

**[ G.R. No. 172203, February 14, 2011 ]**

**DIONISIO LOPEZ Y ABERASTURI, PETITIONER, VS. PEOPLE OF  
THE PHILIPPINES AND SALVADOR G. ESCALANTE, JR.,  
RESPONDENTS.**

**D E C I S I O N**

Freedom of expression enjoys an exalted place in the hierarchy of constitutional rights. Free expression however, "is not absolute for it may be so regulated that [its exercise shall neither] be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society."<sup>[1]</sup> Libel stands as an exception to the enjoyment of that most guarded constitutional right.

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Dionisio Lopez (petitioner) assailing the Decision<sup>[2]</sup> dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CR No. 28175. The CA affirmed with modification the Decision<sup>[3]</sup> rendered by the Regional Trial Court (RTC) of Cadiz City, Branch 60 finding petitioner guilty beyond reasonable doubt of the crime of libel.

***Procedural and Factual Antecedents***

On April 3, 2003, petitioner was indicted for libel in an Information dated March 31, 2003, the accusatory portion of which reads in full as follows:

That on or about the early part of November 2002 in the City of Cadiz, Philippines and within the jurisdiction of this Honorable Court, the herein accused did then and there, willfully, unlawfully and feloniously with intent to impeach the integrity, reputation and putting to public ridicule and dishonor the offended party MAYOR SALVADOR G. ESCALANTE, JR., City Mayor of Cadiz City and with malice and intent to injure and expose the said offended party to public hatred, contempt and ridicule put up billboards/signboards at the fence of Cadiz Hotel, Villena Street, Cadiz City and at Gustilo Boulevard, Cadiz City, which billboards/signboards read as follows:

"CADIZ FOREVER"  
"\_\_\_\_\_ NEVER"

thereby deliberately titillating the curiosity of and drawing extraordinary attention from the residents of Cadiz City and passers-by over what would be placed before the word "NEVER". Later on November 15, 2002, accused affixed the nickname of the herein private complainant "BADING" and the name of the City of "SAGAY" before the word "NEVER" thus making the billboard appear as follows

"CADIZ FOREVER"  
"BADING AND SAGAY NEVER"

For which the words in the signboards/billboards were obviously calculated to induce the readers/passers-by to suppose and understand that something fishy was going on, therefore maliciously impeaching the honesty, virtue and reputation of Mayor Salvador G. Escalante, Jr., and hence were highly libelous, offensive and defamatory to the good name, character and reputation of the offended party and his office and that the said billboards/signboards were read by thousands if not hundred[s] of thousands of persons, which caused damage and prejudice to the offended party by way of moral damages in the amount [of]:

P5,000,000.00 - as moral damages.

ACT CONTRARY TO LAW.<sup>[4]</sup>

Upon arraignment on May 8, 2003, petitioner, as accused, entered a plea of "not guilty." During the pre-trial, the parties stipulated, among others, on the identity of the accused, that the private complainant is the incumbent City Mayor of Cadiz City and is popularly known by the nickname "Bading" and that the petitioner calls the private complainant "Bading." Thenceforth, trial on the merits commenced in due course.

Evidence introduced for the prosecution reveals that in the early part of November 2002, while exercising his official duties as Mayor of Cadiz City, private respondent saw billboards with the printed phrase "CADIZ FOREVER" with a blank space before the word "NEVER" directly under said phrase. Those billboards were posted on the corner of Gustilo and Villena streets, in front of Cadiz Hotel and beside the old Coca-Cola warehouse in Cadiz City. He became intrigued and wondered on what the message conveyed since it was incomplete.

Some days later, on November 15, 2002, private respondent received a phone call relating that the blank space preceding the word "NEVER" was filled up with the added words "BADING AND SAGAY." The next day, he saw the billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER" printed in full. Reacting and feeling that he was being maligned and dishonored with the printed phrase and of being a "*tuta*" of Sagay, private respondent, after consultation with the City Legal Officer, caused the filing of a complaint for libel against petitioner. He claimed that the incident resulted in mental anguish and sleepless nights for him and his family. He thus prayed for damages.

Jude Martin Jaropillo (Jude) is a licensing officer of the Permit and License Division of Cadiz City. While on a licensing campaign, he was able to read the message on the billboards. He wondered what fault the person alluded therein has done as the message is so negative. He felt that the message is an insult to the mayor since it creates a negative impression, as if he was being rejected by the people of Cadiz City. He claimed that he was giving his testimony voluntarily and he was not being rewarded, coerced or forced by anybody.

Nenita Bermeo (Nenita), a retired government employee of Cadiz City, was at Delilah's Coffee [Shop] in the morning of November 19, 2002 when she heard the petitioner shouting "Bading, Bading, Never, Never." She and the tricycle drivers drinking coffee were told by petitioner "You watch out I will add larger billboards."

When she went around Cadiz City, she saw larger billboards with the phrase "CADIZ FOREVER BADING AND SAGAY NEVER," thus confirming what petitioner had said. With the message, she felt as if the people were trying to disown the private respondent. According to her, petitioner has an ax to grind against the mayor. Like Jude, she was not also forced or rewarded in giving her testimony.

Bernardita Villaceran (Bernardita) also found the message unpleasant because Mayor Escalante is an honorable and dignified resident of Cadiz City. According to her, the message is an insult not only to the person of the mayor but also to the people of Cadiz City.

Petitioner admitted having placed all the billboards because he is aware of all the things happening around Cadiz City. He mentioned "BADING" because he was not in conformity with the many things the mayor had done in Cadiz City. He insisted that he has no intention whatsoever of referring to "Bading" as the "*Tuta*" of Sagay. He contended that it was private respondent who referred to Bading as "*Tuta*" of Sagay. He further maintained that his personal belief and expression was that he will never love Bading and Sagay. He concluded that the message in the billboards is just a wake-up call for Cadiz City.

