



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

RAFFY T. TULFO,
Petitioner,

G.R. No. 187113

-versus-

PEOPLE OF THE PHILIPPINES
and ATTY. CARLOS T. SO,
Respondent.

X-----X
ALLEN A. MACASAET and
NICOLAS V. QUIJANO, JR.,
Petitioners,

X-----X
G.R. No. 187230
Present:

-versus-

LEONEN, J., Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
ROSARIO, JJ.

CARLOS T. SO and PEOPLE OF
THE PHILIPPINES,
Respondents.

Promulgated:
January 11, 2021
Mis-DC-Batt

X-----X

DECISION

LEONEN, J.:

The need to protect freedom of speech and of the press cannot be understated. These freedoms are the most pervasive and powerful vehicles

of informing the government of the opinions, needs, and grievances of the public. It is through these guarantees that the people are kept abreast of government affairs. Without these rights, no vigilant press would flourish. And without a vigilant press, the government's mistakes would go unnoticed, their abuses unexposed, and their wrongdoings uncorrected.¹

In this regard, journalists and the media enjoy a wide latitude of discretion in investigating, gathering, and reporting news pertinent to public affairs. Public affairs encompass a wide array of matters, including information on public officials' exercise of their official functions. Imbued with public interest, these officials are expected to execute their mandate in a manner consistent with law, morals, and public policy.

Consistent with the right to deliver information on public matters, journalists and members of the press may at times write inaccurate articles. Nonetheless, liability should attach only if it is proven that the article was written and published with knowledge that it was false or with reckless disregard for the truth.

Commentaries on matters of public affairs are not always expected to conform with what is acceptable. More often, these commentaries will contain a degree of crudeness bordering on boorishness when they are directed against unscrupulous public officials. Even then, the Constitution remains steadfast in protecting these kinds of commentaries.

These consolidated criminal cases originated from 14 Informations for libel filed against the writer, publisher, and managing editor of the *Abante Tonite* column, "Shoot to Kill," which covered stories on the alleged anomalous dealings of Atty. Carlos "Ding" So (Atty. So) of the Bureau of Customs. At issue are the Revised Penal Code provisions on libel vis-à-vis the constitutional guarantee of freedom of the press and statements involving public officers in the exercise of their official functions.

Abante Tonite columnist Raffy T. Tulfo (Tulfo) filed a partial Petition for Review,² docketed as G.R. No. 187113, assailing a portion of the Court of Appeals' Amended Decision³ that affirmed his conviction for six of 14 counts of libel. *Abante Tonite* publisher Allen A. Macasaet (Macasaet) and managing editor Nicolas V. Quijano (Quijano) also filed a partial Petition for Review,⁴ docketed as G.R. No. 187230, assailing the same Decision.

¹ See *Perfecto V. Fernandez, Freedom of the Press in the Philippines*, 33 Phil. L. J. 473, 477 (1958).

² *Rollo* (G.R. No. 187113), pp. 11–60.

³ *Rollo* (G.R. No. 187230), pp. 53–67. The March 17, 2009 Decision was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Portia Aliño-Hormachuelos and Pampio A. Abarintos of the Special Ninth Division, Court of Appeals, Manila.

⁴ *Id.* at 3–51.

On April 12, 1999, after the ninth publication in *Abante Tonite* about his purportedly dubious activities at the Bureau of Customs, Atty. So filed a Complaint-Affidavit for nine counts of libel against the three accused for their abusive and malicious imputations against him. He later filed two more Complaint-Affidavits, in connection with the April 14, 19, 21, and 23, and May 12, 1999 issues of *Abante Tonite*, when Tulfo refused to stop his alleged defamatory statements.⁵

The 14 Informations read:

1. In CRIM CASE NO. 99-1463:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 3rd day of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY. CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said publication on March 3, 1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

"Noong August 14, 1996 ay nag-strike ang mga brokers at hiningi mapatalsik si So dahil sobra umano ito kung mag-extort sa kanila."

Muling nag-strike ang mga brokers laban sa kanya nitong December 1998 dahil sa reklamo nilang sobra kung mangikil si So. Pero hindi na nasibak si So sa kanyang puwesto sa pagkakataong ito.

"Ang modus operandi ni So sa NAIA ay "pinababantayan" niya at 'pina-a-alert' ang lahat ng kargamentong ipinapasok ng mga brokers."

"Hindi para patawan ng karampatang taxes kundi para mag-extort sa mga ito. Ayon sa aking source, ₱50,000.00 pataas and hinihingi na pang-areglo ni So sa kada cargo."

"Idinagdag pa ng source na kaya malakas diumano ang loob ni So sa kanyang extortion activities ay dahil (ka-) tandem niya si Collector Templo."

⁵ Rollo (G.R. No. 187113), pp. 90-91.

“Sa 100 cargoes araw-araw na dumating ay bahala na kayong malula sa kakukuwenta kung gaano kalaking halaga ang nakukurakot ni So.”

“Walang pwedeng humarang sa departamento niya (District Collector Templo) at pagdating sa Intelligence and Investigation Service ay naroon and partner niyang si So. Talagang sisiw sa kanila ang smuggling.”

“Kaya ayon sa aking source, sky is the limit kung “magparating” itong si Templo ng kargamento.”

“Kung sina Hernandez-Taguba raw ang “The Most Formidable Tandem in Customs Smuggling History”, sa panig ng mga brokers, itong sina So-Templo naman daw and Mafia ng mga bantay-salakay sa Customs.”

“Si So ay may Mercedes Benz, Nissan Patrol, Pajero, Honda Civic at Estrada. Kung gusto ninyong makakita ng tunay na mansion ay magpunta kayo sa Fort Bonifacio at ang pinakamalking (sic) bahay na may blue gate at malapit sa gold course and mansyong ni So diyan sa loob.”

“Paano nga pala ito nakasingit sa loob ng Fort Bonifacio samantalang puro military officers and hile-hilerang nakatira diyan at hindi naman miyembro ng militar si So.”

“Kamakailan lang na-promote si So bilang CIIS Chief. Sa plantilla niya noon bilang Intelligence Officer I ay ₱8,000.00 lang kada buwan ang suweldo niya. Paano niya nga kaya nakuha ngayon ang ganito kalaking kayamanan?”

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.⁶ (Emphasis in the original)

2. In CRIM CASE NO. 99-1464:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 5th day of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher, and managing Editor, respectively of “Abante Tonite”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit

⁶ Rollo (G.R. No. 187230), pp. 141-143.

or dishonour complainant CARLOS T. SO and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on March 5, 1999, its daily column "Shoot to Kill", quoted hereunder, to wit:

"Si Jerry Yap and isa sa mga pinakamalaking smuggler diyan sa NAIA, ayon sa aking source. Ang protector na naman umano nito ay ang dalawang walanghiyang Customs Officials na sina Atty. Ding So, Chief ng CIIS, at si District Collector Celso Templo."

....

"Isang halimbawa ay noong September 1998, walong vans na dineklara niyang personal effects and pinarating niya sa NAIA, hinuli ito ng EIIB pero bigla raw namagitan si So at Templo."

....

"Ayon pa sa aking source, kapalit ng protection ni So ay ₱25,000.00 daw, Weekly 'tong' mula kay Yap."

....

"Sa ganitong klaseng sistema nina Templo at So ay hindi nga matitigil and smuggling diyan sa NAIA."

"Kaya tinatawagan ko ng pansin si Customs Acting Commissioner Nelso Tan, dapat bantayan mong mabuti itong sina Jerry Yap, So at Templo dahil kung hindi ay sayang lang ang ginawa mong re-shuffle kamakailan."

"Magiging inutil pa rin ang hangarin mong malinis ang Customs."

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.⁷ (Emphasis in the original)

3. In CRIM CASE NO. 99-1465:

The undersigned Assistant City Prosecutor accused RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 12th day of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and

⁷ Id. at 144-146.

there wilfully, unlawfully and feloniously and with malicious intent to discredit and dishonour complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule, write and publish in the regular issue of said daily publication on March 12, 1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

'Kamakailan ay inilantad ko rito sa SHOOT TO KILL and mga katarantaduhan ng isang miyembro ng INC. si Atty. Ding So na Chief ng CIIS sa Customs sa NAIA.'

'Ayon sa aking mga importante (sic) ay nagyayabang pa si So matapos kong bombahin. Ipinagmamalaki niya na hindi siya apektado sa kahit na anumang batikos dahil kaibigan daw niya si Boy Manalo na kamag-anak ninyo, ay ito raw and pader na sinasandalan niya sa INC. Kaya walang sinuman daw ang puwedeng gumalaw sa kanya.'

'Gusto kong isa-isahin ang mga katarantaduhan ni Ding So para sa inyong kaalaman, Ka Erdi.'

'Una, noong Aug. 14, 1996 ay nagstrike ang mga brokers sa NAIA at hiniling na patalsikin si So dahil sobra-sobra umano ito kung mag-extort sa kanila. Pinatalsik naman si So na noon ay Asst. Chief pa lang ng CIIS.'

'At nitong Dec. 1998 ay muling nag-strike ang mga brokers at ang sobra-sobrang extortion pa rin ni So and inireklamo nila ngayong Chief na ito ng CIIS. Pero hindi na napatalsik [p]a ang miyembro ng INC na ito.'

'Panglaw, si So ay sumesweldo lang ng ₱8,000.00 kada buwan sa posisyon niya sa Customs bilang (Assistant) Chief ng CIIS noong nakaraang taon. Pero siya ay nakabili ng Mercedes Benz, Nissan Patrol, Pajero, Honda Civic at Estrada. Bukod pa rito ay may palasyo siyang naipatayo sa loob ng Fort Bonifacio, sa tabi ng golf course.'

'Pangatlo, sa kultura ng Pinoy, marahil ay tanggap ng (sic) ang pagiging babaero ng maraming lalaki. Pero kakaiba ang trip ni So. Ayon sa aking source, ang mga pinapatos ni So ay may baba[e]ng [may-] asawa.'

'Isang halimbawa ang sekretarya sa isang opisina rin sa NAIA na may asawa na. Alam ng maraming taga-NAIA ang pakikipag-relasyon dito ni So sa babaing ito na may initial na 'G'.'

'Ikaapat, isang Josie Ocampo na broker ang hindi na nakatiis at nagdemanda laban kay So. Ang dahilan ay labis namang pangngikil nito at pang-iipit sa pobreng broker.'

'Nagbibigay naman si Ocampo ng lagay at malaki naman daw para hindi na siya ipitin pa ni So. Pero

talagang (sobra)-sobra raw kung mangotong ito kaya napilitan na lang si Ocampo na idemanda si So.'

'Ikalima, ayon sa aming mga source sa Customs, si So ay nagtalaga ng 'Quota' sa lahat ng brokers, biyahero at biyahera (B & B) ng halagang P25,000.00 sa bawat isa sa kanila ling(u)-lingo.'

'Kapag hindi raw nakapagbigay o kulang ang ibinigay ng mga brokers at B&B ay agad na hinuhuli ni So ang kanilang mga kargamento.'

Ikaanim, minsang ay nahuli sa [c]amera ang pagpapatol ni So ng mga parating na cargo sa airport at sinabi nito na para raw iyon sa INC.'

'Kulang ang espasyo rito Ka Erdi, para ibulgar ko ang lahat ng katarantaduhan ng miyembro ninyong si Ding So. Pero siguro naman ay more than enough na ang mga nabasa ninyong ito para itiwag ninyo sa INC si Atty. Ding So.'

'Sa ngayong at sukdulan na ang kanyang pang-[e]xtort, pangungurakot at pagnanakaw pero walang (m)angahas na galawin siya dahil ipinagmamalaki niya ang pagiging INC member at malakas daw ka 'Boy Manalo' na kamag-anak ninyo.'

