

DIONISIO LOPEZ Y ABERASTURI, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND SALVADOR G. ESCALANTE, JR., RESPONDENTS.

G.R. No. 172203. February 14, 2011

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

Freedom of expression enjoys an exalted place in the hierarchy of constitutional rights. Free expression however, "is not absolute for it may be so regulated that [its exercise shall neither] be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society." [1] Libel stands as an exception to the enjoyment of that most guarded constitutional right.

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Dionisio Lopez (petitioner) assailing the Decision [2] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 28175. The CA affirmed with modification the Decision [3] rendered by the Regional Trial Court (RTC) of Cadiz City, Branch 60 finding petitioner guilty beyond reasonable doubt of the crime of libel.

Procedural and Factual Antecedents

On April 3, 2003, petitioner was indicted for libel in an Information dated March 31, 2003, the accusatory portion of which reads in full as follows:

That on or about the early part of November 2002 in the City of Cadiz, Philippines and within the jurisdiction of this Honorable Court, the herein accused did then and there, willfully, unlawfully and feloniously with intent to impeach the integrity, reputation and putting to public ridicule and dishonor the offended party MAYOR SALVADOR G. ESCALANTE, JR., City Mayor of Cadiz City and with malice and intent to injure and expose the said offended party to public hatred, contempt and ridicule put up billboards/signboards at the fence of Cadiz Hotel, Villena Street, Cadiz City and at Gustilo Boulevard, Cadiz City, which billboards/signboards read as follows:

"CADIZ FOREVER"

"_____ NEVER"

thereby deliberately titillating the curiosity of and drawing extraordinary attention from the residents of Cadiz City and passers-by over what would be placed before the word "NEVER". Later on November 15, 2002, accused affixed the nickname of the herein private complainant "BADING" and the name of the City of "SAGAY" before the word "NEVER" thus making the billboard appear as follows

"CADIZ FOREVER"

"BADING AND SAGAY NEVER"

For which the words in the signboards/billboards were obviously calculated to induce the readers/passers-by to suppose and understand that something fishy was going on, therefore maliciously impeaching the honesty, virtue and reputation of Mayor Salvador G. Escalante, Jr., and hence were highly libelous, offensive and defamatory to the good name, character and reputation of the offended party and his office and that the said

billboards/signboards were read by thousands if not hundred[s] of thousands of persons, which caused damage and prejudice to the offended party by way of moral damages in the amount [of]:

P5,000,000.00 - as moral damages.

ACT CONTRARY TO LAW.[4]

Upon arraignment on May 8, 2003, petitioner, as accused, entered a plea of "not guilty." During the pre-trial, the parties stipulated, among others, on the identity of the accused, that the private complainant is the incumbent City Mayor of Cadiz City and is popularly known by the nickname "Bading" and that the petitioner calls the private complainant "Bading." Thenceforth, trial on the merits commenced in due course.

Evidence introduced for the prosecution reveals that in the early part of November 2002, while exercising his official duties as Mayor of Cadiz City, private respondent saw billboards with the printed phrase "CADIZ FOREVER" with a blank space before the word "NEVER" directly under said phrase. Those billboards were posted on the corner of Gustilo and Villena streets, in front of Cadiz Hotel and beside the old Coca-Cola warehouse in Cadiz City. He became intrigued and wondered on what the message conveyed since it was incomplete.

Some days later, on November 15, 2002, private respondent received a phone call relating that the blank space preceding the word "NEVER" was filled up with the added words "BADING AND SAGAY." The next day, he saw the billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER" printed in full. Reacting and feeling that he was being maligned and dishonored with the printed phrase and of being a "tuta" of Sagay, private respondent, after consultation with the City Legal Officer, caused the filing of a complaint for libel against petitioner. He claimed that the incident resulted in mental anguish and sleepless nights for him and his family. He thus prayed for damages.