### ***Ruling of the Regional Trial Court***

On December 17, 2003, the RTC rendered judgment convicting petitioner of libel. The trial court ruled that from the totality of the evidence presented by the prosecution vis-a-vis that of the defense, all the elements of libel are present. The fallo of the Decision reads:

WHEREFORE, in view of all the foregoing, this Court finds accused DIONISIO LOPEZ y ABERASTURI (bonded) 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 him to suffer an indeterminate penalty of imprisonment of FOUR MONTHS AND TWENTY DAYS of Arresto Mayor maximum as the minimum to TWO YEARS, ELEVEN MONTHS AND TEN DAYS of Prision Correccional Medium as the maximum and a FINE of P5,000.00 with subsidiary imprisonment in case of insolvency.

The accused is further ordered to pay the private complainant the sum of P5,000,000.00 by way of moral damages.

The cash bond posted by the accused is hereby ordered cancelled and returned to the accused, however the penalty of Fine adjudged against the accused is hereby ordered deducted from the cash bond posted by the accused pursuant to Section 22 of Rule 114 of the Rules of Court and the remaining balance ordered returned to the accused. The accused is hereby ordered immediately committed to the BJMP, Cadiz City for the service of his sentence.

Cost against the accused.

SO ORDERED. <sup>[5]</sup>

## ***Ruling of the Court of Appeals***

Petitioner appealed the Decision of the RTC to the CA which, as stated earlier, rendered judgment on August 31, 2005, affirming with modification the Decision of the RTC. Like the trial court, the appellate court found the presence of all the elements of the crime of libel. It reduced however, the amount of moral damages to P500,000.00. Petitioner then filed his Motion for Reconsideration, which the appellate court denied in its Resolution<sup>[6]</sup> dated April 7, 2006.

Disgruntled, petitioner is now before us *via* the instant petition. Per our directive, private respondent filed his Comment<sup>[7]</sup> on August 29, 2006 while the Office of the Solicitor General (OSG) representing public respondent People of the Philippines, submitted a Manifestation and Motion in Lieu of Comment<sup>[8]</sup> on even date. After the filing of petitioner's Reply to private respondent's Comment, we further requested the parties to submit their respective memoranda. The OSG filed a Manifestation in Lieu of Memorandum, adopting as its memorandum, the Manifestation and Motion in Lieu of Comment it earlier filed. Petitioner and private respondent submitted their respective memoranda as required.

### **Issues**

Petitioner raised the following arguments in support of his petition:

#### **I**

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE WORDS "CADIZ FOREVER[,] BADING AND SAGAY NEVER" CONTAINED IN THE BILLBOARDS/SIGNBOARDS SHOW THE INJURIOUS NATURE OF THE IMPUTATIONS MADE AGAINST THE PRIVATE RESPONDENT AND TENDS TO INDUCE SUSPICION ON HIS CHARACTER, INTEGRITY AND REPUTATION AS MAYOR OF CADIZ CITY.

#### **II**

ASSUMING WITHOUT CONCEDED THAT THE WORDS "CADIZ FOREVER, BADING AND SAGAY NEVER" CONTAINED IN THE BILLBOARDS ERECTED BY PETITIONER ARE DEFAMATORY, DID THE COURT OF APPEALS ERR IN NOT HOLDING THAT THEY COMPRISE FAIR COMMENTARY ON MATTERS OF PUBLIC INTEREST WHICH ARE THEREFORE PRIVILEGED?

#### **III**

WHETHER X X X THE COURT OF APPEALS ERRED IN HOLDING THAT THE PRESUMPTION OF MALICE IN THE CASE AT BAR HAS NOT BEEN OVERTHROWN.

#### **IV**

WHETHER X X X THE COURT OF APPEALS ERRED IN NOT ACQUITTING PETITIONER OF THE CHARGE OF LIBEL AND IN HOLDING HIM LIABLE FOR MORAL DAMAGES IN THE AMOUNT OF P500,000.<sup>[9]</sup>

Summed up, the focal issues tendered in the present petition boil down to the following: 1) whether the printed phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" is libelous; and 2) whether the controversial words used constituted privileged communication.

### **Our Ruling**

We ought to reverse the CA ruling.

At the outset, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The factual findings of the lower courts are final and conclusive and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

1. When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
2. When the inference made is manifestly mistaken, absurd or impossible;
3. Where there is a grave abuse of discretion;
4. When the judgment is based on a misapprehension of facts;
5. When the findings of fact are conflicting;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact are conclusions without citation of specific evidence on which they are based;
9. When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and,
10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.<sup>[10]</sup>

Indeed, the CA affirmed the factual findings of the RTC that all the elements of the crime of libel are present in this case. Thus, following the general rule, we are precluded from making further evaluation of the factual antecedents of the case. However, we cannot lose sight of the fact that both lower courts have greatly misapprehended the facts in arriving at their unanimous conclusion. Hence, we are constrained to apply one of the exceptions specifically paragraph 4 above, instead of the general rule.

Petitioner takes exception to the CA's ruling that the controversial phrase "CADIZ FOREVER, BADING AND SAGAY NEVER" tends to induce suspicion on private respondent's character, integrity and reputation as mayor of Cadiz City. He avers that there is nothing in said printed matter tending to defame and induce suspicion on the character, integrity and reputation of private respondent.

The OSG, in its Manifestation and Motion in Lieu of Comment, asserts that "there is nothing in the phrase "CADIZ FOREVER" and "BADING AND SAGAY NEVER" which ascribe to private respondent any crime, vice or defect, or any act, omission, condition, status or circumstance which will either dishonor, discredit, or put him into contempt."<sup>[11]</sup>