Ako ay naniniwala Ka Erdi[,] na hindi kayo papayag na masisira and respetadong pangalan ng I(N)C dahil sa kutong lupa at barumbadong si So.'

'Ikaw naman Ding So, ito ang gustong iparating sa iyo ng mga ngitngit na ngitngit na brokers. Maa[ar]ing nakalusot ka sa mga kawalanghiyaan mo sa Customs, pero ang kakaiba mong bisyo na pagpapatol sa asawa ng may asawa ay baka siyang totodas sa iyo kapag natiklo ka balasubas ka!'

'Sige, Acting Customs Commissioner Nelson Tan, sibakin mo na si So at hindi na makikialam ang Iglesia ni Cristo!'

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.⁸ (Emphasis in the original)

4. In CRIM CASE NO. 99-1466:

The undersigned Assistant City Prosecutor accused RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

⁸ Id. at 147-150.

That on or about the 19th day of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonour complainant (sic) ATTY. CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule[,] write and publish in the regular issue of said daily publication on March 19, 1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

‘Ngayon ay tapos na ang maliligayang araw ni Luna. Dahil ayon sa aking source sa Customs ay sinibak na ito. Okey ‘yan Acting (Com.) Tan(.) (T)alagang umaaksyon ka nga!’

‘Pero paano itong masahol pa kay Luna na si Atty. Ding So, chief ng CIIS diyan sa Customs? Inilantad ko na rin ang lahat ng katarantaduhan nito at sampung beses pa ang matinding pangungurakot nito kaysa kay Luna. Siguro [ay] dapat din[g] sumunod ito kay Luna. Sibakin mo na rin Acting Commissioner Tan itong si Ding So!’

‘Anyway, ipinarating ko na kay Ka Erdi Manalo ng Iglesia Ni Cristo ang mga katarantaduhan ni So. Kaya naninniwala (sic) ako na hindi na makikialam si Ka Erdi kung sisibakin man si So. Dahil hindi kinukunsinti ni Ka Erdi ang mga miyembro ng INC na masasamang damo!’

‘Kung hindi ka gagawa ng aksyon laban kay So, Acting Com. Tan, iisipin ng mga tao na takot ka sa INC. Para din sa kaalaman mo Acting Com. Tan, itong si So ay hindi rin ginagalaw ng kanyang Director na si George Jereos.’

Nalaman ko sa aking source na ito ay dahil din sa takot si Jereos sa INC. Bukod dito, para hindi na lang umimik si Jereos ay tinatapalan umano [n]i So ng kuwarta ang mukha nito!’

‘Sinabi rin ng aking source na ikaw Acting Com. Nelson Tan ay hindi tumatanggap ng suhol kay So. Kaya wala kang utang na loob sa [I]ntsik na ito. AT wala ka ring utang na loob sa INC kaya sibakin mo na si So!!!’

wherein said complainant was indicated as an e[x]tortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.⁹ (Emphasis in the original)

⁹ Id. at 151–152.

5. In CRIM CASE NO. 99-1467:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 22nd of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule[,] write and publish in the regular issue of the said daily publication on March 22, 1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

....

"At napag-usapan na rin lang ang black-sheep, diyan sa Customs ay wala ng titindi a sa pagka-black-sheep ni Atty. Ding So, ang Chief ng CIIS. Kaya dapat na talagang gumawa ng hakbang si Acting Com. Tan para madisiplina ang abusado at kurakot na si So!"

"Ang bagong kawalanghiyaan ni Ding So ay nagpatawag siya ng [presscon] kamakailan. Inimbita pa niya si Acting Com. Tan para magpasikat siya dito na many ginagawa siyang panghuhuli."

"Pero ito ang istorya, ang sinasabi niyang hinuli nya ay ang KCJS Fleet Management. Ang halaga ng anim na boxes na "hinuli" niya ay US\$99,415.00 at ang laman ng mga ito ay computer(s) at electronic equipment[.] Hinuli kuno ito ni So dahil ang declaration sa kargamento ay US\$3,000.00 lang."

"Pero ang totoo ay early February, last month pa lang ay ipina-alert na ito [ni] So. (Sa leng[gluwahe ng Customs, ang ibig sabihin ng 'pina-alert' ay 100 percent ang top to bottom examination sa mga cargos)."

....

"Ngunit ang gi[n]agawa ni So ay pinending niya ito. At ayon sa aking source, kinikilan niya kasi ang may-ari ng kargamentos ng halagang P150,000.00. Tumawa[d] ang may-ari pero hindi pumayag si So."

"Nagkaroon sila ng mahabang negosasyon hanggang sa humingi pa ng panahon ang may-ari ng kargamento para mailikom niya ang hinihingi ni So."

"Pero katakot-takot na bomba na ang inabot ni So sa walang tigil kong expose sa katiwalian niya at nainip na rin

siya sa kahihintay sa 'lagay' mula sa may-ari ng KCJS Fleet kaya 'pinatay' na niya ang cargo. Agad na nagpa[presscon] ang mayabang na si So para bumango ang napakabaho at nabubulok na niyang pangalan! Tsk, Tsk, Tsk."

"Simple lang naman ang gagawin kong hamon sa kagalang-galang na pinuno ng Iglesia ni Cristo (INC) na si Ka Erdi Manalo at kay Acting Com. Nelson Tan."

'Kung gusto n'yo talaga ng mga katibayan kung gaano kawalanghiya si Ding So, bakit hindi n'yo isa-isang tanungin ang lahat ng brokers at mga biyahero at biyahera (B&B) na sukang-suka na sa katarantaduhan ni So? At sila mismo ang nagreklamo sa akin.'

'Madalas ko na itong naririnig sa kanila, 'Mr. Tulfo, ang inaasahan lang naming (Brokers at B&B) ay masibak na ang buwayang iyan (Ding So), Pwe?!'

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁰ (Emphasis in the original)

6. In CRIM CASE NO. 99-1468:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 24th day of March 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule(,) write and publish in the regular issue of the said daily publication on March 24,1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

"Bukod pala kay Atty. Ding So na kurakot sa Customs ay may kakambal siya na dapat ko ring bombahin. Ito ay si Ramon Anquilan, Chief ng Close Circuit Television Section. . ."

"Kung inyo pang natatandaan ang sinulat ko na nagstrike December last year ang mga brokers sa Customs at ang unang-una sa listahan ng hinihiling nila na patalsikin ay si Atty. Ding So. Ang pangalawa sa plakards na

¹⁰ Id. at 153-155.

ninabandera nila ito ay si Ramon Anquilan. Dahil katulad din ni Ding So, itong si Anquilan ay nanggigipit din sa kanila, ayon sa aking source.”

“Ayon pa nga sa isang broker, “Mr. Tulfo, nagbibigay talaga kami. Kasama sa negosyo namin yan. Marami kaming inaabutan sa Customs. Natutuwa kami dahil nakakatulong din sila sa amin. Kaya magaan din sa loob naming ang pagbibigay sa marami sa kanila. Samantalang ‘yang hayop na si Ding So at si Ramon Anquilan, hindi marunong makuntento.’”

“Nang tanungin ko kung bakit nila nasabi na hindi nakukuntento sina So at Anquilan ay sinabi ng kausap ko na, “kapag nag-o-offer ka halimbawa ng ₱1,000.00 na standard naman sa Customs ay hihingan ka ng ₱10,000.00 at bibigyan pa ng deadline””

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.”¹¹ (Emphasis in the original)

7. In CRIM CASE NO. 99-1469:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 5th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court(,) the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule(,) write and publish in the regular issue of the said daily publication on April 5,1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

“Kagaya ni Atty. Ding So, marami na rin ang katarantaduhang ginawa ni Aquino. Pero kahit papaano ay may hiya pa rin si Aquino. Kumpara kay Ding So na makapal talaga ang mukha. . .”

....

“Pero hindi tulad ni Ding So na ubod ng suwapang. . .”

¹¹ Id. at 156-157.

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹² (Emphasis in the original)

8. In CRIM CASE NO. 99-1470:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 7th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule(,) write and publish in the regular issues of said daily publication on April 7,1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

"Lalo pang dumagsa ang mga nakikipag-ugnayan sa akin na mismong mga empleyado ng Customs. Hinihikayat pa nila na lalong batikusin si Atty. Ding So at sa tuwing may nakikipag-usap sa akin ay tinatanong kung bakit ngitngit na ngitngit sila kay So."

"Iisa ang sagot sa mga ito, 'malala kasi talaga 'yan Raffy, pati kami ay nadadamay.' Ayon sa isa sa nagsumbong sa akin na malapit kay So. "inambus na nga 'yan minsan at ang dami ng tama ng bala. Kaso Masamang-damo kaya nabuhay pa."

"May kinausap din akong taga-Customs para i-confirm ang tungkol sa ambush na ito at sinabi niya rin na "totoong inambush 'yan noong early '90s tadtad ng bala ang katawan. Nabuhay pa rin dahil siguro marami ang misyon si Satanas at siya ang inaghahasik niyan dito sa mundo."

"Ayon pa sa kausap kong taga-Customs, ang dahilan daw ng ambush ay may kinalaman sa smuggling kung saan nan-double cross diumano si So sa mga kausap niyang sindikato."

....

"Ngayon Nelson Tan, alam mo na pala noon pa man ang mga katarantaduhan ni Ding So, gumawa ka na ng imbestigasyon at sibakin mo na si Ding So."

¹² Id. at 158-159.

“Panahon na para sibakin mo ang gagong ito dahil nagtataka na rin ang maraming empleyado ng Customs sa ‘yo. Malaki ang respeto nila sa ‘yo pero ang tanong nila ay kung bakit daw hindi mo magalaw-galaw si Ding So?”

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹³ (Emphasis in the original)

9. In CRIM CASE NO. 99-1471:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 12th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule write and publish in the regular issues of said daily publication on April 12, 1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

“Sa pagpapatuloy ng expose ko sa (mga) katarantaduhan ni Atty. Ding So diyan sa Customs ay heto pa ang bagong balita ng aking source.”

“Ayon sa aking source, sa kaso ni Ding So ay nagkakaroon siya ng modus. Dahil sa continuing alert order niyang ito ay napipilitan ang mga brokers, biyahero at biyahera ng (B&B) na lumapit umano kay So.”

“Dito nagkakaroon ng suhulan para hindi na sila maabala sa alert order niya.”

....

“Kaya naman, ayong sa aking source, naging arogante lalo si So at palagi nitong bukambibig na lamakas siya sa INC. Bagama’t hindi naman siya kinukunsinti ng INC ay hindi nalalaman ng sektang ito ang kanyang mga katarantaduhan.”

“Ayon sa isang kakilala ni So na miyembro din ng INC, “alam mo Raffy, hindi lang talaga nakakarating kay Ka Erdi ang mga katarantaduhan niya (So). Nahaharang kasi

¹³ Id. at 160–162.

ng mga taong nakapaligid kay Ka Erdi. Pero kapag nalaman ‘yan ng matanda (Ka Erdi) tiyak na ititiwalag ‘yang si So.”

“Isa pang INC member na nakakakilala rin ay Ding So ang nagsabi naman na “ikinahihiya namin siya (So). Kasi alam naman sa NAIA na pinapatos niya ang babaing may-asawa. Si Gemma Laurel na taga-MIAA (Manila International Airport Authority). Kung hindi siya matitiwalag sa aming sekta, baka siya’y ma-ambush na naman.”

“Talaga pang malala na si So at sukang-suka na sa kanya pati mismong mga kapatid niya sa INC.”

“Sir Raffy, lahat naman sila sa Customs ay nakakatikim dahil sa SOP na talaga ‘yan. Maliban na lang kay Nelson Tan. Pero itong si Ding So ay talagang matindi at may sarili siyang presyo. Kaya para kami makabawi at kumita rin ay natuto na kaming mag-adjust sa aming binabayad sa gobyerno (tax and duties)” ayon pa sa isang broker na nagsusumbong.”

