

## THIRD DIVISION

[ G.R. No. 189754, October 24, 2012 ]

**LITO BAUTISTA AND JIMMY ALCANTARA, PETITIONERS, VS.  
SHARON G. CUNETA-PANGILINAN, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before the Court is the petition for review on *certiorari* seeking to set aside the Decision<sup>[1]</sup> dated May 19, 2009 and Resolution<sup>[2]</sup> dated September 28, 2009 of the Court of Appeals (CA), in CA-G.R. SP No. 104885, entitled *Sharon G. Cuneta-Pangilinan v. Hon. Rizalina T. Capco-Umali, in her capacity as Presiding Judge of the Regional Trial Court in Mandaluyong City, Branch 212, Lito Bautista, and Jimmy Alcantara*, which granted the petition for *certiorari* of respondent Sharon G. Cuneta-Pangilinan. The CA Decision reversed and set aside the Order<sup>[3]</sup> dated April 25, 2008 of the Regional Trial Court (RTC), Branch 212, Mandaluyong City, but only insofar as it pertains to the granting of the Demurrer to Evidence filed by petitioners Lito Bautista (Bautista) and Jimmy Alcantara (Alcantara), and also ordered that the case be remanded to the trial court for reception of petitioners' evidence.

The antecedents are as follows:

On February 19, 2002, the Office of the City Prosecutor of Mandaluyong City filed two (2) informations, both dated February 4, 2002, with the RTC, Branch 212, Mandaluyong City, against Pete G. Ampoloquio, Jr. (Ampoloquio), and petitioners Bautista and Alcantara, for the crime of libel, committed by publishing defamatory articles against respondent Sharon Cuneta-Pangilinan in the tabloid *Bandera*.

In Criminal Case No. MC02-4872, the Information dated February 4, 2002 reads:

That on or about the 24<sup>th</sup> day of April, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officer[s] of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt, did then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which among others have the following insulting and slanderous remarks, to wit:

*MAGTIGIL KA, SHARON!*

*Sharon Cuneta, the mega-tabla singer-actress, I'd like to believe, is really brain-dead. Mukhang totoo yata yung sinasabi ng kaibigan ni Pettizou Tayag na ganyan siya.*

*Hayan at buong ingat na sinulat namin yung interview sa kaibigan ng may-ari ng Central Institute of Technology at ni isang side comment ay wala kaming ginawa and all throughout the article, we've maintained our objectivity, pero sa interview sa aparadoric singer-actress in connection with an album launching, ay buong ningning na sinabi nitong she's supposedly looking into the item that we've written and most probably would take some legal action.*

X X X

*Magsalita ka, Missed Cuneta, at sabihin mong hindi ito totoo.*

*Ang hindi lang namin nagustuhan ay ang pagbintangan kaming palagi naman daw namin siyang sinisiraan, kaya hindi lang daw niya kami pinapansin, believing na part raw siguro yun ng aming trabaho.*

*Dios mio perdon, what she gets to see are those purportedly biting commentaries about her katabaan and kaplastikan but she has simply refused to acknowledge the good reviews we've done on her.*

X X X

*Going back to this seemingly disoriented actress who's desperately trying to sing even if she truly can't, itanggi mo na hindi mo kilala si Pettizou Tayag gayung nagkasama raw kayo ng tatlong araw sa mother's house ng mga Aboitiz sa Cebu more than a month ago, in connection with one of those political campaigns of your husband.*

X X X

thereby casting publicly upon complainant, malicious contemptuous imputations of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.

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

In Criminal Case No. MC02-4875, the Information dated February 4, 2002 reads:

That on or about the 27th day of March, 2001, in the City of Mandaluyong, Philippines and within the jurisdiction of this Honorable

Court, the above-named accused, conspiring and confederating together with Jane/John Does unknown directors/officers of *Bandera* Publishing Corporation, publisher of *Bandera*, whose true identities are unknown, and mutually helping, and aiding one another, with deliberate intent to bring SHARON G. CUNETA-PANGILINAN into public dishonor, shame and contempt did, then and there wilfully, unlawfully and feloniously, and with malice and ridicule, cause to publish in *Bandera* (tabloid), with circulation in Metro Manila, which, among others, have the following insulting and slanderous remarks, to wit:

NABURYONG SA KAPLASTIKAN NI SHARON ANG MILYONARY[A]NG SUPPORTER NI KIKO!

