

THIRD DIVISION

[G.R. No. 167764, October 09, 2009]

**VICENTE FOZ, JR. AND DANNY G. FAJARDO, PETITIONERS, VS.
PEOPLE OF THE PHILIPPINES, RESPONDENT.**

DECISION

PERALTA, J.:

Before the court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA), Cebu City, dated November 24, 2004 in CA-G.R. CR No. 22522, which affirmed the Decision of the Regional Trial Court (RTC), Branch 23, Iloilo City, dated December 4, 1997 in Criminal Case No. 44527 finding petitioners guilty beyond reasonable doubt of the crime of libel. Also assailed is the CA Resolution^[2] dated April 8, 2005 denying petitioners' motion for reconsideration.

In an Information^[3] dated October 17, 1994 filed before the RTC of Iloilo City, petitioners Vicente Foz, Jr. and Danny G. Fajardo were charged with the crime of libel committed as follows:

That on or about the 5th day of July, 1994 in the City of Iloilo, Philippines and within the jurisdiction of this court, both the accused as columnist and Editor-Publisher, respectively, of Panay News, a daily publication with a considerable circulation in the City of Iloilo and throughout the region, did then and there willfully, unlawfully and feloniously with malicious intent of impeaching the virtue, honesty, integrity and reputation of Dr. Edgar Portigo, a physician and medical practitioner in Iloilo City, and with the malicious intent of injuring and exposing said Dr. Edgar Portigo to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on July 5, 1994, a certain article entitled "MEET DR. PORTIGO, COMPANY PHYSICIAN," quoted verbatim hereunder, to wit:

MEET DR. PORTIGO,
COMPANY PHYSICIAN

PHYSICIAN (sic) are duly sworn to help to do all their best to promote the health of their patients. Especially if they are employed by a company to serve its employees.

However, the opposite appears to be happening in the Local San Miguel Corporation office, SMC employees are fuming mad about their company physician, Dr. Portigo, because the

latter is not doing well in his sworn obligation in looking after the health problems of employees, reports reaching Aim.. Fire say.

One patient, Lita Payunan, wife of employee Wilfredo Payunan, and residing in Burgos, Lapaz, Iloilo City, has a sad tale to say about Dr. Portigo. Her story began September 19 last year when she felt ill and had to go to Dr. Portigo for consultation. The doctor put her under observation, taking seven months to conclude that she had rectum myoma and must undergo an operation.

Subsequently, the family sought the services of a Dr. Celis and a Dr. de los Reyes at Doctor's Hospital. Incidentally, where Dr. Portigo also maintains a clinic. Dr. Portigo got angry, sources said, after knowing that the family chose a surgeon (Dr. Celis) on their own without his nod as he had one to recommend.

Lita was operated by Dr. de los Reyes last March and was released from the hospital two weeks after. Later, however, she again complained of difficulty in urinating and defecating[. On] June 24, she was readmitted to the hospital.

The second operation, done by Dr. Portigo's recommendee, was devastating to the family and the patient herself who woke to find out her anus and vagina closed and a hole with a catheter punched on her right side.

This was followed by a bad news that she had cancer.

Dr. Portigo recommended another operation, this time to bore another hole on the left side of Lita. But a Dr. Rivera to whom he made the referral frankly turned it down because it would only be a waste of money since the disease was already on the terminal state.

The company and the family spent some P150,000.00 to pay for the wrong diagnosis of the company physician.

My sympathy for Lita and her family. May the good Lord, Healer of all healers, be on your side, May the Healer of all healers likewise touch the conscience of physicians to remind them that their profession is no license for self-enrichment at the expense of the poor. But, sad to say, Lita passed away, July 2, 1994.

Lita is not alone. Society is replete with similar experience where physicians treat their patients for profits. Where physicians prefer to act like agents of multinational corporations prescribing expensive drugs seen if there are equivalent drugs sold at the counter for much lower price. Yes, Lita, we also have hospitals, owned by a so-called charitable

religious institutions and so-called civic groups, too greedy for profits. Instead of promoting baby-and mother-friendly practices which are cheaper and more effective, they still prefer the expensive yet unhealthy practices.

The (sic) shun breast feeding and promote infant milk formula although mother's milk is many times cheaper and more nutritious (sic) than the brands they peddle. These hospitals separate newly born from their moms for days, conditioning the former to milk formula while at the same time stunting the mother's mammalia from manufacturing milk. Kadiri to death!

My deepest sympathy to the bereaved family of Mrs. Lita Payunan who died July 2, 1994, Her body lies at the Payunan residence located at 236-G Burgos St., Lapaz, Iloilo City. May you rest in peace, Inday Lita.

wherein said Dr. Portigo was portrayed as wanting in high sense of professional integrity, trust and responsibility expected of him as a physician, which imputation and insinuation as both accused knew were entirely false and malicious and without foundation in fact and therefore highly libelous, offensive and derogatory to the good name, character and reputation of the said Dr. Edgar Portigo.

CONTRARY TO LAW.^[4]

Upon being arraigned^[5] on March 1, 1995, petitioners, assisted by counsel *de parte*, pleaded not guilty to the crime charged in the Information. Trial thereafter ensued.

