

## SECOND DIVISION

[ G.R. NO. 128959, September 30, 2005 ]

**CIRIACO 'BOY' GUINGGUING, PETITIONER, VS. THE HONORABLE  
COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

The liberty of the press is indeed essential. Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.

-Benjamin Franklin<sup>[1]</sup>

The right of free expression stands as a hallmark of the modern democratic and humane state.<sup>[2]</sup> Not only does it assure a person's right to say freely what is thought freely, it likewise evinces the polity's freedom from psychological insecurity. This fundamental liberty is translated into the constitutional guarantee that no law shall be passed abridging the freedom of speech, of expression, or the press,<sup>[3]</sup> contained in the Bill of Rights,<sup>[4]</sup> which itself obtains a position of primacy in our fundamental law.<sup>[5]</sup>

Criminal libel laws present a special problem. At face value, they might strike as laws passed that abridge the freedom of speech, expression, or the press. Whatever seeming conflict between these two precepts has long been judicially resolved with the doctrine that libelous speech does not fall within the ambit of constitutional protection. Nonetheless, in ascertaining what class of materials may be considered as libelous, the freedom of expression clause, its purposes as well as the evils it guards against, warrant primordial consideration and application.

Before this Court is a *Petition for Review* under Rule 45 of the 1997 Rules of Civil Procedure, assailing the *Decision*<sup>[6]</sup> and the *Resolution*<sup>[7]</sup> of the Court of Appeals (CA) dated 29 July 1996 and 3 October 1996, respectively, in CA-G.R. CR No. 16413. The CA affirmed with modification<sup>[8]</sup> the decision<sup>[9]</sup> rendered by the Regional Trial Court (RTC), Branch 7 of Cebu City, finding Ciriaco "Boy" Guingguing (petitioner) and Segundo Lim (Lim) guilty beyond reasonable doubt of the crime of libel. This petition for certiorari was filed by petitioner alone, hence the verdict of guilt with respect to Lim had already become final and executory.

The antecedent facts follow.

This case originated from a criminal complaint for libel filed by Cirse "Choy" Torralba (complainant) against Lim and petitioner under Criminal Case No. CBU-26582. Complainant was a broadcast journalist who handled two programs for radio stations

DYLA and DYFX. The radio stations were based in Cebu City but the programs were aired over a large portion of the Visayas and Mindanao.<sup>[10]</sup>

On 13 October 1991, Lim caused the publication of records of criminal cases filed against complainant as well as photographs<sup>[11]</sup> of the latter being arrested. These were published by means of a one-page advertisement paid for by Lim in the Sunday Post, a weekly publication edited and published by petitioner. The Sunday Post was circulated in the province of Bohol, as well as in the Visayas and Mindanao.<sup>[12]</sup> The full text of the advertisement which was the basis of the information<sup>[13]</sup> for libel reads:

#### REQUEST FOR PUBLIC SERVICE

ATTN: RADIOMAN CHOY TORRALBA, STATION DYFX, CEBU CITY

TEXT: IN THE INTEREST OF PUBLIC SERVICE, PLEASE DO ENLIGHTEN ME REGARDING THE DISPOSITION OF THE FOLLOWING WHICH APPEAR HEREUNDER. THE CASES WERE FOUND IN THE BLOTTER OF THE CEBU CITY POLICE DEPARTMENT. PLEASE DO TELL ME THE STATUS OF THOSE CASES, WHETHER THEY HAVE BEEN DISMISSED, ARCHIVED AND/OR PENDING.

Name: CIRSE 'CHOY' TORRALBA

CRIM. CASE NO. R-43035  
FOR: MALICIOUS MISCHIEF  
DATE FILED: MAY 10, 1979  
COMPLAINANTS: DR. JOVENAL ALMENDRAS  
ADDRESS: ALMENDRAS ST., MABOLO, CEBU CITY  
MR. VICTORIANO VELOSO  
ADDRESS: 117 HIPODROMO, MABOLO, CEBU CITY  
DISPOSITION: PENDING ARREST

CRIM. CASE NO. 17984-R  
FOR : ESTAFA  
DATE FILED: July 12, 1982  
COMPLAINANTS: MR. PIO Y. GO AND  
MRS. ROSALITA R. ROLDAN  
ADDRESS: c/o 2<sup>nd</sup> Floor Martinez Bldg.  
(ALPHA MKTG., INC.),  
Jones Ave., Cebu City  
DISPOSITION: PENDING ARREST

