Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MEDEL ARNALDO B. BELEN,
Petitioner,

- *versus* -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 211120

Present:

CARPIO, *J.*, *Chairperson*,
PERALTA,
MENDOZA,
REYES,* and
LEONEN, *JJ.*

Promulgated:

13 FEB 2017

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DECISION

PERALTA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] dated April 12, 2013 of the Court of Appeals, which affirmed the Decision[2] dated June 2, 2009 of the Regional Trial Court of San Pablo City, Branch 32, in Criminal Case No. 15332-SP, convicting petitioner Medel Arnaldo B. Belen of the crime of libel.

On March 12, 2004, petitioner, then a practicing lawyer and now a former Judge,[3] filed a criminal complaint for estafa against his uncle, Nezer D. Belen, Sr. before the Office of the City Prosecutor (*OCP*) of San Pablo City, which was docketed as I.S. No. 04-312 and assigned to then Assistant City Prosecutor (*ACP*) Ma. Victoria Suñega-Lagman for preliminary

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* Designated Additional Member per Special Order No. 2416-F, dated January 4, 2017.

1 Penned by Associate Justice Michael P. Elbinias (now deceased), with Associate Justices Isaias P. Dicdican, Mariflor P. Punzalan Castillo and Eduardo B. Peralta Jr., concurring, and Nina G. Antonio-Valenzuela, dissenting.

2 Penned by Judge Agripino G. Morga.

3 Dismissed from service for grave abuse of authority and gross ignorance of the law in *State Prosecutor Comilang, et al. v. Judge Belen*, 689 Phil. 134 (2012).

investigation. With the submission of the parties' and their respective witnesses' affidavits, the case was submitted for resolution.

In order to afford himself the opportunity to fully present his cause, petitioner requested for a clarificatory hearing. Without acting on the request, ACP Suñega-Lagman dismissed petitioner's complaint in a Resolution dated July 28, 2004. Aggrieved by the dismissal of his complaint, petitioner filed an Omnibus Motion (for Reconsideration & Disqualify),[4] the contents of which later became the subject of this libel case.

Petitioner furnished copies of the Omnibus Motion to Nezer and the Office of the Secretary of Justice, Manila. The copy of the Omnibus Motion contained in a sealed envelope and addressed to the Office of the City Prosecutor of San Pablo City was received by its Receiving Section on August 27, 2004. As a matter of procedure, motions filed with the said office are first received and recorded at the receiving section, then forwarded to the records section before referral to the City Prosecutor for assignment to the handling Investigating Prosecutor.

ACP Suñega-Lagman first learned of the existence of the Omnibus Motion from Michael Belen, the son of Nezer who is the respondent in the estafa complaint. She was also informed about the motion by Joey Flores, one of the staff of the OCP of San Pablo City. She then asked the receiving section for a copy of the said motion, and requested a photocopy of it for her own reference.

On September 20, 2004, ACP Suñega-Lagman filed against petitioner a criminal complaint for libel on the basis of the allegations in the Omnibus Motion (for Reconsideration & Disqualify). The complaint was docketed as I.S. No. 04-931 before the OCP of San Pablo City.

Since ACP Suñega-Lagman was then a member of its office, the OCP of San Pablo City voluntarily inhibited itself from conducting the preliminary investigation of the libel complaint and forwarded all its records to the Office of the Regional State Prosecutor.

On September 23, 2004, the Regional State Prosecutor issued an Order designating State Prosecutor II Jorge D. Baculi as Acting City Prosecutor of San Pablo City in the investigation of the libel complaint.

On December 6, 2004, State Prosecutor Baculi rendered a Resolution finding probable cause to file a libel case against petitioner. On December 8, 2004, he filed an Information charging petitioner with the crime of libel, committed as follows:

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4 *Rollo*, pp. 68-75.

That on or about August 31, 2004, in the City of San Pablo, Philippines and within the jurisdiction of this Honorable Court, the said accused, a member of the Philippine Bar with Attorney Roll No. 32322, did then and there willfully, unlawfully and feloniously, and with malicious intent of impeaching, defaming and attacking the honesty, competence, integrity, virtue and reputation of Ma. Victoria Suñega-Lagman as an Assistant City Prosecutor of the Office of the City Prosecutor of San Pablo City and for the further purpose of dishonoring, injuring, defaming and exposing said Ma. Victoria Suñega-Lagman to public hatred, contempt, insult, calumny and ridicule, wrote, correspond, published and filed with the Office of the City Prosecutor of San Pablo City an undated "OMNIBUS MOTION (FOR RECONSIDERATION & DISQUALIFY) in the case entitled "MEDEL B. BELEN, Complainant vs. NEZER D. BELEN SR., Respondent, "for Estafa docketed as I.S. No. 04-312, the pertinent and relevant portions are quoted hereunder, to wit:

> In the instant case, however, the **Investigating Fiscal was not impartial and exhibited manifest bias for 20,000 reasons**. The reasons were not legal or factual. These **reasons were based on her malicious and convoluted perceptions. If she was partial, then she is stupid.** The **Investigating Fiscal's stupidity was clearly manifest in her moronic resolution** to dismiss the complaint because she reasoned out that: (1) the lease started in 1983 as the number 9 was handwritten over the figure "8" in the lease contract; (2) no support for accounting was made for the first five (5) years; and (3) the dismissal of IS No. 03-14-12 covered the same subject matter in the instant case. Thus, the instant complaint should be dismissed.
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> Unfortunately, the **Investigating Fiscal's wrongful assumption were tarnished with silver ingots. She is also an intellectually infirm or stupidly blind.** Because it was just a matter of a more studious and logical appraisal and examination of the documents and affidavits submitted by respondent's witnesses to establish that the lease started in 1993. All respondent's supporting affidavits of Mrs. Leyna Belen-Ang; Mr. Demetrio D. Belen and Mr. Silvestre D. Belen (all admitted that the lease started in 1993). Secondly, had she not always been absent in the preliminary investigation hearings and conducted a clarificatory questioning as requested by herein complainant, as her secretary was the only one always present and accepted the exhibits and affidavits, there would have been a clear deliverance from her corrupted imagination. Firstly, complainant was married to his wife on August 15, 1987. Thus, it would be physically and chronologically inconceivable that the lease for the subject lanzones be entered by complainant and his wife, whom he met only in 1987, with respondent and his siblings in 1983. Secondly, the payments were made in 1993 and 1994, these were admitted by respondent's witnesses in their affidavits. Thus, it would be a height of stupidity for respondent and his witnesses to allow complainant to take possession and harvest the lanzones from 1983 to 2002 without any payment. Lastly, the only defense raised in the respondents

witnesses' affidavits was the lease period was only from 1993 to 1998. Thus, this is a clear admission that the lease started in 1993. Despite all these matters and documents, the moronic resolution insisted that the lease started in 1983. **For all the 20,000 reasons of the Investigating Fiscal, the slip of her skirt shows a corrupted and convoluted frame of mind – a manifest partiality and stupendous stupidity in her resolution.**

Furthermore, Investigating Fiscal's 2nd corrupted reason was the failure of complainant to render an accounting on the 5-year harvest from 1993 to 1998. Sadly, the Investigating Fiscal was manifestly prejudiced and manifestly selective in her rationale. Firstly, the issue of non-presentation of accounting for the first 5 years was not raised in any of the witnesses' affidavits. A careful perusal of all their affidavits clearly shows that the issue of accounting for the first 5-year (1993-1999) harvest was never a defense because respondent and his witnesses knew and were informed that the lanzones harvest from 1993 to 1999 was less than 200,000. Secondly, during the respondent's 2002 visit from USA in a meeting at the house of Mrs. Leyna Belen Agra, complainant advised respondent of this matter and respondent acknowledged the fact that the 5-year harvest from 1993 to 1998 was abundantly inadequate to pay the principal sum of 300,000. Thirdly, all the numbers and figures in the Lease Contract indicated 1993 and/or 1994 – a clear indicia that the transaction covered by the instrument started in 1993. Fourthly, the correction was made by respondent or one of his siblings, which can easily be shown by the penmanship. Lastly, the letters of complainant to respondent clearly advised of the non-payment of the principal and interest for the 1st 5-year. For this reason, complainant had repeatedly agreed to the request of respondent's wife, Lourdes B. Belen and younger son, Nezer Belen, Jr. in 2003 for meetings for resolution of the matter. But respondent's wife and younger son repeatedly cancelled these meetings. All these factual circumstances are undeniable but were presented because the issue of accounting was never raised.

Lastly, **the invocation of the dismissal of I.S. No. 03-1412 was a nail in the coffin for the idiocy and imbecility of the Investigating Fiscal.** It was her fallacious rationale that because No. 03-14-12 covered the same subject, the instant case should also be dismissed. Unfortunately, she showed her glaring ignorance of the law. Firstly, there is no res judicata in a preliminary reinvestigation. Secondly, the dismissal of a complaint shall not bar filing of another complaint because upon completion of the necessary documentary exhibits and affidavits to establish probable cause another case could be filed. Thirdly, the cause of action in the instant case is totally different *vis-à-vis* that in I.S. No. 03-1412. Fourthly, the complainant is filing the instant case in his own personal capacity as "lessee" over the entire property from 1993 to 2013. In other words, the **Investigating Fiscal's invocation**

of the dismissal of I.S. No. 03-1412 was clearly imbecilic and idiotic.

All these matters could have been easily established. **All the idiotic and corrupted reason of the Investigating Fiscal manifestly exposed,** had the Investigating Fiscal exercised the cold partiality of a judge and calendared the instant case for clarificatory questions. In fact, she deliberately ignored complainant's request for such setting despite the established doctrine in preliminary investigation that the "propounding of clarificatory questions is an important component of preliminary investigation, more so where it is requested in order to shed light on the affidavits >>>" (Mondia v. Deputy Ombudsman/Visayas Are, 346 SCRA 365) **Unfortunately, the Investigating Fiscal, despite the letter-request for clarificatory question to shed lights of all the transaction and facts under investigation, chose to be guided by her manifest partiality and stupendous stupidity**. As a reminder to the Investigating Fiscal, Justice Oscar Herrera, Sr., in his treatise, I Remedial Law 2000 ed., succinctly explained the underlying principle of fair play and justice in the just determination of every action and proceedings is that the rules of procedure should be viewed as mere tools designed to aid the Courts in the speedy, just and inexpensive determination of cases before the court.