Jude Martin Jaropillo (Jude) is a licensing officer of the Permit and License Division of Cadiz City. While on a licensing campaign, he was able to read the message on the billboards. He wondered what fault the person alluded therein has done as the message is so negative. He felt that the message is an insult to the mayor since it creates a negative impression, as if he was being rejected by the people of Cadiz City. He claimed that he was giving his testimony voluntarily and he was not being rewarded, coerced or forced by anybody.

Nenita Bermeo (Nenita), a retired government employee of Cadiz City, was at Delilah's Coffee [Shop] in the morning of November 19, 2002 when she heard the petitioner shouting "Bading, Bading, Never, Never." She and the tricycle drivers drinking coffee were told by petitioner "You watch out I will add larger billboards." When she went around Cadiz City, she saw larger billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER," thus confirming what petitioner had said. With the message, she felt as if the people were trying to disown the private respondent. According to her, petitioner has an ax to grind against the mayor. Like Jude, she was not also forced or rewarded in giving her testimony.

Bernardita Villaceran (Bernardita) also found the message unpleasant because Mayor Escalante is an honorable and dignified resident of Cadiz City. According to her, the message is an insult not only to the person of the mayor but also to the people of Cadiz City.

Petitioner admitted having placed all the billboards because he is aware of all the things happening around Cadiz City. He mentioned "BADING" because he was not in conformity with the many things the mayor had done in Cadiz City. He insisted that he has no intention whatsoever of referring to "Bading" as the "Tuta" of Sagay. He contended that it was private respondent who referred to Bading as "Tuta" of Sagay. He further maintained that his personal belief and expression was that he will never love Bading and Sagay. He concluded that the message

in the billboards is just a wake-up call for Cadiz City.

Ruling of the Regional Trial Court

On December 17, 2003, the RTC rendered judgment convicting petitioner of libel. The trial court ruled that from the totality of the evidence presented by the prosecution vis-a-vis that of the defense, all the elements of libel are present. The fallo of the Decision reads:

WHEREFORE, in view of all the foregoing, this Court finds accused DIONISIO LOPEZ y ABERASTURI (bonded) GUILTY beyond reasonable doubt of the crime of Libel defined and penalized under Article 353 in relation to Article 355 of the Revised Penal Code and there being no mitigating or aggravating circumstances attendant thereto hereby sentences him to suffer an indeterminate penalty of imprisonment of FOUR MONTHS AND TWENTY DAYS of Arresto Mayor maximum as the minimum to TWO YEARS, ELEVEN MONTHS AND TEN DAYS of Prision Correccional Medium as the maximum and a FINE of P5,000.00 with subsidiary imprisonment in case of insolvency.

The accused is further ordered to pay the private complainant the sum of P5,000,000.00 by way of moral damages.

The cash bond posted by the accused is hereby ordered cancelled and returned to the accused, however the penalty of Fine adjudged against the accused is hereby ordered deducted from the cash bond posted by the accused pursuant to Section 22 of Rule 114 of the Rules of Court and the remaining balance ordered returned to the accused. The accused is hereby ordered immediately committed to the BJMP, Cadiz City for the service of his sentence.

Cost against the accused.

SO ORDERED.[5]

Ruling of the Court of Appeals

Petitioner appealed the Decision of the RTC to the CA which, as stated earlier, rendered judgment on August 31, 2005, affirming with modification the Decision of the RTC. Like the trial court, the appellate court found the presence of all the elements of the crime of libel. It reduced however, the amount of moral damages to P500,000.00. Petitioner then filed his Motion for Reconsideration, which the appellate court denied in its Resolution[6] dated April 7, 2006.

Disgruntled, petitioner is now before us via the instant petition. Per our directive, private respondent filed his Comment[7] on August 29, 2006 while the Office of the Solicitor General (OSG) representing public respondent People of the Philippines, submitted a Manifestation and Motion in Lieu of Comment[8] on even date. After the filing of petitioner's Reply to private respondent's Comment, we further requested the parties to submit their respective memoranda. The OSG filed a Manifestation in Lieu of Memorandum, adopting as its memorandum, the Manifestation and Motion in Lieu of Comment it earlier filed. Petitioner and private respondent submitted their respective memoranda as required.

