

ALFONSO LAGAYA Y TAMONDONG, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND DR. MARILYN MARTINEZ, RESPONDENTS.

G.R. No. 176251. July 25, 2012

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

"[T]he freedom to express one's sentiments and belief does not grant one the license to vilify in public the honor and integrity of another. Any sentiments must be expressed within the proper forum and with proper regard for the rights of others." [1]

In this Petition for Review on Certiorari [2] under Rule 45 of the Rules of Court, Dr. Alfonso Lagaya y Tamondong (petitioner) seeks to reverse and set aside the Decision [3] dated October 26, 2006 of the Sandiganbayan finding him guilty of Libel. He likewise challenges the Resolution [4] of the Sandiganbayan dated January 16, 2007 denying his Motion for Reconsideration. [5]

In an Information [6] dated September 4, 2003, petitioner was charged with the crime of libel defined and penalized under Article 355 in relation to Articles 353 and 354 of the Revised Penal Code (RPC), allegedly committed as follows:

That on or about the 5[th] day of August 2002, or sometime prior or subsequent thereto, in Carig, Tuguegarao City, Province of Cagayan, Philippines, and within the jurisdiction of this Honorable Court, accused ALFONSO LAGAYA y TAMONDONG, a public officer, being the Director General with Salary Grade 28 of the Philippine Institute of Traditional and Alternative Health Care (PITAHC), an attached agency of Department of Health, while in the performance of his official functions, taking advantage of his official position and committing the crime herein charged in relation to his office, did then and there, wilfully, unlawfully and feloniously, and by means of writing, defame and libel one Dr. Marilyn Martinez by including in Memorandum No. 06. S. 2002 entitled "Disclosure and Misuse of Confidential and Classified Information" he issued and disseminated to the Plant Manager and Staff of Cagayan Valley Herbal Processing Plant in discharge of his administrative supervision and control the statement that Dr. Marilyn Martinez's state of mind or psychiatric behavior be submitted for further psychological and/or psychiatric treatment to prevent further deterioration of her mental and emotional stability, such statement being immaterial and irrelevant thus causing dishonor, discredit and contempt to the person of Dr. Marilyn Martinez which subjected her to public ridicule.

CONTRARY TO LAW.

When arraigned on May 14, 2004, petitioner, with the assistance of counsel de parte, pleaded "Not Guilty" to the charge. [7] After the prosecution and defense made some stipulation of facts, trial on the merits ensued.

Factual Antecedents

Dr. Marilyn Martinez (private respondent) was the Plant Manager of the Cagayan Valley Herbal Processing Plant (HPP) of the Philippine Institute of Traditional and Alternative Health Care (PITAHC), an attached agency of the Department of Health. On July 1 and 2, 2002, she attended the Mid-Year Performance Evaluation Seminar

conducted at the Sulo Hotel by McGimpers International Consulting Corporation (McGimpers). The latter was engaged by the PITAHC with the prime objective of developing its marketing arm and the personality of each personnel of the Sales Department.[8] The participants in the seminar were Sales Managers, various Plant Managers, Sales Agents from the different Regional Offices and other staff of PITAHC. It would appear, however, that during the seminar, the private respondent and one of the female resource speakers had a misunderstanding as a result of the alleged abusive remarks made by the latter pertaining to the former's capability as a supervisor.

On August 8, 2002, the private respondent was summoned by Dr. Eriberto Policar (Dr. Policar), the Regional Director of PITAHC to his office. Thereat, Dr. Policar handed her a copy of Memorandum No. 6, Series of 2002 dated August 5, 2002.[9] The Memorandum was signed by petitioner, he being then the Director General of PITAHC, addressed to all the plant managers and staff and was distributed to the different plants all over the country. The subject of the memorandum is "Disclosure and Misuse of Confidential and Classified Information" and a salient portion thereof states that private respondent needs to undergo psychological and psychiatric treatment to prevent deterioration of her mental and emotional stability as recommended by McGimpers.

