

MARCELO SORIANO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HON AUXENCIO DACUYCUI, AND HON. FRANCISCO TANTUICO, JR., RESPONDENTS.

G.R. No. 72383, November 09, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Where is the proper venue of a libel case for the purpose of conferring jurisdiction on a trial court when the complainant is a public officer?

On complaint of private respondent Francisco S. Tantuico, Jr., the then Chairman of the Commission on Audit (COA), an information for libel was filed against petitioner Marcelo Soriano and six (6) others in connection with press releases and articles imputing to Tantuico the tampering by COA personnel of election returns in the May 14, 1984 Batasan elections at his residence in Tacloban City and in the COA Regional Office in Palo, Leyte. This election offense was allegedly committed at Tantuico's behest to assure the victory of certain candidates in the said Batasan elections. The information which was filed with the Regional Trial Court of Leyte states:

"The undersigned City Fiscal of the City of Tacloban accuses Marcelo B. Soriano, Bobby de la Cruz, Cesar Villegas, Cirilo 'Roy' Montojo, Emmanuel 'Butch' Veloso, Valenta U. Quintero and John 'Doe', of the crime of Libel, committed as follows:

"That during the period from May 26, 1984 to June 1, 1984, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously, without justifiable motive and with malicious intent of impeaching the reputation, honesty and virtue of Commission on Audit Chairman Francisco S. Tantuico, Jr., and with the malicious intent of injuring and exposing the latter to public hatred, contempt and ridicule, published/republished in the 'THE GUARDIAN' dated May 26-June 1, 1984, a weekly newspaper/magazine circulated in Tacloban City and nationwide, of which accused Marcelo B. Soriano and Bobby de la Cruz are the Editor Publisher and Associate Editor, respectively, the press release of accused Cesar G. Villegas written/printed and first circulated/published in Tacloban City dated May 19, 1984, copy of which is hereto attached as part of this Information, publicly imputing the crime of falsification of public documents and/or violation of election laws to said Chairman Francisco S. Tantuico, Jr., which publication in the said newspaper is captioned 'IMPEACH TANTUICO CASE LOOMS', quoted verbatim to wit:

"Unido lawyers are studying the filing of impeachment proceedings against Commission on Audit regional head Francisco Tantuico, Jr., because election returns were reportedly tallied at his COA Regional Office and at his residence.

"The tamper hunt trail started when a 'sympathetic' COA employee informed Con-Con delegate Roy Montejo of the 'new' tally sites.

"If you want to raid or to know where the election returns are being changed, proceed immediately to the

Tantuico residence of the Commission on Audit, said a telephone tip received by Montejo.

"Tente U. Quintero, former Leyte vice-mayor reported that, with fellow candidates, Atty. Cesar Villegas and Emmanuel Veloso, all Unido bets for the five-slot Batasan race in Leyte, Montejo and their supporters went to the Tantuico residence some 2.5 kms., from the city proper. Having no warrant of arrest (sic) barred their entry.

"At the regional COA office at Candahug, Palo, Leyte, around 11 kms., from Tacloban, they were able to enter and were told to wait for the regional director.

"People coming in and out of the conference room attracted their attention. The open door revealed election returns being opened by persons inside, identified later as COA personnel, who were 'shocked' to see the candidates. Replying to the candidates query that they were 'merely tallying the votes for the five KBL candidates', the personnel later added that they 'did not know' who instructed them to do so.

"When the photographer called by one of Mr. Veloso's assistants came, the COA personnel drifted off one by one, leaving only the conference room, the election returns and the envelopes ready to be photographed. It was assumed that the personnel were wary of being photographed with the election returns.

"Lack of sufficient basis for comparison led to the uncertainty of the returns being declared as tampered or not. However, Montejo said that the returns were supposed to have been with the Provincial Comelec supervisor, Filomeno Azeta, as the provincial canvassing at the Leyte Provincial Capitol was still in progress at the time of the raid.

"COA Regional Director Sofronio Flores, Jr., upon seeing the three candidates, tried to explain things. But, Unido supporters said, he failed to answer certain questions.

"The Unido lawyers, meanwhile, started preparing legal charges against the parties seen guilty.'

wherein said Chairman Francisco S. Tantuico, Jr., is portrayed in the aforementioned newspaper/magazine publication as directing and/or orchestrating on or about May 17, 1984 the tampering of the election returns for the May 14, 1984 elections in Leyte to assure the victory of certain candidates in said elections, when in truth and in fact he has no knowledge of the alleged wrongdoing imputed to him as at said time he was in Quezon City holding office as such Chairman of the Commission on Audit.

"Contrary to law." (pp. 24-26, Rollo)

The case was docketed as Criminal Case No. 6136 of the Leyte court. The petitioner filed a motion to quash the information on the ground of improper venue. The petitioner contended that the court has no jurisdiction over the offense charged because under Article 360 of the Revised Penal Code, the libel case should have been filed at Quezon City where Tantuico holds office and where the publication house of the "Guardian" is located.

The trial court denied the motion in a resolution dated May 16, 1985, the dispositive portion of which reads:

"Wherefore, considering that the libelous article complained contained in a press release was printed and first published in the City of Tacloban and venue for this case has been properly laid in accordance with Article 360 of the Revised Penal Code, the motion to quash the information herein filed by defendant Marcelo Soriano is hereby denied." (p. 6, Rollo)

The petitioner then filed a petition for certiorari and prohibition with prayer for a writ of preliminary injunction with the then Intermediate Appellate Court raising the same question of jurisdiction of the Regional Trial Court of Leyte to hear and decide the libel case on the merits.

The appellate court dismissed the petition in a decision dated September 12, 1985. It held that the Regional Trial

Court of Leyte had jurisdiction over the libel case. The appellate court also denied a motion for reconsideration. Hence, this petition.

The only issue to be threshed out in the instant petition is whether or not the Regional Trial Court of Leyte may try the libel case or whether or not it should be tried elsewhere.

The applicable law is Article 360 of the Revised Penal Code, as amended by Republic Act No. 1289 and Republic Act No. 4363. It provides:

"Persons responsible.-- Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

"The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

"The criminal action and civil action for damages in cases of written defamations, as provided for in this chapter shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: Provided, however, That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: x x x."

This Court in *Agbayani v. Sayo* (89 SCRA 699, [1979]) recapitulated the law as follows:

"1.

Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.

"2.

If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.

"3.

If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.

"4.

If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense." (at p.

705)

Both the trial court and the appellate court applied the rule that the jurisdiction of a court to try an offense is determined by the allegations of the complaint or information (*People v. Delfin*, 2 SCRA 911 [1961]) and since the information alleged that the libelous article was printed and first published in Tacloban City, the offense should be tried in Leyte.

The petition is impressed with merit.

We follow the "multiple publication" rule in the Philippines. Thus, in the cases of *Montinola v. Montalvo* (34 Phil. 662, [1916]) and *United States v. Sotto* (36 Phil. 389 [1917]), this Court ruled that each and every publication of the same libel constitutes a distinct offense. Stated more succinctly for purposes of ascertaining jurisdiction under Art. 360 of the Revised Penal Code, as amended, every time the same written matter is communicated such communication is considered a distinct and separate publication of the libel.

We explained this as follows:

"The common law as to causes of action for tort arising out of a single publication was to the effect that each communication of a written or printed matter was a distinct and separate publication of a libel contained therein, giving rise to a separate cause of action. This rule ('multiple publication' rule) is still followed in several American jurisdictions, and seems to be favored by the American Law Institute. Other jurisdictions have adopted the 'single publication' rule which originated in New York, under which any single integrated publication, such as one edition of a newspaper, book, or magazine, or one broadcast, is treated as a unit, giving rise to only one cause of action, regardless of the number of times it is exposed to different people... (50 Am. Jur. 2d 659 cited in *Time, Inc. v. Reyes*)" (39 SCRA 301, 313 [1971]).

Petitioner Marcelo B. Soriano was included as one of the accused in the libel case in his capacity as editor-publisher of the "Guardian." Article 360 of the Revised Penal Code provides that "the editor or business manager of a daily newspaper, magazine x x x shall be responsible for the defamations contained therein to the same extent as if he were the author thereof." Soriano's criminal liability, thereof, was based on a press release prepared in Tacloban City and mailed or delivered to various newspapers. The press release was the basis of the alleged libelous article contained in the "GUARDIAN." Thus, as far as Soriano is concerned, his criminal liability, if any, allegedly stemmed from the publication in the May 26 - June 1, 1984 issue of the GUARDIAN of an article captioned "IMPEACH TANTUICO CASE LOOMS" wherein the full text of the press release prepared by accused Cesar G. Villegas in Tacloban was reproduced. Obviously, as far as petitioner Marcelo B. Soriano is concerned, the requirement as regards the place where the libelous article was printed and first published must be construed as referring to the publication of the press release of accused Cesar Villegas in Soriano's newspaper "THE GUARDIAN."

The error of the trial court lies in its confusing the publication, whether mimeographed or otherwise, of a press release by Villegas in Tacloban City with the publication by a Metro Manila newspaper of that same press release together with various press releases or dispatches from other parts of the country. For purposes of complying with the jurisdictional requirements of Art. 360 of the Revised Penal Code, the liability of a Manila or Quezon City editor must be deemed as commencing with the publication of the allegedly libelous material in his newspaper and not with the typing or mimeographing of press releases by interested persons in different municipalities or cities, copies of which are sent to metropolitan newspapers for national publication. The amendments to Art. 360 were intended to free media persons from the intimidating harassment of libel suits filed in any place where a newspaper happens to be sold or circulated. The purpose behind the law would be negated or violated if the interpretation made by the trial court and appellate court is followed.

The May 26 - June 1, 1984 issue of THE GUARDIAN shows that the newspaper is published every Wednesday and Saturday with editorial and business offices located at Room 201, Llamas Building, 694 E. de los Santos Avenue, Cubao, Quezon City. The intended circulation is nationwide. There is no indication from the records before us, apart from the petitioner's receiving the press release and publishing it in the GUARDIAN, that he had a hand in preparation and distribution from Tacloban City.

As the respondent COA Chairman held office in Quezon City and the offending newspaper is published in Quezon City, the case should be filed with a Quezon City court.

The Solicitor General, assisted by Assistant Solicitor General Oswaldo D. Agcaoili and Solicitor Aurora Cortes-Jorge, disagree with the prosecution in this case. He states:

"A more circumspect reading of the information, insofar as petitioner Soriano and co-accused Bobby de la Cruz, Editor Publisher and Associate Editor, respectively, of The Guardian are concerned, shows that the criminal charges does not at all state that the libelous article against Tantuico was printed and first published in Tacloban City. Indeed, what the information merely recites is that said accused 'published/republished in 'The Guardian' dated May 26 - June 1, 1984, a weekly newspaper/magazine circulated in Tacloban City and nationwide, of which accused Marcelo B. Soriano and Bobby de la Cruz are the Editor Publisher and Associate Editor, respectively, x x x publicly imputing the crime of falsification of public documents and/or violation of election laws to said Chairman Francisco S. Tantuico, Jr., which publication in the said newspaper is captioned 'IMPEACH TANTUICO CASE LOOMS', quoted verbatim to wit: x x x.'

"As a matter of fact, what the criminal information does clearly assert as having been 'written/printed and first circulated/published in Tacloban City dated May 19, 1984' was the press release of accused Cesar G. Villegas which the city fiscal found to have likewise contained the malicious imputation against Tantuico. Apparently, this was made the basis, albeit mistakenly, by the respondent trial court in vesting jurisdiction upon itself over the libel case against petitioner whose only involvement in the imputed offense refers to the publication of the Guardian and not to the press release of accused Villegas. The error is made more apparent even from a reading of the information itself which shows that the Villegas press release was issued on May 19, 1984 which was earlier than the questioned publication of The Guardian which is dated May 26 - June 1, 1984.

"Even a recall of a copy of said issue of The Guardian (May 26 - June 1, 1984) will easily yield the fact that said newspaper was printed and first published in Quezon City where its publishing house is located. As such, the publication in The Guardian constituted a separate cause of action for libel which should have been filed in Quezon City. It is a settled jurisprudence that each separate publication of a libel constitutes a distinct crime of libel, although two libelous publications arose out of the same controversy and even if one was a partial reiteration of the first. (People v. Vicente Sotto, 36 Phil. 389; Montinola v. Montalvo, 34 Phil. 662).

"The foregoing having failed to evince any finding that the alleged libelous statements were printed and first published in Tacloban City, but were in fact printed and first published in Quezon City, and considering the admitted fact that Tantuico, at the time of the commission of the offense, was a public official whose office is located in Quezon City, the application of the provisions of Article 360 of the Revised Penal Code constrain a conclusion that the venue and jurisdiction over subject criminal case for libel should be lodged not in Tacloban City but in Quezon City." (pp. 75-77, Rollo)

This decision, in helping or making it easier for media people to meet their occupational hazard of libel suits, should by no means be viewed as encouraging irresponsible or licentious publications.

Public officers and private individuals who are wronged through an inordinate exercise by newspapermen or media of freedom of speech and of the press have every right to avail themselves of the legal remedies for libel. Media cannot hide behind the constitutional guarantee of a free press to maliciously and recklessly malign the persons and reputations of public or private figures through the publication of falsehoods or fabrications, the

sordid distortion of half-truths, or the playing up of human frailties for no justifiable end but to malign and titillate.

At the same time, the Court should be vigilant against all attempts to harass or persecute an independent press or to restrain and chill the free expression of opinions. In this case, the intent of the amendment is to avoid the harassment of media persons through libel suits instituted in distant or out-of-the-way towns by public officers who could more conveniently file cases in their places of work.

WHEREFORE, the instant petition is hereby GRANTED. The questioned decision and resolution of the appellate court are REVERSED and SET ASIDE. The Regional Trial Court of Leyte, Branch 7, Palo, Leyte is DIRECTED TO DISMISS Criminal Case No. 6136 in so far as petitioner Marcelo Soriano is concerned.

SO ORDERED.

Fernan, C.J., (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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