“Paano ba ito Acting Comm. Nelson Tan, napakabigat na pasanin mo pala itong si Ding So? Kung patuloy mo siyang babalikatin ay baka balang araw tuluyang bumagsak ang boung Customs at samasama kayong lumubog diyan?”

“Bitawan mo ang pabigat na si Ding So!”

....

Noo[n] pa man ay double-crosser na si Aquino katulad ni Ding So. Dagdag pa ng aking source. Malamang umano na ma-ambush din itong si Aquino tulad ni So.

Si George Jereos, director ng CIIS ang sinasabi ng aking source na protector ng dalawang loko-lokong sina So at Aquino. Topnotcher daw kasi sina So at Aquino pagdating sa pag-aabot kay Jereos ayaon pa sa aking source.

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁴ (Emphasis in the original)

10. In CRIM CASE NO. 99-1472:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 14th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court,

¹⁴ Id. at 163–165.

the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule[,] write and publish in the regular issue of said daily publication on April 14,1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

....

“Marami na rin ang galit kay Jereos na mga taga-Customs at ang dahilan ayo sa aking source, ay dahil sa sobra na rin daw kung mangikil ito at naging katulad na ni Ding So. Sinasabi ng aking source na ni-require ni Jereos ang lahat ng chiefs ng iba’t ibang units ng CIIS na magbigay sa kanya ng “tara” weekly. Ang malalaking units na under sa kanya ay sa NAIA, MICP, South Harbor, Intelligence Division, Internal Inquiry Division, Cebu at Batangas ay kinikilala niya.

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁵ (Emphasis in the original)

11. In CRIM CASE NO. 99-1473:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 19th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule[,] write and publish in the regular issue of said daily publication on April 19,1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

“Matapos ibalita sa akin ng isang kapatid ni Atty. Ding So sa Iglesia Ni Cristo na si Gemma Laurel diumano ang babaing may-asawa na pinapatos ni So diyan sa Manila International Airport Authority (MIAA) ay agad na tumawag daw ang mga tauhan ng asawa ni Gemma na anak ni dating Bise Presidente Doy Laurel.

¹⁵ Id. at 166–167.

Nag tanong-tanong ngayon ang mga Laurel sa mga brokers at sa ibang Customs employees para ikumpirma ang sinulat ko. Nagagalak naman ang mga brokers na galit sa abusadong si Ding So sa pagkumpirma sa mga tauhan ng mga Laurel. Sinasabi nila na totoo nga ang umano'y pakikialam ni So kay Gemma.

Kaya nagwawala daw ngayon ang anak ni Doy at hina-hunting na ngayon nito si So. Ito ang masasabi ko, Mr. Laurel happy hunting po.

Ikaw naman Ding So, happy-hiding!”

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁶ (Emphasis in the original)

12. In CRIM CASE NO. 99-1474:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 21th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule write and publish in the regular issue of said daily publication on April 21, 1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

“Kung sa iba lang siguro inalok ni Erap ang posisyon na ito ay tiyak na hinihimud na nila ang puwit ng Pangulo ngayon sa sobrang kagalakan!

Saludo ako sa pinakita mong katapatan sa tungkulin Nelson Tan. Pero kung ganito kang klaseng tao ay dapat panindigan mo rin ang pagiging matapat at matapang. Matuto kang sibakin diyan ang mga sinasabing ‘untouchables’ sa Customs!

....

Dahil ang mga ito ang sisira sa Pangalan mo kahit tunay kang malinis. Ang isa sa ‘untouchables’ dito ay itong abusadong si Atty. Ding So.

¹⁶ Id. at 168–169.

Paulit-ulit nang inilalantad ang mga katiwalian niya rito at marami na ang kapwa niya taga-Customs at mga brokers ang galit sa kanya. Kahit pa nga ang mismong mga kapatid niya sa Inglesia ni Cristo (INC) ay galitna rin kay So at kinokondena na nila ang mga kawalang-hiyaan nito.

Matagal na siyang nasibak pero nabalik din dahil tumatakbo ito sa INC at ito ang ipinagmamalaki niya kapag natatanggal siya sa puwesto diyan sa Customs.

....

Pero once again Acting Com. Tan, imbestigahan mong mabuti ang lahat ng anomalyang ini-expose ko tungkol kay Ding So at saka aksiyunan mo na ito!

Sibakin mo na rin si Ding So dahil tiyak na si Ka Erdi Manalo, bilang respetadong leader ng INC ay hindi kumukunsinti sa masasamang miyembro nila at hindi niya ipagpipilitan ang tulad ni Ding So na isang masamang damo!”

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁷ (Emphasis in the original)

13. In CRIM CASE NO. 99-1475:

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 23th day of April 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of “ABANTE TONITE”, a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule(,) write and publish in the regular issue of said daily publication on April 23,1999, its daily column “SHOOT TO KILL”, quoted hereunder, to wit:

....

“Matapos kong mabanggit dito ang pangalan ni Gemma Laurel dahil ibinalita sa akin ng isang miyembro ng Iglesia ni Cristo na galit kay Atty. Ding So na si Gemma raw ang

¹⁷ Id. at 170-172.

babaing may asawa na “pinakikialaman” ni So ay nakipagugnayan sa akin si Gemma.

Umiiyak ito at nakikiusap na linawin ko ang panig nya. Ayon kay Gemma, hindi totong may kaugnayan siya kay So.

Okey, kung nabanggit ko man ang pangalan mo rito ay hindi ko intensiyon na siraan ka. Ang layunin ko kung bakit ibinulgar ko ang mga kawalanghiyaan ni So ay para masibak na ito sa Customs at matigil na ang kanyang pagkaabusado. Wala sa intensiyon ko na ibulgar pati ang personal na aktibidad ni So.

Pero nagkataon na dahil sa dami ng mga taong galit na galit na talaga kay So at nagbo-volunteer ng mga impormasyon, pati na ang ilang kapatid niya sa Iglesia ni Cristo, (na siyang nagkuwento tungkol daw sa pakikialam ni So kay Gemma) ay nadawit lang ang pangalan ni Gemma sa isang isyu.

At ito ay dahil labag sa do[k]trina ng INC ang pakikialam ng isang miyembro nila sa isang taong may-asawa, ayon na rin sa taga-INC na nagparating sa akin ng bagay na ito.”

“Tinanong ko na noon ang kagalang-galang na si Ka Erdi Manalo ng INC kung bakit pati ang mga kapatid ni So ay galit na galit sa kanya. Ang sagot nito ay napaka-elementary, sukduhan na raw kasi ang kawalang-hiyaan ni So kaya gusto nilang masibak na ito sa Customs!

Ayon nga sa isang hindi miyembro ng INC na taga-Customs, “Raffy, okey lang sa amin kung talagang gusto nilang maglagay ng isang taga-INC sa puwesto ni Ding So sa Customs. Kahit pa nga puro INC members ang iluklok nila dito ay [o]key lang dahil karamihan sa kanila ay disiplinado at sumusunod talaga sa aral ng Bibliya. Puwera lang yang si Ding So!”

“Paano ba ito, Ka Erdi Manalo?

Panawagan na rin kay Pangulong Erap Estrada, ayon sa isang reliable source ko diyan sa Customs, kaya raw hindi masibak-sibak si So ay dahil wala kang go signal kay Acting Com. Tan dahil matindi raw si So sa INC?!”

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁸ (Emphasis in the original)

14. In CRIM CASE NO. 99-1476:

¹⁸ Id. at 173-175.

The undersigned Assistant City Prosecutor accuses RAFFY TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., of the crime of LIBEL, committed as follows:

That on or about the 12th day of May 1999 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, being then the columnist, publisher and managing editor, respectively of "ABANTE TONITE", a tabloid published daily and of general circulation in the Philippines, did then and there wilfully, unlawfully and feloniously and with malicious intent to discredit or dishonor complainant ATTY, CARLOS T. SO, and with the malicious intent of injuring and exposing said complainant to public hatred, contempt and ridicule(,) write and publish in the regular issue of said daily publication on May 12,1999, its daily column "SHOOT TO KILL", quoted hereunder, to wit:

"ATTY. DING SO NANGHIHIMOD NG PUWET?"

....

"May bagong source na nakikipag-ugnayan sa akin at sinabi niya na itong si Atty. Ding So na matagal ko nang binobomba rito dahil sa maraming katarantaduhan ginagawa niya diyan sa Customs ay nawala ng apat na araw. Kaya tuwang-tuwa ang mga maraming brokers at nakahinga sila kahit papaano mua sa pang-gigipit in So."

Pero noong araw daw ng Huwebes, alas-kuwatro ng hapon ay bigla itong sumulpot at ipinatawag agad ang mga brokers. Mainit daw ang ulo nito at simisingil sila ng weekly tara na tig-₱10,000.00 bawat isa.'

"Ayon sa aking source, nahuhulaan na niya kung bakit mainit ang ulo ni Ding So. Hirap na hirap na daw kasi ito ngayon sa kagagapang at namamaga na rin ang dila sa kahihimod sa puwet ng mga mai-impluwensiyang tao na nilalapitan niya."

"Ang dahilan ng kanyang pangga-gapang at panghihimod ay magkakaroon ng re-shuffle sa Customs ay nanganganib na isa siya sa masisibak! Tsk, Tsk, tsk, ganoon na ba talaga katindi ang pagsamba mo sa puwesto mo Ding So!"

wherein said complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth, all as already stated, with the object of destroying his reputation, discrediting and ridiculing him before the bar of public opinion.

Contrary to law.¹⁹ (Emphasis in the original)

The bulk of the Informations accuses Tulfo of writing columns that, allegedly, maliciously impute Atty. So for his "shady dealings in the Bureau

¹⁹ Id. at 176-177.

of Customs”; particularly, his reported extortion activities against brokers and shippers. Tulfo also wrote about Atty. So allegedly having an affair with a married woman.²⁰

Tulfo later filed his Counter-Affidavit, which Macasaet and Quijano adopted as their Joint Counter-Affidavit. Subsequently, So filed a Reply-Affidavit, to which Tulfo filed a Rejoinder-Affidavit.²¹

On August, 12, 1999, Assistant City Prosecutor Abdulkalim A. Askali issued a Joint Resolution finding probable cause against the three accused for 14 counts of libel. The three accused moved for reconsideration, which Atty. So opposed.²²

On arraignment, the accused refused to enter any plea. As a result, the Regional Trial Court entered a plea of not guilty for all of them.²³

According to the prosecution, Tulfo continued lambasting Atty. So in his column, particularly in the August 23, 1999, December 17, 1999, February 16, 2000, February 28, 2000 and April 5, 2000 issues.²⁴

For his defense, Tulfo contended that the statements he used in his articles were merely reported to him by brokers-complainants whose identities he could not reveal. He said that he verified these statements from “other sources” who were Bureau of Customs employees and KCJS staff members, among others. He claimed that his column serves as the voice of those with complaints but who are at a disadvantage against those being complained of. He argued lack of malicious intent to publish as both he and Atty. So had not known each other before the complaints were filed.²⁵

For their part, Macasaet and Quijano insisted that the law does not mention a publisher and managing editor as those liable for libel.²⁶

In its February 28, 2005 Decision,²⁷ the Regional Trial Court found Tulfo, Macasaet, and Quijano guilty beyond reasonable doubt of 14 counts of libel and imposed on them the penalty of imprisonment and fine. It further ordered the three accused to solidarily pay Atty. So moral, exemplary, and compensatory damages:²⁸

²⁰ *Rollo* (G.R. No. 187113), p. 63–64.

²¹ *Id.* at 91.

²² *Id.*

²³ *Id.* at 91–92.

²⁴ *Id.* at 91.

²⁵ *Id.* at 93.

²⁶ *Id.* at 94.

²⁷ *Rollo* (G.R. No. 187230), pp. 178–225. The Decision was penned by Judge Priscilla C. Mijares of the Regional Trial Court of Pasay City, Branch 108.