Memorandum No. 6, series of 2002 reads:

TO : HPP's Plant Manager & Staff

SUBJECT : Disclosure and Misuse of Confidential and Classified Information

It came into our attention that Dr. MARILYN MARTINEZ, has personally lobbied in a legislature, councils or offices without authority, to further her private interest or give undue advantage to anyone or to prejudice the public interest. Please be informed that the Board of Trustees has no decision made as of date regarding the fate of the HPP's.

In addition, this office has received official complaint behavior of Dr. Martinez compromising the efficiency of the HPP's and the entire organization. Such [behavior] unbecoming of Dr. Martinez is supported by officials of the HPP's as well as the findings of our Consultant McGimpers International Consulting Corporation during the Mid Year Evaluation at Sulo Hotel last July 1-2, 2002, recommending that "Dr. Martinez be submitted for further psychological and or psychiatric treatment to prevent further deterioration of her menial and emotional stability".

In view of this, you are hereby directed to submit to this office any incidental report that is affecting the efficiency in the HPP's operation; and/or information related to her psychiatric behavior.

For information and guidance.

(Signed)

ALFONSO T. LAGAYA, MD, MDM

Director General

On account of the issuance of the Memorandum, which according to private respondent exposed her to public ridicule and humiliation, she sought the assistance of a lawyer to file the necessary administrative, civil and criminal charges against petitioner.

Petitioner admitted having signed the memorandum. He claimed that he had been receiving information that private respondent was lobbying against the intended privatization of the Herbal Processing Plants when the Board of Trustees of PITAHC was still in the process of deliberating the same, and of various verbal complaints against her from the employees of the plants who were afraid to come out and voice their grievances formally. He further stressed that the report of McGimpers gave him the opportunity to encourage the employees of PITAHC to submit formal complaints against the private respondent. Petitioner also averred that the issuance of the

memorandum was done in the performance of official duty and in good faith considering that his objective is to help the private respondent.

Ruling of the Sandiganbayan

In its Decision[10] promulgated on October 26, 2006, the Sandiganbayan held that the prosecution has convincingly established by proof beyond reasonable doubt the existence of all the elements essential to support the charge and thus adjudged petitioner guilty of the crime of libel, viz:

WHEREFORE, proceeding from the foregoing, judgment is hereby rendered finding accused ALFONSO LAGAYA y TAMONDONG GUILTY of the crime of libel defined and penalized under Article 355 in relation to Articles 353 and 354 of the Revised Penal Code and, in the absence of any modifying circumstance, sentencing the said accused to: (a) suffer an indeterminate sentence of imprisonment of six (6) months of arresto mayor, as minimum, to two (2) years, eleven (11) months, and ten (10), days of prision correctional, as maximum; (b) suffer all the appropriate accessory penalties consequent thereto, including perpetual special disqualification; and (c) pay the costs.

SO ORDERED.[11]

Petitioner sought reconsideration of the Decision but the Sandiganbayan denied the same in the questioned January 16, 2007 Resolution.[12]

Hence, this petition.

Issues

Petitioner ascribes upon the Sandiganbayan the following errors:

I

THE HONORABLE SANDIGANBAYAN ERRED IN NOT HOLDING THAT THE CONTENTS OF THE MEMORANDUM ARE NOT DEFAMATORY AS THEY WERE MERELY QUOTED VERBATIM FROM A RECOMMENDATION OF PITAHG CONSULTANT MCGIMPERS INTERNATIONAL CONSULTANCY CORPORATION.

II

GRANTING ARGUENDO THAT THE UTTERANCE WAS IN ITSELF DEFAMATORY, NONETHELESS, THE HONORABLE SANDIGANBAYAN ERRED IN NOT HOLDING THAT THE SUBJECT MEMORANDUM WAS NOT ATTENDED WITH MALICE TO THUS FREE PETITIONER OF CRIMINAL LIABILITY.

