

VIRGINIA DIO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND TIMOTHY DESMOND, RESPONDENTS.

G.R. No. 208146. June 08, 2016

Ponente: LEONEN, J.

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LEONEN, J.:

When a motion to quash an information is based on a defect that may be cured by amendment, courts must provide the prosecution with the opportunity to amend the information.

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated January 8, 2013 and Resolution[3] dated July 10, 2013. The Court of Appeals reversed and set aside the Regional Trial Court Order that quashed the Informations charging petitioner Virginia Dio (Dio) with libel because these Informations failed to allege publication.[4]

Private respondent Timothy Desmond (Desmond) is the Chair and Chief Executive Officer of Subic Bay Marine Exploratorium, of which Dio is Treasurer and Member of the Board of Directors.[5]

On December 9, 2002, Desmond filed a complaint against Dio for libel.[6] Two (2) separate Informations, both dated February 26, 2003, were filed and docketed as Criminal Case Nos. 9108 and 9109.[7] The Information in Criminal Case No. 9108 reads:

That on or about July 6, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the offended party and to other persons namely: Atty. Winston Ginez, John Corcoran, and Terry Nichoson which read as follows:

'NOW THAT WE ARE SET TO BUILD THE HOTEL SO THAT YOU COULD SURVIVED, (sic) YOU SHOULD STOP YOUR NONSENSE THREAT BECAUSE YOU COULD NOT EVEN FEED YOUR OWN SELF UNLESS WE PAY YOUR EXHORBITANT (sic) SALARY, HOUSE YOU ADN (sic) SUPPORT ALL YOUR PERSONAL NEEDS. YOU SHOULD BE ASHAMED IN DOING THIS. AS FAR AS WE ARE CONCERNED, YOU ARE NOTHING EXCEPT A PERSON WHO IS TRYING TO SURVIVED (sic) AT THE PRETEXT OF ENVIRONMENTAL AND ANIMAL PROTECTOR [sic]. YOU ARE PADI (sic) TO THE LAST CENTS ON ALL YOUR WORK IN THE WORK (sic). AT THE SAME TIME, YOU BLOATED THE PRICE OF EACH ANIMAL YOU BROUGHT TO THE PHILIPPINES from US\$500,000.00 to US\$750,000.00 each so that you could owned (sic) more shares that you should. Please look into this deeply.

IF YOU INSISTS (sic) TO BE CALLED AN ENVIRONMENTAL AND ANIMAL PROTECTOR IN OUR COUNTRY, THEN YOU AND YOUR WIFE SHOULD STOP BLEEDING THE COMPANY WITH YOUR MONTHLY PAYROLL OF ALMOST P1 MILLION A MONTH.'

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or contempt against the person of the said Timothy Desmond, to the damage and prejudice

of the said offended party.

CONTRARY TO LAW.[8]

The Information in Criminal Case No. 9109 reads:

That on or about July 13, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the [sic] Atty. Winston Ginez and Fatima Paglicawan, to the offended party, Timothy Desmond and to other persons namely: Hon. Felicito Payumo, SBMA Chariman [sic], Terry Nichoson, John Corcoran, and Gail Laule which read as follows:

'Dear Winston and Fatima:

UNDER THE LEADERSHIP OF TIM DESMOND AS CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF SBME, AS OF THIS DATE THE COMPANY HAD INCURRED A LOSS OF MORE THAN ONE HUNDRED MILLION. A BALANCE SHEET SUBMITTED TODAY BY THEIR ACCOUNTANT JULIET REFLECT AND (sic) ASSETS OF MORE THAN THREE HUNDRED MILLION PESOS, 50% OF WHICH IS OVERVALUED AND NON-EXISTENT. TIM DESMOND AND FAMILY HAD ACCUMULATED A (sic) SHARES OF MORE THAN 70% OF THE RECORDED PAID UP CAPITAL BY OVERVALUING OF THE ASSETS CONTRIBUTION, PAYMENT TO THEIR OWN COMPANY IN THE USA, ETC. AT THE SAME TIME, TIM DESMOND AND FAMILY BLEED THE COMPANY FROM DATE OF INCORPORATION TO PRESENT FOR AN AVERAGE OF ONE MILLION PER MONTH FOR THEIR PERSONAL GAIN, LIKE SALARY, CAR, ET, [sic] ETC.'

