

**THE PROVINCIAL FISCAL OF PAMPANGA, PETITIONER, VS.
HERMOGENES REYES, JUDGE OF FIRST INSTANCE OF PAMPANGA,
AND ANDRES GUEVARRA, RESPONDENTS.**

G. R. No. 35366. August 05, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

The petitioner prays for a writ of mandamus to compel the respondent judge to admit Exhibits A, B, C, and D (attached to the petition), as evidence for the prosecution in criminal cases Nos. 4501 and 4502 of the Court of First Instance of Pampanga.

The provincial fiscal of Pampanga filed two informations for libel against Andres Guevarra. The informations alleged that the defendant, with malicious intent, published on page 9 of the weekly paper *Ing Magumasid* in its issue of July 13, 1930, a squib in verse, of which a translation into Spanish was included therein, intended to impeach the honesty, integrity, and reputation of Clemente Dayrit (information in criminal cause No. 4501) and of Mariano Nepomuceno (information in criminal cause No. 4502).

The defendant demurred on the ground of duplicity of informations, he having published only one libelous article in the *Ing Magumasid* for July 13, 1930. The court over-ruled the demurrer.

A joint trial was held of criminal cases Nos. 4501 and 4502. The fiscal attempted to present as evidence for the prosecution, the aforementioned Exhibits A, B, C, and D, which are copies of the *Ing Magymasid* containing the libelous article with the innuendo, another article in the vernacular published in the same weekly, and its translation into Spanish. Counsel for the defendant objected to this evidence, which objection was sustained by the court.

The respondents answered the petition for mandamus, praying for its dismissal with costs against the petitioner.

At the hearing of this case, both parties appeared and moved that they be allowed to present memoranda in lieu of an oral argument, which memoranda are in the record.

The petitioner contends that the exhibits in question are the best evidence of the libel, the subject matter of the information, and should therefore be admitted; while the respondents maintain that, inasmuch as the libelous articles were not quoted in the information,, said evidence cannot be admitted without amending the information. The prosecution asked for an amendment to the information, but the court denied the petition on the ground that it would impair the rights of the defendant, holding that the omission of the libelous article in the original was fatal to the prosecution.

The first question raised here is whether an information charging a libel published in an unofficial language, without including a copy of the libelous article, but only a translation into Spanish, is valid' or not. It is true that in *United States vs. Eguia and Lozano* (38 Phil, 857), it was stated: "The general rule is that the complaint or information for libel must set out the particular defamatory words as published, and a statement of their substance

and effect is usually considered insufficient." But this general rule does not exclude certain exceptions, such as, cases where the libel is published in a non-official language. "When the defamation has been published in a foreign tongue, it is proper, and in general, necessary, to set out the communication as it was originally made, with an exact translation into English; and if from the translation no cause of action appears, it is immaterial that the foreign words were actionable. In some jurisdictions, however, under the influence of the liberality of laws on practice, it is held unnecessary to set out the communication in the foreign language in which it is alleged to have been published, so long as the foreign publication is alleged, with an English translation attached." (37 C. J., 27, sec. 336.)

If the libelous article had been published in one of our official languages, English or Spanish, it would have been necessary to follow the general rule; but since the article in question was published in the Pampango dialect, it is sufficient to insert a Spanish translation in the information. The justice of this exception to the general rule becomes more evident if we consider a libelous article published, for instance, in Moro or Chinese, who use characters different from our own.

The second question refers to the admissibility of the aforesaid exhibits. The general rules regarding the admissibility of evidence are applicable to cases of libel or slander. The evidence must be relevant, and not hearsay. (37 C. J., 151, sec. 688.) This being so, the rule of procedure which requires the production of the best evidence, is applicable to the present case. And certainly the copies of the weekly where the libelous article was published, and its translation, constitute the best evidence of the libel charged. The newspaper itself is the best evidence of an article published in it. (Bond vs. Central Bank of Georgia, 2 Ga., 92.)

The respondent judge undoubtedly has discretion to admit or reject the evidence offered by the fiscal; but in the instant case his refusal to admit such evidence amounts to an abuse of that discretion, which may be controlled by this court by means of mandamus proceedings. In so far as the jurisdiction of this court is concerned, we believe the doctrine is applicable which was held in *Orient Insurance Co. vs. Revilla and Teal Motor Co.* (54 Phil., 919), namely, that the Supreme Court has jurisdiction to entertain an application for a writ of mandamus to compel a Court of First Instance to permit the attorney of a litigant to examine the entire written communication, when part of the same has been introduced in evidence by the other party.

Wherefore, the writ prayed for against the respondent judge of the Court of First Instance of Pampanga should be issued, requiring him to admit Exhibits A, B, C, and D, in question in criminal cases Nos. 4501 and 4502 of that court, and it is so ordered, without special pronouncement of costs.

Avanceña, C. J., Johnson, Street, Malcolm, Romvaldez, Villa-Real, and Imperial, JJ., concur.

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