III

IN ANY EVENT, THE SUBJECT MEMORANDUM FALLS WITHIN THE AMBIT OF THE PRIVILEGED COMMUNICATION RULE, HENCE, NOT LIBELOUS.

IV

THE PROSECUTION'S EVIDENCE TO PROVE THE COMMISSION OF LIBEL FELL SHORT OF THE DEGREE OF PROOF, THAT IS, PROOF BEYOND REASONABLE DOUBT, REQUIRED BY LAW TO BE ESTABLISHED IN ORDER TO OVERCOME THE CONSTITUTIONALLY ENSHRINED PRESUMPTION OF INNOCENCE IN FAVOR OF ACCUSED-PETITIONER.

V

GRANTING WITHOUT ADMITTING THAT PETITIONER IS LIABLE FOR THE CRIME OF LIBEL THE PENALTY IMPOSED UPON HIM IS NOT COMMENSURATE TO THE ALLEGED OFFENSE; BEARING IN MIND SEVERAL YEARS OF UNTARNISHED PUBLIC SERVICE AS DIRECTOR

GENERAL FOR PITAHC.[13]

Petitioner avers that the contents of the subject memorandum are not defamatory. The memorandum was not only issued in good faith but also in the performance of his official duty as Director General of PITAHC, that is, to make certain that the members of the organization he heads would work together for the accomplishment of the organization's mandate. In fact, he merely quoted in the said memorandum the recommendation of their consultant McGimpers. Petitioner also argues that the subject memorandum falls within the ambit of privileged communication, hence, not actionable. Lastly, assuming that he is liable, a fine instead of imprisonment should be imposed following prevailing jurisprudence.

Private respondent and public respondent People of the Philippines, in their respective comments, pray for the affirmance of the challenged Decision of the Sandiganbayan and for the dismissal of the petition.

Our Ruling

The Court finds the petition partly impressed with merit.

All the requisites of the crime of libel are obtaining in this case.

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.[14] "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."[15]

The Court finds the four aforementioned requisites to be present in this case.

As to the first requisite, we find the subject memorandum defamatory. 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. "In determining whether a statement is defamatory, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense."[16]

In the present case, the subject memorandum dealt more on the supposedly abnormal behavior of the private respondent which to an ordinary reader automatically means a judgment of mental deficiency. As the Sandiganbayan correctly ruled:

xxx To stress, the words used could not be interpreted to mean other than what they intend to say - that Martinez has psychiatric problems and needs psychological and/or psychiatric treatment: otherwise her mental and emotional stability would further deteriorate. As the law does not make, any distinction whether the imputed defect/condition is real or imaginary, no other conclusion can be reached, except that accused Lagaya, in issuing the Memorandum, ascribes unto Martinez a vice, defect, condition, or circumstance which tends to dishonor, discredit, or put her in ridicule, xxx[17]

The element of malice was also established. "Malice, which is the doing of an act conceived in the spirit of mischief or criminal indifference to the rights of others or which must partake of a criminal or wanton nature, is presumed from any defamatory imputation, particularly when it injures the reputation of the person defamed."[18] As early on, the Court had perused the second paragraph contained in the subject memorandum and since the same, on its face, shows the injurious nature of the imputations to the private respondent, there is then a

presumption that petitioner acted with malice. Under Article 354 of the RPC, 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.

To buttress his defense of lack of malice, petitioner claimed that when he issued the memorandum, he was motivated by good intention to help private respondent and improve PITAHC. Such goodness, however, is not sufficient justification considering the details of the entire contents of the memorandum. Thus, in *United States v. Prautch*,^[19] it was held that "[t]he existence of justifiable motives is a question which has to be decided by taking into consideration not only the intention of the author of the publication but all the other circumstances of each particular case."^[20] Certainly, the second paragraph in the memorandum was not encompassed by the subject indicated therein (Disclosure and Misuse of Confidential and Classified Information) and likewise was not even germane to the privatization of PITAHC. At this juncture, the observation of the Court of Appeals (CA) in CA-G.R. SP No. 83622, an Administrative Case filed against herein petitioner based on the same set of facts and circumstances, is worth noting, viz:

x x x If, indeed, petitioner was merely disseminating information to the Manager and Staff of HPP's under the administration of PITAHC, as he claims, he could have just stated in plain terms the current status of HPP's to counter the alleged misinformation such as what plans, recommendations and steps are being considered by the PITAHC about the HPP's, any developments regarding the decision-making process with the assurance that the concerns of those employees involved or will be affected by a possible abolition or reorganization are properly addressed, and similar matters and just stopped there. Casting aspersion on the mental state of private respondent who herself may just be needing plain and simple clarification from a superior like petitioner who is no less the Director of the PITAHC, is totally uncalled for and done in poor taste.

x x x Far from discharging his public duties "in good faith" petitioner succeeded only in ruining beyond repair the reputation of private respondent and attack her very person -- the condition of her mental faculties and emotional being -- not only by circulating the memo in their offices nationwide but even personally distributed and made sure that the Manager and Staff of the HPP in Tuguegarao where private respondent works, have all read the memo in his presence. It is unbelievable that a public official would stoop so low and diminish his stature by such unethical, inconsiderate, and unfair act against a co-worker in the public service.

x x x x

We fully concur with the Ombudsman's declaration that short of using the word "insane," the statements- in the memo unmistakably imply that the alleged unauthorized disclosure by private respondent of supposedly classified information regarding the fate of the HPP's is simply an external manifestation of her deteriorating mental and emotional condition. Petitioner thereby announced to all the employees of the agency that such alleged infraction by private respondent only confirms the findings of their consultant that private respondent is suffering from mental and emotional imbalance, even instructing them to report any information related to private respondent's "psychiatric behavior."^[21]

This CA ruling in the Administrative Case which had already attained its finality on November 30, 2004^[22] has effectively and decisively determined the issue of malice in the present petition. We see no cogent reason why this Court should not be bound by it. In *Constantino v. Sandiganbayan* (First Division)^[23] the Court ruled:

Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude — by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," — the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid

down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment. (Citations omitted.)

The element of publication was also proven. "Publication, in the law of libel, means the making of the defamatory matter, after it has been written, known to someone other than the person to whom it has been written." [24] On the basis of the evidence on record and as found by the Sandiganbayan, there is no dispute that copies of the memorandum containing the defamatory remarks were circulated to all the regional offices of the HPP. Evidence also shows that petitioner allowed the distribution of the subject memorandum and even read the contents thereof before a gathering at a meeting attended by more or less 24 participants thereat.

Anent the last element, that is, the identity of the offended party, there is no doubt that the private respondent was the person referred to by the defamatory remarks as she was in fact, particularly named therein.

Privileged Communication Rule
is not applicable in this case.

Petitioner tenaciously argues that the disputed memorandum is not libelous since it is covered by the privileged communication rule. He avers that memorandum is an official act done in good faith, an honest innocent statement arising from a moral and legal obligation.

Petitioner's invocation of the rule on privileged communication is misplaced.

Article 354 of the RPC provides:

Article 354; Requirement for publicity— Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:

1. A private communication made by any 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 other act performed by public officers in the exercise of their functions.

Before a statement would come within the ambit of a privileged communication under paragraph No. 1 of the abovequoted Article 354, it must be established that: "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." [25] All these requisites must concur.

In the instant case, petitioner addressed the memorandum not only to the Plant Manager but also to the staff of HPP. Undoubtedly, the staff of HPP were not petitioner's superiors vested with the power of supervision over the private respondent. Neither were they the parties to whom the information should be given for they have no authority to inquire into the veracity of the charges. As aptly observed by the Sandiganbayan, the memorandum is not simply addressed to an officer, a board or a superior. Rather, the communication was addressed to all the staff of PITAHC who obviously do not have the power to furnish the protection sought. [26] Substantially, the Court finds no error in the foregoing findings. The irresponsible act of furnishing the staff a copy of the memorandum is

enough circumstance which militates against the petitioner's pretension of good faith and performance of a moral and social duty. As further held in *Brillante*,^[27] the law requires that for a defamatory imputation made out of a legal, moral or social duty to be privileged, such statement must be communicated only to the person or persons who have some interest or duty in the matter alleged and who have the power to furnish the protection sought by the author, of the statement. It may not be amiss to note at this point too that petitioner very well knows that the recommendation of PITAHC's consultant, McGimpers, is a sensitive matter that should be treated with strictest confidentiality.^[28]