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or contempt against the person of the said Timothy Desmond, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[9]

On April 22, 2003, Dio filed a Petition to suspend the criminal proceedings,[10] but it was denied in the Order dated February 6, 2004.[11]

Dio moved for reconsideration of the February 6, 2004 Order.[12] She also moved to quash the Informations, arguing that the "facts charged do not constitute an offense." [13] In its Order[14] dated July 13, 2004, the trial court denied both Motions. The dispositive portion of the Order reads:

Premises considered, the Motion For Reconsideration of the Order dated February 6, 2004 and the Motion To Quash, both filed for accused, as well as the Motion For Issuance of a Hold Departure Order filed by the Prosecution, are hereby DENIED.

Arraignment will proceed as previously set on July 20, 2005 at 9:00 a.m.

SO ORDERED.[15]

Dio moved for partial reconsideration of the July 13, 2004 Order, but the Motion was denied in the trial court's Order dated September 13, 2005.[16]

On October 11, 2005, Dio filed a Motion for leave of court to file a second motion for reconsideration.[17] She also filed an Omnibus Motion to quash the Informations for failure to allege publication and lack of jurisdiction, and for second reconsideration with leave of court.[18]

The trial court's Order dated February 7, 2006 denied both Motions and scheduled Dio's arraignment on March 9,

2006.[19] Dio moved for partial reconsideration.[20]

The trial court granted Dio's Motion for Partial Reconsideration in its February 12, 2009 Order,[21] the dispositive portion of which reads:

WHEREFORE, the Motion For Partial Reconsideration filed by the accused in Criminal Cases (sic) Nos. 9108 and 9109, on the ground that the Informations in the said cases fail (sic) to allege publication, is GRANTED and, accordingly, the Informations filed against the accused are thereby QUASHED and DISMISSED.

No finding as to costs.

SO ORDERED.[22]

After filing a Notice of Appeal on March 5, 2009,[23] Desmond raised before the Court of Appeals the following issues:

I

WHETHER OR NOT THE LOWER COURT ERRED IN UPHOLDING THE ACCUSED'S ARGUMENT THAT THE PRESENT CHARGES SHOULD BE QUASHED FOR FAILURE OF THE INFORMATIONS TO ALLEGE PUBLICATION.

II

WHETHER OR NOT THE LOWER COURT ERRED IN DISMISSING THE CASE AND QUASHING THE INFORMATIONS WITHOUT GIVING THE PROSECUTOR THE OPPORTUNITY TO AMEND THE INFORMATIONS.[24]

In its January 8, 2013 Decision, the Court of Appeals sustained that the Informations did not substantially constitute the offense charged.[25] It found that the Informations did not contain any allegation that the emails allegedly sent by Dio to Desmond had been accessed.[26] However, it found that the trial court erred in quashing the Informations without giving the prosecution a chance to amend them pursuant to Rule 117, Section 4 of the Rules of Court:

Although we agree with the trial court that the facts alleged in the Informations do not substantially constitute the offense charged, the most prudent thing to do for the trial court is to give the prosecution the opportunity to amend it and make the necessary corrections. Indeed, an Information may be defective because the facts charged do not constitute an offense, however, the dismissal of the case will not necessarily follow. The Rules specifically require that the prosecution should be given a chance to correct the defect; the court can order the dismissal only upon the prosecution's failure to do so. The trial court's failure to provide the prosecution with this opportunity constitutes an arbitrary exercise of power.[27]

The dispositive portion reads:

WHEREFORE, premises considered, the appeal is GRANTED. The order of the Regional Trial Court of Balanga City, Branch 3 dated February 12, 2009 in Criminal Case Nos. 9108 and 9109 is REVERSED AND SET ASIDE. The case is remanded to the trial court and the Public Prosecutor of Balanga City is hereby DIRECTED to amend the Informations.

SO ORDERED.[28]

Dio moved for reconsideration,[29] but the Court of Appeals denied the Motion in its July 10, 2013 Resolution.[30]

Hence, this Petition was filed.

Desmond and the Office of the Solicitor General filed their Comments,[31] to which Dio filed her Reply.[32] On April 2, 2014, this Court gave due course to the Petition and required the parties to submit their respective memoranda.[33]

The Office of the Solicitor General filed on June 11, 2014 a Manifestation and Motion[34] adopting its Comment. Desmond and Dio filed their memoranda on June 19, 2014[35] and July 10, 2014,[36] respectively.

