328 Phil. 1272

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[G.R. No. 122274, July 31, 1996]

SUSAN V. LLENES, PETITIONER, VS. HON. ISAIAS P. DICDICAN, PRESIDING JUDGE, REGIONAL TRIAL COURT OF CEBU, BRANCH 11, HON. AMADO B. BAJARIAS, SR., PRESIDING JUDGE, MUNICIPAL TRIAL COURT, BRANCH 7, AND VIVIAN G. GINETE, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

The key issue raised in this special civil action for *certiorari* under Rule 65 of the Rules of Court is whether the filing with the Office of the Ombudsman of a complaint against a government official for grave oral defamation interrupts the period of prescription of such offense.

We find this issue to be important enough to merit our attention. We thus resolved to give due course to the petition, consider the private respondent's comment on the petition[1] as the answer thereto, and decide it on the basis of the pleadings which have sufficiently discussed the issue.

The factual and procedural antecedents are not disputed.

On 13 October 1993, private respondent Vivian G. Ginete, then officer-in-charge of the Physical Education and School Sports (PESS) Division of the Regional Office of Region VII in Cebu City of the Department of Education, Culture and Sports (DECS), filed with the Office of the Deputy Ombudsman for the Visayas (hereinafter *Ombudsman-Visayas*) a complaint for grave oral defamation[2] allegedly committed on 23 September 1993 by petitioner Susan V. Llenes, an Education Supervisor II of the same Regional Office.

The petitioner was required to file a counter-affidavit pursuant to Administrative Order No. 7 of the Office of the Ombudsman, but she failed to do so.

In his resolution of 15 March 1994,[3] Antonio B. Yap, Graft Investigation Officer I of the said office, recommended that the case be indorsed to the Office of the City Prosecutor of Cebu City for the filing of the necessary information against the petitioner. This resolution was approved by the Deputy Ombudsman-Visayas.

On 28 March 1994, the City Prosecutor of Cebu City filed with the Municipal Trial Court (MTC) in Cebu City an information[4] for grave oral defamation against the petitioner. This was docketed as Criminal Case No. 35684-R and assigned to Branch 7 thereof.

On 30 May 1994, the petitioner filed a motion to quash[5] the information on the ground that the "criminal action or liability" has been extinguished. She contended that under Article 90 of the Revised Penal Code, the offense of grave oral defamation prescribes in months and that since the information was filed only on 28 March 1994, or 186 days or 6 months and 6 days after its alleged commission, the crime had then already prescribed. In support thereof, she cited the decision in *"Zalderia*[6] *vs. Reyes, Jr.,* G.R. No. 102342, July 3, 1992, 211 SCRA 277," wherein this Court ruled that the filing of an information at the fiscal's office will not stop the running of the prescriptive period for crimes.

In her opposition,[7] the private respondent cited Section 1, Rule 110 of the Rules of Court which provides, inter alia, that for offenses not subject to the rule on summary procedure in special cases and which fall within the jurisdiction of Municipal Trial Courts and Municipal Circuit Trial Courts, the filing of the complaint directly with the said court or with the fiscal's office interrupts the period of prescription of the offense charged. The filing of the complaint by the private respondent with the Office of the Deputy Ombudsman-Visayas was equivalent to the filing of a complaint with the fiscal's (now prosecutor's) office under said Section 1 pursuant to its powers under Section 15(1) of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989. The private respondent further claimed that *Zaldivia* is inapplicable because it involves an offense covered by the rule on summary procedure and it explicitly stated that Section 1 of Rule 110 excludes cases covered by the Rule on Summary Procedure.

The Municipal Trial Court, per public respondent Judge Bajarias, denied the motion to quash in the order of 18 July 1994.[8] It fully agreed with the stand of the private respondent.

Her motion to reconsider[9] the above order having been denied on 29 November 1994,[10] the petitioner filed with the Regional Trial Court (RTC) of Cebu a special civil action for certiorari,[11] which was docketed therein as Civil Case No. CEB-16988. The case was assigned to Branch 11.