In totality, the dismissal of the instant case was based on reasons that were never raised by the respondent. Reasons dictate and due process of law mandates that complainant be afforded opportunity to rebut issues raised. In the instant case, manifestly established is the corrupted penchant of the Investigating Fiscal to assume matters and presume issues not raised and decide, without affording complainant the due process, matters totally extraneous and not raised. Thus, contrary to the due process requirement of law, the Investigating Fiscal rendered a resolution on a matter not raised. The question, therefore, is her reason in adjudicating without affording complainant the opportunity of rebuttal, a matter not raised. She never ever asked these questions. She deliberately and fraudulently concealed her biased reasoning to prevent complainant to rebut this matter. She sideswiped complainant on matters not raised in the pleading. She was a partial and interested investigator with clear intent to dismiss the case. This is an implied lawyering for the respondent. Thus, **she should resign from the prosecutorial arm of the government and be a defense counsel. Then her infirmed intellectual prowess and stupid assumptions be exposed in trial on the merits under which complainant is afforded the due process requirement of the law. At that stage of trial, she would be exposed as a fraud and a quack bereft of any intellectual ability and mental honesty.**

It is a sad day for a colleague in the practice of law to call for a disqualification of an Investigating Fiscal. The circumstances of the instant case, leave no recourse for

> complainant but the option, in his quest for justice and fair play and not for corrupted and convoluted 20,000 reasons, to strongly ask for the disqualification of Fiscal Suñega-Lagman in the resolution of the instant motion.
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> In the resolution for this motion for reconsideration, the sole issue is whether based on the affidavits and evidence adduced by the complainant probable cause exist to file a case against respondent. The answer is YES because, all law students and lawyers, except Fiscal Suñega-Lagman, know " >>> the preliminary investigation should determine whether there is a sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial. (Webb vs. Visconde, August 23, 1995, 63 SCAD 916, 247 SCRA 652) And if the evidence so warrants, the investigating prosecutor is duty bound to file the corresponding information. (Meralco vs. Court of Appeals, G.R. No. 115835, July 5, 1996, 71 SCAD 712, 258 SCRA 280). Thus, preliminary investigation is not a trial of the case on the merits and has no purpose except that of determining whether there is probable cause to believe that the accused is guilty thereof. A probable cause merely implies probability of guilt and should be determined in a summary manner..."
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> That the article in question had for its object to appear and made it understood, as was in effect understood and interpreted by the public or person/s who read it, that Ma. Victoria Suñega-Lagman is an inept, ignorant, dishonest, corrupt, undeserving, unjust, unfair and incompetent prosecutor of the Office of the City Prosecutor of San Pablo City.
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> CONTRARY TO LAW.[5]

Upon arraignment, petitioner refused to make a plea; hence, the trial court entered a plea of "NOT GUILTY." Trial on the merits ensued. The prosecution presented four (4) witnesses, namely: (1) complainant ACP Suñega-Lagman, (2) Michael Belen, the son and representative of respondent Nezer in the estafa complaint; and (3) Joey R. Flores and Gayne Gamo Enseo, who are part of the administrative staff of the OCP of San Pablo City. For its part, the defense presented the accused petitioner as its sole witness.

After trial, the trial court found petitioner guilty of libel and sentenced him to pay a fine of ₱3,000.00, with no pronouncement as to damages on account of ACP Suñega-Lagman's reservation to file an independent civil action against him.

The trial court stressed that the following allegations and utterances against ACP Suñega-Lagman in petitioner's Omnibus Motion are far detached from the controversy in the estafa case, thereby losing its character

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5 *Id.* at 86-89. (Emphasis added)

as absolutely privileged communication: (1) "manifest bias for 20,000 reasons"; (2) "the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots"; (3) "the slip of her skirt shows a corrupted and convoluted frame of mind"; (4) "corrupted and convoluted 20,000 reasons"; (5) "moronic resolution"; (6) "intellectually infirm or stupid blind"; (7) "manifest partiality and stupendous stupidity"; (8) "idiocy and imbecility of the Investigating Fiscal"; and (9) "a fraud and a quack bereft of any intellectual ability and mental honesty." On the element of publication, the trial court noted that the Omnibus Motion was not sent straight to ACP Suñega-Lagman, but passed through and exposed to be read by third persons, namely: prosecution witnesses Flores and Enseo who are the staff in the receiving section of the OCP of San Pablo City, as well as Michael Belen, the son and representative of Nezer in the estafa case.

On appeal, the CA affirmed the trial court's decision. On the claimed lack of publication, the CA pointed out that the defamatory matter was made known to third persons because prosecution witnesses Flores and Enseo, who are the staff in the OCP of San Pablo City, were able to read the Omnibus Motion filed by petitioner, as well as Michael, son and representative of Nezer in the estafa case then being investigated by ACP Suñega-Lagman, was furnished copy of the motion. Anent the applicability of the rule on absolutely privileged communication, the CA ruled in the negative because the subject statements were unnecessary or irrelevant in determining whether the dismissal of the estafa case filed by petitioner against Nezer was proper, and they were defamatory remarks on the personality, reputation and mental fitness of ACP Suñega-Lagman.

