

FIRST DIVISION

[G.R. NO. 147524, June 20, 2006]

SEGUNDO S. LIM, PETITIONER, VS. COURT OF APPEALS, HON. SIMEON P. DUMDUM, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 7, CEBU CITY, THE PEOPLE OF THE PHILIPPINES, AND CIRSE "CHOY" TORRALBA, RESPONDENTS.

DECISION

AUSTRIA-MARTINEZ, J.:

In Criminal Case No. CBU-26582, petitioner Segundo S. Lim, together with Boy "BG" Guinguing, were found guilty of libel by the Regional Trial Court of Cebu City, Branch 7, in a Decision dated May 17, 1994, the dispositive portion of which reads as follows:

WHEREFORE, the court finds accused, SEGUNDO LIM and BOY "BG" GUINGGUING, GUILTY, beyond reasonable doubt, as principals of the crime of Libel as charged in the Information, defined and penalized in Art. 353 in relation to Art. 355 of the Revised Penal Code, and hereby sentences the said accused to a prison term of, ranging from, One (1) year, Eight (8) months and Twenty-one (21) days as minimum, to Two (2) years, Eleven (11) months and Eleven (11) days of *prision correccional*, as maximum; to indemnify the complainant, damages in the amount of P50,000.00 and to pay the costs.

SO ORDERED.^[1]

The criminal case for libel was filed by private respondent Cirse "Choy" Torralba after petitioner caused the publication of records of criminal cases filed against Torralba, including photographs of his arrest, through a one-page advertisement paid for by petitioner in the Sunday Post, a weekly publication edited and published by petitioner's co-accused, Boy "BG" Guinguing.

On appeal, the Court of Appeals (CA) affirmed the conviction in a Decision dated July 29, 1996, although the penalty was modified. The decretal portion of the decision reads:

WHEREFORE, premises considered, accused-appellants are sentenced to an indeterminate penalty of TWO (2) MONTHS and ONE (1) DAY of *arresto mayor*, as minimum to ONE (1) YEAR, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of *prision correccional*, as maximum. Except as thus MODIFIED, the decision appealed from is AFFIRMED en [sic] toto, with costs against accused-appellants.

SO ORDERED.^[2]

Petitioner filed a petition for review with the Court docketed as G.R. No. 126701 but this was denied in a Resolution dated December 4, 1996 due to petitioner's failure to comply with Revised Circular No. 1-88 in that the petition did not contain a certified true copy of the resolution denying petitioner's motion for reconsideration.^[3] Said resolution became final and executory and entry of judgment was made on March 20, 1997.^[4]

Meanwhile, petitioner's co-accused, Boy "BG" Guingguing, filed with the Court a petition for review dated April 4, 1997, docketed as G.R. No. 128959, and entitled *Ciriaco "Boy" Guingguing v. The Honorable Court of Appeals and the People of the Philippines*.

Thereafter, in an Order dated May 26, 2000, the trial court granted a motion filed by the private prosecutor praying for the promulgation of the judgment of conviction against petitioner. Promulgation was set on June 6, 2000.^[5] Petitioner filed a motion for reconsideration but this was denied by the trial court in its Resolution dated September 18, 2000.^[6]

Thus, petitioner filed a special civil action for *certiorari* and prohibition with the CA, docketed as CA-G.R. SP No. 60952. On February 5, 2001, the CA promulgated its decision in the above-mentioned case, denying due course and dismissing the petition. The dispositive portion of the decision provides:

WHEREFORE, the foregoing considered, the petition is denied due course and is hereby DISMISSED. The temporary restraining order issued on 03 October 2000 became *functus officio* after the expiration of 60 days from its issuance.

SO ORDERED.^[7]

Consequently, in an Order dated March 19, 2001, the trial court, upon motion of the State and the private prosecutor, set the promulgation of the judgment of conviction of petitioner on April 26, 2001.^[8]

In the meantime, petitioner filed a motion for reconsideration with the CA but the same was denied in a Resolution dated June 22, 2001 for lack of merit.^[9]

The foregoing antecedents constrained petitioner to file the present petition for *certiorari* and prohibition with urgent prayer for the issuance of a writ of preliminary injunction or temporary restraining order.

In a Resolution dated April 27, 2001, the Court granted petitioner's prayer for the issuance of a temporary restraining order enjoining the trial court from enforcing its Order dated March 19, 2001. In the same resolution, respondents were required to file their comment to the petition.^[10]

Petitioner asserts that his co-accused Guingguing's petition before the Court (G.R. No. 128959) is still pending resolution and considering that their respective liabilities are interwoven, prudence dictates that a final decision by the Court in G.R. No. 128959 should be awaited.^[11] Notably, these are the same arguments that petitioner raised in his petition with the CA and opposition to the private

prosecution's motion for promulgation of judgment before the trial court.

Instead of filing a comment, the Office of the Solicitor General (OSG) submitted a Manifestation in Lieu of Comment (With Recommendation for the Reversal of the Assailed Order/Ruling), wherein it agrees with petitioner that promulgation of the judgment of conviction should be stayed pending resolution of G.R. No. 128959 by the Court. Citing Rule 122, Section 11 of the Rules of Criminal Procedure, the OSG opines that the petitioner's conviction is not yet final and executory despite entry of judgment, and that in case the Court renders a judgment of acquittal in favor of Guingguing, then petitioner should benefit from it. There would be an inconsistency, according to the OSG, if petitioner were held guilty of libel while Guingguing is not despite that the charge arose from the same written article.^[12] Reasons of justice and equity also dictate the stay of the promulgation and execution of judgment, the OSG states.^[13]

On September 5, 2005, the Court required the parties to submit their respective Memoranda.^[14]

In what seems to be providential for petitioner, the Court rendered a decision^[15] in G.R. No. 128959 on September 30, 2005, acquitting Guingguing of the charge of libel. The Court quotes the pertinent portions of the Decision, *viz.*:

As it has been established that complainant was a public figure, it was incumbent upon the prosecution to prove actual malice on the part of Lim and petitioner when the latter published the article subject matter of the complaint. Set otherwise, the prosecution must have established beyond reasonable doubt that the defendants knew the statements in the advertisement was false or nonetheless proceeded with reckless disregard as to publish it whether or not it was true.

It should thus proceed that if the statements made against the public figure are essentially true, then no conviction for libel can be had. Any statement that does not contain a provably false factual connotation will receive full constitutional protection. An examination of the records of this case showed that the précis of information contained in the questioned publication were actually true. Thus, complainant himself testified:

x x x

From the foregoing, it is clear that there was nothing untruthful about what was published in the Sunday Post. The criminal cases listed in the advertisement as pending against the complainant had indeed been filed. It may have been inconvenient for the complainant that these matters may have been divulged, yet such information hardly falls within any realm of privacy complainant could invoke, since the pendency of these criminal charges are actually matters of public record.

The information, moreover, went into the very character and integrity of complainant to which his listening public has a very legitimate interest. Complainant hosts a public affairs program, one which he himself claimed