SECOND DIVISION

G.R. No. 211120: MEDEL ARNALDO B. BELEN, Petitioner, **v. PEOPLE OF THE PHILIPPINES,** Respondent.

Promulgated:
13 FEB 2017

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DISSENTING OPINION

LEONEN, *J.*:

Medel Arnaldo B. Belen has indeed made callous, acerbic, and intemperate comments through his motions before the prosecutor. His comments betray a lack of empathy for another human being. They also reveal his sense of undeserved superiority, which is as empty as it is comical.

However, in my view, he cannot be criminally liable for libel.

In his Omnibus Motion (for Reconsideration & Disqualify)[1] filed before the Office of the City Prosecutor of San Pablo City in an estafa case,[2] Medel Arnaldo B. Belen (Belen) stated:

> In the instant case, however, the investigating Fiscal was not impartial and exhibited manifest bias for 20,000 reasons. These 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. . . .
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> Unfortunately, the investigating Fiscal's wrongful assumption were [sic] tarnished with silver ingots. She is also an intellectually infirm [sic] 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. . . . For all the 20,000 reasons of the Investigating Fiscal, the slip of her skirt shows a corrupted and convoluted frame of mind – manifest partiality and stupendous stupidity in her resolution.
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> . . . .
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> 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. 03-1412 covered the same

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1 *Rollo*, pp. 68–75.

2 The estafa case was docketed as I.S. No. 04-312 and entitled *Medel B Belen v. Nezer D. Belen, Sr.*

> subject, the instant case should also be dismissed. . . . In other words, the Investigating Fiscal's invocation of the dismissal of I.S. No. 03-1412 was clearly imbecilic and idiotic.
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> All these matters could have been easily established. All the idiotic and corrupted reason [sic] of the Investigating Fiscal manifestly exposed, had the Investigating Fiscal exercised the cold partiality of judge and calendared the instant case for clarificatory questions. . . . Unfortunately, the Investigating Fiscal despite the letter-request for clarificatory question to shed lights [sic] of all the transaction [sic] and facts under investigation, chose to be guided by her manifest partiality and stupendous stupidity.
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> . . . 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.[3]

Libel, as defined in the Revised Penal Code, consists of any writing or printed form that has been made public and that maliciously imputes to a person a crime, vice, defect, or any act or circumstance tending to cause him or her dishonor, discredit, or contempt.[4]

Conviction for libel requires proof of facts beyond reasonable doubt of: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the allegation; (c) identity of the person defamed; and (d) malice.[5]

For libel to prosper, the accused must be shown to have publicly alleged facts that can be proven to be true or false. Statements of opinion—being impressions subjective to the person—are not criminally actionable.

Furthermore, malice is an essential element for criminal libel.

I

Malice exists when a defamatory statement is made without any reason other than to unjustly injure the person defamed.[6] There must be an intention to annoy and injure, motivated by ill will or personal spite.[7]

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3 *Rollo*, pp. 69–73.

4 REV. PEN. CODE, art. 353 and 355.

5 *Vasquez v. Court of Appeals*, 373 Phil. 238, 248 (1999) [Per J. Mendoza, En Banc].

6 *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 716 (2009) [Per J. Chico-Nazario, Third Division].

7 Id.

Generally, malice is presumed in every defamatory statement.[8] The prosecution need not prove the element of malice to convict an accused.

This is not true with privileged communications.

There are two (2) types of privileged communications: (i) absolutely privileged communications; and (ii) qualifiedly privileged communications.[9]

In absolutely privileged communications, no statement can be considered libelous even though it is defamatory and maliciously made.[10] Qualifiedly privileged communications, on the other hand, are statements the malice of which must be proven by the prosecution before an accused is convicted.[11]

II

Belen's statements fall under absolutely privileged communications. In absolutely privileged communications, the accused cannot be criminally liable for libel although he or she has made defamatory statements proven to be malicious.[12]

Examples of absolutely privileged communications include: (i) statements in official legislative proceedings by members of the Congress; and (ii) *statements made during judicial proceedings, including answers given by witnesses in reply to questions propounded to them during proceedings*.[13]

People v. Sesbreno[14] discusses the rationale for exempting absolutely privileged communications:

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8 REV. PEN. CODE, art. 354.

9 *Flor v. People*, 494 Phil. 439, 449 (2005) [Per J. Chico-Nazario, Second Division].

