

**J. F. OLIVER AND LAVIECE CHAMBLISE OLIVER, HIS WIFE,
PLAINTIFFS AND APPELLANTS, VS. “LA VANGUARDIA,
INC.,” DEFENDANT AND APPELLEE.**

G.R. No. 23063, December 10, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

J. F. Oliver and Laviece Chamblise Oliver, husband and wife, seek in this action, to recover of La Vanguardia, Inc., damages in the amount of sixty thousand pesos (P60,000) on account of an alleged libelous article published in defendant's newspaper Taliba. The judgment in the Court of First Instance of Cagayan was with the defendant.

A preliminary point was made by counsel for the appellee in a motion to dismiss the appeal. The court, however, after due consideration denied the motion. (Code of Civil Procedure, sec. 146 as amended; Soriano vs. Ramirez [1923], 44 Phil., 519.)

Appellants' five assignments of error center around the question of whether the article, the subject of the suit, is libelous or not. The trial judge found it not to be libelous. Appellants argue vigorously that it is libelous.

Taliba is a newspaper of Manila published in the Tagalog dialect by La Vanguardia, Inc. It conducts a humorous column entitled "Buhay Maynila" (Manila Life). Verses in Tagalog written by the poet Jose Corazon de Jesus under the nom de plume of Huseng Batute appear regularly therein.

In the edition of Taliba of March 3, 1921, the column "Buhay Maynila" (Manila Life) was given up to matter with the heading "Amerikanang Asuwang" (American Ghoul). Underneath appeared in quotation marks what was apparently an excerpt from a news item, reading "The Filipino flag was insulted and depreciated by Mrs. J. F. Oliver, a teacher in Tuguegarao, Cagayan. * * *." Then followed a poem which, as translated into English for the record, reads as follows:

"I

"Aha! you little devil,
So there you are!
I had been looking for you during holy week,
In order to place into your mouth a glowing
Coal, mouth of a Medusa,
Cave of snakes, and hole of ...
Aha, you devil,
Now I have caught you!

"II

"What you deserve
Is to be scourged by me!
Ha, one, two—go on—lie down, three! four,
Five, six—lie down you ... hup!—Seven, eight,
Nine, ten, eleven, twelve . . . devil!
What, will you do it again? Ha? Mind you,
That I have scourged you
For being so talkative!

"III

"Even though you be an American,
I'll flog you!
What is it you said? Our national flag
Is the flag of ignorant people!
And you likewise said it should be trod upon?
Lie down ... I will make it twenty-five lashes,
Even though you be an American woman,
I'll beat you!

"IV

"You have allowed yourself to go too far
Because your attention was not halted!
You think I have no ears
With which to hear your grumbling insults . . .
You think I have no eyes
To see that you are a mere hussy . . .
Go on ... lie down, go on!!!
I will strike you!

"V

"Before you teach,
You ought to know
That every flag is dear to the heart
Of the people that fly it;
If your mind is so twisted and crooked
You should be thrown over a high precipice . . .
You are an individual devoid of education!

"VI

"You ought to stop and think,
That as a wise teacher . . .
The national flag should not be insulted by you;
For a little I would cast you far away.

If you wish to be respected you must respect.
Those things that are bad for you you should not do.
Do not be so talkative
In order to save yourself from being cooked.

"HUSENG BATUTE"

The defendant failed entirely to plead the truth as a defense. Rather does the defendant take the position, to use counsel's own words, that "the humorous verse" in Tagalog "was a mere jocular publication designed rather as an entertainment for the readers of the paper than as anything else," and hence that the publication was not in itself libelous. In addition, the special defense contains averments intended to establish that the matter charged as libelous was published with good motives and for justifiable ends.

The poem, as we have stated, appeared in the humorous section of Taliba. This part of a newspaper is intended to tickle the fancy, to while away a passing hour with quirk and joke, and to provide amusement for its readers. Much may be conceded under such circumstances to the author. Immaterial inaccuracies are unimportant. Poetic license may be indulged in to meet the requirements of rhyme and rhythm. Occasional ridicule which pricks the feelings of the individual can be pardoned. Extravaganzas are permissible.

Here the language used passes from the bounds of playful jest and intensive criticism into the region of scurrilous calumny and intemperate personalities. There is nothing funny in such contemptuous phrases as "An American Ghoul;" "The Filipino flag was insulted;" "you little devil;" "you devil;" "What you deserve is to be scourged by me;" "Our national flag is the flag of ignorant people! * * * it should be trod upon;" "even though you be an American woman, I'll beat you;" "you are a mere hussy;" "If your mind is so twisted and crooked you should be thrown over a high precipice;" "You are an individual devoid of education!" The article complained of represents Mrs. Oliver as illiterate, coarse, and vulgar, as an evil spirit to be shunned, and as entirely out of harmony with the patriotic ideals of the youth of the country.

The article in question is unquestionably libelous per se, To follow the lead of the Libel Law, it is a malicious defamation, expressed in writing, tending to impeach the reputation and to expose one to public hatred, contempt, and ridicule. It affects a teacher in her profession to her disadvantage. It is injurious to her reputation. It has occasioned mental suffering. What greater humiliation, what more insistent harm could a teacher suffer than to have her name paraded in a newspaper throughout the length and breadth of the land, with the implication that she had insulted the Filipino flag?