*FREAKOUT pala kay Sharon Cuneta ang isa sa mga loyal supporters ni Kiko Pangilinan na si Pettizou Tayag, a multi-millionaire who owns Central Institute of Technology College in Sampaloc, Manila (it is also one of the biggest schools in Paniqui, Tarlac).*

x x x

*Which in a way, she did. Bagama't busy siya (she was having a meeting with some business associates), she went out of her way to give Sharon security.*

*So, ang ginawa daw ni Ms. Tayag ay tinext nito si Sha[ron] para mabigyan ito ng instructions para kumportable itong makarating sa Bulacan.*

*She was most caring and solicitous, pero tipong na-offend daw ang megastar at nagtext pang "You don't need to produce an emergency SOS for me, I'll be fine."*

*Now, nang makara[t]ing na raw sa Bulacan si Mega nagtatarang daw ito at binadmouth si Pettizou. Kesyo ang kulit-kulit daw nito, atribida, mapapel at kung anu-ano pang mga derogatory words na nakarating siyempre sa kinauukulan.*

*Anyhow, if it's true that Ms. Pettizou has been most financially supportive of Kiko, how come Sharon seems not to approve of her?*

*"She doesn't want kasi her husband to win as a senator because when that happens, mawawalan siya ng hold sa kanya," our caller opines.*

*Pettizou is really sad that Sharon is treating her husband like a wimp.*

*"In public," our source goes on tartly, "pa kiss-kiss siya. Pa-*

*embrace-embrace pero kung silang dalawa [na] lang parang kung sinong sampid kung i-treat niya si Kiko."*

*My God Pete, Harvard graduate si Kiko. He's really intelligent as compared to Sharon who appears to be brain dead most of the time.*

*Yung text message niyang "You don't need to produce an emergency SOS for me," hindi ba't she was being redundant?*

*Another thing, I guess it's high time that she goes on a diet [again]. Jesus, she looks 6'11 crosswise!*

x x x

*Kunsabagay, she was only being most consistent. Yang si Sharon daw ay talagang mega-brat, mega-sungit. But who does she think she is? Her wealth, dear, would pale in comparison with the Tayag's millions. Kunsabagay, she's brain dead most of the time.*

x x x

thereby casting publicly upon complainant, malicious contemptuous imputation of a vice, condition or defect, which tend to cause complainant her dishonor, discredit or contempt.

CONTRARY TO LAW.<sup>[5]</sup>

Upon arraignment, petitioners, together with their co-accused Ampoloquio, each entered a plea of not guilty. Thereafter, a joint pre-trial and trial of the case ensued.<sup>[6]</sup>

Respondent's undated Complaint-Affidavit<sup>[7]</sup> alleged that Bautista and Alcantara were Editor and Associate Editor, respectively, of the publication *Bandera*, and their co-accused, Ampoloquio, was the author of the alleged libelous articles which were published therein, and subject of the two informations. According to respondent, in April 2001, she and her family were shocked to learn about an article dated March 27, 2001, featured on page 7 of *Bandera* (Vol. 11, No. 156), in the column *Usapang Censored* of Ampoloquio, entitled *Naburyong sa Kaplastikan ni Sharon ang Milyonaryang Supporter ni Kiko*, that described her as plastic (hypocrite), ingrate, mega-brat, mega-sungit, and brain dead, which were the subject of Criminal Case No. MC02-4875.<sup>[8]</sup> Another article, with the same title and similar text, also featured on the same date, appeared on page 6 of *Saksi Ngayon*, in the column *Banatan* of Ampoloquio.<sup>[9]</sup> Moreover, respondent averred that on April 24, 2001, Ampoloquio wrote two follow-up articles, one appeared in his column *Usapang Censored*, entitled *Magtigil Ka, Sharon!*, stating that she bad-mouthed one Pettizou Tayag by calling the latter *kulit-kulit* (annoyingly persistent), *atribida* (presumptuous), *mapapel* (officious or self-important), and other derogatory words; that she humiliated Tayag during a meeting by calling the latter *bobo* (stupid); that