Neither does the defamatory statement in the memorandum covered by paragraph No. 2 of the Article 354. Though private respondent is a public officer, certainly, the defamatory remarks are not related or relevant to the discharge of her official duties but was purely an attack on her mental condition which adversely reflect on her reputation and dignity.

Imposition of the penalty of fine instead of imprisonment.

Notwithstanding the guilt of the petitioner, still the Court finds favorable consideration on his argument that instead of imprisonment a fine should be imposed on him.

Following precedents^[29] and considering that the records do not show that petitioner has previously violated any provision of the penal laws, the Court, in the exercise of its judicious discretion, imposes upon him a penalty of fine instead of imprisonment.

WHEREFORE, premises considered, the petition is PARTLY GRANTED. The Decision of the Sandiganbayan finding petitioner Alfonso Lagaya y Tamondong guilty beyond reasonable doubt of the crime of libel is AFFIRMED in all respects except that in lieu of imprisonment, petitioner is sentenced to pay a fine of P6,000.00 with subsidiary imprisonment in case of insolvency.

SO ORDERED.

Carpio,^[*]Bersamin,^[**] (Acting Chairperson), Abad,^[***] and Perlas-Bernabe,^[****] JJ., concur.

[*] Per Special Order No. 1270 dated July 24, 2012.

[**] Per Special Order No. 1251 dated July 12, 2012.

[***] Per raffle dated July 23, 2012.

[****] Per Special Order No. 1227 dated May 30, 2012.

[1] *Lucas v. Spy Royo*, 398 Phil. 400, 411 (2000).

[2] *Rollo*, pp. 3-49.

[3] *Sandiganbayan rollo*, pp. 434-463; penned by Associate Justice Gregory S. Ong and concurred in by Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada.

[4] *Id.* at 511-513.

[5] *Id.* at 470-483.

[6] *Id.* at 1-3.

[7] Id. at 70.

[8] Supra note 3 at 443-444.

[9] Sandiganbayan rollo, p. 221.

[10] Supra note 3.

[11] Sandiganbayan rollo, p. 462

[12] Supra note 4.

[13] Rollo, pp. 365-366.

[14] THE REVISED PENAL CODE, Article 353.

[15] Buatis Jr. v. People, 520 Phil. 149, 160(2006).

[16] Id.

[17] Sandiganbayan rollo, p. 456.

[18] Lucas v. Sps. Royo, supra note 1 at 411-412.

[19] Phil. 562 (1908).

[20] Id. at 565.

[21] See CA Decision promulgated on July 29, 2004: penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court) and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao: rollo, pp. 165-177 at 174-176.

[22] Per Entry of Judgment, id. at 164.

[23] G.R. Nos. 140656 and 154482. September 13, 2007, 533 SCRA 205. 228-229.

[24] Magno v. People, 516 Phil. 72, 84 (2006).

[25] Brillante v. Court of Appeals, 483 Phil. 568, 593 (2004).

[26] Supra note 3 at 459.

[27] Supra note 25.

[28] See Counter-Affidavit dated November 18, 2002 of Nellie S. Kadava, Sandiganbayan rollo, pp. 31-35.

[29] Sazon v. Court of Appeals. 325 Phil. 1053 (1996); Mari v. Court of Appeals. 388 Phil. 269 (2000); Brillante v. Court of Appeals, supra note 25; Buatis, Jr. v. People, supra note 15; Fermin v. People, G.R. No. 157643, March 28, 2008, 550 SCRA 132.

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