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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **25 November 2019** which reads as follows:

G.R. No. 249690 - Zenaida Martin-Ortega v. People of the Philippines
X-----X

Assailed in this Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court are the December 12, 2018 Decision² and the October 2, 2019 Resolution³ of the Court of Appeals in CA-G.R. CR No. 39615, which affirmed the August 31, 2016 Decision⁴ of the Regional Trial Court (RTC) of Pasay City, Branch 114 in Criminal Case No. R-PSY-12-05470-CR, finding petitioner Zenaida Martin-Ortega (petitioner) guilty beyond reasonable doubt of Libel committed against her husband, Leonardo Ortega, Jr. (Leonardo).

Petitioner, along with Amalia Bandiola-Cabusao (Amalia) and Jesus G. Dureza (Jesus), were charged under the following Information:

That on or about the 28th day of November 2011, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ZENAIDA MARTIN-ORTEGA, being then the married wife of complainant LEONARDO ORTEGA, JR., and AMALIA BANDIOLA-CABUSAO and JESUS G. DUREZA, being then the editor-in-chief and publisher, respectively, of the newspaper MINDANAO TIMES, all conspiring, confederating and mutually helping one another, with malicious intent to impeach the integrity, virtue and reputation of complainant Leonardo Ortega, Jr., did then and there willfully, unlawfully and feloniously publish in the Mindanao Times a Notice to the Public stating:

“This is to inform the public that LEONARDO G. “LEO” Ortega, Jr., whose picture appears above, is no longer connected with LZ DENTAL TRADING and LZ DENTAL CENTER of both Davao (main) and Metro Manila (branch) office (sic).

Any transactions made by him on our behalf will not be honored by the company. Please report immediately any such unauthorized and illegal activity to any of our offices.”

¹ Rollo, pp. 3-24.

² *Id.* at 70-88; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Japar B. Dimaampao and Manuel M. Barrios.

³ *Id.* at 98-100.

⁴ *Id.* at 42-46; penned by Judge Edwin B. Ramizo.

[W]ith a photograph of the said complainant in a T-shirt with the emblazoned words "BAYOT AKO, (sic) PALAG KA?", thereby imputing an imaginary vice or defect to the said complainant Leonardo Ortega, Jr. which tends to cause him dishonor, discredit or contempt.

CONTRARY TO LAW."⁵

All the accused pleaded not guilty to the charge. Subsequently, the prosecution moved to withdraw the charges against Amalia and Jesus. Trial proceeded solely against petitioner.

The prosecution alleged that on November 28, 2011, petitioner caused the publication of a Notice to the Public in the newspaper the Mindanao Times announcing that Leonardo is no longer connected with LZ Dental Trading and LZ Dental Center. The announcement bore a picture of Leonardo wearing a t-shirt with the printed words "*Bayot ako, Palag Ka?*"⁶ This act of petitioner was supposedly in retaliation to Leonardo's filing of an annulment case against her in order to divide their conjugal properties. As a result of the libelous publication, Leonardo lost his clients and his business suffered. Moreover, he was ridiculed and embarrassed. Said publication also caused pain to his ailing mother.

In her defense, petitioner insisted that she was the one who put up LZ Dental Trading and LZ Dental Center before getting married to Leonardo. Petitioner admitted causing the publication of a Notice to the Public regarding Leonardo because the latter stole dental equipment from her business. With respect to the photograph of Leonardo, petitioner claimed that she had no other available photographs of Leonardo and that they were already in a rush to publish the notice. Petitioner asserted that said photograph was in her lawyer's computer and that she was advised by her lawyer that she could publish the article using that particular photograph. At the time of publication, petitioner and Leonardo were no longer living together.⁷

Ruling of the Regional Trial Court

In a Decision dated August 31, 2016, the RTC found petitioner guilty of Libel, viz.:

WHEREFORE, in view of all the foregoing, the Court finds accused ZENAIDA MARTIN-ORTEGA "GUILTY" beyond reasonable doubt of the crime of Libel defined and penalized under Article 353 in relation to Article 355 of the Revised Penal Code, and there being no mitigating or aggravating circumstances attendant thereto, hereby sentences her to suffer the indeterminate penalty of imprisonment of four (4) months and twenty (20) days of Arresto Mayor maximum, as

⁵ *Id.* at 42.

⁶ *Id.* at 43.

⁷ *See id.* at 77-78.

minimum, to two (2) years, eleven (11) months and ten (10) days of Prision Correccional Medium, as maximum.

The accused is further ordered to pay private complainant Leonardo Ortega, Jr. the amount of ₱1,000,000.00 as actual damages and ₱1,000,000.00 as moral damages as well.

SO ORDERED.⁸

Petitioner filed a Motion for Reconsideration which the RTC denied in an Order dated December 12, 2016. Petitioner appealed before the Court of Appeals.