she exhibited offensive behavior towards Tayag; and that she was a dishonest person with questionable credibility, which were the subject of Criminal Case No. MC02-4872.<sup>[10]</sup> Another article, entitled *Magtigil Ka, Sharon Cuneta!!!!*, also featured on the same date with similar text, and appeared on page 7 of Saksi Ngayon (Vol. 3, No. 285), in the column Banatan of Ampoloquio,<sup>[11]</sup> with the headline in bold letters, *Sharon Cuneta, May Sira?* on the front page of the said issue.<sup>[12]</sup> Respondent added that Ampoloquio's articles impugned her character as a woman and wife, as they depicted her to be a domineering wife to a browbeaten husband. According to Ampoloquio, respondent did not want her husband (Senator Francis Pangilinan) to win (as Senator) because that would mean losing hold over him, and that she would treat him like a wimp and *sampid* (hanger-on) privately, but she appeared to be a loving wife to him in public. Respondent denied that Tayag contributed millions to her husband's campaign fund. She clarified that Tayag assisted during the campaign and was one of the volunteers of her husband's *Kilos Ko* Movement, being the first cousin of one Atty. Joaquinito Harvey B. Ringler (her husband's partner in Franco Pangilinan Law Office); however, it was Atty. Ringler who asked Tayag to resign from the movement due to difficulty in dealing with her.

After presenting respondent on the witness stand, the prosecution filed its Formal Offer of Documentary Exhibits dated October 11, 2006, which included her undated Complaint-Affidavit.<sup>[13]</sup>

On November 14, 2006, petitioners filed a Motion for Leave of Court to File the Attached Demurrer to Evidence.<sup>[14]</sup> In their Demurrer to Evidence,<sup>[15]</sup> which was appended to the said Motion, Bautista and Alcantara alleged that the prosecution's evidence failed to establish their participation as Editor and Associate Editor, respectively, of the publication *Bandera*; that they were not properly identified by respondent herself during her testimony; and that the subject articles written by Ampoloquio were not libelous due to absence of malice.

On April 25, 2008, the RTC issued an Order<sup>[16]</sup> granting petitioners' Demurrer to Evidence and dismissed Criminal Case Nos. MCO2-4872 and MCO2-4875. The trial court opined, among others, that since the prosecution did not submit its Comment/Opposition to the petitioners' Demurrer to Evidence, the averments therein thus became un rebutted; that the testimonial and documentary evidence adduced by the prosecution failed to prove the participation of petitioners as conspirators of the crime charged; and that during the direct examination on July 27, 2004 and cross-examination on August 1, 2006, respondent neither identified them, nor was there any mention about their actual participation.

As a consequence, the prosecution filed a Motion to Admit<sup>[17]</sup> dated May 29, 2008, with the attached Comment ([to] Accused Lito Bautista and Jimmy Alcantara's Demurrer to Evidence)<sup>[18]</sup> dated March 24, 2008, stating that during the pendency of the trial court's resolution on the petitioners' Motion for Leave of Court to File the Attached Demurrer to Evidence, with the attached Demurrer to Evidence, the prosecution intended to file its Comment, by serving copies thereof, through registered mail, upon counsels for the petitioners, including the other accused, and the respondent; however, said Comment was not actually filed with the trial court due to oversight on the part of the staff of the State Prosecutor handling the case.

<sup>[19]</sup> Claiming that it was deprived of due process, the prosecution prayed that its