²⁸ *Id.* at 225.

WHEREFORE, judgment is hereby rendered finding the three (3) accused, **RAFFY T. TULFO, ALLEN A. MACASAET, and NICOLAS V. QUIJANO, JR.**, guilty beyond reasonable doubt of the crime of Libel defined under Article 353 and penalized by Article 355 in relation to Article 354 of the Revised Penal Code, in fourteen (14) counts, Criminal Cases Nos. 99-1463 to 99-1476, and consequently each of the accused is *hereby sentenced as follows*:

- A. *To suffer the penalty of six (6) months and one (1) day of prision correccional minimum, as the minimum penalty, to two (2) years, four (4) months and one (1) day of prision correccional medium, as the maximum penalty for each count of Libel as herein charged;*
- B. *To pay individually a fine of Six Thousand Pesos (P6,000.00) for each case with subsidiary imprisonment in case of insolvency;*
- C. *To jointly and severally indemnify the private complainant, Atty. Carlos "Ding" T. So, in the amount of Five Hundred Thousand Pesos (P500,000.00) for each case as moral damages;*
- D. *To jointly and severally pay private complainant in the amount of Fifty Thousand Pesos (P50,000.00) for each case as exemplary damages;*
- E. *To jointly and severally pay private complainant in the amount of Five Hundred Thousand Pesos (P500,000.00) as compensatory damages for all the cases; and*
- F. *To pay the costs of suit.*

SO ORDERED.²⁹ (Emphasis in the original)

Tulfo, Macasaet, and Quijano appealed.³⁰ However, in its July 31, 2006 Decision,³¹ the Court of Appeals affirmed the conviction.

On motion for reconsideration,³² the Court of Appeals issued its Amended Decision³³ reconsidering in part its July 31, 2006 Decision. It acquitted the three accused on eight counts of libel, but sustained their

²⁹ Id.

³⁰ *Rollo* (G.R. No. 187113), p. 62.

³¹ Id. at 62–133. The Decision dated July 31, 2006 was penned by Associate Justice Andres B. Reyes, Jr. (now retired member of this Court) and concurred in by Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe (now a member of this Court) of the Tenth Division, Court of Appeals, Manila.

³² Id. at 134–181.

³³ *Rollo* (G.R. No. 187230), pp. 53–67. The Decision dated March 17, 2009 was penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Portia Aliño-Hormachuelos and Pampio A. Abarintos of the Special Ninth Division, Court of Appeals, Manila.

conviction for Criminal Case Nos. 99-1463, 99-1465, 99-1471, 99-1473, 99-1474, and 99-1475:

WHEREFORE, in view of the foregoing, the Decision of this Court dated July 31, 2006 is **RECONSIDERED** in part.

1. The conviction of the three (3) accused, RAFFY T. TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., in Criminal Case Nos. 99-1463; 99-1465; 99-1471; 99-1473; 99-1474 and 99-1475 is **AFFIRMED** together with the corresponding sentences and fines set forth in paragraphs A and B, respectively, of the February 28, 2005 Decision of Branch 108, RTC, NCJR, Pasay City in said cases;

2. All three (3) aforementioned accused are likewise ordered to jointly and severally indemnify the private complainant, Atty. Carlos "Ding" T. So, in Criminal Case Nos. 99-1463; 99-1465; 99-1471; 99-1473; 99-1474 and 99-1475

a) in the amount of ₱100,000.00 as moral damages in each of said cases;

b) in the amount of ₱50,000.00 as exemplary damages in each of said cases;

c) in the amount of ₱100,000.00 as nominal damages for all the said cases; and

to pay the costs of suit.

All three (3) accused RAFFY T. TULFO, ALLEN A. MACASAET and NICOLAS V. QUIJANO, JR., are **ACQUITTED** in Criminal Case Nos. 99-1464; 99-1466; 99-1467; 99-1468; 99-1469; 99-1470; 99-1472 and 99-1476.

SO ORDERED.³⁴ (Emphasis in the original)

In so ruling, the Court of Appeals applied the doctrines laid down in *Borjal v. Court of Appeals*³⁵ and *Vasquez v. Court of Appeals*,³⁶ and decreed:

Anent Crim. Case Nos. 99-1464; 99-1466; 99-1467; 99-1468; 99-1469; 99-1470; 99-1472; and 99-1476 this Court finds the ruling in *Borjal vs. Court of Appeals* (supra) applicable, the discreditable imputations alleged in the said informations being in connection with acts of a public official in the discharge of his public functions. Said actuations have to be gauged, therefore, in accordance with the standards in *Borjal* and *Vasquez*, as to whether they are false and if so, whether they were made with actual malice – that is, with knowledge that it is false or with reckless disregard of whether it was false or not. This Court has to go along with accused Tulfo that bare denials made by Atty. So cannot prove falsity of the imputations. *After a thorough revisit of the entire records, this Court entertains doubt as to whether the evidence introduced by the*

³⁴ Id. at 66.

³⁵ 361 Phil. 1 (1999) [Per J. Bellosillo, Second Division].

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

prosecution had adequately established the falsity of the subject imputations or the existence of actual malice as defined in Borjal and Vasquez and ACQUITS all three (3) accused in Crim. Case Nos. 99-1464; 99-1466; 99-1467; 99-1468; 99-1469; 99-1470; 99-1472; and 99-1476.³⁷ (Emphasis supplied)

Hence, petitioners filed these two partial Petitions for Review,³⁸ assailing the portion of the Amended Decision that affirmed their conviction for six counts of libel.

The Office of the Solicitor General, on behalf of respondent People of the Philippines, filed its Consolidated Comment.³⁹ In turn, petitioners filed their Replies.⁴⁰

For this Court's resolution are the following issues:

First, whether or not petitioner Raffy T. Tulfo is liable for libel under Article 353 in relation to Article 355 of the Revised Penal Code;

Second, whether or not the published articles can be considered privileged communication under Article 354 of the Revised Penal Code;

Third, whether or not petitioners Allen A. Macasaet and Nicolas V. Quijano, Jr., as publisher and managing editor of *Abante Tonite*, are also liable for libel under Article 360 of the Revised Penal Code; and

Finally, should petitioners be found guilty, whether or not the penalty of fine should be imposed instead of imprisonment, pursuant to Administrative Circular No. 08-2008, or the *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*.

This Court finds the Petitions meritorious.

In construing libel laws, regard must always be made to the guarantees provided by our Constitution.⁴¹ Criminal prosecutions for libel must undergo the rigorous and exacting standard of ensuring that they do not violate the right to free expression and the press.⁴² Our libel laws must not be broadly construed as to deter comments on public affairs and the conduct of public

³⁷ *Rollo* (G.R. No. 187230), pp. 63–64.

³⁸ *Rollo* (G.R. No. 187113), pp. 11–60, petitioner Tulfo's partial petition, and *rollo* (G.R. No. 187230), pp. 3–51, petitioners Macasaet and Quijano's partial petition.

³⁹ *Id.* at 463–499.

⁴⁰ *Id.* at 503–523, petitioner Tulfo's Reply, and 530 – 545, petitioners Macasaet and Quijano's Reply.

⁴¹ *United States v. Bustos*, 37 Phil. 731, 744 (1918) [Per J. Malcolm, First Division].

⁴² *Elizalde v. Judge Gutierrez*, 167 Phil. 192, 193 (1977) [Per J. Fernando, Second Division] *citing* *Bocobo v. Estanislao*, 164 Phil. 516, 520–521 (1976) [Per J. Fernando, Second Division].

officials. Courts must examine libel cases involving a public officer's exercise of official functions within the context of these constitutional guarantees.⁴³

Unless the prosecution proves that the defamatory statements were made with *actual malice*—that is, “with knowledge that it was false or with reckless disregard of whether it was false or not”⁴⁴—a criminal case for libel involving a public officer's exercise of official functions cannot prosper.

I

Freedom of speech and of the press is a hard-fought right dating as far back as the Spanish regime. At that time, censorship had been legitimate, and such liberties were not only recurrent demands of propagandists, but leading causes for revolution.⁴⁵

Freedom of the press rests its philosophical basis within the larger scope of the right to free discussion and expression.⁴⁶ Freedom of the press “is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed.”⁴⁷

However, the freedoms of speech and of the press are not absolute, but subject to certain restrictions, such as laws against libel.⁴⁸ The recognition of libel as a limitation is rooted in one's right to protect their reputation from malicious attacks.⁴⁹ “The right of a person to public esteem is as much a constitutional right as the possession of life, liberty or property.”⁵⁰

In the Philippines, libel first emerged during the Spanish colonial regime.⁵¹ The old Spanish Penal Code then in force included provisions on *defamacion*, penalizing those “who by writing shall defame, abuse, or insult, any minister of the Crown, or other person in authority”;⁵² calumny, or “the

⁴³ *Flor v. People of the Philippines*, 494 Phil. 439, 450 (2005) [Per J. Chico-Nazario, Second Division].

⁴⁴ *Id.* citing *New York Times v. Sullivan*, 376 US 254, 11 L. ed. 2d 686; and *Vasquez v. Court of Appeals*, 373 Phil. 238, 254 (1999) [Per J. Mendoza, En Banc].

⁴⁵ See Perfecto V. Fernandez, *Freedom of the Press in the Philippines*, 33 PHIL. L. J. 473, 473 (1958). See also *United States v. Bustos*, 37 Phil. 731, 739–740 (1918) [Per J. Malcolm, First Division].

⁴⁶ *Id.* at 476.

⁴⁷ *Id.* at 477.

⁴⁸ See Bienvenido C. Ambion, *Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 316 (1939-1940); See also Miriam Defensor Santiago, *The Supreme Court Applies “Clear and Present Danger”: But Which One?*, 60 PHIL. L. J. 57, 57–59 for discussion on free speech as not an absolute right, but occupying a preferred position.

⁴⁹ See Perfecto V. Fernandez, *Freedom of the Press in the Philippines*, 33 PHIL. L. J. 473, 486 (1958).

⁵⁰ *Id.* at 487.

⁵¹ Justice Leonen Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 29, 385 (2014) [Per J. Abad, En Banc].

⁵² See Bienvenido C. Ambion, *Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 318 (1939-1940) quoting Article 256 of the Spanish Penal Code, which provides:

false imputation of a crime”;⁵³ and insult, which “consists of any statement or act which tends to bring another person into disrepute, discredit, or contempt.”⁵⁴

Later, the United States Philippine Commission enacted Act No. 277, which punished both civil and criminal libel.⁵⁵ Act No. 277 repealed the Spanish Penal Code provisions on calumny and insults when expressed publicly in writing.⁵⁶

The Philippine Legislature then enacted Act No. 3815, or the Revised Penal Code, which repealed Act No. 277.⁵⁷ The provisions of the Libel Law vis-à-vis the Revised Penal Code on libel are as follows:⁵⁸

Act No. 277 (1901)	Revised Penal Code (1932)
SEC. 1. A libel is a malicious defamation, expressed either in writing, printing, or by signs or pictures, or the like, or public theatrical exhibitions, tending to blacken the memory of one who is dead or to impeach the honesty, virtue, or reputation, or publish the alleged or natural defects of one who is alive, and thereby expose him to public	ART. 353. <i>Definition of libel.</i> – A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

ARTICLE 256. Any person who, by word, deed, or writing, shall defame, abuse, or insult any Minister of the Crown or other person in authority, while engaged in the performance of official duties, or by reason of such performance, provided that the offensive conduct does not take place in the presence of such minister or person, or the offensive writing be not addressed to him, shall suffer the penalty of *arresto mayor*.

⁵³ The Spanish Penal Code, Title X, Ch. 1, art. 452 provides:

ARTICLE 452. Calumny is the false imputation of a crime upon which a prosecution might be instituted by the Government of its own motion.