In her Dissenting Opinion, Justice Nina G. Antonio-Valenzuela stated that petitioner could not be convicted of libel because the statements in his Omnibus Motion, while couched in intemperate, acrid and uncalled-for language, are relevant to the dismissal of his estafa case, and thus falls under the concept of absolutely privileged communication. She also said that the element of publication is absent, because with respect to Nezer, Michael is not a "third person," *i.e.,* a person other than the person to whom the defamatory statement refers, but a "representative of his father." She added that while Flores and Enseo, who are staff of the OCP of San Pablo City, had read the Omnibus Motion, they are not "third persons" since they had a legal duty to perform with respect to the said motion filed in their office.

In a Resolution dated January 10, 2014, the CA denied petitioner's motion for reconsideration. Hence, this petition for review on *certiorari.*

In seeking his acquittal of the crime charged, petitioner argues that the CA erred (1) in finding him guilty of libel despite the absence of the element of publication; (2) in ruling that the privileged communication rule is

inapplicable; and (3) in relying on the opinion of ordinary witnesses to show the presence of malicious imputations.[6]

The petition lacks merit.

On the absence of the element of publication, petitioner contends that in serving and filing the Omnibus Motion enclosed in sealed envelopes, he did not intend to expose it to third persons, but only complied with the law on how service and filing of pleadings should be done. He asserts that the perusal of the said motion by Michael, the duly authorized representative and son of the respondent in the estafa case, as well as the two staff of the OCP - Flores and Enseo - did not constitute publication within the meaning of the law on libel because they cannot be considered as "third persons to whom copies of the motion were disseminated." With respect to Flores and Enseo, petitioner insists that they were both legal recipients as personnel in the OCP where the motion was addressed and had to be filed. Stating that the absence of publication negates malice, petitioner posits that he could not have intended to injure the reputation of ACP Suñega-Lagman with the filing of the Omnibus Motion since it was never published, but was sent to its legal recipients.

Publication in libel means making the defamatory matter, after it has been written, known to someone other than the person to whom it has been written.[7] A communication of the defamatory matter to the person defamed alone cannot injure his reputation though it may wound his self-esteem, for a man's reputation is not the good opinion he has of himself, but the estimation in which other hold him.[8] In the same vein, a defamatory letter contained in a closed envelope addressed to another constitutes sufficient publication if the offender parted with its possession in such a way that it can be read by person other than the offended party.[9] If a sender of a libelous communication knows or has good reasons to believe that it will be intercepted before reaching the person defamed, there is sufficient publication.[10] The publication of a libel, however, should not be presumed from the fact that the immediate control thereof is parted with unless it appears that there is reasonable probability that it is hereby exposed to be read or seen by third persons.[11]

In claiming that he did not intend to expose the Omnibus Motion to third persons, but only complied with the law on how service and filing of pleadings should be done, petitioner conceded that the defamatory

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6 *Id.* at 7.

7 *Novicio v. Aggabao*, 463 Phil. 510, 517 (2003).

8 *Ledesma v. CA*, 344 Phil. 207, 239 (1997), citing *Alonzo v. CA*, G.R. No. 110088, February 1, 1995, 241 SCRA 51, 60-61.

9 *People v. De la Vega-Cayetano*, 52 O.G. 240. (1956), citing *People v. Adamos*, 35 O.G. 496.

10 *Lane v. Schilling*, 130 Or 119, 279 P. 267, 65 ALR 2042.

11 *Lopez v. Delgado*, 8 Phil. 26, 28 (1907).

statements in it were made known to someone other than the person to whom it has been written. Despite the fact that the motion was contained in sealed envelopes, it is not unreasonable to expect that persons other than the one defamed would be able to read the defamatory statements in it, precisely because they were filed with the OCP of San Pablo City and copy furnished to Nezer, the respondent in the estafa complaint, and the Office of the Secretary of Justice in Manila. Then being a lawyer, petitioner is well aware that such motion is not a mere private communication, but forms part of public record when filed with the government office. Inasmuch as one is disputably presumed to intend the natural and probable consequence of his act,[12] petitioner cannot brush aside the logical outcome of the filing and service of his Omnibus Motion. As aptly noted by the trial court:

> x x x The Omnibus Motion although contained in a sealed envelope was addressed to the Office of the City Prosecutor, San Pablo City. As such, the accused fully well knows that the sealed envelope will be opened at the receiving section, and will be first read by the staff of the Office before the private complainant gets hold of a copy thereof. In fine, the Omnibus Motion was not sent straight to the private complainant — the person [to] whom it is written, but passed through other persons in the Office of the City Prosecutor. At the time the accused mailed the sealed envelope containing the Omnibus Motion addressed to the Office of the City Prosecutor, he knew that there exists not only a reasonable but strong probability that it will be exposed to be read or seen by third persons.[13]

It is not amiss to state that generally, the requirement of publication of defamatory matters is not satisfied by a communication of such matters to an agent of the defamed person.[14] In this case, however, the defamatory statement was published when copy of the Omnibus Motion was furnished to and read by Michael, the son and representative of respondent Nezer in the estafa complaint, who is clearly not an agent of the defamed person, ACP Suñega-Lagman.