In its decision of 3 July 1995,[12] the RTC, per public respondent Judge Isaias P. Dicdican, affirmed the challenged orders of Judge Bajarias of 18 July 1994 and 29 November 1994. It ruled that the order denying the motion to quash is interlocutory and that the petitioner's remedy, per *Acharon vs. Purisima,*[13] reiterated in *People vs. Bans*,[14] was to go to trial without prejudice on her part to reiterate the special defense she had invoked in her motion to quash and, if after trial on the merits an adverse decision is rendered, to appeal therefrom in the manner authorized by law. Besides, the petitioner has not satisfactorily and convincingly shown that Judge Bajarias has acted with grave abuse of discretion in issuing the orders considering that the ground invoked by her does not appear to be indubitable. And even assuming that the MTC erred in venturing an opinion that the filing of the complaint with the Office of the Ombudsman is equivalent to the filing of a complaint with the fiscal's office, such error is merely one of judgment. For, there is no decided case on the matter, and the substantive laws have not clearly stated as to what bodies or agencies of government should complaints or informations be filed in order that the period of prescription of crimes or offenses should be considered interrupted. Article 91 of the Revised Penal Code simply states that the prescriptive period shall be

interrupted by the "filing of the complaint or information" and has not specified further where such complaint or information should be filed.

Since the Regional Trial Court denied her motion to reconsider[15] the decision in the order of 23 August 1995,[16] the petitioner filed this special civil action wherein she reiterates the arguments she adduced before the two courts below. The private respondent likewise did nothing more in her responsive pleading than reiterate what she had raised before the said courts.

The basic substantive laws on prescription of offenses are Articles 90 and 91 of the Revised Penal Code for offenses punished thereunder, and Act No. 3326, as amended, for those penalized by special laws. Under Article 90 of the Revised Penal Code, the crime of grave oral defamation, which is the subject of the information in Criminal Case No. 35684-R of the MTC of Cebu, prescribes in 6 months. Since Article 13 of the Civil Code provides that when the law speaks of months it shall be understood to be of 30 days, then grave oral defamation prescribes in 180 days.[17] Article 91 of the Revised Penal Code provides:

> ART. 91. *Computation of prescription of offenses.* -- The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
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> The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

In the instant case, the alleged defamatory words were directly uttered in the presence of the offended party on 23 September 1993. Hence, the prescriptive period for the offense started to run on that date.

The matter of interruption of the prescriptive period due to the filing of the complaint or information had been the subject of conflicting decisions of this Court. In *People vs. Tayco,*[18] *People vs. Del Rosario,*[19] and *People vs. Coquia,*[20] this Court held that it is the filing of the complaint or information with the proper court, viz., the court having jurisdiction over the crime, which interrupts the running of the period of prescription. On the other hand, in the first case of *People vs. Olarte,*[21] a case for libel, this Court held that the filing of the complaint with the justice of the peace court even for preliminary investigation purposes only interrupts the running of the statute of limitations.

However, the decision of 28 February 1967 of this Court in the second case of *People vs. Olarte*[22] resolved once and for all what should be the doctrine, *viz.,* that the filing of the complaint with the municipal trial court even for purposes of preliminary investigation only suspends the running of the prescriptive period. Thus:

> Analysis of the precedents on the issue of prescription discloses that there are two lines of decisions following differing criteria in determining whether prescription of crimes has been interrupted. One line of