The case of Wells vs. Times Printing Co. ([1913], 77 Wash., 171), had to do with a newspaper article which referred to the plaintiff as a "man who reviled U. S. flag," "who denounced Old Glory as a dirty rag," a "redtinted agitator," voicing "constructive sedition and treason," leaping "beyond the last border of unloyalty and indecency" by "denouncing Old Glory as a dirty rag," and "wantonly insulted the symbol of a patriotic allegiance." Held libelous per se. Mr. Justice Morris for the Supreme Court of Washington said: " * * * Such language requires no innuendo to construe its meaning as intending to bring the individual of whom it is written into public hatred, contempt, and ridicule, expose him to public obloquy, scorn, and shame, and cause him to be shunned and avoided by his fellows. * * *"

The case of Triggs vs. Sun Printing and Publishing Association ([1904], 179 N. Y., 144), concerned libelous articles relating to Professor Oscar L. Triggs of the University of Chicago. On the subject of whether the publication could be justified upon the ground that it was a mere jest, the highest court of the State of New York, speaking through Mr. Justice Martin, said:

"It is likewise claimed by the respondent that these articles were written in jest, and hence that it is not liable to the plaintiff for the injury he has sustained. It is, perhaps, possible that the defendant published the articles in question as a jest, yet they do not disclose that, but are a scathing denunciation, ridiculing the plaintiff. If, however, they can be regarded as having been published as a jest, then it should be said that however desirable it may be that the readers of and the writers for the public prints shall be amused, it is manifest that neither such readers nor writers should be furnished such amusement at the expense of the reputation or business of another. In the language of Joy, C. B.: The principle is clear that a person shall not be allowed to murder another's reputation in jest; 'or, in the words of Smith, B., in the same case: 'If a man in jest conveys a serious imputation, he jests at his peril.' (Donoghue vs. Hayes [1831], Hayes, Irish Exchequer, 265, 266.) We are of the opinion that one assaulting the reputation or business of another in a public newspaper cannot justify it upon the ground that it was a mere jest, unless it is perfectly manifest from the language employed that it could in no respect be regarded as an attack upon the reputation or business of the person to whom it related.

"The single purpose of the rule permitting fair and honest criticism is that it promotes the public good, enables the people to discern right from wrong, encourages merit, and firmly condemns and exposes the charlatan and the cheat, and hence is based upon public policy. The distinction between criticism and defamation is that criticism deals only with such things as invite public attention or call for public comment, and does not follow a public man into his private life or pry into his domestic concerns. It never attacks the individual, but only his work. A true critic never indulges in personalities, but confines himself to the merits of the subject-matter, and never takes advantage of the occasion to attain any other object beyond the fair discussion of matters of public interest and the judicious guidance of the public taste. The articles in question come far short of falling within the line of true criticism, but are clearly defamatory in character and are libelous per se."

The defense tends to show various circumstances in mitigation. In the first place, the newspaper *Ang Mithi* had the day before the appearance of the poem in *Taliba* published a news item and an editorial on the subject of the insult to the Filipino flag. In the second place, there were rumors current in Manila to this effect which came to the attention of De Jesus. In the third place, De Jesus was permitted by the chief clerk of the Bureau of Education to read certain correspondence on the subject. In the fourth place, much can be forgiven where patriotic ardor is inflamed. To all this there is added the fact that in the issue of *Taliba* of March 17, 1921, in the same column "*Buhay Maynila*" (*Manila Life*) after the charges against Mrs. Oliver had been found to be groundless, De Jesus made a retraction in Tagalog although still in somewhat of a satirical vein, concluding with these words in English and Tagalog:

"Dear Mrs. Oliver: From the latest information received here in Manila, I have learned that news regarding your alleged insult against our Flag is not true, and I wish to take this opportunity of making my apology for attacking you in my poem.

"Tapus na ang kuento!

"Sincerely yours,

"HUSENG BATUTE"

None of the grounds of defense constitute complete justification. (*U. S. vs. Liongsin* [1919], 39 Phil., 457; *U. S. vs. McCullough Dick* [1915], 30 Phil., 76.) The most that can be said for the defense is that the tort was not aggravated. The points made for the defense are in the nature of mitigating circumstances which, while not proving the truth of the publication, permit of an inference that the defendant was not actuated by malice except as

the statute makes it presumptively so. In this category are the previous publication by another newspaper, common rumor and belief, and retraction (Newel, Slander and Libel, Third Edition, pp. 1072, 1087).

Whether under such circumstances the plaintiffs should be allowed nominal or substantial damages, is a question difficult of ascertainment. The amount of the damages resulting from the libelous publication is likewise difficult of approximation. A majority of the court entertain the opinion that as damages for injury to feelings and reputation, and as punitive damages, the plaintiffs should be allowed a total of one thousand pesos (P1,000).

The judgment is reversed and the plaintiffs shall have and recover of the defendant the sum of one thousand pesos (P1,000) and costs.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, and Romualdez, JJ., concur.

Villa-Real, J.: I believe that P500 would be sufficient.

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