Petitioner then argues that there is no publication as to Flores and Enseo, the staff of the OCP of San Pablo City, who had read the contents of the Omnibus Motion. In support thereof, he cites the settled rule that "when a public officer, in the discharge of his or her official duties, sends a communication to another officer or to a body of officers, who have a duty to perform with respect to the subject matter of the communication, such communication does not amount to publication."[15] Petitioner's argument is untenable. As mere members of the administrative staff of the OCP of San Pablo City, Flores and Enseo cannot be said to have a duty to perform with respect to the subject matter of his motion, which is to seek reconsideration of the dismissal of his Estafa complaint and to disqualify ACP Suñega-Lagman from the preliminary investigation of the case. Their legal duty

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12 Section 3(c), Rule 131 of the Rules of Court.
13 *Rollo*, pp. 139-140; RTC Decision pp. 49-50.
14 50 Am Jur 2d § 244, Libel and Slander.
15 *Alcantara v. Ponce*, 545 Phil. 677, 683 (2007).

pertains only to the clerical procedure of transmitting the motions filed with the OCP of San Pablo City to the proper recipients.

Petitioner also avers that the alleged defamatory statements in his Omnibus Motion passed the test of relevancy, hence, covered by the doctrine of absolutely privileged communication. He asserts that the statements contained in his motion are relevant and pertinent to the subject of inquiry, as they were used only to highlight and emphasize the manifestly reversible errors and irregularities that attended the resolution rendered by ACP Suñega-Lagman.

Petitioner's contentions fail to persuade.

A communication is absolutely privileged when it is not actionable, even if the author has acted in bad faith. This class includes allegations or statements made by parties or their counsel in pleadings or motions or during the hearing of judicial and administrative proceedings, as well as answers given by the witness in reply to questions propounded to them in the course of said proceedings, provided that said allegations or statements are relevant to the issues, and the answers are responsive to the questions propounded to said witnesses.[16]

The reason for the rule that pleadings in judicial proceedings are considered privileged is not only because said pleadings have become part of public record open to the public to scrutinize, but also to the undeniable fact said pleadings are presumed to contain allegations and assertions lawful and legal in nature, appropriate to the disposition of issues ventilated before the courts for proper administration of justice and, therefore, of general public concern. Moreover, pleadings are presumed to contain allegations substantially true because they can be supported by evidence in good faith, the contents of which would be under scrutiny of courts and, therefore, subject to be purged of all improprieties and illegal statements contained therein.[17] In fine, the privilege is granted in aid and for the advantage of the administration of justice.[18]

While Philippine law is silent on the question of whether the doctrine of absolutely privileged communication extends to statements in preliminary investigations or other proceedings preparatory to trial, the Court found as persuasive in this jurisdiction the U.S. case of *Borg v. Boas*[19] which categorically declared the existence of such protection:

> It is hornbook learning that the actions and utterances in judicial proceedings so far as the actual participants therein are concerned and **preliminary steps leading to judicial action of an official nature have**

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16 *Orfanel v. People*, 141 Phil. 519, 523 (1969); *Malit v. People*, 199 Phil. 532 (1982).
17 *Cuenco v. Cuenco*, 162 Phil. 299, 332 (1976).
18 *Malit v. People*, *supra* note 16, at 536.
19 231 F 2d 788 (1956).

> **been given absolute privilege**. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime xxx [A] written charge or information filed with the prosecutor or the court is not libelous although proved false and unfounded. Furthermore, the information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation.[20]

The absolute privilege remains regardless of the defamatory tenor and the presence of malice, if the same are relevant, pertinent or material to the cause in and or subject of the inquiry.[21] Sarcastic, pungent and harsh allegations in a pleading although tending to detract from the dignity that should characterize proceedings in courts of justice, are absolutely privileged, if relevant to the issues.[22] As to the degree of relevancy or pertinency necessary to make the alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety.[23] In order that a matter alleged in the pleading may be privileged, it need not, in any case, be material to the issue presented by the pleadings; however, it must be legitimately related thereto or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial.[24] What is relevant or pertinent should be liberally considered to favor the writer, and the words are not be scrutinized with microscopic intensity,[25] as it would defeat the protection which the law throws over privileged communication.[26]

The statements in petitioner's Omnibus Motion filed before the OCP of San Pablo City as a remedy for the dismissal of his estafa complaint during preliminary investigation, fall short of the test of relevancy. An examination of the motion shows that the following defamatory words and phrases used, even if liberally construed, are hardly material or pertinent to his cause, which is to seek a reconsideration of the dismissal of his estafa complaint and the disqualification of ACP Suñega-Lagman from further acting on the case: (1) **"manifest bias for 20,000 reasons"**; (2) **"the Investigating Fiscal's wrongful assumptions were tarnished in silver ingots"**; (3) **"the slip of her skirt shows a corrupted and convoluted frame of mind"**; (4) **"corrupted and convoluted 20,000 reasons"**; (5) **"moronic resolution"**; (6) **"intellectually infirm or stupid blind"**; (7) **"manifest partiality and stupendous stupidity"**; (8) **"idiocy and imbecility of the Investigating Fiscal"**; and (9) **"a fraud and a quack**

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20 *Alcantara v. Ponce*, *supra* note 15, at 684. (Emphasis in the original)

21 *Navarrete v. Court of Appeals*, 382 Phil. 427, 434 (2000), citing *Deles v. Aragona, Jr.*, G.R. No. A.C. No. 598, March 28, 1969, 27 SCRA 633, 641.