CRIM. CASE NO. 14843-R  
FOR: SERIOUS PHYSICAL INJURIES  
DATED FILED: APRIL 28, 1980  
COMPLAINANTS:  
ADDRESS:  
DISPOSITION: PROVISIONALLY DISMISSED  
DATED: APRIL 14, 1991

NOT TOO LONG AGO, I RECEIVED THE FOLLOWING NEWSPAPER CLIPPING COURTESY OF A CEBU CITY CONCERNED CITIZEN. THE CAPTION STORY BELOW TELLS ALL. IF YOU KNOW WHO THE BUSINESSMAN ALLUDED TO IN THE CAPTION, PLEASE DO TELL ME.

[Thereafter followed by a picture of a person with face blotted out being arrested and an inset picture of the same person with face likewise blotted out, being detained, these pictures being followed by the caption, which states]:

'ESTAFA CASE. Members of Cebu City Police Intelligence group under Lt. Col. Eduardo Ricardo arrested last night a businessman (extreme left) for his alleged involvement in estafa case filed by APOCEMCO. Left photo a member of the team serves the warrant of arrest order issued by CEBU RTC Judge German Lee.

ANOTHER CLIPPING WHICH IDENTIFIED BUSINESSMAN CHOY TORRALBA TO HAVE BEEN SERVED A WARRANT OF ARREST IN A (P)LUSH UPTOWN HOTEL IN CEBU CITY BY OPERATIVES OF THE CEBU CITY POLICE. NOW TELL ME, IS IT YOU THE SAME CHOY TORRALBA REFERRED TO IN THE CAPTION STORY. IF INDEED YOU ARE THE ONE AND THE SAME WHO APPEARED IN THE PICTURE BELOW, PLEASE TO (sic) INFORM ME.:

[Thereafter followed by another picture, this time, the face of the person being arrested is clearly shown to be that of Cirse Choy Torralba, followed by this caption.]

SERENE EVENING: The otherwise serene evening enjoyed by businessman Choy Torralba (left) in a plush uptown Hotel was disturbed by operatives (right) of the Cebu City Police under P/Lt/Col. Eduardo Ricardo just to serve on the former a warrant of arrest issued by Cebu RTC Judge German Lee relative to the suit filed by Apocemco against the businessman (PR)

THANK YOU, AND MY BEST REGARDS.

PAID SPACE  
LIM<sup>[14]</sup>

BY: (sgd.) SEGUNDO

Asserting *inter alia* that he had been acquitted and the case/s referred to had already been settled, complainant sought Lim and petitioner's conviction for libel. At the same time, he asked for moral, compensatory and exemplary damages as well as attorney's fees because the publication allegedly placed him in public contempt and ridicule. It was claimed that the publication was also designed to degrade and malign his person and destroy him as a broadcast journalist.<sup>[15]</sup>

Lim, in his defense, claimed that complainant was allegedly making scurrilous attacks against him and his family over the airwaves. Since Lim had no access to radio time, he opted for paid advertisements via newspaper to answer the attacks,<sup>[16]</sup> as a measure of self-defense. Lim also argued that complainant, as a media man and member of the fourth estate, occupied a position almost similar to a public functionary and should not be onion-skinned and be able to absorb the thrust of

public scrutiny.<sup>[17]</sup>

After trial, the lower court concluded that the publication complained of was indeed libelous.<sup>[18]</sup> Declaring that malice is the most important element of libel, it held that the same was present in the case because every defamatory publication *prima facie* implies malice on the part of the author and publisher towards the person subject thereof.<sup>[19]</sup> The lower court gave no credence to Lim and petitioner's argument that the publication was resorted to in self-defense.

