

SECOND DIVISION

[G.R. No. 176596, March 23, 2011]

JUDGE ADORACION G. ANGELES, PETITIONER, VS. HON. MANUEL E. GAITE, DEPUTY EXECUTIVE SECRETARY FOR LEGAL AFFAIRS, OFFICE OF THE PRESIDENT; HON. RAUL GONZALES, SECRETARY, AND HON. JOVENCITO ZUÑO, CHIEF STATE PROSECUTOR, BOTH OF THE DEPARTMENT OF JUSTICE (DOJ); HON. RAMON R. GARCIA (SUBSTITUTED BY HON. JOSEPH LOPEZ), CITY PROSECUTOR, ACP MARLINA N. MANUEL, AND ACP ADELIZA H. MAGNO-GUINGOYON, ALL OF THE MANILA PROSECUTION SERVICE; AND SSP EMMANUEL VELASCO, DEPARTMENT OF JUSTICE, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

Before us is a petition for review on *certiorari* filed by petitioner Adoracion G. Angeles, former Presiding Judge of the Regional Trial Court (RTC), Branch 121, Caloocan City, assailing the Decision^[1] dated August 30, 2006 and the Resolution^[2] dated February 8, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 87003. The antecedent facts are as follows:

It appears that sometime in June 1999, petitioner was charged of child abuse by her grandniece Maria Mercedes Vistan. The preliminary investigation of the complaint was assigned to State Prosecutor Emmanuel Y. Velasco (respondent Velasco) of the Department of Justice (DOJ). In a Resolution dated June 20, 1999, respondent Velasco filed a case against petitioner for 21 counts of Child Abuse under Republic Act (RA) No. 7610, otherwise known as the *Special Protection of Children against Child Abuse, Exploitation and Discrimination Act*. Petitioner filed a petition for review with the DOJ Secretary who, in a Resolution dated April 4, 2000, ordered the withdrawal of the Information against petitioner.

On July 7, 2000, petitioner filed with the DOJ an administrative complaint for Gross Misconduct, Gross Ignorance of the Law, Incompetence and Manifest Bad Faith against respondent Velasco, which the DOJ subsequently dismissed. Petitioner filed a motion for reconsideration, which the DOJ Secretary denied in a Resolution dated February 18, 2002. Petitioner then filed a Petition for Review^[3] with the Office of the President (OP) assailing the DOJ's Resolutions dismissing the administrative complaint she filed against respondent Velasco. The OP asked respondent Velasco to file his comment thereto. In his Comment,^[4] respondent Velasco stated among others:

x x x x

Herein respondent-appellee hereby manifests his challenge to petitioner-appellant to finally agree to the conduct of such investigation in order to determine the veracity of the following information which were provided very recently by unimpeachable sources from the judiciary, schoolmates and close friends of Judge ANGELES, to wit:

(a) That Judge ANGELES is still single because she belongs to the third sex (and there is nothing wrong for being so frankly.)

(b) In fact, Judge ANGELES is carrying an affair with a lady lawyer (still there is nothing wrong with this, everybody has the freedom whom to love.);

(c) But this lady lawyer is often seen with Judge ANGELES even in her courtroom. Said lawyer is the conduit or connection of those who has pending cases in her sala (now there's something terribly wrong with this.);

(d) That Judge Angeles was so insecure and jealous at the time her grandniece MARIA MERCEDES VISTAN was allegedly flirting with boys (there is something wrong here also because there is a manifestation of perversity and in fact said jealousy led to the abuse of the child.)^[5]

On the basis of the above statements which petitioner claimed to be a direct attack on her character and reputation as a public servant, she filed a Complaint^[6] for four counts of libel against respondent Velasco before the Office of the City Prosecutor of Manila.

In a Resolution^[7] dated August 13, 2003, Assistant City Prosecutor (ACP) Adeliza Magno-Gingoyon recommended the dismissal of petitioner's complaint for Libel due to insufficiency of evidence and/or lack of merit. The pertinent portions of the Resolution read:

A charge for libel will only be sufficient if the words uttered or stated are calculated to induce the hearers or readers to suppose and understand that the persons against whom they are uttered were guilty of certain offenses, or are sufficient to impeach their honesty, virtue or reputation, or to hold the persons up to public ridicule.

Such calculation does not and will not arise in this case since complainant herself has not clearly manifested if being single and/or member of the third sex; or carrying an affair with a lady lawyer; or being seen in her courtroom with the said lawyer; or feeling insecure and jealous of her grandniece Ma. Mercedes Vistan, is on her own view, a crime, vice or defect or an act of omission which tends to cause her dishonor, discredit or contempt.

Beyond the omission of the complainant to elaborate on the defamatory

character of the statements she quoted, a reading of the portion of the reply/comment of the respondent where the questioned statements were lifted, particularly in paragraph 55 of the said reply/comment, reveals that respondent did not categorically declare therein that Judge Angeles is really single and belongs to the third sex; is carrying an affair with a lady lawyer who is often seen in her courtroom; and was so insecure and jealous of her grandniece.

Quite vividly, respondent premised his disclosures with a challenge to the complainant to agree to the conduct of an investigation to determine the veracity of the information he cited therein, thereby conveying that his disclosures are more of questions begging for answers rather than a direct imputation of any wrongdoing.

Even assuming *arguendo* that complainant was defamed or maligned by the subject statements, we cannot, nonetheless, find any presumptive malice therein because the said statements can be considered as privileged communication for they were made in the course of official proceedings before the Office of the President.