⁵⁴ The Spanish Penal Code, Title X, Ch. II, art. 456 provides:

ARTICLE 456. The offense of insult (*injuria*) consists of any statement or act which tends to bring another person into disrepute, discredit, or contempt.

⁵⁵ J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 29, 385 (2014) [Per J. Abad, En Banc].

⁵⁶ *People v. Castro*, 43 Phil. 842, 848 (1922) [Per J. Johnson, En Banc].

⁵⁷ REV. PEN. CODE, art. 367 provides:

ARTICLE 367. *Repealing Clause.* - Except as is provided in the next preceding article, the present Penal Code, the Provisional Law for the application of its provisions, and Acts Nos. 277, 282, 480, 518, 519, 899, 1121, 1438, 1523, 1559, 1692, 1754, 1955, 1773, 2020, 2036, 2071, 2142, 2212, 2293, 2298, 2300, 2364, 2549, 2557, 2595, 2609, 2718, 3103, 3195, 3244, 3298, 3309, 3313, 3397, 3559, and 3586, are hereby repealed.

⁵⁸ See *Bienvenido C. Ambion, Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 324–325 (1939-1940), thus:

Many of the provisions of the old libel law have not been incorporated into the Revised Penal Code such that some of the existing theories are modified. Under Act 277, the proof of truth and defamatory imputation was always admissible (Sec. 4) but under the Revised Penal Code “proof of the truth of an imputation of an act or omission, not constituting a crime, shall not be admitted unless the imputation shall have been made against government employees with respect to the facts related to the discharge of their official duties. (Art. 361). Under the old law person libelled was entitled to recover actual pecuniary damages for injury to feelings and reputation and such exemplary damages as the Court may determine (Sec. 11) but under the Revised Penal Code recovering exemplary damages is not allowed.

The incorporation of the libel law into the Revised Penal Code automatically made applicable to it certain general principles of the said Code on criminal and civil liabilities.

hatred, contempt, or ridicule	
<p>SEC. 3. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.</p> <p>SEC. 9. A private communication made by any person to another, in good faith, in the performance of any duty, whether legal, moral, or social, solely with the fair and reasonable purpose of protecting the interests of the person making the communication or the interests of the person to whom the communication is made, is a privileged communication, and the person making the same shall not be guilty of libel nor be within the provisions of this Act.</p> <p>SEC. 7. No reporter, editor or proprietor of any newspaper is liable to any prosecution for a fair and true report of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in the course of the same, except upon proof of malice in making such report, which shall not be implied from the mere fact of publication.</p>	<p>ART. 354. <i>Requirement for publicity.</i> – 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:</p> <ol style="list-style-type: none"> 1. A private communication made by any person to another in the performance of any legal, moral, or social duty; and 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.
<p>SEC. 4. In all criminal prosecutions for libel the truth may be given in evidence to the court, and if it appears to the court that the matter charged as libelous is true and was published with good motives and for justifiable ends, the party shall be acquitted; otherwise he shall be convicted; but to establish this defense, not only must the truth of the matter so charged be proven, but also that it was published with good motives and for justifiable ends.</p>	<p>ART. 361. <i>Proof of the truth.</i> – In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendant shall be acquitted.</p> <p>Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their duties.</p> <p>In such cases, if the defendant proves the truth of the imputation made by him, he shall be acquitted.</p>
<p>SEC. 2. Every person who wilfully and with a malicious intent to injure another publishes or procures to be published any libel shall be punished by a fine of not exceeding two thousand dollars or imprisonment for not exceeding one</p>	<p>ART. 360. <i>Persons responsible.</i> – Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.</p>

year, or both.

SEC. 6. Every author, editor, or proprietor of any book, newspaper, or serial publication is chargeable with the publication of any words contained in any part of such book or number of each newspaper or serial as fully as if he were the author of the same.

SEC. 11. In addition to the criminal action hereby prescribed, a right of civil action is also hereby given to any person libelled as hereinbefore set forth against the person libelling him for damages sustained by such libel, and the person so libeled shall lie entitled to recover in such civil action not only the actual pecuniary damages sustained by him but also damages for injury to his feelings and reputation, and in addition such punitive damages as the court may think will be a just punishment to the libeller and an example to others. Suit may be brought in any Court of First Instance having jurisdiction of the parties. The presumptions, rules of evidence, and special defenses herein provided for criminal prosecutions shall be equally applicable in civil actions under this section.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.

The criminal and civil action for damages in cases of written defamations as provided for in this chapter shall be filed simultaneously or separately with the court of first instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however,* That where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published: *Provided, further,* That the civil action shall be filed in the same court where the criminal action is filed and vice versa: *Provided, furthermore,* That the court where the criminal action or civil action for damages is first filed, shall acquire jurisdiction to the exclusion of other courts: *And provided, finally,* That this amendment shall not apply to cases of written defamations, the civil and/or criminal actions for which have been filed in court at the time of the effectivity of this law.

....

Our Constitution, laws, and jurisprudence have since learned from history and adapted to the changing times, finding a framework that balances our freedom of expression with the need to protect other fundamental rights.

In the 1918 case of *United States v. Bustos*,⁵⁹ this Court was faced with the question of how to interpret and enforce the Libel Law in light of the basic prerogatives of the freedoms of speech and the press.⁶⁰ It discussed the historical development of libel in relation to these freedoms from the Spanish regime until the enactment of organic acts in the Philippines:

Turning to the pages of history, we state nothing new when we set down the freedom of speech as cherished in democratic countries was unknown in the Philippine Islands before 1900. A prime cause for revolt was consequently ready made. Jose Rizal in “*Filipinas Despues de Cien Años*” (The Philippines a Century Hence, pages 62 *et seq.*) describing “the reforms *sine quibus non*,” which the Filipinos insist upon, said:

“The minister, . . . who wants his reforms to be reforms, must begin by declaring the press in the Philippines free and by instituting Filipino delegates.”

The Filipino patriots in Spain, through the columns of “*La Solidaridad*” and by other means invariably in exposing the wants of the Filipino people demanded “liberty of the press, of cults, and of associations.” (See Mabini, *La Revolucion Filipina*.) The Malolos Consitution, the work of the Revolutionary Congress, in its Bill of Rights, zealously guarded freedom of speech and press and assembly and petition.

Mention is made of the foregoing data only to deduce the proposition that a reform so sacred to the people of these Islands and won at so dear a cost, should now be protected and carried forward as one would protect and preserve the covenant of liberty itself.

Next comes the period of American-Filipino cooperative effort. The Constitution of the United States and the State constitutions guarantee the right of freedom of speech and press and the right of assembly and petition. We are therefore, not surprised to find President McKinley in that Magna Carta of Philippine Liberty, the Instruction to the Second Philippine Commission, of April 7, 1900, laying down the inviolable rule “That no law shall be passed abridging the freedom of speech or of the press or of the rights of the people to peaceably assemble and petition the Government for a redress of grievances.”

The Philippine Bill, the Act of Congress of July 1, 1902, and the Jones Law, the Act of Congress of August 29, 1916, in the nature of organic acts for the Philippines, continued this guaranty. The words quoted are not unfamiliar to students of Constitutional Law, for they are the counterpart of the first amendment to the Constitution of the United States, which the American people demanded before giving their approval to the Constitution.

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

⁶⁰ *Id.* at 733-734.

We mention the foregoing facts only to deduce the proposition never to be forgotten for an instant that the guaranties mentioned are part and parcel of the Organic Law — of the Constitution — of the Philippines Islands.

These paragraphs found in the Philippine Bill of Rights are not threadbare verbiage. The language carries with it all the applicable jurisprudence of great English and American Constitutional cases. (Kepner vs. U. S. [1904], 195 U. S., 100; Serra vs. Mortiga [1907], 204 U. S., 470.) *And what are these principles? Volumes would inadequately answer. But included are the following:*

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 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."

The right to assemble and petition is the necessary consequence of republican institutions and the complement of the right of free speech. Assembly means a right on the part of citizens to meet peaceably for consultation in respect to public affairs. Petition means that any person or group of persons can apply, without fear of penalty, to the appropriate branch or office of the government for a redress of grievances. The persons assembling and petitioning must, of course, assume responsibility for the charges made.

Public policy, the welfare of society, and the orderly administration of government have demanded protection for public opinion. The

inevitable and incontestable result has been the development and adoption of the doctrine of privilege.⁶¹ (Citations omitted)

In the past, libel had been punished because it tended “to provoke an immediate breach of the peace.”⁶² Modern views, however, justify libel laws on the value of reputation.⁶³ History has shown several concepts of reputation that defamation laws seek to protect: reputation as property; reputation as honor; and reputation as dignity.⁶⁴ The right to enjoy one’s reputation is ancient, long regarded as essential to human society and civilization, falling under personal security.⁶⁵ For this reason, those who harm another’s reputation are penalized.

There appears no real distinction between civil and criminal libels.⁶⁶ Act No. 277 had once placed civil and criminal libel actions as separate and independent remedies even if based on the same acts, as they differed in the required sufficiency of evidence.⁶⁷ This principle was no longer incorporated in the Revised Penal Code, which strengthened the notion that exemption from criminal liability means exemption from civil liability.⁶⁸ Nevertheless, Article 33 of the Civil Code still provides:

ARTICLE 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

As a rule, “when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action[.]”⁶⁹ Article 33 provides an exception in that it permits the institution of “a civil action for the recovery of damages that is entirely unrelated to the purely criminal aspect of the case.”⁷⁰

It must, however, be clarified that the terms defamation and fraud, as used in Article 33, should be interpreted in their ordinary sense, “because

⁶¹ Id. at 739–742.

⁶² Perfecto V. Fernandez, *Freedom of the Press in the Philippines*, 33 PHIL. L. J. 473, 486 (1958).

⁶³ Id. at 487. See also Bienvenido C. Ambion, *Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 316 (1939-1940).

⁶⁴ Robert C. Post, *The Social Foundations of Defamation Law: Reputation and the Constitution*, 74 CAL L. Rev. 691, 693 (1986).

⁶⁵ Bienvenido C. Ambion, *Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 316 (1939-1940)

⁶⁶ Id. at 320.

⁶⁷ Id. at 320–321. See Revised Rules on Evidence, Rule 133.

⁶⁸ See Bienvenido C. Ambion, *Liability for Libel Under the Present State of Philippine Jurisprudence*, 19 PHIL. L. J. 316, 321 (1939-1940). The article discussed that Section 355 “makes civil action an additional punishment” while Section 360 of the Revised Penal Code reiterates that “every person criminally liable is also civilly liable.”

⁶⁹ *Madeja v. Caro*, 211 Phil. 469, 472 (1983) [Per J. Abad Santos, Second Division].

⁷⁰ *Azucena v. Potenciano*, 115 Phil. 465, 459 (1962) [Per J. Makalintal, En Banc].

there are no specific provisions in the Revised Penal Code using these terms as means of offenses defined therein[.]”⁷¹

How much one suffers from the damage to reputation cannot be accurately assessed, and courts must exercise sound discretion based on the circumstances of each case.⁷²

Here, petitioners are being criminally prosecuted for libel. Thus, this Court resolves the issues considering the elements of libel as defined under the Revised Penal Code, and as interpreted and applied in jurisprudence.