The Ruling of the Court of Appeals

In a December 12, 2018 Decision, the Court of Appeals affirmed petitioner's conviction for the crime of Libel with modification that the award for actual damages is deleted. The appellate court ruled that the prosecution was able to prove all the elements of libel. **First**, the subject publication which contained a photograph of Leonardo wearing a shirt with the words "*Bayot ako, Palag Ka*" was defamatory. **Second**, petitioner was prompted by ill will or spite in publishing the article. And **third**, there was no dispute that the article was published in the Mindanao Times and the same was circulated in Davao City. Leonardo was named in full in the subject publication.⁹ The elements of publicity and identifiability had thus been complied with. However, the appellate court held that the prosecution has not proven the actual amount of lost income opportunities on the part of Leonardo.¹⁰ The appellate court decreed:

WHEREFORE, the appeal is DENIED. The Decision dated 31 August 2016 of the Regional Trial Court, Branch 114 of Pasay City in Criminal Case No. R-PSY-12-05470-CR, is AFFIRMED WITH MODIFICATION.

The award of ₱1,000,000.00 as actual damages is deleted.

The amount of ₱1,000,000.00 awarded as moral damages shall earn interest of 6% *per annum*, from date of finality of this Decision, until full payment.

In all other respects, the Decision appealed from stands.

SO ORDERED.¹¹

Petitioner filed a Motion for Reconsideration which was denied in the October 2, 2019 Resolution of the Court of Appeals. Thus, this present Petition for Review on *Certiorari*.

⁸ *Id.* at 46.

⁹ *See id.* at 79-84.

¹⁰ *Id.* at 86

¹¹ *Id.* at 87.

Our Ruling

We deny the Petition.

Factual findings of the trial court, especially when affirmed by the Court of Appeals, are final and conclusive and may not be reviewed on appeal. We hold that the prosecution had proven beyond reasonable doubt all the elements of the crime of Libel, as perpetrated by petitioner. However, a modification of the penalty is in order.

In accordance with the liberalized approach towards libel, Administrative Circular No. 08-2008, or the Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases provided the rule of preference for the imposition of fine only rather than imprisonment in libel, subject to the following guidelines, to wit:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provision on subsidiary imprisonment.

The penalty for the crime of Libel under Article 355 of the Revised Penal Code, as amended by Section 91 of Republic Act No. 10951¹² reads:

Section 91. Article 355 of the same Act is hereby amended to read as follows:

Art. 355. *Libel by means of writings or similar means.* - A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by *prision correccional* in its minimum and medium periods or a fine ranging from Forty thousand pesos (P40,000) to One million two hundred thousand pesos (P1,200,000), or both, in addition to the civil action which may be brought by the offended party.

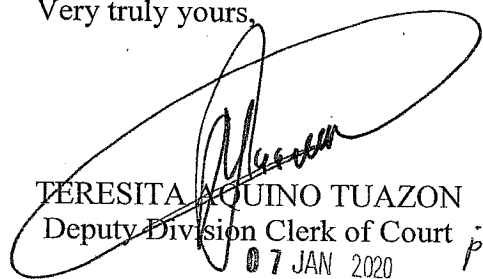
¹² An Act Adjusting The Amount Or The Value Of Property And Damage On Which A Penalty Is Based, And The Fines Imposed Under The Revised Penal Code, Amending For The Purpose Act No. 3815, Otherwise Known As "The Revised Penal Code," As Amended. Approved August 29, 2017.

Consistent with the liberalized approach towards libel and considering that this is petitioner's first offense and she apparently acted in the heat of anger which impelled her to cause the defamatory publication, we find it appropriate to delete the penalty of imprisonment, impose a fine in the amount of ₱100,000.00 and reduce the amount of moral damages imposed by the Court of Appeals to ₱300,000.00.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The December 12, 2018 Decision and the October 2, 2019 Resolution of the Court of Appeals in CA-G.R. CR No. 39615, are **AFFIRMED with MODIFICATION** in that the penalty of imprisonment is hereby **DELETED**. Petitioner Zenaida Martin-Ortega is **ORDERED** to pay the fine of ₱100,000.00 with subsidiary imprisonment in case of insolvency. Furthermore, petitioner is liable to pay moral damages in the amount of ₱300,000.00, which shall earn interest of 6% per *annum* from the date of finality of this Resolution until full payment.

Reyes, A. Jr., J., on leave. "

Very truly yours,


 TERESITA QUINO TUAZON
 Deputy Division Clerk of Court
 07 JAN 2020 p 17

*ATTY. ULYSSES L. GALLEGO (reg)
 Counsel for Petitioner
 Lot 1-A-3, Corinthian Villas,
 Matimyas Street, Gen. T. de Leon
 Valenzuela City 1442

*OFFICE OF THE SOLICITOR GENERAL (reg)
 134 Amorsolo Street
 1229 Legaspi Village
 Makati City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 114
 Pasay City
 (Crim. Case No. R-PSY-12-05470-CR)

JUDGMENT DIVISION (x)
 Supreme Court, Manila

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OFFICE OF THE CHIEF ATTORNEY (x)
 OFFICE OF THE REPORTER (x)
 Supreme Court, Manila

COURT OF APPEALS (x)
 Ma. Orosa Street
 Ermita, 1000 Manila
 CA-G.R. CR No. 39615

*with copy of CA Decision dated 12 Dec. 2018 and
 Resolution dated 2 Oct. 2019
 Please notify the Court of any change in your address.
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