10 Id.

11 Id. at 450.

12 Id. at 449.

13 *Flor v. People*, 494 Phil. 439, 449 (2005) [Per J. Chico-Nazario, Second Division]; *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 728 (2009) [Per J. Chico-Nazario, Third Division]; *People v. Sesbreno*, 215 Phil. 411, 416 (1984) [Per J. Guitierrez, Jr., First Division]. *See also U.S. v. Bustos*, 37 Phil. 731 (1918) [Per J. Malcolm, First Division]; *Gilmer v. Hilliard*, 43 Phil. 180 (1922) [Per J. Johns, First Division]; *Santiago v. Calvo*, 47 Phil. 919 (1926) [Per J. Malcolm, En Banc]; *Smith Bell and Co. v. Ellis*, 48 Phil. 475 (1925) [Per J. Johns, En Banc]; *People v. Valerio Andres*, 107 Phil. 1046 (1960) [Per J. Barrera, En Banc]; *Sison v. David*, 110 Phil. 662 (1961) [Per J. Concepcion, En Banc]; *Tolentino v. Baylosis*, 110 Phil. 1010 (1961) [Per J. J.B.L. Reyes, En Banc]; *Cuenco v. Cuenco*, 162 Phil. 299 (1976) [Per J. Esguerra, First Division]; *Elizalde v. Gutierrez*, 167 Phil. 192 (1977) [Per J. Fernando, Second Division]; and *PCIB v. Philnabank Employees' Association*, 192 Phil. 581 (1981) [Per J. Fernando, Second Division].

14 215 Phil. 411 (1984) [Per J. Guitierrez, Jr., First Division].

> The doctrine of privileged communication that utterances made in the course of judicial proceedings, including *all kinds of pleadings, petitions and motions, belong to the class of communications that are absolutely privileged* has been expressed in a long line of cases. . . . *The doctrine of privileged communication rests upon public policy, which looks to the free and unfettered administration of justice, though, as an incidental result it may in some instances afford an immunity to the evil disposed and malignant slanderer.* While the doctrine is liable to be abused, and its abuse may lead to great hardships, yet to give legal action to such libel suits would give rise to greater hardships. The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of the public welfare, *the purpose being that members of the legislature, judges of courts, jurors, lawyers, and witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for the recovery of damages.* Lawyers, most especially, should be allowed a great latitude of pertinent comment in the furtherance of the causes they uphold, and for the felicity of their clients, they may be pardoned some infelicities of language.[15] (Emphasis supplied, citations omitted)

The absolute privilege of communications in judicial proceedings extends to preliminary investigations.

Preliminary investigations are inquisitorial proceedings to determine probable cause—whether there is "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."[16] In conducting a preliminary investigation, the prosecutor exercises powers akin to those of a court, although he or she is an officer of the executive department.[17]

In *Alcantara v. Ponce*:[18]

> Since the newsletter was presented during the preliminary investigation, it was vested with a privileged character. While Philippine law is silent on the question of *whether the doctrine of absolute privilege extends to statements made in preliminary investigations or other proceedings preparatory to the actual trial*, the U.S. case of *Borg v. Boas* makes a categorical declaration of the existence of such protection:
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> > 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 been given absolute privilege. Of particular interest are proceedings leading up to prosecutions or attempted prosecutions for crime.* . . . [A] written charge or information filed with the

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15 Id. at 416.

16 RULES OF COURT, Rule 112, sec. 1, par. 1.

17 *Santos v. Go,* 510 Phil. 137, 147 (2005) [Per J. Quisumbing, First Division].

18 545 Phil. 677 (2007) [Per J. Corona, First Division].

> prosecutor or the court is not libelous although proved to be 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.[19] (Emphasis supplied, citations omitted)

This doctrine applies, although the statements are not directed against the opposing party. The only qualification to the doctrine of absolutely privileged communications is that the statements must be relevant to the issues or are responsive or pertinent to the questions propounded.[20]

In *Sesbreno*, the accused called the opposing counsel an "irresponsible person, cannot be trusted, like Judas, a liar and irresponsible childish prankster."[21] In discussing the test of relevancy, this Court held:

> However, this doctrine [of absolutely privileged communication] is not without qualification. Statements made in the course of judicial proceedings are absolutely privileged — that is, privileged regardless of defamatory tenor and of the presence of malice — if the same are *relevant, pertinent, or material to the cause in hand or subject of inquiry.* A pleading must meet the test of relevancy to avoid being considered libelous.
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> As to the degree of relevancy or pertinency necessary to make alleged defamatory matters 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 irrelevance and impropriety.* In order that a matter alleged in a pleading may be privileged, *it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of the inquiry in the course of the trial.*
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> . . . .
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> *. . . Although the language used by defendant-appellee in the pleading in question was undoubtedly strong, since it was made in legitimate defense of his own and of his client's interest, such remarks must be deemed absolutely privileged and cannot be the basis of an action for libel.*[22] (Emphasis supplied, citations omitted)

When the statements are made to protect one's interests in the case—however caustic and severe the language used may be—they are considered absolutely privileged.