II

Petitioners argue that the prosecution failed to prove the falsity of the allegations subject of Criminal Case No. 99-1463,⁷³ much less actual malice in making these imputations.⁷⁴ They further argue that, contrary to the Court of Appeals’ ruling, the imputations in the other five cases⁷⁵ relate to Atty. So’s public functions, and thus, fall within the ambit of qualified privileged communications.⁷⁶

Petitioners add that the allegations on Atty. So’s immorality and impropriety of conduct involve his failure to meet the standards of conduct required of public officials⁷⁷ under Article XI, Section 1 of the Constitution, Republic Act No. 6713, the Administrative Code, the Civil Service Law, and the Lawyer’s Oath,⁷⁸ among others.⁷⁹ Atty. So’s alleged illicit relationship violates these provisions⁸⁰ since “[t]here is no dichotomy of morality: a public official is also judged by his private morals.”⁸¹ Imputations made on Atty. So’s religious affiliation, they say, also relate to his misconduct as a public official, such as how his affiliation protects him from prosecution.⁸²

Respondent counters that petitioners’ liability for libel attaches to the entire text of the articles, and not only to certain portions, as petitioners insist.⁸³ It maintains that these ill publications serve no purpose other than to publicly smear Atty. So’s reputation.⁸⁴

⁷¹ *Madeja v. Caro*, 211 Phil. 469, 473 (1983) [Per J. Abad Santos, Second Division] citing *Carandang v. Santiago*, 97 Phil. 94 (1955) [Per J. Labrador, First Division].

⁷² *Id.* at 322 citing *Guevara v. Almario*, 56 Phil. 476 (1932) [Per J. Malcolm, En Banc].

⁷³ *Rollo* (G.R. No. 187113), p. 44.

⁷⁴ *Rollo* (G.R. No. 187230), pp. 19–26; *rollo* (G.R. No. 187113), pp. 537 and 539.

⁷⁵ Criminal Case Nos. 99-1465, 99-1471, 99-1473, 99-1474, and 99-1475.

⁷⁶ *Rollo* (G.R. No. 187113), pp. 52 and 539–540; *rollo* (G.R. No. 187230), pp. 26–40.

⁷⁷ *Id.* at 38–39.

⁷⁸ *Rollo* (G.R. No. 187113), p. 508.

⁷⁹ *Id.* at 45 and 504–505.

⁸⁰ *Id.* at 505.

⁸¹ *Rollo* (G.R. No. 187113), p. 506; and *rollo* (G.R. No. 187230), 39.

⁸² *Rollo* (G.R. No. 187113), p. 506; and *rollo* (G.R. No. 187230), p. 37–38.

⁸³ *Rollo* (G.R. No. 187113), pp. 475 and 477.

⁸⁴ *Id.* at 479.

In addition, respondent contends that the allegations of extortion and corruption should have been raised in an administrative action instead of in a published written letter containing libelous matter.⁸⁵ It notes that even after the charges for libel had been filed, petitioners continued to publish defamatory statements that show malice.⁸⁶ It submits that petitioners recklessly disregarded their duty to ascertain the truth of the imputations made against Atty. So.⁸⁷

Finally, respondent contends that the attacks on Atty. So's personal life, such as being a disgrace to the Iglesia Ni Cristo and allegedly having an illicit affair, cannot be considered as privileged communication under Articles 354 and 361 of the Revised Penal Code.⁸⁸

Article 353 of the Revised Penal Code defines the crime of libel, while Article 355, provides for the imposable penalty:

ARTICLE 353. *Definition of Libel.* — A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

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.⁸⁹

In sustaining a conviction for libel, the prosecution must prove the existence of four elements: "(a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; (c) identity of the person defamed; and (d) existence of malice."⁹⁰

For the first element, Article 353 of the Revised Penal Code provides that an allegation is considered defamatory if:

⁸⁵ Id.

⁸⁶ Id. at 480.

⁸⁷ Id. at 482.

⁸⁸ Id. at 488–490.

⁸⁹ Republic Act No. 10951 has since amended Article 355 to adjust the amount of fine prescribed. The imposable fine now ranges from ₱40,000.00 to ₱1,200,000.00. Nonetheless, we reproduce here Article 355 as originally worded, since the incidents here occurred before Republic Act No. 10951 was passed.

⁹⁰ *Brillante v. Court of Appeals*, 483 Phil. 568, 590 (2004) [Per J. Tinga, Second Division] citing *Vasquez v. Court of Appeals*, 373 Phil. 238 (1999) [Per J. Mendoza, En Banc].

. . . it ascribes to a person the commission of a crime, the possession of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance which tends to dishonor or discredit or put him in contempt, or which tends to blacken the memory of one who is dead.⁹¹ (Citation omitted)

Jurisprudence⁹² laid down the following rules on construction when determining whether the nature of a statement is defamatory:

In determining whether a statement is *defamatory*, the words used are to be construed in their entirety and should be taken in their plain, natural and ordinary meaning as they would naturally be understood by persons reading them, unless it appears that they were used and understood in another sense.

For the purpose of determining the meaning of any publication alleged to be libelous, we laid down the rule in *Jimenez v. Reyes*, to wit:

In *Tawney vs. Simonson, Whitcomb & Hurley Co.* (109 Minn., 341), the court had the following to say on this point: In determining whether the specified matter is libelous per se, two rules of construction are conspicuously applicable: (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 would naturally understand what was uttered. (2) The published matter alleged to be 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.⁹³ (Citations omitted)

Insulting words are not actionable as libel per se, and a consequent personal embarrassment does not mean this is automatically equivalent to defamation.⁹⁴ The court must still be satisfied that, from the entirety of the impugned writing, it is defamatory.

As to the elements of publication and identifiability, *Vasquez v. Court of Appeals*⁹⁵ discussed them as follows:

⁹¹ *Vasquez v. Court of Appeals*, 373 Phil. 238, 249 (1999) [Per J. Mendoza, En Banc].

⁹² *See Buatis v. People*, 520 Phil. 149, 161 (2006) [Per J. Austria-Martinez, First Division] *citing Jimenez v. Reyes*, 27 Phil. 52, 59–60 (1914); *Vasquez v. Court of Appeals*, 373 Phil. 238, 250 (1999) [Per J. Mendoza, En Banc] *further citing United States v. Sotto*, 38 Phil 666, 672–673 (1918) [Per J. Fisher, En Banc].

⁹³ *Buatis, Jr. v. People*, 520 Phil. 149, 160–161 (2006) [Per J. Austria-Martinez, First Division] *citing Jimenez v. Reyes*, 27 Phil. 52, 59–60 (1914) [Per J. Trent, First Division].

⁹⁴ *De Leon v. People*, 776 Phil. 701 (2016) [Per J. Mendoza, Second Division].

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

There is publication if the material is communicated to a third person. It is not required that the person defamed has read or heard about the libelous remark. What is material is that a third person has read or heard the libelous statement, for “a man’s reputation is the estimate in which others hold him, not the good opinion which he has of himself.”

On the other hand, to satisfy the element of identifiability, it must be shown that at least a third person or a stranger was able to identify him as the object of the defamatory statement.⁹⁶ (Citations omitted)

Here, petitioners do not question the Court of Appeals’ findings that the first three elements exist.⁹⁷ They only raise as issue the falsity or truthfulness of the imputations, and whether these imputations are connected to Atty. So’s official functions.⁹⁸ Incidentally, these issues both pertain to the fourth element of libel, which is malice.

II (A)

Malice exists when the prosecution proves that the author made the defamatory statement knowing it was false, or even if true, there is no showing of good intention and justifiable motive.⁹⁹ It “implies an intention to do ulterior and unjustifiable harm”¹⁰⁰ and exists when “the offender is prompted by personal ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed.”¹⁰¹

The requisite of malice has evolved, there being a distinction between libel cases involving private persons and those involving public officers and public figures. Thus, whether the complainant is a private or public person is a factor that must be considered.¹⁰²

Here, the prosecution admitted during pre-trial that at the time the articles were published, private complainant Atty. So was a public officer, the then officer-in-charge of the Bureau of Customs Intelligence and Investigation Service at the Ninoy Aquino International Airport.¹⁰³ This admission shall be considered in determining petitioners’ liability for libel.

⁹⁶ Id. at 249.

⁹⁷ *Rollo* (G.R. No. 187113), p. 263.

⁹⁸ *Rollo* (G.R. No. 187113) pp. 44–45 and *rollo* (G.R. No. 187230), pp. 13–14.

⁹⁹ *Brillante v. Court of Appeals*, 483 Phil. 568, 591 (2004) [Per J. Tinga, Second Division] citing *New York Times v. Sullivan*, 376 U.S. 254 (1964).

¹⁰⁰ *Brillante v. Court of Appeals*, 483 Phil. 568, 591 (2004) [Per J. Tinga, Second Division] citing *United States v. Cañete*, 38 Phil. 253 (1918) [Per J. Fisher, En Banc].

¹⁰¹ Id.

¹⁰² J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 29, 368–374 (2014) [Per J. Abad, En Banc].

¹⁰³ *Rollo* (G.R. No. 187113), p. 93.

The Constitution mandates that “[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”¹⁰⁴

As early as 1918, this Court in *Bustos* emphasized the need for full discussion of public affairs and how those in public positions should not be too thin-skinned when comments are made on their official functions.¹⁰⁵

In the United States, it was not only until the 1964 case of *New York Times v. Sullivan*¹⁰⁶ that the United States Supreme Court laid down “the extent to which the constitutional protections for speech and press limit a State’s power to award damages in a libel action brought by a public official against critics of his official conduct.”¹⁰⁷ The Court, speaking through Justice William Brennan, decreed:

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.”

“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.”¹⁰⁸ (Citations omitted)

The United States Supreme Court in *New York Times* went on to introduce the “actual malice” test. Under this test, a public official cannot recover damages for a defamatory falsehood on their official conduct unless they prove “that the statement was made . . . with knowledge that it was false or with reckless disregard of whether it was false or not.”¹⁰⁹

In our jurisdiction, this Court adopted with approval the actual malice test and has since applied it to several cases involving libel.¹¹⁰

¹⁰⁴ CONST., art. XI, sec. 1.

¹⁰⁵ *United States v. Bustos*, 376 Phil. 731, 740–741 (1918) [Per J. Malcolm, First Division].

¹⁰⁶ 376 U.S. 254 (1964). See also *Lopez v. Court of Appeals* 145 Phil. 219, 233 (1970) [Per J. Fernando, First Division].

¹⁰⁷ *Id.* at 256.

¹⁰⁸ *Id.* at 269.

¹⁰⁹ *Id.* at 279–280.

¹¹⁰ See *Lopez v. Court of Appeals*, 145 Phil. 219 (1970) [Per J. Fernando, First Division]; *Guinguing v. Court of Appeals*, 508 Phil. 193 (2005) [Per J. Tinga, Second Division]; *Borjal v. Court of Appeals*, 361 Phil. 1 (1999) [Per J. Bellosillo, Second Division]; *Vasquez v. Court of Appeals*, 373 Phil. 238 (1999) [Per J. Mendoza, En Banc]; and *Flor v. People*, 494 Phil. 439 (2005) [Per J. Chico-Nazario, Second Division].

In *Ayer Productions Pty. Ltd. v. Hon. Capulong*,¹¹¹ this Court extended the “actual malice” requirement in libel cases involving public officers to “public figures.” It decreed that owing to the legitimate interest of the public in his or her affairs “the right of privacy of a ‘public figure’ is necessarily narrower than that of an ordinary citizen.”¹¹²

II (B)

Article 354 of the Revised Penal Code provides that except for privileged communications, every defamatory imputation is deemed malicious:

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:

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and
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.

On the other hand, Article 361 recognizes the truth of an imputation as a defense in a criminal prosecution for libel:

ARTICLE 361. *Proof of the Truth.* — In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.

Proof of the truth of an imputation of an act or omission not constituting a crime shall not be admitted, unless the imputation shall have been made against Government employees with respect to facts related to the discharge of their official duties.

In such cases if the defendant proves the truth of the imputation made by him, he shall be acquitted.

As an exception to the presumption that every defamatory imputation is malicious, privileged communication has two kinds: absolute and

¹¹¹ 243 Phil. 1007 (1988) [Per J. Feliciano, En Banc].

