

FIRST DIVISION

[G.R. No. 120769, February 12, 1997]

**STANLEY J. FORTICH, PETITIONER, VS. COURT OF APPEALS AND
FELIX T. GALLERON, RESPONDENTS.
D E C I S I O N**

KAPUNAN, J.:

For over five years since August 1973, petitioner Stanley J. Fortich was employed as an area salesman of the soft drinks division of the San Miguel Corporation in Dipolog City, a job which required him to collect various sums of money from the retailers and buyers of the company along his designated route.

On June 5, 1979, petitioner received a Memorandum ordering him to stop plying his route and collecting the sums owed by customers to the company for the stated reason of his alleged "NONISSUANCE (SIC) OF EITHER CHANGE REFUND NOR OFFICIAL RECEIPT FOR EMPTIES RETRIEVED FROM OUTLETS WITH TEMPORARY CREDIT SALES."^[1] The order grounding petitioner, signed by herein respondent Felipe T. Carreon in his capacity as District Sales Supervisor, likewise directed petitioner to instead report directly "to the sales office every working day at the prescribed company time."^[2]

Following up on his first memorandum and alleging that petitioner misappropriated the amount of P1,605.00 from his collections (through non-issuance of invoices to several customers) private respondent, on June 11, 1975, submitted a second inter-office memorandum addressed to the Regional Sales Manager summarizing the findings of an initial investigation he conducted on the matter, which he concluded with the following paragraph:

"In addition, I would like to further inform management that S/M Stanley Fortich is an avid mahjong player and a cockfighting enthusiast. In spite of several advices, there seems to be no change in his lifestyle. Also, respondent had a similar case last September 11, 1978."^[3]

After further investigation by the company which found petitioner guilty of misappropriating company funds, petitioner was preventively suspended from his job. The order suspending petitioner also decreed his dismissal "upon receipt of clearance from the Ministry of Labor."^[4]

Claiming that the above-quoted second memorandum issued by the private respondent was "willfull, malicious and done in gross bad faith,"^[5] petitioner, on September 28, 1979 filed a complaint for "Damages Arising from Libel" with the Court of First Instance (now Regional Trial Court) of Zamboanga Del Norte. In his complaint, he alleged that:

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[T]he defendant has pictured the plaintiff in his report (Annex "B") as a thief, corrupt or dishonest man and even going to the extent of exposing in public the alleged vices of the plaintiff such as mahjong and cockfighting.

[T]he defendant is guilty of gross bad faith and malice in the highest degree for making and publishing a false, and libelous report for the purpose of putting down the good name and reputation of the plaintiff and his family.

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Petitioner then prayed that the trial court grant the total amount of P171,000.00 to him as moral and exemplary damages, attorney's fees and expenses of litigation.

On November 5, 1990, the Regional Trial Court rendered its decision^[7] in favor of herein petitioner, the dispositive portion of which states the following:

PREMISES CONSIDERED, the Court hereby renders judgment -

1. Ordering the defendant to pay to the plaintiff the following sums: (a) P150,000.00 for moral damages; (b) P50,000.00 for exemplary damages; (c) P20,000.00 for attorney's fees and (d) P1,000.00 for litigation expenses;
2. Dismissing the defendant's counterclaim for lack of merit; and
3. Ordering the defendant to pay the costs.^[8]

Principally contending in his assignment of errors that no actual malice existed or had been shown in respect to the questioned (second) memorandum and that in any case, the assailed letter was protected by the privileged communication rule, the private respondent appealed the trial court's decision to the Court of Appeals.

On February 21, 1995, respondent court reversed the trial court's decision on the ground that the memorandum was not libelous being "within the ambit of privileged communications." Motion for Reconsideration was denied by the Court of Appeals on May 31, 1995, hence, the instant petition for review on certiorari.

The appeal is not impressed with merit.

The provisions of law applicable to the case at bar are embodied in Articles 353 and 354 of the Revised Penal Code which state the following:

Art. 353. Definition of Libel. - A libel is 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.

Art. 354. Requirement for publicity. - Every defamatory imputation is