Dio stresses that "venue is jurisdictional in criminal cases." [37] Considering that libel is limited as to the venue of the case, failure to allege "where the libelous article was printed and first published" [38] or "where the offended party actually resided at the time of the commission of the offense" [39] is a jurisdictional defect. She argues that jurisdictional defects in an Information are not curable by amendment, even before arraignment. To support this position, she cites *Agustin v. Pamintuan*: [40]

We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.[41] (Citations omitted)

Dio also cites *Leviste v. Hon. Alameda*, [42] where this Court has stated that not all defects in an Information are curable by amendment prior to arraignment:

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void ab initio cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[43] (Citations omitted)

Dio argues that the Informations were void as the prosecutor of Morong, Bataan had no authority to conduct the preliminary investigation of the offenses charged.[44] The complaint filed before the prosecutor did not allege that the emails were printed and first published in Morong Bataan, or that Desmond resided in Morong, Bataan at the time of the offense.[45] In the absence of these allegations, the prosecutor did not have the authority to conduct the preliminary investigation or to file the information.[46]

Dio further argues that publication, one of the elements of libel, was not present in the case. She asserts that emailing does not constitute publication under Article 355 of the Revised Penal Code. As there was no allegation in the Informations that the emails were received, accessed, and read by third persons other than Desmond, there could be no publication.[47] Further, emails are not covered under Article 355 of the Revised Penal Code. Thus, at the time the allegedly libelous emails were sent, there was no law punishing this act.[48]

Finally, Dio argues that she sent the emails as private communication to the officers of the corporation, who were in the position to act on her grievances.[49] The emails were sent in good faith, with justifiable ends, and in the performance of a legal duty.[50]

The primordial issue for resolution is whether an information's failure to establish venue is a defect that can be cured by amendment before arraignment.

The Petition is denied.

I

If a motion to quash is based on a defect in the information that can be cured by amendment, the court shall order that an amendment be made. Rule 117, Section 4 of the Rules of Court states:

SEC. 4. Amendment of complaint or information. - If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.

If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

This Court has held that failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of power.[51] In *People v. Sandiganbayan*: [52]

When a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to quash and order the prosecution to file an amended Information. Generally, a defect pertaining to the failure of an Information to charge facts constituting an offense is one that may be corrected by an amendment. In such instances, courts are mandated not to automatically quash the Information; rather, it should grant the prosecution the opportunity to cure the defect through an amendment. This rule allows a case to proceed without undue delay. By allowing the defect to be cured by simple amendment, unnecessary appeals based on technical grounds, which only result to prolonging the proceedings, are avoided.

More than this practical consideration, however, is the due process underpinnings of this rule. As explained by this Court in *People v. Andrade*, the State, just like any other litigant, is entitled to its day in court. Thus, a court's refusal to grant the prosecution the opportunity to amend an Information, where such right is expressly granted under the Rules of Court and affirmed time and again in a string of Supreme Court decisions, effectively curtails the State's right to due process.[53]

In this case, petitioner Virginia Dio has not yet been arraigned; thus, Rule 117, Section 4 of the Rules of Court applies. If the information is defective, the prosecution must be given the opportunity to amend it before it may be quashed.

Petitioner claims that Rule 117, Section 4 of the Rules of Court applies only to informations that can be cured by amendment. She argues that before a court orders that an amendment be made, or otherwise gives the prosecution an opportunity to amend an information, it must first establish that the defective information can be cured by amendment.

Petitioner relies on *Agustin* to argue the proscription of an amendment of an information in order to vest jurisdiction in the court. This is misplaced.

In *Agustin*, the accused in the criminal case was already arraigned under a defective information that failed to establish venue.[54] The Court of Appeals held that the defect in the information was merely formal and, consequently, could be amended even after plea, with leave of court. Thus, this Court held:

We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.[55]

In turn, *Agustin* cited *Agbayani v. Sayo*. [56] However, *Agbayani* does not involve the amendment of a defective information before or after arraignment. Subsequent cases have cited *Agustin* as basis that amendment of an information to vest jurisdiction in the trial court is impermissible. Thus, in *Leviste*, this Court cited *Agustin* and stated that certain amendments are impermissible even before arraignment:

It must be clarified though that not all defects in an information are curable by amendment prior to entry of

plea. An information which is void ab initio cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[57]

It may appear that Leviste supports petitioner's contention that an amendment operating to vest jurisdiction in the trial court is impermissible. However, the statement in Leviste was obiter dictum. It cites only Agustin, which did not involve the amendment of an information before arraignment.