22 *Sison v. David*, 110 Phil. 662, 679 (1960).

23 *Malit v. People*, *supra* note 16, at 535.

24 *Gonzales v. Alvarez*, 122 Phil. 238, 242 (1965).

25 *Navarrete v. Court of Appeals*, *supra* note 21, at 436 citing, *People v. Aquino*, L-23908, October 29, 1966, 18 SCRA 555 (1966).

26 *U.S. v. Bustos*, 37 Phil. 731, 743 (1918).

bereft of any intellectual ability and mental honesty." These statements are neither relevant grounds for a motion for reconsideration nor valid and justifiable reasons for disqualification. These diatribes pertain to ACP Suñega-Lagman's honor, reputation, mental and moral character, and are no longer related to the discharge of her official function as a prosecutor. They are devoid of any relation to the subject matter of petitioner's Omnibus Motion that no reasonable man can doubt their irrelevancy, and may not become the subject of inquiry in the course of resolving the motion. As fittingly ruled by the trial court:

> This Court has no problem with legitimate criticisms of the procedures taken during the preliminary investigation and accused's comments pointing out flaws in the ruling of the private complainant. They should ever be constructive and should pave the way at correcting the supposed errors in the Resolution and/or convincing the private complainant to inhibit, as she did, from the case. Unfortunately, the Omnibus Motion, or the questioned allegations contained therein, are not of this genre. On the contrary, the accused has crossed the lines as his statements are baseless, scurrilous attacks on the person of the private complainant. The attacks did nothing but damage the integrity and reputation of the private complainant. In fact, the attacks undermined in no small measure the faith and confidence of the litigants in the prosecutorial service.[27]

Petitioner should bear in mind the rule that the pleadings should contain but the plain and concise statements of material facts and not the evidence by which they are to be proved. If the pleader goes beyond the requirements of the statute, and alleges an irrelevant matter which is libelous, he loses his privilege.[28] The reason for this is that without the requirement of relevancy, pleadings could be easily diverted from their original aim to succinctly inform the court of the issues in litigation and pervaded into a vehicle for airing charges motivated by a personal rancor.[29] Granted that lawyers are given great latitude or pertinent comment in furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language,[30] petitioner would do well to recall that the Code of Professional Responsibility[31] ordains that a lawyer shall not, in his professional dealings use language which is abusive, offensive or otherwise improper. After all, a lawyer should conduct himself with courtesy, fairness and candor toward his professional colleagues,[32] and use only such temperate but strong language in his pleadings or arguments befitting an advocate.

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27 *Rollo*, p. 136; RTC Decision, p. 46.

28 *Gutierrez v. Abila, et al.* 197 Phil. 616, 621-622 (1982), citing *Anonymous v. Trenkman*, 48 F.2d 571, 574.

29 *Tolentino v. Balylosis*, 110 Phil. 1010, 1015 (1961).

30 *Dorado v. Pilar*, 104 Phil. 743, 748 (1958).

31 Canon 8, Rule 8.01 of the Code of Professional Responsibility.

32 *Id.*

There is also no merit in petitioner's theory that the test of relevancy should be liberally construed in his favor, especially because "in the information for libel, there was no allegation of irrelevancy or impertinency of the questioned statements to the cause"[33] or the subject of the inquiry, the estafa complaint in I.S. No. 04-312. It bears emphasis that while the relevancy of the statement is a requisite of the defense of absolutely privileged communication, it is not one of the elements of libel. Thus, the absence of an allegation to the effect that the questioned statement is irrelevant or impertinent does not violate the right of the accused to be informed of the nature and cause of the accusation against him. As the party raising such defense, petitioner has the burden of proving that his statements are relevant to the subject of his Omnibus Motion. For its part, the prosecution only has to prove beyond reasonable doubt the presence of all the elements of libel as defined in Article 353 of the Revised Penal Code, namely: (1) imputation of a crime, vice or defect, real or imaginary, or any act, omission, condition status or circumstance; (2) publicity or publication; (3) malice; (4) direction of such imputation at a natural or juridical person; and (5) tendency to cause the dishonour, discredit or contempt of the person defamed.[34]

Meanwhile, petitioner's reliance on *People v. Andres*[35] is misplaced. In that case, the prosecution argued that the trial court erred in dismissing the case on a mere motion to quash, contending that the judge's conclusion on the face of the information that the defendant was prompted only by good motives assumes a fact to be proved, and that the alleged privileged nature of defendant's publication is a matter of defense and is not a proper ground for dismissal of the libel complaint. The Court sustained the trial court in dismissing the libel case on a mere motion to quash in this wise:

> While there is some point in this contention, yet when in the information itself it appears, as it does in the present case, that the communication alleged to be libelous is contained in an appropriate pleading in a court proceeding, the privilege becomes at once apparent and defendant need to wait until trial and produce evidence before he can raise the question of privilege. And if added to this, the questioned imputations appear, as they seem, in this case, to be really pertinent and relevant to defendant's plea for reconsideration based on complainant's supposed partiality and abuse of power from which defendant has a right to seek relief in vindication of his client's interest as a litigant in complainant's court, it would become evident that the fact thus alleged in the information would not constitute an offense of libel.
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> As has already been said by this Court: "As to the degree of relevancy or pertinency necessary to make an alleged defamatory matter privileged, the courts are inclined to be liberal. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its

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33 *Rollo*, p. 27.

34 *Alcantara v. Ponce*, *supra* note 15, at 681.

35 107 Phil. 1046 (1960).

> irrelevancy and impropriety." Having this in mind, it can not be said that the trial court committed reversible error in this case in finding that the allegations in the information itself present a case of an absolutely privileged communication justifying the dismissal of the case. Note that the information does not contain any allegation of irrelevancy and impertinency to counteract the quotations from the motion for reconsideration in question.[36]

In stark contrast to *People v. Andres*, even on the face of the allegations in the information, the defamatory statements in petitioner's Omnibus Motion fail the test of relevancy in order to be considered an absolutely privileged communication, because they are neither relevant grounds for a motion for reconsideration nor valid or justifiable reasons for disqualification of ACP Suñega-Lagman.

Finally, petitioner argues that the reliance of the CA on the statements of ordinary witnesses like Michael, Flores and Enseo is contrary to Sections 48[37] and 50[38] of Rule 130 of the Rules of Court, because they are incompetent to testify on whether the statements against ACP Suñega-Lagman in the Omnibus Motion constituted malicious imputations against her person.

As a rule, the opinion of a witness is inadmissible because a witness can testify only to those facts which he knows of his own personal knowledge[39] and it is for the court to draw conclusions from the facts testified to. Opinion evidence or testimony refers to evidence of what the witness thinks, believes or infers in regard to facts in dispute, as distinguished from his personal knowledge of the facts themselves.[40] In this case, however, prosecution witnesses Michael, Flores and Enseo barely made a conclusion on the defamatory nature of the statements in petitioner's Omnibus Motion, but merely testified on their own understanding of what they had read.

In *Buatis, Jr. v. People,*[41] the Court stated the twin rule for the purpose of determining the meaning of any publication alleged to be libelous: (1) that construction must be adopted which will give to the matter such a meaning as is natural and obvious in the plain and ordinary sense in which the public

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36 *People v. Andres, supra,* at 1051.

37 SEC. 48. *General rule.* – The opinion of a witness is not admissible, except as indicated in the following sections.

38 SEC. 50. *Opinion of ordinary witnesses.* – The opinion of a witness for which proper basis is given may be received in evidence regarding –

(a) the identity of a person whom he has adequate knowledge;
(b) a handwriting with which he has sufficient familiarity; and
(c) the mental sanity of a person with whom he is sufficiently acquainted.

The witness may also testify on his impressions of the emotion, behaviour, condition or appearance of a person.

39 Section 36, Rule 130 of the Rules of Court.

40 Black's Law Dictionary, 5th Edition, West Publishing Co. (1979).

41 520 Phil. 149, 161 (2006), citing *Jimenez v. Reyes,* 27 Phil. 52 (1914).

would naturally understand what was uttered; and (2) the published matter alleged to libelous must be construed as a whole. "In applying these rules to the language of an alleged libel, the court will disregard any subtle or ingenious explanation offered by the publisher on being called to account. The whole question being the effect the publication had upon the minds of the readers, and they not having been assisted by the offered explanation in reading the article, it comes too late to have the effect of removing the sting, if any there be from the words used in the publication."[42] As the persons who, aside from ACP Suñega-Lagman, had also read the Omnibus Motion, prosecution witnesses Michael, Flores and Enseo are competent to testify on their own understanding of the questioned statements, and their testimonies are relevant to the trial court's determination of the defamatory character of such statements.