The trial court likewise disregarded the insulative effects of complainant's status as a mediaman to the prosecution of the criminal libel charge. The publication of a calumny even against public officers or candidates for public office, according to the trial court, is an offense most dangerous to the people. It deserves punishment because the latter may be deceived thereby and reject the best and deserving citizens to their great injury.<sup>[20]</sup> It further held that a private reputation is as constitutionally protected as the enjoyment of life, liberty and property such that anybody who attacks a person's reputation by slanderous words or libelous publications is obliged to make full compensation for the damage done.<sup>[21]</sup>

On appeal, the CA modified the penalty imposed but it affirmed the RTC's finding of guilt. The CA likewise held that self-defense was unavailing as a justification since the defendant should not go beyond explaining what was previously said of him. The appellate court asserted that the purpose of self-defense in libel is to repair, minimize or remove the effect of the damage caused to him but it does not license the defendant to utter blow-for-blow scurrilous language in return for what he received. Once the defendant hits back with equal or more scurrilous remarks unnecessary for his defense, the retaliation becomes an independent act for which he may be liable.<sup>[22]</sup> For this reason, the CA refused to sanction the invocation of self-defense.

Petitioner now comes before this Court praying for the reversal of the judgment against him. Petitioner contends *inter alia* that as editor-publisher of the Sunday Post and as a member of the fourth estate, the lower courts' finding of guilt against him constitutes an infringement of his constitutional right to freedom of speech and of the press.<sup>[23]</sup> Petitioner likewise faults the lower courts' failure to appreciate their invocation of self-defense.

For resolution of this Court, therefore, is the fundamental question of whether the publication subject matter of the instant case is indeed libelous. While the findings and conclusions of the lower courts are rigid in their application of the strict letter of the law, the issue seems more complex than it appears at first blush. The Court is compelled to delve deeper into the issue considering that libel principles formulated at one time or another have waxed and waned through the years, in the constant ebb and flow of judicial review.<sup>[24]</sup> A change in the factual milieu of a case is apt to evoke a change in the judgment applicable. Viewed in this context, the petition has merit and the judgment appealed from must be reversed.

*Criminal Libel vis-à-vis the  
Guarantee of Free Speech*

Under our law, criminal libel is defined as 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.<sup>[25]</sup> Thus, the elements of libel are: (a) imputation of a discreditable act or condition to another; (b) publication of the imputation; (c) identity of the person defamed; and, (d) existence of malice.<sup>[26]</sup>

Originally, the truth of a defamatory imputation was not considered a defense in the prosecution for libel. In the landmark opinion of England's Star Chamber in the *Libelis Famosis* case in 1603, two major propositions in the prosecution of defamatory remarks were established: first, that libel against a public person is a greater offense than one directed against an ordinary man, and second, that it is immaterial that the libel be true.<sup>[27]</sup> These propositions were due to the fact that the law of defamatory libel was developed under the common law to help government protect itself from criticism and to provide an outlet for individuals to defend their honor and reputation so they would not resort to taking the law into their own hands.<sup>[28]</sup>

Our understanding of criminal libel changed in 1735 with the trial and acquittal of John Peter Zenger for seditious libel in the then English colony of New York. Zenger, the publisher of the New-York Weekly Journal, had been charged with seditious libel, for his paper's consistent attacks against Colonel William Cosby, the Royal Governor of New York. In his defense, Zenger's counsel, Andrew Hamilton, argued that the criticisms against Governor Cosby were "the right of every free-born subject to make when the matters so published can be supported with truth."<sup>[29]</sup> The jury, by acquitting Zenger, acknowledged albeit unofficially the defense of truth in a libel action. The *Zenger* case also laid to rest the idea that public officials were immune from criticism.<sup>[30]</sup>

The *Zenger* case is crucial, not only to the evolution of the doctrine of criminal libel, but also to the emergence of the American democratic ideal. It has been characterized as the first landmark in the tradition of a free press, then a somewhat radical notion that eventually evolved into the First Amendment<sup>[31]</sup> in the American Bill of Rights and also proved an essential weapon in the war of words that led into the American War for Independence.<sup>[32]</sup>

Yet even in the young American state, the government paid less than ideal fealty to the proposition that Congress shall pass no law abridging the freedom of speech. The notorious Alien and Sedition Acts of 1798<sup>[33]</sup> made it a crime for any person who, by writing, speaking or printing, should threaten an officer of the government with damage to his character, person, or estate. The law was passed at the insistence of President John Adams, whose Federalist Party had held a majority in Congress, and who had faced persistent criticism from political opponents belonging to the Jeffersonian Republican Party. As a result, at least twenty-five people, mostly Jeffersonian Republican editors, were arrested under the law. The Acts were never challenged before the U.S. Supreme Court, but they were not subsequently renewed upon their expiration.<sup>[34]</sup>

The massive unpopularity of the Alien and Sedition Acts contributed to the electoral