Issues

Petitioner raised the following arguments in support of his petition:

I

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE WORDS "CADIZ FOREVER[,] BADING AND SAGAY NEVER" CONTAINED IN THE BILLBOARDS/SIGNBOARDS SHOW THE INJURIOUS NATURE OF THE IMPUTATIONS MADE AGAINST THE PRIVATE

RESPONDENT AND TENDS TO INDUCE SUSPICION ON HIS CHARACTER, INTEGRITY AND REPUTATION AS MAYOR OF CADIZ CITY.

II

ASSUMING WITHOUT CONCEDED THAT THE WORDS "CADIZ FOREVER, BADING AND SAGAY NEVER" CONTAINED IN THE BILLBOARDS ERECTED BY PETITIONER ARE DEFAMATORY, DID THE COURT OF APPEALS ERR IN NOT HOLDING THAT THEY COMPRISE FAIR COMMENTARY ON MATTERS OF PUBLIC INTEREST WHICH ARE THEREFORE PRIVILEGED?

III

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE PRESUMPTION OF MALICE IN THE CASE AT BAR HAS NOT BEEN OVERTHROWN.

IV

WHETHER X X X THE COURT OF APPEALS ERRED IN NOT ACQUITTING PETITIONER OF THE CHARGE OF LIBEL AND IN HOLDING HIM LIABLE FOR MORAL DAMAGES IN THE AMOUNT OF P500,000.[9]

Summed up, the focal issues tendered in the present petition boil down to the following: 1) whether the printed phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" is libelous; and 2) whether the controversial words used constituted privileged communication.

Our Ruling

We ought to reverse the CA ruling.

At the outset, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. The factual findings of the lower courts are final and conclusive and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

- When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- When the inference made is manifestly mistaken, absurd or impossible;
- Where there is a grave abuse of discretion;
- When the judgment is based on a misapprehension of facts;
- When the findings of fact are conflicting;
- When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- When the findings are contrary to those of the trial court;
- When the findings of fact are conclusions without citation of specific evidence on which they are based;
- When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and,
- When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[10]

Indeed, the CA affirmed the factual findings of the RTC that all the elements of the crime of libel are present in

this case. Thus, following the general rule, we are precluded from making further evaluation of the factual antecedents of the case. However, we cannot lose sight of the fact that both lower courts have greatly misapprehended the facts in arriving at their unanimous conclusion. Hence, we are constrained to apply one of the exceptions specifically paragraph 4 above, instead of the general rule.

Petitioner takes exception to the CA's ruling that the controversial phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of Cadiz City. He avers that there is nothing in said printed matter tending to defame and induce suspicion on the character, integrity and reputation of private respondent.

The OSG, in its Manifestation and Motion in Lieu of Comment, asserts that "there is nothing in the phrase "CADIZ FOREVER" and "BADING AND SAGAY NEVER" which ascribe to private respondent any crime, vice or defect, or any act, omission, condition, status or circumstance which will either dishonor, discredit, or put him into contempt." [11]

The prosecution maintains that the appellate court correctly sustained the trial court's finding of guilt on petitioner. Citing well-established jurisprudence [12] holding that "[w]ords calculated to induce suspicion are sometimes more effective

to destroy reputation than false charges directly made" and that "[i]ronical and metaphorical language is a favored vehicle for slander," it argued that the words printed on the billboards somehow bordered on the incomprehensible and the ludicrous yet they were so deliberately crafted solely to induce suspicion and cast aspersion against private respondent's honor and reputation.

A 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." [13] "For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable." [14] Absent one of these elements precludes the commission of the crime of libel.

Although all the elements must concur, the defamatory nature of the subject printed phrase must be proved first because this is so vital in a prosecution for libel. Were the words imputed not defamatory in character, a libel charge will not prosper. Malice is necessarily rendered immaterial.