At any rate, even if petitioner's objections to the admissibility of the testimonies of the prosecution witnesses as to their supposed opinions on his statements against ACP Suñega-Lagman were to be sustained, the trial court still correctly determined the statements to be defamatory based on its own reading of the plain and ordinary meanings of the words and phrases used in the Omnibus Motion, thus:

> Based on the above testimonies of the prosecution witnesses and on this Court's own assessment, the statements above-quoted disturb one's sensibilities. There is evident imputation of the crime of bribery to the effect that the private complainant may have received money in exchange for the dismissal of the accused's complaint against his uncle Nezer Belen. There is likewise an imputation against the private complainant as an "idiot", "imbecile" and with "stupendous stupidity". An "idiot" as defined in Meriam-Webster Collegiate Thesaurus, 1988 Edition, p. 380, as a "fool", "moron, "stupid", "nincompoop", "ignoramus", "simpleton", "dummy", or "imbecile". On the other hand, an "imbecile" means "retarded", "dull" or "feeble minded. "Stupid" means lacking in or exhibiting a lack of power to absorb ideas or impressions, or dumb. "Stupendous" means marvelous, astounding, monstrous, monumental and tremendous. Thus, "stupendous stupidity" simply means tremendous or monstrous dumbness. Indeed, accused's characterization of the private complainant is unkind, to say the least, which should not be found a pleading written by a lawyer."[43]

Given the settled rule that an appeal in a criminal case throws the whole case open for review, and it becomes the duty of the appellate court to correct such errors as may be found in the judgment appealed from, whether or not they are made the subject of assignment of errors,[44] the Court finds it proper to modify the penalty of fine of Three Thousand Pesos (₱3,000.00) imposed upon petitioner.

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42 *Buatis, Jr. v. People, supra.*

43 *Rollo*, pp. 135-136; RTC Decision, p. 45.

44 *People v. Pangilinan,* 676 Phil. 16, 26 (2011).

Apropos is Administrative Circular No. 08-2008, or the *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*,[45] where the Supreme Court cited cases[46] of libel, indicating an emergent rule of preference for the imposition of fine only rather than imprisonment in such cases under the circumstances therein specified. The Administrative Circular sets down the rule of preference on the matter of imposition of penalties for the crime of libel bearing in mind the following principles:

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;[47]

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, is *prisión correccional* in its minimum and medium periods or a fine ranging from ₱200.00 to ₱6,000.00, or both, in addition to the civil action which may be brought by the offended party. The

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45 Dated January 25, 2008.

46 In *Fernando Sazon v. Court of Appeals and People of the Philippines* [325 Phil. 1053, 1068 (1996)], the Court modified the penalty imposed upon petitioner, an officer of a homeowners' association, for the crime of libel from imprisonment and fine in the amount of ₱200.00, to fine only of ₱3,000.00, with subsidiary imprisonment in case of insolvency, for the reason that he wrote the libelous article merely to defend his honor against the malicious messages that earlier circulated around the subdivision, which he thought was the handiwork of the private complainant.

In *Quirico Mari v. Court of Appeals and People of the Philippines* [388 Phil. 269, 279 (2000)], where the crime involved is slander by deed, the Court modified the penalty imposed on the petitioner, an ordinary government employee, from imprisonment to fine of ₱1,000.00, with subsidiary imprisonment in case of insolvency, on the ground that the latter committed the offense in the heat of anger and in reaction to a perceived provocation.

In *Brillante v. Court of Appeals* [511 Phil. 96, 99 (2005)], the Court deleted the penalty of imprisonment imposed upon petitioner, a local politician, but maintained the penalty of fine of ₱4,000.00, with subsidiary imprisonment in case of insolvency, in each of the (5) cases of libel, on the ground that the intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter; and that incomplete privileged communication should be appreciated in favor of petitioner, especially considering the wide latitude traditionally given to defamatory utterances against public officials in connection with or relevant to their performance of official duties or against public figures in relation to matters of public interest involving them.

In *Buatis, Jr. v. People of the Philippines* [520 Phil. 149, 166 (2006)], the Court opted to impose upon petitioner, a lawyer, the penalty of fine only for the crime of libel considering that it was his first offense and he was motivated purely by his belief that he was merely exercising a civic or moral duty to his client when he wrote the defamatory letter to private complainant.

47 ARTICLE 355. *Libel by Means of Writing 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 *prisión correccional* in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to the civil action which may be brought by the offended party.

Court finds it appropriate to increase the fine imposed upon petitioner from Three Thousand Pesos (₱3,000.00) to Six Thousand Pesos (₱6,000.00), considering the following peculiar circumstances of the case: (1) then a practicing lawyer himself, petitioner ignored the rules that in his professional dealings, a lawyer shall not use language which is abusive, offensive or otherwise improper, and should treat other lawyers with courtesy, fairness and candor; (2) the barrage of defamatory statements in his Omnibus Motion are utterly irrelevant to his prayers for a reconsideration of the dismissal of his estafa case and for the disqualification of ACP Suñega-Lagman from further acting thereon; (3) the baseless and scurrilous personal attacks in such public document do nothing but damage the integrity and reputation of ACP Suñega-Lagman, as well as undermine the faith and confidence of litigants in the prosecutorial service; and (4) the lack of remorse on his part, as shown by his unfounded claim that he filed the Omnibus Motion in self-defense to ACP Suñega-Lagman's supposed imputation of falsification against him without due process of law.

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**, and the Decision dated April 12, 2013 and the Resolution dated January 10, 2014 of the Court of Appeals in CA-G.R. CR No. 32905, are **AFFIRMED** with **MODIFICATION**, increasing the penalty imposed upon petitioner Medel Arnaldo B. Belen to Six Thousand Pesos (₱6,000.00), with subsidiary imprisonment in case of insolvency.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

see separate Dissenting Opinion

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice