

## THIRD DIVISION

[ G.R. No. 160316, September 02, 2013 ]

**ROSALINDA PUNZALAN, RANDALL PUNZALAN AND RAINIER PUNZALAN, PETITIONERS, VS. MICHAEL GAMALIEL J. PLATA AND RUBEN PLATA, RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the September 29, 2003 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 62633, which annulled and set aside the June 6, 2000<sup>[2]</sup> and October 11, 2000<sup>[3]</sup> Resolutions of the Department of Justice (DOJ) and reinstated its (DOJ's) March 23, 2000 Resolution<sup>[4]</sup> ordering the City Prosecutor of Mandaluyong City to file separate informations charging the petitioners, Rosalinda Punzalan (*Rosalinda*), Rainier Punzalan (*Rainier*), Randall Punzalan (*Randall*) and several other individual with various offenses - three (3) counts of Slight Oral Defamation against petitioner Rosalinda Punzalan (*Rosalinda*); two (2) counts of Light Threat against Alexander "Toto" Ofrin; Attempted Homicide against Alexander "Toto" Ofrin, petitioners Rainier and Randall, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nobida, Mark Catap, Ricky Eugenio, Alejandro Diez, Vicente Joven Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar, and Raymond Poliquit; and Malicious Mischief and Theft against petitioners Rainier and Randall, Mark Catap, Alejandro Diez, Jose Gregorio Lanuzo, Alexander "Toto" Ofrin, Herson Mendoza, Emmanuel Nobida, Edwin Vivar, Avelino "Bobby" Serrano, and John Does.

The basic facts as found by the Court in G.R. No. 158543,<sup>[5]</sup> are as follows:

The Punzalan and the Plata families were neighbors in Hulo Bliss, Mandaluyong City. At around 11:00 p.m. of August 13, 1997, Dencio dela Peña, a house boarder of the Platas, was in front of a store near their house when the group of Rainier Punzalan, Randall Punzalan, Ricky Eugenio, Jose Gregorio, Alex "Toto" Ofrin, and several others arrived. Ricky Eugenio shouted at Dela Peña, "*Hoy, kalbo, saan mo binili and sumbrero mo?*" Dela Peña replied, "*Kalbo nga ako, ay pinagtatawanan pa ninyo ako.*" Irked by the response, Jose Gregorio slapped Dela Peña while Rainier punched him in the mouth. The group then ganged up on him. In the course of the melee, somebody shouted, "*Yariin na 'yan!*" Thereafter, Alex "Toto" Ofrin kicked Dela Peña and tried to stab him with a *balisong* but missed because he was able to run. The group chased him.

While Dela Peña was fleeing, he met Robert Cagara, the Platas' family driver, who was carrying a gun. He grabbed the gun from Cagara and

pointed it to the group chasing him in order to scare them. Michael Plata, who was nearby, intervened and tried to wrestle the gun away from Dela Peña. The gun accidentally went off and hit Rainier Punzalan on the thigh. Shocked, Dela Peña, Cagara and Plata ran towards the latter's house and locked themselves in. The group ran after them and when they got to the Platas' house, shouted, "*Lumabas kayo d'yan, putang ina ninyo! Papatayin namin kayo!*" Dela Peña, Cagara, and Plata left the house through the back door and proceeded to the police station to seek assistance.

Thereafter, Rainier filed a criminal complaint for Attempted Homicide against Michael Gamaliel Plata (*Michael*) and one for Illegal Possession of Firearms against Robert Cagara (*Cagara*). On the other hand, Michael, Ruben Plata (*Ruben*) and several others filed several complaints against petitioners Rosalinda, Randall, Rainier, and several individuals before the Office of the City Prosecutor, Mandaluyong City, to wit:

<b>Investigation Slip No. (I.S. No.)</b>	<b>Charge</b>	<b>Parties</b>
97-11485	Slight Physical Injuries	Roberto Cagara v. Randal Punzalan, Avelino Serrano, Raymond Poliguit, Alex "Toto" Ofrin, Alejandro Diez, Jose Gregorio Lanuzo, Mark Catap, Vicente "Joven" Manda, Mark Labrador and Herson Mendoza
97-11487	Grave Oral Defamation	Michael Gamaliel J. Plata v. Rosalinda Punzalan
97-11492	Grave Threats	Michael Gamaliel J. Plata v. Rosalinda Punzalan
97-11520	Grave Threats	Dencio Del Peña v. Alex "Toto" Ofrin
97-11521	Grave Threats	Dencio Dela Peña v. Alex "Toto" Ofrin
97-11522	Grave Oral Defamation	Dencio Dela Peña v. Rosalinda Punzalan
97-11523	Grave Oral Defamation	Robert Cagara v. Rosalinda Punzalan
97-11528	Attempted Murder	Dencio Dela Peña v. Alexander "Toto" Ofrin, Rainier Punzalan, Jose Gregorio Lanuzo, Avelino Serrano, Lito Dela Cruz, Emmanuel Nibida, Randal

		Punzalan, mark Catap, Ricky Eugenio, alejandro Diez, Vincente "Koven" Manda, Herson Mendoza, Mark Labrador, Alex Pascua, Edwin Vivar and Raymond Poliquit
97-11764	Grave Oral Defamation	Roland Curampes and Robert Cagara v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Raymond Poliquit, Alex Pascua, Rainier Punzalan, Alexander "Toto" Ofrin and Edwin Vivar
97-11765	Malicious Mischief	Michael Gamaliel J. Plata v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan, Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Joven Manda and Jose Gregorio Lanuzo
97-11766	Robbery	Michael Gamaliel J. Plata v. Avelino Serrano, Randal Punzalan, Emmanuel Nobida, Herson Mendoza, Alejandro Diez, Rainier Punzalan, Alexander "Toto" Ofrin, Edwin Vivar, Mark Catap, Vicente "Joven" Manda and Jose Gregorio Lanuzo
97-11786	Grave Oral Defamation	Michael Gamaliel J. Plata v. Rosalinda Punzalan

On July 28, 1998, the Office of the City Prosecutor, in its Joint Resolution,<sup>[6]</sup> dismissed the complaints filed against the petitioners for lack of sufficient basis both in fact and in law, giving the following reasons:

The investigation and affidavits of all parties reveal that the above cases have no sufficient basis. First, as regards the **Grave Oral Defamation** charges against Rosalinda Punzalan allegedly committed on the 13<sup>th</sup> of August 1997 and 16<sup>th</sup> of October 1997 (I.S. Nos. 97-11487, 97-11786; 97-11522 and 97-11523), the alleged defamatory statements are not supported by any evidence to prove that they would 'cast dishonor, discredit or contempt upon another person (Article 359, Revised Peñal

Code), which are essential requisites of Grave Oral Defamation. Complainants presented no evidence aside from their claims to prove their cases; hence, insufficient. Further, the records show that the alleged defamatory statements were made by respondent during the scheduled hearing of one of the above case, which even if true, must have been said while in a state of distress caused by the filing of the above numerous cases filed against her family, hence, not actionable. The same also holds true with the other Oral Defamation and Grave Threat charges allegedly committed on October 21, 1997 by Avelino Serrano and 15 other persons including the sons of Rosalinda Punzalan named Randal and Rainier against Roberto Cagara and Ronald Curampes (I.S. No. 11764), the alleged defamatory statements are not supported by any evidence that would cause dishonor, discredit or contempt upon another person neither would such utterances constitute an act which may fall under the definition of 'Grave Threat' which complainant's claimed against them because such utterances do not amount to a crime.

'Merely insulting or abusive words are not actionable, unless they constitute defamation punishable by law (Isidro vs Acuna, 57 O.G. 3321) as to make the party subject to disgrace, ridicule or contempt or affect one injuriously in his office, profession, trade or occupation (People vs. Perez, 11 CA Rep. 207).'

Moreover, the elements of 'PUBLICATION' is not alleged nor proved by complainants, hence, not applicable.

'The only element of grave oral defamation not found in intriguing against honor is publication' (People vs. Alcosaba, 30 April 1964)

As regards the case of **Attempted Murder** (I.S. No. 97-11528) allegedly committed on 13 August 1997 by Ranier Punzalan, et al., the same is already the subject of other two (2) criminal cases docketed as Crim. Case No. 66879 and 66878 entitled 'People vs. Michael Plata' for Attempted Homicide and 'People vs. Roberto Cagara' for Illegal Possession of Firearm, respectively, both pending before Branch 60, MTC of Mandaluyong; hence, cannot be the subject of another case, conformably with the foregoing pronouncement of the high court:

x x x x

In the case at bar, what is undisputed is that RAINIER sustained a gunshot wound in his thigh for which reason he filed a case of frustrated murder and illegal possession of firearms. The version of Michael Plata and Dencio Dela Peña (the defendants in said two cases) is that the latter was seen by Plata and Cagara while Dencio was being mauled by RAINIER, et al., thereby compelling Plata and Cagara to go out of Plata's house and defend Dencio. Dencio run towards Plata and Cagara and took the gun out of Cagara's hand and aimed the gun at RAINIER, et al. which, in turn, forced Plata to grapple with Cagara to prevent Cagara from hurting anyone but unfortunately, the gun accidentally fired and hit RAINIER in the thigh.

Thus, whether the shooting of RAINIER arose from Plata's and Cagara's attempt to defend Dencio from the mauling by Rainier, et al. or from an accident, the elements of these justifying (defense of strangers) and exempting circumstances (accident) should properly be established WITH CLEAR AND CONVINCING EVIDENCE NOT in the attempted murder case filed against RAINIER, et., al. by Dencio but in the attempted homicide case filed against Michael Plata by RAINIER, there being a clear admission as to the fact of shooting which wounded RAINIER who filed a frustrated murder case but was eventually downgraded to attempted homicide.

With regard to the alleged **robbery** (I.S. no. 97-11766) which was allegedly committed on the same date as the malicious mischief (I.S. No. 97-11765), these two (2) cases cannot be the product of the same criminal act for some element of one may be absent in the other, particularly "animus lucrandi." Further, it is noted that the complainant in the robbery case, who is the same complainant in the malicious mischief (Michael Plata), use the very "same affidavit" for the two (2) different charges with no other obvious intention aside from harassing the respondents.

As regards the claim of **Slight Physical Injuries** (I.S. No. 97-11485), it appears on the affidavit of the complainants, Robert Cagara ("CAGARA") and Dencio Dela Peña ("DENCIO"), that they have conflicting statements which were not properly explained during the investigation. According to Cagara, he and Dencio were standing near the gate of the Platas 'bandang looban' and it was the house which was stoned and Cagara was accidentally hit by one of these stones which were aimed at the house and not at him; however, in Dencio's affidavit, he claimed that Randal Punzalan hit Cagara on the shoulder with a bottle while the latter himself did not even mention this in his own affidavit. These inconsistencies belied their claim. Moreover, it is noted that the complaint for Slight Physical Injuries was filed belatedly (10 October 1997), more than a month after the commission of the alleged act on 30 August 1997 and that the Medical Certificate of Cagara was issued much later (15 October 1997) from the commission of the alleged injuries and Cagara did not even bother to explain this in his affidavit.

As regards the charge of **Grave Threat** (I.S. No. 97-11492, 97-11520 and 97-11521), there is no act which may fall under the definition of "grave threat" because the utterances claimed do not amount to a crime. Further, in I.S. No. 97-11492, the alleged threat was made through telephone conversations and even to the complainant himself, hence, they did not pose any danger to the life and limbs nor to the property of the complainant.

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WHEREFORE, premises considered, the above cases are hereby dismissed for lack of sufficient basis in fact and in law.<sup>[7]</sup> [Emphases supplied]