> precedents holds that the filing of the complaint with the justice of the peace (now municipal judge) does interrupt the course of the prescriptive term: People vs. Olarte, L-13027, June 30, 1960 and cases cited therein; People vs. Uba, L-13106, October 16, 1959; People vs. Aquino, 68 Phil. 588, 590. Another series of decisions declares that to produce interruption the complaint or information must have been filed in the proper court that has jurisdiction to try the case on its merits: People vs. Del Rosario, L-15140, December 29, 1960; People vs. Coquia, L-15456, June 29, 1963.
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> In view of this diversity of precedents, and in order to provide guidance for Bench and Bar, this Court has reexamined the question and, after mature consideration, has arrived at the conclusion that the true doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on its merits. Several reasons buttress this conclusion: First, the text of Article 91 of the Revised Penal Code, in declaring that the period of prescription "shall be interrupted by the filing of the complaint or information" without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control. All that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint.
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> And it is no argument that Article 91 also expresses that the interrupted prescription "shall commence to run again when such proceedings terminate without the accused being convicted or acquitted," thereby indicating that the court in which the complaint or information is filed must have power to acquit or convict the accused. Precisely, the trial on the merits usually terminates in conviction or acquittal, not otherwise. But it is in the court conducting a preliminary investigation where the proceedings may terminate without conviction or acquittal, if the court should discharge the accused because no prima facie case has been shown.
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> Considering the foregoing reasons, the Court hereby overrules the doctrine of the cases of People vs. Del Rosario, L-15140, December 29, 1960; and People vs. Coquia, L-15456, promulgated June 29, 1963.

Then, in its decision of 30 May 1983 in *Francisco vs. Court of Appeals,*[23] this Court not only reiterated Olarte of 1967 but also broadened its scope by holding that the filing of the complaint in the fiscal's office for preliminary investigation also suspends the running of the prescriptive period. Thus:

Article 91 of the Revised Penal Code provides that . . . .

Interpreting the foregoing provision, this Court in People vs. Tayco held that the complaint or information referred to in Article 91 is that which is filed in the proper court and not the denuncia or accusation lodged by the offended party in the Fiscal's Office. This is so, according to the court, because under this rule it is so provided that the period shall commence to run again when the proceedings initiated by the filing of the complaint or information terminate without the accused being convicted or acquitted, adding that the proceedings in the Office of the Fiscal cannot end there in the acquittal or conviction of the accused.

The basis of the doctrine in the Tayco case, however, was disregarded by this Court in the Olarte case, cited by the Solicitor General. It should be recalled that before the Olarte case, there was diversity of precedents on the issue of prescription. One view declares that the filing of the complaint with the justice of the peace (or municipal judge) does interrupt the course of prescriptive term. This view is found-in People v. Olarte, L-13027, June 30, 1960 and cases cited therein; People v. Uba, L-13106, October 16, 1959; People v. Aquino, 68 Phil. 588, 590. The other pronouncement is that to produce interruption, the complainant or information must have been filed in the proper court that has jurisdiction to try the case on its merits, found in the cases of People v. del Rosario, L-15140, December 29, 1960; People v. Coquia, L-15456, June 29, 1963.

The Olarte case set at rest the conflict views, and enunciated the doctrine aforecited by the Solicitor General. The reasons for the doctrine which We find applicable to the case at bar read:

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As is a well-known fact, like the proceedings in the court conducting a preliminary investigation, a proceeding in the Fiscal's Office may terminate without conviction or acquittal.

As Justice Claudio Teehankee has observed:

To the writer's mind, these reasons logically call with equal force, for the express overruling also of the doctrine in People vs. Tayco, 73 Phil. 509, (1941) that the filing of a complaint or denuncia by the offended party with the City Fiscal's Office which is required by law to conduct the preliminary investigation does not interrupt the period of prescription. In chartered cities, criminal prosecution is generally initiated by the filing of the complaint or denuncia with the city fiscal for preliminary investigation. In the case of provincial fiscals, besides being empowered like municipal judges to conduct preliminary investigations, they may even reverse actions of municipal judges with respect to charges triable by Courts of First Instance x x x.

Clearly, therefore, the filing of the denuncia or complaint for intriguing against honor by the offended party, later changed by the Fiscal to grave oral defamation, even if it were in the Fiscal's Office, 39 days after the