure her reputation or diminish her self-esteem; that they referred to the price of the underwear not for the purpose of maligning her or to make her look frivolous in the public's eyes, but to show that petitioner and his family lead lavish and extravagant lives; and that this matter is within the realm of public interest given that petitioner is an aspirant to a public office while his wife is an incumbent public official.

We grant the petition.

Under Article 353 of the Revised Penal Code, libel is defined as "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." Its elements are as follows: (a) an imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and (d) the existence of malice.[19] Thus, for an imputation to be libelous, it must be defamatory, malicious, published, and the victim is identifiable.[20]

The elements of publication and identity of the person defamed are present in this case. Thus, in resolving the issue at hand, we limit our discussion on whether paragraph 25 of the subject article contains the two other elements of libel, to wit: (a) imputation of a discreditable act or condition to another, i.e., whether the paragraph is defamatory; and (b) existence of malice.

In *MVRS Pub. Inc. v. Islamic Da'wah Council of the Phils., Inc.*, [21] we defined defamatory language in this wise:

Defamation, which includes libel and slander, means the offense of 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, good will or confidence in the plaintiff or to excite derogatory feelings or opinions about the plaintiff. It is the publication of anything which is injurious to the good name or reputation of another or tends to bring him into disrepute. Defamation is an invasion of a relational interest since it involves the opinion which others in the community may have, or tend to have, of the plaintiff.

It must be stressed that words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious, whether written or spoken, do not constitute a basis for an action for defamation in the absence of an allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself. (Emphasis added)

In determining whether a statement is defamatory, the words used are construed in their entirety and taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.[22]

Tested against the foregoing, we find that there is *prima facie* showing that paragraph 25 of the subject article is defamatory. It is opprobrious, ill-natured, and vexatious as it has absolutely nothing to do with petitioner's qualification as a mayoralty candidate or as a public figure. It appears that private respondents' only purpose in focusing on Joanna's status as an adopted child and her alleged extravagant purchases was to malign her before the public and to bring her into disrepute. This is a clear and simple invasion of her privacy.

In *Buatis, Jr. v. People*, [23] the Court found libelous a letter addressed to a lawyer for using words such as "lousy," "inutile," "carabao English," "stupidity," and "satan." It cast aspersions on the character, integrity and reputation of respondent as a lawyer and exposed him to public ridicule. Evidence aliunde was found unnecessary to prove libel.

In the same manner, we need not require any evidence aliunde to prove that paragraph 25 is defamatory. It has

exposed Joanna to the public at large as a spoiled and spendthrift adopted daughter and a compulsive buyer who has no qualms buying expensive lingerie.

Private respondents argue that paragraph 25 constitutes privileged communication because it was a fair comment on the fitness of petitioner to run for public office, particularly on his lifestyle and that of his family. As such, malice cannot be presumed. It is now petitioner's burden to prove malice in fact.

We are not convinced.

In the first place, paragraph 25 does not qualify as a conditionally or qualifiedly privileged communication, which Article 354 of the Revised Penal Code limits to the following instances: (1) A private communication made by a person to another in the performance of any legal, moral, or social duty; and (2) 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 act performed by public officers in the exercise of their functions.

To qualify under the first category of a conditionally or qualifiedly privileged communication, paragraph 25 must fulfill the following elements: (1) the person who made the communication had a legal, moral, or social duty to make the communication, or at least, had an interest to protect, which interest may either be his own or of the one to whom it is made; (2) the communication is addressed to an officer or a board, or superior, having some interest or duty in the matter, and who has the power to furnish the protection sought; and (3) the statements in the communication are made in good faith and without malice. [24]

Whichever way we view it, we cannot discern a legal, moral, or social duty in publishing Joanna's status as an adopted daughter. Neither is there any public interest respecting her purchases of panties worth P1,000.00. Whether she indeed bought those panties is not something that the public can afford any protection against. With this backdrop, it is obvious that private respondents' only motive in inserting paragraph 25 in the subject article is to embarrass Joanna before the reading public.

In addition, the claim that paragraph 25 constitutes privileged communication is a matter of defense, [25] which is can only be proved in a full-blown trial. It is elementary that "a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and the accused is probably guilty thereof." [26]

Moreover, under Article 354 of the Revised Penal 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. It is thus incumbent upon private respondents to prove that "good intention and justifiable motive" attended the publication of the subject article.

WHEREFORE, the petition is GRANTED. The Court of Appeals' Decision in CA-G.R. SP No. 75989 dated November 22, 2004, upholding the Justice Secretary's Resolutions dated July 2, 2002 and January 8, 2003, ordering the withdrawal of the information filed against private respondents Genivi V. Factao and Vicente G. Tirol and the Resolution dated November 25, 2005, denying petitioner's motion for reconsideration, are REVERSED AND SET ASIDE. The City Prosecutor of Makati City is ORDERED to continue and proceed with the case for libel against private respondents Vicente G. Tirol and Genivi V. Factao.

SO ORDERED.

Panganiban, C. J. (Chairperson), Austria-Marinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[*]Also spelled as Joanne in other parts of the rollo.

[1] Rollo, pp. 136-145. Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Delilah Vidallon-Magtolis and Conrado M. Vasquez, Jr.

[2] Id. at 107-109.

[3] Id. at 110-111.

[4] Id. at 159-165.

[**] In the proceedings before the Prosecutor's office, Department of Justice, and the Court of Appeals, Joanna was represented by her mother, Elenita S. Binay. It was only before this Court that Jejomar C. Binay was substituted as petitioner.

[5] Id. at 66. Elenita Binay filed the complaint under Article 220 of the Civil Code in relation to Section 5, Rule 3, Rules of Court.

[6] Id. at 66-67; docketed as I.S. No. 01-F-11158-59.

[7] Id.

[8] Id. at 68.

[9] Docketed as Crim. Case No. 01-1950.

[10] Id. at 83-84.

[11] Id. at 85-95.

[12] She now heads the Office of the Ombudsman.

[13] Rollo, pp. 96-98.

[14] Id. at 110.

[15] Id. at 112-134.

[16] Id. at 17.

[17] Id. at 43.

[18] Id. at 166.

[19] *Guinguing v. Court of Appeals*, G.R. No. 128959, September 30, 2005, 471 SCRA 196, 206.

[20] *Sazon v. Court of Appeals*, 325 Phil. 1053, 1062 (1996); *Ledesma v. Court of Appeals*, 344 Phil. 207, 236-237 (1997).

[21] G.R. No. 135306, 444 Phil. 230, 241 (2003).

[22] *Novicio v. Aggabao*, 463 Phil. 510, 516 (2003).

[23] G.R. No. 142509, 24 March 2006, SC E-Library.

[24] *Brillante v. Court of Appeals*, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541, 569.

[25] *People v. Gomez*, No. L-32815, June 25, 1980, 98 SCRA 181.

[26] *Baytan v. COMELEC*, 444 Phil. 812, 819-820 (2003).

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