

FORMER SEVENTEENTH DIVISION

[CA-G.R. CR NO. 3325, June 13, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALLEN MACASAET, NICOLAS V. QUIJANO, JR., JANET BAY, JESUS P. GALANG, RANDY HAGOS, JEANY LACORTE, VENUS TANDOC, AND RAFFY T. TULFO, ACCUSED-APPELLANTS.

AMENDED DECISION

CORALES, J.:

Before the Court are private complainant-appellee Michael C. Guy's (Guy) Motion for Partial Reconsideration and Clarification^[1] and accused-appellant Raffy T. Tulfo's (Tulfo) Motion for Reconsideration^[2] assailing Our August 30, 2013 Decision^[3] which denied accused-appellants' appeal and affirmed with modification the February 24, 2010 Judgment^[4] of the Regional Trial Court, Branch 132, Makati City in Criminal Case No. 04-3614, thus:

WHEREFORE, the appeal is **DENIED**. The February 24, 2010 Judgment of the Regional Trial Court, Branch 132, Makati City, in Criminal Case No. 04-3614 is **AFFIRMED** with **MODIFICATION** that all accused-appellants are ordered to pay Michael Guy, jointly and severally, P500,000.00 moral damages and P500,000.00 exemplary damages.^[5]

A perusal of Tulfo's motion show that the arguments raised therein are mere rehash of those already considered and passed upon by this Court. No new issues have been presented to justify the reversal or modification of Our Decision, thus, We **DENY** Tulfo's Motion for Reconsideration for lack of merit.

With respect to Guy's Motion for Partial Reconsideration and Clarification, there is indeed a need to clarify some aspects of the awarded damages in Our August 30, 2013 Decision. As aptly pointed out by Guy, the RTC awarded in his favor "moral and actual damages" and not "moral and exemplary damages" as mistakenly stated in Our August 30, 2013 Decision. For this reason, We hereby render the instant Amended Decision.^[6]

AMENDED DECISION

In their separate Notices of Appeal,^[7] accused-appellants Allen Macasaet, Nicolas V. Quijano, Jr., Janet Bay, Jesus P. Galang, Randy Hagos, Jeany Lacorte, Venus Tandoc (Macasaet and the editors) and Raffy T. Tulfo (referred individually by their respective family names but collectively as Macasaet, *et al.*) assail the February 24, 2010 Judgment^[8] of the Regional Trial Court (RTC), Branch 132, Makati City in Criminal Case No. 04-3614 finding them guilty of libel.

The Antecedents

Tulfo is a columnist in *Abante Tonite* while Macasaet, Quijano, Jr., Bay, Galang, Hagos, Lacorte, and Tandoc hold various capacities in Monica Publishing Corporation (Monica Publishing), the publisher of *Abante Tonite*.

On the strength of a Complaint-Affidavit^[9] filed by Guy, President of MG Forex Corporation (MG Forex), a company engaged in foreign exchange trading, the Office of the City Prosecutor of Makati City (OCP) charged Macasaet, *et al.* with libel under an Amended Information which reads:

The undersigned Prosecutor accuses ALLEN MACASAET, NICOLAS V. QUIJANO, JR., JANET BAY, JESUS P. GALANG, RANDY HAGOS, JEANY LACORTE, VENUS TANDOC, and RAFFY TULFO of the crime of Libel, committed as follows:

That on or about the 24th day of March 2004, in the City of Makati, Philippines, and a place within the jurisdiction of this Honorable Court, the above-named accused, being then the publisher, editors and author respectively of a daily publication known as "Abante Tonite", a newspaper of general and nationwide circulation, conspiring, confederating together and all of them mutually helping and aiding one another, with malicious intent of impeaching the honesty, integrity, virtue and reputations of complainant Michael C. Guy, a resident of 2393 Mabolo Street, Dasmariñas Village, Makati City at the time of publication and with malicious intent of injuring and exposing said Michael C. Guy to public hatred, contempt and ridicule did then and there willfully, unlawfully and feloniously write, edit and publish an article with Abante Tonite, under the column entitled: "Shoot to Kill" quoted verbatim, thus:

**MALINIS BA TALAGA O NAGLILINIS-LINISAN
LAMANG (SINO SI FINANCE SEC. JUANITA
AMATONG?)**

"Ang mga tanong ngayon, may katotohanan kaya ang akusasyon ni Salanga laban kay Amatong? Nagsasabi naman kaya ng totoo si Amatong nang itanggi niya ang akusasyon ni Salanga laban sa kanya?