Aside from obiter dictum in jurisprudence, petitioner provides no legal basis to reverse the Court of Appeals' determination that the defective informations may be amended before arraignment. Although the cases petitioner cited involved defective informations that failed to establish the jurisdiction of the court over the libel charges, none involved the amendment of an information before arraignment. Thus, these cannot be controlling over the facts of this case.

II

A defect in the complaint filed before the fiscal is not a ground to quash an information. In *Sasot v. People*: [58]

Section 3, Rule 117 of the 1985 Rules of Criminal Procedure, which was then in force at the time the alleged criminal acts were committed, enumerates the grounds for quashing an information, to wit:

a)

That the facts charged do not constitute an offense;

b)

That the court trying the case has no jurisdiction over the offense charged or the person of the accused;

c)

That the officer who filed the information had no authority to do so;

d)

That it does not conform substantially to the prescribed form;

e)

That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

f)

That the criminal action or liability has been extinguished;

g)

That it contains averments which, if true, would constitute a legal excuse or justification; and

h)

That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

Nowhere in the foregoing provision is there any mention of the defect in the complaint filed before the fiscal and the complainant's capacity to sue as grounds for a motion to quash.[59]

On the other hand, lack of authority to file an information is a proper ground. In *Cudia v. Court of Appeals*: [60]

With respect to the second requisite, however, it is plainly apparent that the City Prosecutor of Angeles City had no authority to file the first information, the offense having been committed in the Municipality of Mabalacat, which is beyond his jurisdiction. Presidential Decree No. 1275, in relation to Section 9 of the Administrative Code of 1987, pertinently provides that:

"Section 11. The provincial or the city fiscal shall:

....

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions and have the necessary information or complaint prepared or made against the persons accused. In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose.

....

It is thus the Provincial Prosecutor of Pampanga, not the City Prosecutor, who should prepare informations for offenses committed within Pampanga but outside of Angeles City. An information, when required to be filed by a public prosecuting officer, cannot be filed by another. It must be exhibited or presented by the prosecuting attorney or someone authorized by law. If not, the court does not acquire jurisdiction.

Petitioner, however, insists that his failure to assert the lack of authority of the City Prosecutor in filing the information in question is deemed a waiver thereof. As correctly pointed out by the Court of Appeals, petitioner's plea to an information before he filed a motion to quash may be a waiver of all objections to it insofar as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of the Rules of Court, and by a long line of uniform decisions, questions relating to want of jurisdiction may be raised at any stage of the proceeding. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused (herein petitioner) and the subject matter of the accusation. In consonance with this view, an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.

In fine, there must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar to petitioner's subsequent prosecution. Jeopardy does not attach where a defendant pleads guilty to a defective indictment that is voluntarily dismissed by the prosecution.

Petitioner next claims that the lack of authority of the City Prosecutor was the error of the investigating panel and the same should not be used to prejudice and penalize him. It is an all too familiar maxim that the State is not bound or estopped by the mistakes or inadvertence of its officials and employees. To rule otherwise could very well result in setting felons free, deny proper protection to the community, and give rise to the possibility of connivance between the prosecutor and the accused.

Finally, petitioner avers that an amendment of the first information, and not its dismissal, should have been the remedy sought by the prosecution. Suffice it to say that this Court, in *Galvez vs. Court of Appeals* has ruled that even if amendment is proper, pursuant to Section 14 of Rule 110, it is also quite plausible under the same provision that, instead of an amendment, an information may be dismissed to give way to the filing of a new information.^[61] (Emphasis in the original, citations omitted)

However, for quashal of an information to be sustained, the defect of the information must be evident on its face. In *Santos v. People*:^[62]

First, a motion to quash should be based on a defect in the information which is evident on its face. The same cannot be said herein. The Information against petitioner appears valid on its face; and that it was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. As pointed out by the CTA First Division in its 11 May 2006 Resolution, the more appropriate recourse petitioner should have taken, given the dismissal of similar charges against Velasquez, was to appeal the Resolution dated 21 October 2005 of the Office of the State Prosecutor recommending the filing of an information against her with the DOJ Secretary.[63]

For an information to be quashed based on the prosecutor's lack of authority to file it, the lack of the authority must be evident on the face of the information.