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19 Id. at 384.

20 *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 728 (2009) [Per J. Chico-Nazario, Third Division].

21 *People v. Sesbreno*, 215 Phil. 411, 415 (1984) [Per J. Guitierrez, Jr., First Division].

22 Id. at 417–418.

Belen's acerbic statements were made in an Omnibus Motion, a pleading filed before the Office of the Prosecutor in an estafa case. His statements constitute his justifications for filing his Motion. They include lengthy explanations on why the prosecutor erred in dismissing his estafa case. Although the statements were misguided and callous, to Belen it was necessary that he alleged them for his prayer to be granted. Belen made the statements as a means to protect his own interests as he believed that his estafa case was unjustly dismissed.

Necessarily, the statements are absolutely privileged.

III

Assuming that the communications are not absolutely privileged, the statements are, at the very least, qualifiedly privileged.

Qualifiedly privileged communications, although defamatory and offensive, are libelous only when actual malice is proven.[23]

Statutorily, qualifiedly privileged communications are provided for under Article 354 of the Revised Penal Code:

> ARTICLE 354. *Requirement for Publicity.* — Every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown, except in the following cases:
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> 1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
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> 2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

This enumeration, however, is not exclusive. Other communications may be deemed qualifiedly privileged when considered in light of the public policy to protect the right to freedom of speech.[24]

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[23] *Flor v. People*, 494 Phil. 439, 450 (2005) [Per J. Chico-Nazario, Second Division].
[24] Id.

In *Flor v. People*:[25]

> In the case, however, of *Borjal v. Court of Appeals*, this Court recognized that the enumeration stated in Article 354 of the Revised Penal Code is not exclusive but is rendered more expansive by the constitutional guarantee of freedom of the press, thus:
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> > . . . ***To be sure, the enumeration under Art. 354 is not an exclusive list of qualifiedly privileged communications since fair commentaries on matters of public interest are likewise privileged.*** The rule on privileged communications had its genesis not in the nation's penal code but in the Bill of Rights of the Constitution guaranteeing freedom of speech and of the press. As early as 1918, in *United States v. Cañete*, this Court ruled that publications which are privileged for reasons of public policy are protected by the constitutional guaranty of freedom of speech. This constitutional right cannot be abolished by the mere failure of the legislature to give it express recognition in the statute punishing libels.[26] (Emphasis supplied, citations omitted)

From this parameter of protecting freedom of speech, this Court has consistently ruled that defamatory statements relating to public officials and the discharge of their official duties are considered qualifiedly privileged communications.[27]

In *Disini, Jr. v. Secretary of Justice*,[28] I had the occasion to trace the development of this doctrine from the American case of *New York Times Co. v. Sullivan*:[29]

> It was in the American case of *New York Times Co. v. Sullivan*, which this court adopted later on, that the "actual malice" requirement was expounded and categorically required for cases of libel involving public officers. In resolving the issue of "whether . . . an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments", the *New York Times* case required that actual malice should be proven when a case for defamation "includes matters of public concern, public men, and candidates for office." Thus:
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> > Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, ***libel can claim no talismanic immunity from constitutional***

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25 494 Phil. 439 (2005) [Per J. Chico-Nazario, Second Division].
26 Id. at 450.
27 Id.
28 727 Phil. 28 (2014) [Per J. Abad, En Banc].
29 376 U.S. 254 (1964).

> ***limitations.*** It must be measured by standards that satisfy the First Amendment.
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> The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."
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> The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.
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> . . . .
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> ***Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. This is true even though the utterance contains "half-truths" and "misinformation."*** Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. If judges are to be treated as "men of fortitude, able to thrive in a hardy climate," surely the same must be true of other government officials, such as elected city commissioners. ***Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism, and hence diminishes their official reputations.***[30] (Emphasis supplied, citations omitted)

In *United States v. Bustos,*[31] a justice of the peace was charged with malfeasance in office:

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience. *A public officer must not be too thin-skinned with reference to comment upon his official acts. Only thus can the intelligence and dignity of the individual be exalted.* Of course, criticism does not authorize defamation. Nevertheless, as the individual is less than the State, so must expected criticism be born for the common good. Rising superior to any official, or set of officials, to the

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[30] J. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 369–370 (2014) [Per J. Abad, En Banc].