¹¹² *Id.* at 1024.

qualified.¹¹³ The distinction between these two was discussed in *Orfanel v. People*,¹¹⁴ where this Court decreed:

[A] privileged communication may be either absolutely privileged or conditionally privileged. A communication is said to be absolutely privileged when it is not actionable, even if its author has acted in bad faith. This class includes statements made by members of Congress in the discharge of their functions as such, official communications made by public officers in the performance of their duties, and allegations or statements made by the parties or their counsel in their pleadings or motions or during the hearing of judicial proceedings, as well as the answers given by 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 or pertinent to the questions propounded to said witnesses. Upon the other hand, conditionally or qualifiedly privileged communications are those which, although containing defamatory imputations, would not be actionable unless made with malice or bad faith. It has, moreover, been held that there is malice when the defamer has been prompted by ill-will or spite and speaks not in response to duty, but merely to injure the reputation of the person defamed.¹¹⁵ (Citations omitted)

Absolute privileged communications include Article VI, Section 11 of the Constitution, which states, “No Member [of Congress] shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.”¹¹⁶ On the other hand, qualified privileged communications include “private communications” and “fair and true report without any comment or remarks.”¹¹⁷

In *Borjal v. Court of Appeals*,¹¹⁸ this Court recognized that the enumeration of qualified privileged communications under Article 354 of the Revised Penal Code is not exclusive. It decreed that “fair commentaries on matters of public interest” are likewise deemed privileged by reason of the constitutional guarantee of freedom of the press:

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. Caete, 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.

¹¹³ See *Sison v. David*, 110 Phil 662, 671–675 (1961) [Per J. Concepcion, En Banc]; See also *Borjal v. Court of Appeals*, 361 Phil 1, 18 (1999) [Per J. Bellosillo, Second Division]; *Flor v. People*, 494 Phil 439, 449–450 (2005) [Per J. Chico-Nazario, Second Division].

¹¹⁴ 141 Phil. 519 (1969) [Per J. Concepcion, En Banc].

¹¹⁵ *Id.* at 523–524.

¹¹⁶ CONST, art. VI, sec. 11.

¹¹⁷ *Borjal v. Court of Appeals*, 361 Phil. 1, 18 (1999) [Per J. Bellosillo, Second Division].

¹¹⁸ 361 Phil. 1 (1999) [Per J. Bellosillo, Second Division].

The concept of privileged communications is implicit in the freedom of the press. As held in *Elizalde v. Gutierrez* and reiterated in *Santos v. Court of Appeals* –

To be more specific, no culpability could be imputed to petitioners for alleged offending publication without doing violence to the concept of privileged communications implicit in the freedom of the press. As was so well put by Justice Malcolm in *Bustos*: ***Public policy, the welfare of society, and the orderly administration of government have demanded protection of public opinion.*** The inevitable and incontestable result has been the development and adoption of the doctrine of privilege.

The doctrine formulated in these two (2) cases resonates the rule that privileged communications must, *sui generis*, be protective of public opinion. This closely adheres to the democratic theory of free speech as essential to collective self-determination and eschews the strictly libertarian view that it is protective solely of self-expression which, in the words of Yale Sterling Professor Owen Fiss, makes its appeal to the individualistic ethos that so dominates our popular and political culture. . .

To reiterate, fair commentaries on matters of public interest are privileged and constitute a valid defense in an action for libel or slander. The doctrine of fair comment means that while in general every discreditable imputation publicly made is deemed false, because every man is presumed innocent until his guilt is judicially proved, and every false imputation is deemed malicious, nevertheless, when the discreditable imputation is directed against a public person in his public capacity, it is not necessarily actionable. *In order that such discreditable imputation to a public official may be actionable, it must either be a false allegation of fact or a comment based on a false supposition. If the comment is an expression of opinion, based on established facts, then it is immaterial that the opinion happens to be mistaken, as long as it might reasonably be inferred from the facts.*¹¹⁹ (Emphasis supplied, citations omitted)

In *Vasquez v. Court of Appeals*,¹²⁰ this Court reiterated the actual malice test and discussed Article 361 on the defense of truth:

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.

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,

¹¹⁹ *Id.* at 18–20.

¹²⁰ 373 Phil. 238, 254 (1999) [Per J. Mendoza, En Banc].

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.” . . .

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.¹²¹ (Emphasis supplied, citations omitted)

As discussed, *Bustos* has early on recognized the need to read and interpret our libel laws in relation to the fundamental rights of free speech and free press.¹²² Courts must examine libel cases involving a public officer’s exercise of official functions within the context of these constitutional guarantees.¹²³

Bustos discussed everyone’s societal duty to assist in the investigation of any alleged wrongful act or misconduct by public officers, and to give notice if such matters of public concern come to their attention. To maintain good government, it is within societal interest to foster an atmosphere that allows a full discussion of public matters, including comments and criticisms on the conduct of those holding public office.¹²⁴

In *United States v. Perfecto*,¹²⁵ this Court recognized that “[t]he development of an informed public opinion in the Philippines can certainly not be brought about by the constant prosecution of those citizens who have the courage to denounce the maladministration of public affairs.”¹²⁶

Similarly, in *Lopez v. Court of Appeals*,¹²⁷ it was stressed that “[n]o inroads on press freedom should be allowed in the guise of punitive action visited in what otherwise could be characterized as libel whether in the form of printed words or a defamatory imputation[.]”¹²⁸

The diminishing viability of criminal prosecutions for libel was noted in *Guinguing v. Court of Appeals*,¹²⁹ where this Court decreed:

¹²¹ *Id.* at 254–255.

¹²² *United States v. Bustos*, 37 Phil. 731, 733–734 (1918) [Per J. Malcolm, First Division].

¹²³ *Flor v. People*, 494 Phil. 439, 450 (2005) [Per J. Chico-Nazario, Second Division].

¹²⁴ *United States v. Bustos*, 37 Phil. 731, 740–741 (1918) [Per J. Malcolm, First Division].

¹²⁵ 43 Phil 225 (1922) [Per J. Malcolm, First Division].

¹²⁶ *Id.* at 232.

¹²⁷ 145 Phil. 219 (1970) [Per J. Fernando, First Division]

¹²⁸ *Id.* at 234.

¹²⁹ *Guinguing v. Court of Appeals*, 508 Phil. 193, 204–216 (2005) [Per J. Tinga, Second Division].

It cannot be helped if the commentary protected by the Bill of Rights is accompanied by excessive color or innuendo. Certainly, persons in possession of truthful facts are not obliged to present the same in bland fashion. These true facts may be utilized to convince the listener/reader against a particular position, or to even dissuade one against accepting the credibility of a public figure. *Dry facts, by themselves, are hardly stirring. It is the commentary thereupon that usually animates the discourse which is encouraged by the Constitution as integral to the democratic way of life.* This is replete in many components of our daily life, such as political addresses, televised debates, and even commercial advertisements.


As adverted earlier, *the guarantee of free speech was enacted to protect not only polite speech, but even expression in its most unsophisticated form.* Criminal libel stands as a necessary qualification to any absolutist interpretation of the free speech clause, if only because it prevents the proliferation of untruths which if unrefuted, would gain an undue influence in the public discourse. But in order to safeguard against fears that the public debate might be muted due to the reckless enforcement of libel laws, truth has been sanctioned as a defense, much more in the case when the statements in question address public issues or involve public figures.

In ascertaining the degree of falsity that would constitute actual malice, the Court, citing *New York Times*, has even gone so far as acknowledging:

Even assuming that the contents of the articles are false, mere error, inaccuracy or even falsity alone does not prove actual malice. Errors or misstatements are inevitable in any scheme of truly free expression and debate. Consistent with good faith and reasonable care, the press should not be held to account, to a point of suppression, for honest mistakes or imperfections in the choice of language. *There must be some room for misstatement of fact as well as for misjudgment. Only by giving them much leeway and tolerance can they courageously and effectively function as critical agencies in our democracy.* In *Bulletin Publishing Corp. v. Noel* we held:

A newspaper especially one national in reach and coverage, should be free to report on events and developments in which the public has a legitimate interest with minimum fear of being hauled to court by one group or another on criminal or civil charges for libel, so long as the newspaper respects and keeps within the standards of morality and civility prevailing within the general community.

To avoid the self-censorship that would necessarily accompany strict liability for erroneous statements, rules governing liability for injury to reputation are required to allow an adequate margin of error by protecting some inaccuracies. It is for the same reason that the New York



*Times doctrine requires that liability for defamation of a public official or public figure may not be imposed in the absence of proof of “actual malice” on the part of the person making the libelous statement.*¹³⁰ (Emphasis supplied, citations omitted)

Every prosecution for libel, therefore, must undergo the rigorous and exacting standard of ensuring that it does not violate the fundamental right to free speech and the press.¹³¹ Unless the prosecution proves that the defamatory statements were made with actual malice,¹³² a criminal case for libel against critics of a public officer’s exercise of official functions cannot prosper.

II (C)

Notably, the facts and issues of the Petitions here are similar to the 2008 case of *Erwin Tulfo v. People*,¹³³ where this Court quoted *Re: Emil P. Jurado*¹³⁴ on the duty of journalists to write responsibly:

Surely it cannot be postulated that the law protects a journalist who deliberately prints lies or distorts the truth; or that a newsman may escape liability who publishes derogatory or defamatory allegations against a person or entity, but recognized no obligation *bona fide* to establish beforehand the factual basis of such imputations and refuses to submit proof thereof when challenged to do so. It outrages all notions of fair play and due process, and reduces to uselessness all the injunctions of the Journalists Code of Ethics to allow a newsman, with all the potential of his profession to influence popular belief and shape public opinion, to make shameful and offensive charges destructive of personal or institutional honor and repute, and when called upon to justify the same, cavalierly beg off by claiming that to do so would compromise his sources and demanding acceptance of his word for the reliability of those sources.¹³⁵

Here, the Court of Appeals affirmed petitioner Raffy Tulfo’s conviction in Criminal Case No. 99-1463 after finding that the imputations were false, and that he knew them to be false:

Aforesaid news article is false because as testified to by Atty. So he was a Military Officer and is still a member of the reserved corps. The allusion that his house is a mansion was contradicted by Judge Mijares during the trial before her court herself where accused-appellant Tulfo

¹³⁰ Id. at 221–223.

¹³¹ See *Elizalde v. Judge Gutierrez*, 167 Phil. 192, 193 (1977) [Per J. Fernando, Second Division] citing *Bocobo v. Estanislao*, 164 Phil. 516, 520–521 (1976).

¹³² *Flor v. People*, 494 Phil. 439, 451 (2005) [Per J. Chico-Nazario, Second Division], discussing the actual malice test laid down in *New York Times, Co. v. Sullivan*, that is, “with knowledge that it was false or with reckless disregard of whether it was false or not.”

¹³³ 587 Phil. 64 (2008) [Per J. Velasco, Second Division].

¹³⁴ 313 Phil. 119 (1995) [Per C.J. Narvasa, En Banc].

¹³⁵ *Erwin Tulfo v. People*, 587 Phil. 64, 87 (2008) [Per J. Velasco, Second Division].

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himself presented the photograph by saying it is a residential house. Not only is the imputation in said publication of *Abante Tonite* on March 3, 1999 false; accused Tulfo himself knew it to be false.¹³⁶

As for the other five libel cases,¹³⁷ the Court of Appeals affirmed his conviction after finding that the discreditable imputations do not relate to Atty. So's official functions, and the statements seeking to expel him from his religious community or to publicize his alleged illicit affair were made without good intention or justifiable motive.¹³⁸

In its original Decision, the Court of Appeals quoted the following portion of petitioner Tulfo's cross-examination and decreed¹³⁹ that petitioners acted with reckless disregard in ascertaining whether the imputations were false or not:

Atty. So:

Q: In all the articles that you wrote against Atty. Carlos 'Ding' So in your 'Shoot to Kill' column in *Abante Tonite* newspaper which are now the subject of the present cases, you claimed that your reports or information came from sources or informants whose names you would not like to divulge before this Court, is this correct?