An allegation is considered defamatory if it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt or which tends to blacken the memory of one who is dead. To determine "whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense." [15] Moreover, "[a] charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person or persons against whom they were uttered were guilty of certain offenses or are sufficient to impeach the honesty, virtue or reputation or to hold the person or persons up to public ridicule." [16]

Tested under these established standards, we cannot subscribe to the appellate court's finding that the phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of Cadiz City. There are no derogatory imputations of a crime, vice or defect or any act, omission, condition, status or circumstance tending, directly or indirectly, to cause his dishonor.

Neither does the phrase in its entirety, employ any unpleasant language or somewhat harsh and uncalled for that would reflect on private respondent's integrity. Obviously, the controversial word "NEVER" used by petitioner was plain and simple. In its ordinary sense, the word did not cast aspersion upon private respondent's integrity and reputation much less convey the idea that he was guilty of any offense. Simply worded as it was with nary a notion of corruption and dishonesty in government service, it is our considered view to appropriately consider it as mere epithet or personal reaction on private respondent's performance of official duty and not purposely designed to malign and besmirch his reputation and dignity more so to deprive him of public confidence.

Indeed, the prosecution witnesses were able to read the message printed in the billboards and gave a negative impression on what it says. They imply that the message conveys something as if the private respondent was being rejected as city mayor of Cadiz. But the trustworthiness of these witnesses is doubtful considering the moral ascendancy exercised over them by the private respondent such that it is quite easy for them to draw such negative impression. As observed by the OSG, at the time the billboards were erected and during the incumbency of private respondent as mayor of Cadiz City, these witnesses were either employed in the Cadiz City Hall or active in the project of the city government. Bernardita was a member of the Clean and Green Program of Cadiz City; Jude was employed as a licensing officer under the Permit and License Division of the Cadiz City Hall and Nenita held the position of Utility Worker II of the General Services Office of Cadiz City. These witnesses, according to the OSG, would naturally testify in his favor. They could have verbicide the meaning of the word "NEVER." Prudently, at the least, the prosecution could have presented witnesses within the community with more independent disposition than these witnesses who are beholden to private respondent.

According to the private respondent, the message in the billboards would like to convey to the people of Cadiz that he is a tuta of Sagay City.

We disagree. Strangely, the OSG adopted a position contrary to the interest of the People. In its Manifestation and Motion in Lieu of Comment, instead of contesting the arguments of the petitioner, the OSG surprisingly joined stance with him, vehemently praying for his acquittal. We quote with approval the OSG's analysis of the issue which was the basis for its observation, thus:

During the proceedings in the trial court, private respondent testified that the subject billboards maligned his character and portrayed him as a puppet of Sagay City, Thus:

Q: You do not know of course the intention of putting those billboards "BADING AND SAGAY NEVER"?

A: Definitely, I know the intention because to answer your question, it will not only require those "BADING AND SAGAY NEVER" billboard[s], it was after which additional billboards were put up. That strengthen, that I am being a "Tuta of Sagay. I am being maligned because of those billboards that states and I repeat: "Ang Tubig san Cadiz, ginkuha sang Sagay", "Welcome to Brgy. Cadiz" and there is a small word under it, Zone 2, very small, very very small, you cannot see it in [sic] a glance.

x x x x

A: That is the meaning of the signboard[s]. The message that the signboards would like to convey to the people of Cadiz, that the Mayor of Cadiz City is a "Tuta" or Puppet of Sagay City.

x x x x[17]

Contrary to private respondent's assertion, there is nothing in the subject billboards which state, either directly or indirectly, that he is, in his words, a "tuta" or "puppet" of Sagay City. Except for private respondent, not a single prosecution witness testified that the billboards portray Mayor Bading Escalante, Jr. as a "tuta or "puppet" of Sagay City. The billboards erected by petitioner simply say "CADIZ FOREVER", "BADING AND SAGAY

NEVER"[18]

Apparently, private respondent refers to the circumstances mentioned in another billboard that is not the subject matter in the present charge. The aforesaid facts dismally failed to support the allegations in the instant information. Be that as it may, private respondent nevertheless did not specify any actionable wrong or particular act or omission on petitioner's part that could have defamed him or caused his alleged injury. While it may be that the Court is not bound by the analysis and observation of the OSG, still, the Court finds that it deserves meritorious consideration. The prosecution never indulged to give any reason persuasive enough for the court not to adopt it.