[31] 37 Phil. 731 (1918) [Per J. Malcolm, First Division].

> Chief Executive, to the Legislature, to the Judiciary — to any or all the agencies of Government — public opinion should be the constant source of liberty and democracy.
>
> *The guaranties of a free speech and a free press include the right to criticize judicial conduct. The administration of the law is a matter of vital public concern. Whether the law is wisely or badly enforced is, therefore, a fit subject for proper comment. If the people cannot criticize a justice of the peace or a judge the same as any other public officer, public opinion will be effectively muzzled. Attempted terrorization of public opinion on the part of the judiciary would be tyranny of the basest sort. The sword of Damocles in the hands of a judge does not hang suspended over the individual who dares to assert his prerogative as a citizen and to stand up bravely before any official. On the contrary, it is a duty which every one owes to society or to the State to assist in the investigation of any alleged misconduct. It is further the duty of all know of any official dereliction on the part of a magistrate or the wrongful act of any public officer to bring the facts to the notice of those whose duty it is to inquire into and punish them. In the words of Mr. Justice Gayner, who contributed so largely to the law of libel. "The people are not obliged to speak of the conduct of their officials in whispers or with bated breath in a free government, but only in a despotism."*[32] (Emphasis supplied, citations omitted)

Statements relating to acts of public officers and of those who exercise judicial functions fall under qualifiedly privileged communications. Belen's statements were his criticism of a public official.

IV

For qualifiedly privileged communications to be considered libelous, actual malice must be proven.

To prove actual malice, it must be shown that the statement was made with the knowledge that it is false or with reckless disregard for the truth.[33]

In *Vasquez v. Court of Appeals*:[34]

> In denouncing the barangay chairman in this case, petitioner and the other residents of the Tondo Foreshore Area were not only acting in their self-interest but engaging in the performance of a civic duty to see to it that public duty is discharged faithfully and well by those on whom such duty is incumbent. The recognition of this right and duty of every citizen in a democracy is inconsistent with any requirement placing on him the burden of proving that he acted with good motives and for justifiable ends.

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32 Id. at 740–742.

33 *Yuchengco v. Manila Chronicle Publishing Corp.*, 620 Phil. 697, 732 (2009) [Per J. Chico-Nazario, Third Division].

34 373 Phil. 238 (1999) [Per J. Mendoza, En Banc].

> For that matter, *even if the defamatory statement is false, no liability can attach if it relates to official conduct, unless the public official concerned proves that the statement was made with actual malice — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.* This is the gist of the ruling in the landmark case of *New York Times v. Sullivan*, which this Court has cited with approval in several of its own decisions. This is the rule of "actual malice." In this case, the prosecution failed to prove not only that the charges made by petitioner were false but also that petitioner made them with knowledge of their falsity or with reckless disregard of whether they were false or not.
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> A rule placing on the accused the burden of showing the truth of allegations of official misconduct and/or good motives and justifiable ends for making such allegations would not only be contrary to Art. 361 of the Revised Penal Code. It would, above all, infringe on the constitutionally guaranteed freedom of expression. Such a rule would deter citizens from performing their duties as members of a self-governing community. Without free speech and assembly, discussions of our most abiding concerns as a nation would be stifled. As Justice Brandeis has said, "public discussion is a political duty" and the "greatest menace to freedom is an inert people."[35] (Emphasis supplied)

To be considered to have reckless disregard for the truth, the false statements must have been made with a definite awareness that they are untrue.[36] That the accused was negligent of the facts is not enough.[37] The accused must have doubted the veracity of the statements that he or she was making.[38] Thus, errors and inaccuracies may be excused so long as they were made with the belief that what was being stated is true.[39]

Here, what Belen expressed is, first and foremost, an opinion, not a fact. It is an inference drawn from the refusal of the prosecutor to allow a clarificatory hearing and the dismissal of the estafa complaint. That the prosecutor is "intellectually infirm and stupidly blind"[40] is an estimation that may or may not be mistaken, but nonetheless one that does not detract from its nature as a mere opinion that reflects more on the speaker than the subject.

Moreover, the statements relating to partiality and bias constitute Belen's justifications for filing his Motion. His statements include lengthy explanations on why the prosecutor erred in dismissing his estafa case. The statements were made to protect his interests as he believed that his estafa case was unjustly dismissed.