Although the said proceedings may not be strictly considered as judicial in nature, they are akin thereto as they involve litigation or hearing of contentious issues, albeit in a purely administrative matter.

The subject statements are relevant to the issues in the said administrative proceedings for they revolve around the moral fitness of the complainant to be an accuser of the respondent for acts done while the latter is in the public service and they are intended to further prove the incredibility of her accusations by making the impression that complainant herself may not be "coming to court with clean hands."

While it may be argued that the subject statements are not really germane to the issues raised in the complainant's petition for review, suffice it to state that "it is the rule that what is relevant or pertinent should be liberally considered to favor the writer, and the words are not to be scrutinized with the microscopic intensity."

Malice does not exist in this case. It is only in every defamatory imputation where malice can be presumed (see Article 354, 1st par., Revised Penal Code). Considering that, as afore-discussed, the subject statements have not been amply shown to be defamatory to the complainant, malice cannot, therefore, be presumed in the execution thereof, conformably to the above-stated provisions of the penal code. Neither can we attribute malice in fact on the part of the respondent when he wrote the subject statements considering that:

- (1) He did not volunteer to provide that information to the reviewing officials in the Office of the President out of a single desire to malign the complainant since, apart from making the alleged derogatory statements in only a portion of his reply/comment, he has submitted his said reply/comment to

the Office of the President primarily in compliance with the Order dated June 10, 2002 of Deputy Executive secretary Arthur P. Autea in O.P. Case No. 02-D-187.

The subject statements are just, therefore, incidental to the litany of defenses in his reply/comment.

It has been held that if the matter charged as libelous is only an incident in act which has another objective, there is no libel; and

(2) In the questioned statements, respondent himself opined that there is nothing wrong if Judge Angeles belongs to the third sex or has an affair with a lady lawyer, clearly signifying that he has not treated such information as impugning complainant's honor.

While he may have stated therein that there's something wrong with the alleged connection of a lady lawyer with those who have pending cases in complainant's sala or in the latter's insecurity at her grandniece, he has not, nevertheless, averred, or even implied, just for the sake of maligning Judge Angeles, that she has, indeed, granted favors to the lady lawyer often seen in her courtroom or that she has actually manifested perversity in her relation with her grandniece mentioned.^[8]

Petitioner filed a motion for reconsideration, which was denied in a Resolution^[9] dated December 12, 2003. In denying the motion, ACP Marlina N. Manuel found that there was no concrete showing that respondent made a categorical or direct malicious accusation or imputation of any crime or vice against petitioner; that apparently, respondent entertaining uncertainty of the informations gathered called for an investigation to determine the veracity or truth thereof.

Dissatisfied, petitioner filed with the DOJ Secretary a Petition for Review^[10] assailing the dismissal of her complaint for Libel as well as her motion for reconsideration.

In a Resolution^[11] dated March 17, 2004, the Petition for Review was dismissed by Chief State Prosecutor Jovencito R. Zuño (CSP Zuño), ruling as follows:

We have carefully examined the record, but found no cogent reason to justify a reversal of the assailed resolution. The statements alleged to be libelous are privileged, since they were made by respondent in legitimate defense of his own interest, not to mention that the said statements bear some reasonable relation or reference to the subject matter of the inquiry or may be possibly relevant to it. Neither may it be said that respondent acted with malice or ill-will against petitioner when he informed the President of matters of public concern like the conduct or character of the latter which need imperative remedial actions.^[12]

X X X X

Petitioner filed a motion for reconsideration with a motion for inhibition of CSP Zuño, which the DOJ in a Resolution^[13] dated June 25, 2004 denied the motion with finality. In so ruling, DOJ Acting Secretary Merceditas N. Gutierrez said:

The Reply/Comment in OP Case No. 02-D-187 motivated solely by a desire of respondent to defend himself against pending charges, is privileged for being an exercise of the natural right of a person accused of a crime in order to bring to the attention of the President who is to pass upon his guilt all such considerations he thinks may influence her judgment in his behalf, even though he may in so doing incidentally disparage private character.

As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged, the test should be the good faith of respondent. Since under the circumstances, respondent believed that the language used by him in the paragraph in question would have a tendency to move the discretion of the President to grant the relief asked, it must be deemed relevant to the issues raised in the pleadings that it may become the subject of inquiry in the course of the hearing.

Thus, as the Comment sent by him to the President in the performance of a legal duty, as an explanation of the matter contained in the order sent to him by the President, although employing a language somewhat harsh and uncalled for, is excusable in the interest of public policy, respondent, rather is not guilty of libel.^[14]

On July 15, 2004, petitioner filed a Petition for Review^[15] before the OP questioning the DOJ Resolutions dismissing her petition.

On July 29, 2004, the OP issued an Order^[16] dismissing the Petition for Review filed by petitioner saying:

Under Memorandum Circular (MC) No. 58 dated 29 May 2003, no appeal from or petition for review of the decision or resolution of the Secretary of Justice on preliminary investigation of criminal cases shall be entertained by the Office of the President, except those involving offenses punishable by *reclusion perpetua* to death. An appeal or petition not clearly falling within the jurisdiction of the Office of the President, as set forth above, shall be dismissed outright.

The basic complaint of petitioner and the appealed resolutions of the Secretary of Justice involve the offense of Libel defined in Article 353 of the Revised Penal Code (RPC). By whatever means committed, libel carries only the penalty of *prision correccional* in its minimum and medium periods or fine or both. (Art. 355, RPC).