On December 4, 1997, the RTC rendered its Decision^[6] finding petitioners guilty as charged. The dispositive portion of the Decision reads:

WHEREFORE, in the light of the facts obtaining and the jurisprudence aforecited, JUDGMENT is hereby rendered finding both accused Danny Fajardo and Vicente Foz, Jr. GUILTY BEYOND REASONABLE DOUBT for the crime of Libel defined in Article 353 and punishable under Article 355 of the Revised Penal Code, hereby sentencing aforementioned accused to suffer an indeterminate penalty of imprisonment of Three (3) Months and Eleven (11) Days of Arresto Mayor, as Minimum, to One (1) Year, Eight (8) Months and Twenty-One (21) Days of Prision Correccional, as Maximum, and to pay a fine of P1,000.00 each.^[7]

Petitioners' motion for reconsideration was denied in an Order^[8] dated February 20, 1998.

Dissatisfied, petitioners filed an appeal with the CA.

On November 24, 2004, the CA rendered its assailed Decision which affirmed *in toto*

the RTC decision.

Petitioners filed a motion for reconsideration, which the CA denied in a Resolution dated April 8, 2005.

Hence, herein petition filed by petitioners based on the following grounds:

I. THE COURT OF APPEALS ERRED IN FINDING THE SUBJECT ARTICLE "LIBELOUS" WITHIN THE MEANING AND INTENDMENT OF ARTICLE 353 OF THE REVISED PENAL CODE.

II. THE COURT OF APPEALS ERRED IN FINDING THE EXISTENCE OF MALICE IN THIS CASE AND IN NOT FINDING THAT THE SUBJECT ARTICLE IS CONSTITUTIONALLY PROTECTED AS PRIVILEGED COMMUNICATIONS.

III. THE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF PETITIONER FAJARDO WHO HAPPENS TO BE MERELY PUBLISHER OF *PANAY NEWS* AND COULD NOT POSSIBLY SHARE ALL THE OPINIONS OF THE NEWSPAPER'S OPINION COLUMNISTS.^[9]

Petitioners argue that the CA erred in finding that the element of defamatory imputation was satisfied when petitioner Foz, as columnist, portrayed Dr. Portigo as an incompetent doctor and an opportunist who enriched himself at the expense of the poor. Petitioners pose the question of whether a newspaper opinion columnist, who sympathizes with a patient and her family and expresses the family's outrage in print, commits libel when the columnist criticizes the doctor's competence or lack of it, and such criticism turns out to be lacking in basis if not entirely false. Petitioners claim that the article was written in good faith in the belief that it would serve the public good. They contend that the CA erred in finding the existence of malice in the publication of the article; that no malice in law or actual malice was proven by the prosecution; and that the article was printed pursuant to the bounden duty of the press to report matters of public interest. Petitioners further contend that the subject article was an opinion column, which was the columnist's exclusive views; and that petitioner Fajardo, as the editor and publisher of *Panay News*, did not have to share those views and should not be held responsible for the crime of libel.

The Solicitor General filed his Comment, alleging that only errors of law are reviewable by this Court in a petition for review on *certiorari* under Rule 45; that petitioners are raising a factual issue, *i.e.*, whether or not the element of malice required in every indictment for libel was established by the prosecution, which would require the weighing anew of the evidence already passed upon by the CA and the RTC; and that factual findings of the CA, affirming those of the RTC, are accorded finality, unless there appears on records some facts or circumstance of weight which the court may have overlooked, misunderstood or misappreciated, and which, if properly considered, may alter the result of the case – a situation that is not, however, obtaining in this case.

In their Reply, petitioners claim that the first two issues presented in their petition do not require the evaluation of evidence submitted in court; that malice, as an

element of libel, has always been discussed whenever raised as an issue via a petition for review on *certiorari*. Petitioners raise for the first time the issue that the information charging them with libel did not contain allegations sufficient to vest jurisdiction in the RTC of Iloilo City.

The Court finds that the threshold issue for resolution is whether or not the RTC of Iloilo City, Branch 23, had jurisdiction over the offense of libel as charged in the Information dated October 17, 1994.

The Court notes that petitioners raised for the first time the issue of the RTC's jurisdiction over the offense charged only in their Reply filed before this Court and finds that petitioners are not precluded from doing so.

In *Fukuzume v. People*,^[10] the Court ruled:

It is noted that it was only in his petition with the CA that Fukuzume raised the issue of the trial court's jurisdiction over the offense charged. Nonetheless, the rule is settled that an objection based on the ground that the court lacks jurisdiction over the offense charged may be raised or considered *motu proprio* by the court at any stage of the proceedings or on appeal. Moreover, jurisdiction over the subject matter in a criminal case cannot be conferred upon the court by the accused, by express waiver or otherwise, since such jurisdiction is conferred by the sovereign authority which organized the court, and is given only by law in the manner and form prescribed by law. While an exception to this rule was recognized by this Court beginning with the landmark case of *Tijam vs. Sibonghanoy*, wherein the defense of lack of jurisdiction by the court which rendered the questioned ruling was considered to be barred by laches, we find that the factual circumstances involved in said case, a civil case, which justified the departure from the general rule are not present in the instant criminal case.^[11]

The Court finds merit in the petition.

Venue in criminal cases is an essential element of jurisdiction. The Court held in *Macasaet v. People*^[12] that:

It is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases the offense should have been committed or any one of its essential ingredients took place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. Thus, it cannot take jurisdiction over a person charged with an offense allegedly committed outside of that limited territory. Furthermore, **the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. And once it is so shown, the court may validly take cognizance of the case.** However, if the evidence adduced during the trial show that the offense was committed somewhere else, the court