Truth be told that somehow the private respondent was not pleased with the controversial printed matter. But that is grossly insufficient to make it actionable by itself. "[P]ersonal hurt or embarrassment or offense, even if real, is not automatically equivalent to defamation,"[19] "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 bases 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," as the Court ruled in *MVRS Publications, Inc. v. Islamic Da' Wah Council of the Phils., Inc.*[20]

In arriving at an analogous finding of guilt on petitioner, both lower courts heavily relied on the testimony of the petitioner pertaining to the reasons behind the printing of the phrase "CADIZ FOREVER BADING AND SAGAY NEVER." [21] Our in-depth scrutiny of his testimony, however, reveals that the reasons elicited by the prosecution mainly relate to the discharge of private respondent's official duties as City Mayor of Cadiz City. For that matter, granting that the controversial phrase is considered defamatory, still, no liability attaches on petitioner. Pursuant to Article 361 of the Revised Penal Code, if the defamatory statement is made against a public official with respect to the discharge of his official duties and functions and the truth of the allegations is shown, the accused will be entitled to an acquittal even though he does not prove that the imputation was published with good motives and for justifiable ends. As the Court held in *United States v. Bustos*, [22] the policy of a public official may be attacked, rightly or wrongly with every argument which ability can find or ingenuity invent. The public officer "may suffer under a hostile and an unjust accusation; the wound can be assuaged by the balm of a clear conscience. A public [official] must not be too thin-skinned with reference to comments upon his official acts."

"In criminal prosecutions, fundamental is the requirement that the elemental acts constituting the offense be established with moral certainty as this is the critical and only requisite to a finding of guilt." [23] In this case, contrary to the conclusion of the trial court as affirmed by the appellate court, the prosecution failed to prove that the controversial phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" imputes derogatory remarks on private respondent's character, reputation and integrity. In this light, any discussion on the issue of malice is rendered moot.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals dated August 31, 2005 in CA-G.R. CR No. 28175 is REVERSED and SET ASIDE and the petitioner is ACQUITTED of the crime charged.

SO ORDERED

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and Perez, JJ., concur.

[1] *Primicias v. Fugoso*, 80 Phil. 71, 75 (1948).

- [2] Rollo, pp. 31-38; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Enrico A. Lanzas.
- [3] Records, pp. 179-196; penned by Judge Renato D. Munez.
- [4] Id. at 1.
- [5] Id. at 195-196.
- [6] Rollo, p. 41-44.
- [7] Id. at 91-100.
- [8] Id. at 102-113.
- [9] Id. at 145.
- [10] Ontimare, Jr. v. Elep, G.R. No. 159224, January 20, 2006, 479 SCRA 257, 265.
- [11] Rollo, p. 107.
- [12] United States v. O'Connell, 37 Phil. 767, 772 (1918).
- [13] REVISED PENAL CODE, Article 353.
- [14] Novicio v. Aggabao, 463 Phil. 510, 516 (2003).
- [15] Buatis, Jr. v. People, G.R. No. 142509, March 24, 2006, 485 SCRA 275, 286.
- [16] United States v. O'Connel, supra note 12 at 772.
- [17] TSN, July 28, 2003, pp 62-63, 65.
- [18] Rollo, p. 108.
- [19] GMA Network, Inc. v. Bustos, G.R. No. 146848, October 17, 2006, 504 SCRA 638, 654.
- [20] 444 Phil. 230, 241 (2003).
- [21] For brevity, the Court shall refrain from quoting the relevant portion of the testimony of the petitioner as the same was reproduced in the assailed Decision.
- [22] 37 Phil. 731, 741 (1918).
- [23] People v. Obmiranis, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 148.

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