The Informations here do not allege that the venue of the offense was other than Morong, Bataan. Thus, it is not apparent on the face of the Informations that the prosecutor did not have the authority to file them.

The proper remedy is to give the prosecution the opportunity to amend the Informations. If the proper venue appears not to be Morong, Bataan after the Informations have been amended, then the trial court may dismiss the case due to lack of jurisdiction, as well as lack of authority of the prosecutor to file the information.

III

Article 355 of the Revised Penal Code provides:

Article 355. Libel by means of writings or similar means. - A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to civil action which may be brought by the offended party.

Petitioner argues that at the time of the offense, emails were not covered under Article 355 of the Revised Penal Code. Petitioner claims this is bolstered by the enactment of Republic Act No. 10175, otherwise known as the Anti-Cybercrime Law, which widened the scope of libel to include libel committed through email, among others.[64]

Whether emailing or, as in this case, sending emails to the persons named in the Informations—who appear to be officials of Subic Bay Metropolitan Authority where Subic Bay Marine Exploratorium is found—is sufficiently "public," as required by Articles 353 and 355 of the Revised Penal Code and by the Anti-Cybercrime Law, is a matter of defense that should be properly raised during trial.

Passionate and emphatic grievance, channelled through proper public authorities, partakes of a degree of protected freedom of expression.[65]

Certainly, if we remain faithful to the dictum that public office is a public trust,[66] some leeway should be given to the public to express disgust. The scope and extent of that protection cannot be grounded in abstractions. The facts of this case need to be proven by evidence; otherwise, this Court exercises barren abstractions that may wander into situations only imagined, not real.

IV

Good faith is not among the grounds for quashing an information as enumerated in Rule 117, Section 3 of the Rules of Court. It is not apparent on the face of the Informations, and what is not apparent cannot be the basis for quashing them. In *Danguilan-Vitug v. Court of Appeals*: [67]

We find no reason to depart from said conclusion. Section 3, Rule 117 of the Revised Rules of Court

enumerates the grounds for quashing an information. Specifically, paragraph (g) of said provision states that the accused may move to quash the complaint or information where it contains averments which, if true, would constitute a legal excuse or justification. Hence, for the alleged privilege to be a ground for quashing the information, the same should have been averred in the information itself and secondly, the privilege should be absolute, not only qualified. Where, however, these circumstances are not alleged in the information, quashal is not proper as they should be raised and proved as defenses. With more reason is it true in the case of merely qualifiedly privileged communications because such cases remain actionable since the defamatory communication is simply presumed to be not malicious, thereby relieving the defendant of the burden of proving good intention and justifiable motive. The burden is on the prosecution to prove malice. Thus, even if the qualifiedly privileged nature of the communication is alleged in the information, it cannot be quashed especially where prosecution opposes the same so as not to deprive the latter of its day in court, but prosecution can only prove its case after trial on the merits. In *People v. Gomez* we held, inter alia:

"The claim of the accused . . . that the letter is privileged communication is not a ground for a motion to quash. It is a matter of defense which must be proved after trial of the case on the merits." [68] (Citations omitted)

Thus, the Court of Appeals did not err in disregarding petitioner's purported good faith. This should be a matter of defense properly raised during trial.

WHEREFORE, the Petition for Review on Certiorari dated July 29, 2013 is DENIED. The Court of Appeals Decision dated January 8, 2013 and Resolution dated July 10, 2013 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, and Mendoza, JJ., concur.

Brion, J., on official leave.

[1] Rollo, pp. 3-22. The Petition was filed under Rule 45 of the Rules of Court.

[2] Id. at 24-32. The Decision, docketed as CA-G.R. CR No. 32514, was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] Id. at 34-35. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] Id. at 31.

[5] Id. at 24.

[6] Id.

[7] Id.

[8] Id. at 28.

[9] Id. at 28-29.

[10] Id. at 25.

[11] Id.

[12] Id.

[13] Id.