Narito ang isang balitang natanggap ng SHOOT TO KILL mula sa isang mapagkakatiwalaan at A-1 source na kung saan ay inarbor ni Amatong sa kanyang mga tauhan ang isang negosyanteng iniimbistegahan ng DOF dahil sa katiwalian sa tax refund. Narito ang kwento at kayo na ang bahalang manghusga kung sino ang may kredibilidad, si Amatong o si Salanga?

Noong March 20, 2004, Sabado ng hapon pumunta ang isang negosyanteng nagngangalang Michael Guy sa bahay ni Amatong. Si Guy ay iniimbestegahan ng mga tauhan ng Revenue Integrity Protection Service (RIPS) ng DOF dahil sa kahinahinalang mga tax refund na natanggap nito mula sa BIR simula 1998 hanggang 2003. Problemado si Guy sapagkat natunugan niyang iniimbestigahan na siya ng RIPS. Ito'y matapos magpadala ng sulat ang RIPS para hilingin dito na

ihinto ang imbestigasyon laban kay Guy at isurender sa kanyang opisina ang lahat ng mga dokumentong nakalap ng RIPS laban dito!!!”

which article and/or publication tend to cause, as it thereby caused dishonor, discredit and contempt upon the person of said Michael C. Guy by exposing him to public ridicule and causing mental anguish, besmirched reputation and other moral pains and suffering. xxx^[10]

When arraigned, Macasaet, *et al.* refused to enter a plea, thus, the RTC ordered that a plea of “not guilty” be entered into the records for all accused-appellants.^[11] Pre-trial ensued and the parties stipulated on the following: 1) the jurisdiction of the court; 2) the identity of the accused; and 3) the fact that Tulfo was the author of the alleged offending article which was subject of the case.^[12]

During trial, the prosecution presented the following as witnesses: the private complainant, Guy; his client, Jayson Mallari (Mallari); the then Department of Finance (DOF) Secretary, Juanita Amatong (Secretary Amatong); his lawyer, Atty. Karl Castillo (Atty. Castillo); and his accountant, Ma. Esperanza B. Caraig (Caraig).

On the other hand, Tulfo, his alleged source, Ruben Frogoso (Frogoso), and accused-appellants Quijano, Jr., Macasaet, Tandoc and Bay, testified for the defense.

The Version of the Prosecution

Guy identified the March 24, 2004 article authored by Tulfo under the column “SHOOT TO KILL” and published in *Abante Tonite*. According to Guy, he knew that he was the “Michael Guy” referred to in the said article because he had been subjected to the same kind of attack by Tulfo in six (6) different articles published under the “SHOOT TO KILL” column between October 3, 2003 and October 24, 2003.^[13] He, however, admitted that the article mainly referred to Secretary Amatong and only the 5th paragraph, out of fourteen (14) caused him extreme humiliation.^[14]

He claimed that after reading the article, he suffered extreme humiliation, embarrassment and depression and lost the trust of his business associates. His wife doubted him while his mother scolded him for bringing shame to the family. His sisters also lost confidence in him and one even sold her shares back to Guy for allegedly losing confidence in his dealings. Even his children were not spared as two teachers allegedly asked them if the article was true. His clients and business associates also refused to transact with him for fear of being involved in the false accusations against him.^[15] Guy named his sister and the latter's husband as the business associates who sold back their shares due to loss of confidence in him, and Mallari of Tivoli Enterprises as the client who stopped trading with him due to the malicious article.^[16]

He denied personally knowing Secretary Amatong and going to her house on March 20, 2004 or being subjected to any investigation for anomalous tax exemption or tax refund. He also disclaimed that he was investigated by the Revenue Integrity Protection Services (RIPS) and alleged that the investigative power of this agency covers only government officials and not private individuals. As proof, he offered a Bureau of Internal Revenue (BIR) Certification^[17] dated September 1, 2004 to the effect that MG Forex had neither delinquent accounts nor application for tax

refund/tax credit, and an article^[18] allegedly published in the Philippine Daily Inquirer authored by DOF Undersecretary Emmanuel Bonoan (Undersecretary Bonoan) stating that on March 20, 2004, Secretary Amatong left her home at 5:45 a.m. and was still on official leave by March 23, 2004.^[19]

Based on his own personal assessment of the damages caused by the offending article,^[20] Guy prayed for P50 million moral and exemplary damages.^[21] However, he clarified during crossexamination that he has been in the business since 1990 and had not earned P50 Million.^[22]

Caraig corroborated Guy's testimony that he did not apply for tax refunds and did not receive any notice from BIR or RIPS. She also identified the BIR certifications respectively issued by its Regional District Offices in Manila^[23] and Marikina^[24] showing that Guy did not file any claim for tax refund.^[25]

Secretary Amatong also testified that she does not know and had never met Guy. She was even shocked when she read the article because the same is not true. According to Secretary Amatong, on the subject date she was in Dumaguete and returned home only on March 24, 2004. It was also impossible that Guy went to her house without her knowing.^[26]