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35 Id. at 254–255.
36 *Flor v. People*, 494 Phil. 439, 452 (2005) [Per J. Chico-Nazario, Second Division].
37 Id.
38 Id.
39 Id.
40 *Rollo*, p. 69.

There is no showing that he did not believe his allegations. There is likewise no showing that he made those statements with the knowledge that they were false. There is no showing that the statements were made with reckless disregard for the truth.

Public officers and those who exercise judicial functions must not be so onion-skinned. Intemperate language is an occupational hazard. Many times, such statements reflect more on the speaker than the subject.

V

I reiterate my view that libel ought to be decriminalized. It is inconsistent with the constitutionally protected right to freedom of speech. There is no state interest served in criminalizing libel. Civil actions for defamation are sufficient to address grievances without threatening the public's fundamental right to free speech.

The libel provisions in the Revised Penal Code are now overbroad. They do not embody the entire doctrine of principles that this Court for decades has expounded on under the free speech principles to which the State adheres.[41]

The history of the criminalization of libel in the Philippines shows that libel started as a legal tool of the Spaniards and the Americans to protect government and the status quo.[42] It was promulgated to regulate speech that criticized foreign rule.[43] Jurisprudence has expanded and qualified the bare text of the law to give way to the fundamental right to expression.[44]

Thus, in theory, only private parties ought to be protected from defamatory utterances.[45] However, in practice, notable personalities who are powerful and influential—including electoral candidates and public officers—are the usual parties who pursue libel cases.[46] The limitations set out in jurisprudence have not been enough to protect free speech.[47] Clearly, the libel laws are used to deter speech and silence detractors.[48]

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41 As I discussed in my Dissenting Opinion in *Disini, Jr. v. Secretary of Justice* (727 Phil. 28, 301–430 (2014) [Per J. Abad, En Banc]), jurisprudence has developed our criminal laws on libel to accommodate our free speech values.

42 J. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 386 (2014) [Per J. Abad, En Banc].

43 Id. at 385.

44 Id. at 386.

45 Id.

46 Id. at 387.

47 Id. at 388.

48 Id.

The libel provisions under the Revised Penal Code invade a constitutionally protected freedom. Imposing both criminal and civil liabilities to the exercise of free speech produces a chilling effect.

I maintain that free speech and the public's participation in matters of interest are of greater value and importance than the imprisonment of a private person who has made intemperate statements against another.[49] This is especially so when there are other remedies to prevent abuse and unwarranted attacks on a person's reputation and character.[50]

Civil actions do not endanger the right to free speech, such that they produce an unnecessary chilling effect on critical comments against public officers or policies.[51] Thus:

> In a civil action, the complainant decides what to allege in the complaint, how much damages to request, whether to proceed or at what point to compromise with the defendant. Whether reputation is tarnished or not is a matter that depends on the toleration, maturity, and notoriety of the person involved. Varying personal thresholds exists. Various social contexts will vary at these levels of toleration. Sarcasm, for instance, may be acceptable in some conversations but highly improper in others.
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> In a criminal action, on the other hand, the offended party does not have full control of the case. He or she must get the concurrence of the public prosecutor as well as the court whenever he or she wants the complaint to be dismissed. The state, thus, has its own agency. It will decide for itself through the prosecutor and the court.
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> Criminalizing libel imposes a standard threshold and context for the entire society. It masks individual differences and unique contexts. Criminal libel, in the guise of protecting reputation, makes differences invisible.
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> Libel as an element of civil liability makes defamation a matter between the parties. Of course, because trial is always public, it also provides for measured retribution for the offended person. The possibility of being sued also provides for some degree of deterrence.
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> The state's interest to protect private defamation is better served with laws providing for civil remedies for the affected party. It is entirely within the control of the offended party. The facts that will constitute the cause of action will be narrowly tailored to address the perceived wrong.

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[49] Id. at 375.

[50] CIVIL CODE, art. 19, 20 and 21.
Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.
Art. 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.
Art. 21. Any person who wilfully causes loss or injury to another in manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

[51] J. Leonen, Dissenting Opinion in *Disini, Jr. v. Secretary of Justice*, 727 Phil. 28, 389 (2014) [Per J. Abad, En Banc].

The relief, whether injunctive or in damages, will be appropriate to the wrong.

Declaring criminal libel as unconstitutional, therefore, does not mean that the state countenances private defamation. It is just consistent with our democratic values.[52]

ACCORDINGLY, I vote to **GRANT** the Petition.

MARVIC M.V.F. LEONEN
Associate Justice

[52] Id. at 391–392.