- [14] Id.
- [15] Id.
- [16] Id.
- [17] Id.
- [18] Id.
- [19] Id.
- [20] Id.
- [21] Id. at 26.
- [22] Id.
- [23] Id.
- [24] Id. at 26-27.
- [25] Id. at 27-28.
- [26] Id. at 29.
- [27] Id. at 30-31.
- [28] Id. at 31.
- [29] Id. at 36-44.
- [30] Id. at 34-35.
- [31] Id. at 57-70, Desmond's Comment, and 76-87, Office of the Solicitor General's Comment.
- [32] Id. at 90-97.
- [33] Id. at 99.
- [34] Id. at 100.
- [33] Id. at 104-116.
- [36] Id. at 130-151.
- [37] Id. at 139.
- [38] Id. at 140.
- [39] Id.
- [40] 505 Phil. 103 (2005) [Per J. Callejo, Sr., Second Division].
- [41] Id. at 113.
- [42] 640 Phil. 620 (2010) [Per J. Carpio Morales, Third Division].
- [43] Id. at 640.
- [44] Rollo , pp. 15-16, Petition.

[45] Id.

[46] Id.

[47] Id. at 147.

[48] Id. at 145.

[49] Id. at 147.

[50] Id.

[51] *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 321 (2009) [Per J. Brion, Second Division].

[52] G.R. No. 160619, September 9, 2015
<<http://scjudiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/160619.pdf>> [Per J. Jardeleza, Third Division].

[53] Id. at 10, citing *People v. Andrade*, G.R. No. 187000, November 24, 2014
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/187000.pdf>> [Per J. Peralta, Third Division].

[54] Id. at 112.

[55] Id. at 113.

[56] 178 Phil. 574 (1979) [Per J. Aquino, Second Division].

[57] Id. at 640.

[58] 500 Phil. 527 (2005) [Per J. Austria-Martinez, Second Division].

[59] Id. at 536.

[60] 348 Phil. 190 (1998) [Per J. Romero, Third Division].

[61] Id. at 199-202.

[62] 585 Phil. 337 (2008) [Per J. Chico-Nazario, Third Division].

[63] Id. at 361, citing *Gozos v. Hon. Tac-An*, 360 Phil. 453,464 (1998) [Per J. Mendoza, Second Division].

[64] Rollo, p. 145, Memorandum.

[65] See J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014, 716 SCRA 237, 602-621 [Per J. Abad, En Bane], which proffered the view that continued criminalization of libel, especially in platforms using the internet unqualifiedly produces a "chilling effect" that stifles freedom of expression:

"The crime of libel in its 1930 version in the Revised Penal Code was again reenacted through the Cybercrime Prevention Act of 2012. It simply added the use of the internet as one of the means to commit the criminal acts. The reenactment of these archaic provisions is unconstitutional for many reasons. At minimum, it failed to take into consideration refinements in the interpretation of the old law through decades of jurisprudence. It now stands starkly in contrast with the required constitutional protection of freedom of expression.

. . . .

With the definite evolution of jurisprudence to accommodate free speech values, it is clear that the reenactment of the old text of libel is now unconstitutional. Articles 353, 354, and 355 of the Revised Penal Code — and by reference, Section 4(c)4 of the law in question — are now overbroad as it prescribes a definition and presumption that have been repeatedly struck down by this court for several decades.

....

The effect on speech of the dangerously broad provisions of the current law on libel is even more palpable in the internet.

....

The broad and simplistic formulation now in Article 353 of the Revised Penal Code essential for the punishment of cyber libel can only cope with these variations produced by the technologies in the Internet by giving law enforcers wide latitude to determine which acts are defamatory. There are no judicially determinable standards. The approach will allow subjective case-by-case ad hoc determination. There will be no real notice to the speaker or writer. The speaker or writer will calibrate speech not on the basis of what the law provides but on who enforces it.

This is quintessentially the chilling effect of this law.

The threat of being prosecuted for libel stifles the dynamism of the conversations that take place in cyberspace. These conversations can be loose yet full of emotion. These can be analytical and the product of painstaking deliberation. Other conversations can just be exponential combinations of these forms that provide canisters to evolving ideas as people from different communities with varied identities and cultures come together to test their messages.

Certainly, there will be a mix of the public and the private; the serious and the not so serious. But, this might be the kind of democratic spaces needed by our society: a mishmash of emotion and logic that may creatively spring solutions to grave public issues in better and more entertaining ways than a symposium of scholars. Libel with its broad bright lines, thus, is an anachronistic tool that may have had its uses in older societies: a monkey wrench that will steal inspiration from the democratic mob" (Id. at 50-62).

[66] CONST., art. XI, sec. 1.

[67] G.R. No. 103618, May 20, 1994, 232 SCRA 460 [Per J. Romero, Third Division].

[68] Id. at 467-468.

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