Meanwhile, Mallari admitted that he had dealings with Guy from 2000 up to the early part of 2004. He terminated his business relationship with Guy after reading the offending article because he does not want to deal with a person allegedly involved in bribing Secretary Amatong and had illegal tax refund cases. He, however, admitted on cross-examination that he was not immediately convinced by the article and called Guy before terminating his business with him but they were back in business sometime in 2005.^[27]

Atty. Castillo testified to prove the prayer for P211,200.00 attorney's fees and presented several statements of accounts.^[28] The defense admitted the genuineness and due execution of said documents.^[29]

The Version of the Defense

Tulfo admitted that he wrote the subject article and the six (6) other articles that the prosecution presented which were all previously published in his "SHOOT TO KILL" column in *Abante Tonite*, to wit: "Michael C. Guy, Binondo Godfather"^[30] dated October 3, 2003, "Binondo Godfather II"^[31] dated October 8, 2003, "*Sino si Benny at Vangie ng BIR?* (The Binondo Godfather Story Part III)"^[32] dated October 10, 2003, "*Ang mga Godfather sa BIR*"^[33] dated October 13, 2003, "*Nagbanta na ang Godfather ng Binondo Mafia*"^[34] dated October 17, 2003 and "*Mga Pagbati Mula sa California, U.S.A. At Singapore*"^[35] dated October 20, 2003. However, he clarified that these articles were not intended to malign the reputation of Guy but only to expose the alleged anomalies and tax scams of the latter. According to Tulfo, the public ought to know these tax scams and that Guy conspired with certain BIR and other government officials in defrauding the government with millions of pesos in taxes.^[36]

Tulfo also testified that his allegedly defamatory article was based on the information given by resource persons from the DOF, the BIR and some friends of

Guy. He, however, denied personally knowing Guy or Secretary Amatong but claimed that he had documents establishing the truth of what he wrote. He presented a Tax Year Summary Record^[37] purportedly from the BIR showing that MG Forex paid P94,607.66 in taxes for 2002 and asked for a P278,117.98 refund on 2003. Tulfo also referred to the Affidavit^[38] of Frogoso, earlier attached to his Rejoinder Affidavit^[39] before the OCP, as one of his sources in writing that Guy defrauded the government by not paying the correct taxes and he later on went to Secretary Amatong.^[40]

Frogoso, who was presented to bolster Tulfo's defense, testified that he is an Intelligence Officer II of the DOF. He affirmed the contents of his Affidavit^[41] attached to Tulfo's Rejoinder Affidavit^[42] and admitted that he supplied Tulfo with information about Guy even though he knew it to be confidential. He was familiar with Guy because he was assigned by Undersecretary Bonoan in gathering information regarding Guy's activities. It was also revealed that Frogoso was suspended by DOF Secretary Gary Teves because he failed to pass the lifestyle check.^[43]

On the other hand, Macasaet and the editors raised the defense that their respective positions had nothing to do with the publication or editing of the offending article, thus, they should be exonerated from the crime charged.

Quijano, Jr. admitted that he was the Managing Editor of *Abante* and *Abante Tonite* and detailed the process by which an article is reviewed and edited. For *Abante Tonite*, the writer submits his work to Hagos and the latter reports the same to Bay, Quijano, Jr.'s assistant. Afterwards, Bay, through a phone call to Quijano, Jr., summarizes the articles that would be included in the edition for publication the next day. Quijano, Jr. does not have personal contact with the writers of the news articles and opinions and would usually talk to Bay only through telephone. He admitted that he does not review the opinion columns and read Tulfo's article only after it was published.^[44]

Tandoc, the News Editor of *Abante Tonite* from 2004 to 2006, testified that she only reviews news articles while another editor reviews the opinion columns.^[45] Bay, the Assistant Managing Editor, corroborated Tandoc. According to her, she reviews and edits news articles and helps in deciding which should be the banner story. She, however, denied reviewing columns as it was allegedly the job of the Opinion Page Editor.^[46] Tandoc and Bay also denied knowing Guy or ever reading the purported offending article of Tulfo.

Macasaet, the President of Monica Publishing, claimed that his duties are all administrative, such as dealing with suppliers, looking for equipment and ensuring proper replacement if anybody is absent, and he had no participation in the publication of any news item or editorial.^[47]

The Ruling of the RTC

In its February 24, 2010 Judgment,^[48] the RTC convicted Macasaet et al. of libel. Citing *U.S. v. O'Connell*,^[49] the RTC pronounced that a charge is considered sufficient if the words are calculated to induce hearers to suppose and understand that the person against whom they were uttered was guilty of certain offenses or