Witness:

A: That is correct.

Q: And that these reports or information by your sources were not reduced into writing, or in affidavit form, is it not? . . .

Witness:

A: Yes, your Honor.

Atty. So:

Q: And that according to you, those statements written in your articles against Atty. Carlos 'Ding' So were not based on your personal knowledge because these were only relayed to you by your sources whose names you refuse to reveal, is it not?

Witness:

A: Yes, I don't have personal knowledge.

Q: Before you wrote these articles, did you find out if there was any pending criminal or administrative complaint filed against Atty. Ding So in relation to his work? . . .

Witness:

A: No administrative or criminal cases against him.

Atty. So:

¹³⁶ *Rollo* (G.R. No. 187113), p. 266.

¹³⁷ Criminal Case Nos. 99-1465, 99-1471, 99-1473, 99-1474, and 99-1475.

¹³⁸ *Rollo* (G.R. No. 187113), p. 271.

¹³⁹ *Id.* at 119.

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Q: Despite the lack of any criminal or administrative complaint filed against Atty. Ding So prior to the writing of these articles, you still wrote those articles describing Atty. So as syndicated smuggler, coddler and protector of smugglers, *balasubas*, swindler, *pinapatos ang mga babaeng may asawa*, double crosser, etc., is it not? . . .

Witness:

A: The answer is yes.” (Cross-examination of accused Tulfo, TSN dated 9 July 2004, pages 31 to 38)

“Atty. So:

Q: You mentioned that complainant Atty. So owns luxury vehicles such as Mercedes Benz, a Nissan Patrol, a Pajero, a Honda Civic and a Strada, is it now?

Witness:

A: Yes, sir.

Q: Did you verify from the Land Transportation Office (LTO) whether said vehicles were or are registered in the name of Atty. So?

Witness:

A: Those informations (sic) were given to me by your friends . . .

Atty. So:

Just answer the question.

Court:

There was no verification?

Witness:

None, your honor.” (Cross-Examination of accused Tulfo, TSN dated July 9, 2004, pages 47-48)

“Atty. So:

Q: You have written in your March 3, 1999 Shoot to Kill column that Atty. So was able to own a house in Fort Bonifacio when he is not a member of the military, is it not?

Witness:

A: Yes, sir. . . .

Q: Did you also verify from the Office of the Armed Forces of the Philippine Officers Village Association, Inc. whether Atty. So is the owner of the house that you referred to in your March 3, 1999 column?

Witness:

A: No, sir.” (Cross Examination of accused Tulfo, TSN dated July 9, 2004, pages 103-104)¹⁴⁰

Contrary to the Court of Appeals’ findings, the prosecution failed to prove that petitioner Tulfo acted with malice, or with reckless disregard in determining the truth or falsity of the imputations.

¹⁴⁰ Id. at 120-122.

Here, each Information on the series of articles in *Abante Tonite* covering Atty. So includes an ending paragraph stating that “complainant was indicated as an extortionist, a corrupt public official, smuggler and having illegally acquired wealth[.]”¹⁴¹

The Informations for Criminal Case Nos. 99-1463 and 99-1465 allege, among others, that the brokers conducted a strike on August 14, 1996 and sometime in December 1998, seeking Atty. So’s removal from his position “*dahil sobra umano ito kung mag-extort sa kanila.*”¹⁴² The Informations for Criminal Case Nos. 99-1463, 99-1465, and 99-1471 also state:

“Ayon sa aking source, P50,000 pataas ang hinihingi na pang-areglo ni So sa kada cargo”;¹⁴³ “Ang modus operandi ni So sa NAIA ay ‘pimababantayan’ niya at ‘pina-a-alert’ ang lahat ng kargamentong ipinapasok ng mga brokers”;¹⁴⁴ “Dahil sa continuing alert order niyang ito ay napipilitan ang mga brokers, biyahero at biyahera ng (B&B) na lumapit umano kay So . . . Dito nagkakaroon ng suhulan para hindi na sila maabala sa alert order niya”;¹⁴⁵ “[A]yon sa aming mga sources sa Customs, si So ay nagtalaga ng ‘Quota’ sa lahat ng brokers, biyahero at biyahera (B& B) ng halagang P25,000.00 sa bawat isa sa kanila ling(u)-lingo”;¹⁴⁶ “Sir Raffy, lahat naman sila sa Customs ay nakakatikim dahil (sa) SOP na talaga ‘yan. Maliban na lang kay Nelson Tan. Pero [itong] si Ding So ay talagang matindi at may sarili siyang presyo.”¹⁴⁷

These allegations all refer to acts related to Atty. So’s official functions at the Bureau of Customs.

The Informations also mention allegations that Atty. So has a “mansion” or “*palasyo*” at Fort Bonifacio and a number of cars.¹⁴⁸ Reading the articles as a whole, these statements imply corruption and smuggling in relation to Atty. So’s official functions, thus:

“*Sa 100 cargo(e)s araw-araw na dumating ay bahala na kayong malula sa kakakirwenta kung gaano kalaking halaga ang nakukurakot ni So*”;¹⁴⁹ “*Kamakailan lang na-promote si So bilang CIIS Chief. Sa plantilla niya noon bilang Intelligence Officer I at P8,000.00 lang kada buwan ang suweldo niya. Paano niya nga kaya nakuha ngayon ang ganito kalaking kayamanan?*”¹⁵⁰

¹⁴¹ *Rollo* (G.R. No. 187113), pp. 66, 70, 82, 84, 86, 88.

¹⁴² *Id.* at 64. *See also id.* at 68–69.

¹⁴³ *Id.* at 65.

¹⁴⁴ *Id.* at 64.

¹⁴⁵ *Id.* at 80.

¹⁴⁶ *Id.* at 69.

¹⁴⁷ *Id.* at 81.

¹⁴⁸ *Id.* at 65 and 69.

¹⁴⁹ *Id.* at 65.

¹⁵⁰ *Id.* at 66.

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For Criminal Case Nos. 99-1465, 99-1471, 99-1473, 99-1474, and 99-1475, the Informations include statements calling for Atty. So to be removed from Iglesia ni Cristo for his misconduct, including having an alleged affair with a married woman.¹⁵¹

Reading the articles as a whole, these statements indicate Atty. So's alleged use of connections to stay in position and conceal his misconduct. They were written to end his purported abuse of public position:

“Ayon sa aking mga impor[m]ante ay nagyayabang pa si So matapos kong bombahin. Ipinagmamalaki niya na hindi siya apektado sa kahit na anumang batikos dahil kaibigan daw niya si Boy Manalo(,) na kamag-anak ninyo, at ito raw ang pader na sinasandalan niya sa INC. Kaya walang sinuman daw ang puwedeng gumalaw sa kanya;”¹⁵² “Kaya naman, ayon sa aking source, naging arogante lalo si So at palagi nitong bukambibig na (malakas) siya sa INC;”¹⁵³ “Matagal na siyang nasibak pero nabalik din dahil tumatakbo ito sa INC at ito an[g] ipinagmamalaki niya kapag natatanggal siya sa puwesto diyan sa Customs;”¹⁵⁴ “Isa pang INC member na nakakakilala rin kay Ding So ang nagsabi naman na ‘ikinahihiya namin siya (So). Kasi alam naman sa NAIA na pinapatos miya ang babaing may-asawa.”¹⁵⁵ “Nagtanong-tanong ngayon ang mga (tauhan ng mga) Laurel sa mga brokers at sa ibang Customs employees para ikumpirma ang sinulat ko. Nagagalak naman ang mga brokers na galit (na galit) sa abusadong si Ding So sa pagkumpirma sa mga tauhan ng mga Laurel. Sinasabi nila na totoo nga ang umano’y pakikialam ni (Ding) So kay Gemma;”¹⁵⁶ “[N]akipag[-]jugnayan sa akin si Gemma. Umiiyak ito at nakikiusap na linawin ko ang panig nya. Ayon kay Gemma, hindi toto[ong] may kaugnayan siya kay So. Okey, kung nabanggit ko man ang pangalan mo rito ay hindi ko intensiyon na siraan ka. Ang layunin ko kung bakit ibinu[bul]gar ko ang mga kawalanghiyaan ni So ay para masibak na ito sa Customs at matigil na ang kanyang pagkaabusado. Wala sa intensiyon ko na ibulgar pati ang personal na aktibidad ni So.”¹⁵⁷

From these, it can be deduced that the impugned articles fall within the purview of qualified privileged communications. These columns relate to Atty. So's exercise of his official functions. His alleged actuations refer to matters of public interest which the citizenry ought to know. As an official of the Bureau of Customs, Atty. So is subject to a closer scrutiny by members of the media, who act as sentinels of the public.

Having established the privileged nature of the *Abante Tonite* articles, the burden shifts to the prosecution to prove that actual malice exists.¹⁵⁸ The prosecution is duty bound to show that the alleged defamatory statements

¹⁵¹ Id. at 70, 80, and 84–87.

¹⁵² Id. at 68.

¹⁵³ Id. at 80.

¹⁵⁴ Id. at 85.

¹⁵⁵ Id. at 80.

¹⁵⁶ Id. at 84.

¹⁵⁷ Id. at 87.

¹⁵⁸ See REV. PEN. CODE, art. 354.

were made “with knowledge that it was false or with reckless disregard of whether it was false or not.”¹⁵⁹ The reason for this rule is based on the *New York Times* doctrine, which provides:

[T]o require critics of official conduct to guarantee the truth of all their factual assertions on pain of libel judgments would lead to self-censorship, since would-be critics would be deterred from voicing out their criticisms even if such were believed to be true, or were in fact true, because of doubt whether it could be proved or because of fear of the expense of having to prove it.¹⁶⁰ (Citation omitted)

The “reckless disregard” standard “cannot be fully encompassed in one infallible definition”¹⁶¹ and must be applied depending on the facts of each case.¹⁶² Nevertheless, in *Flor v. People*,¹⁶³ this Court decreed that the existence of reckless disregard cannot be based on “whether a reasonably prudent [person] would have published, or would have investigated before publishing.”¹⁶⁴ Instead, it depends on whether sufficient evidence has been adduced “to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of [their] publication.”¹⁶⁵

Here, petitioner Tulfo’s testimony on cross-examination does not show that the allegations were false, or that they were made with reckless disregard of ascertaining whether the statements were false or not. His testimony that no administrative case was filed against Atty. So does not mean that the statements in the articles were false.

Besides, it is not unusual that columnists have no personal knowledge on the material they report. Perhaps compelled by their societal duty to maintain good government, people with information on matters of public interest may contact reporters and columnists to share in confidence what they know. Columnists cannot be compelled to reveal their sources, pursuant to Republic Act No. 53, as amended by Republic Act No. 1477.¹⁶⁶ The confidentiality of sources serves as their protection.

¹⁵⁹ *Flor v. People*, 494 Phil. 439, 451 (2005) [Per J. Chico-Nazario, Second Division] citing *New York Times Co. v. Sullivan*, 376 US 254, 11 L. ed. 2d 686; and *Vasquez v. Court of Appeals*, 373 Phil. 238, 254 (1999) [Per J. Mendoza, En Banc].

¹⁶⁰ *Borjal v. Court of Appeals*, 361 Phil. 1, 22 (1999) [Per J. Bellosillo, Second Division].

¹⁶¹ *Flor v. People*, 494 Phil. 439, 452 (2005) [Per J. Chico-Nazario, Second Division] citing *St. Amant v. Thompso*, 390 U.S. 727, 730 [Per J. White].

¹⁶² *Id.*

¹⁶³ 494 Phil. 439 (2005) [Per J. Chico-Nazario, Second Division].

¹⁶⁴ *Id.* at 452.

¹⁶⁵ *Id.*

¹⁶⁶ Republic Act No. 1477 (1956), sec. 1, amending Republic Act No. 53 (1946), states:

SECTION 1. Without prejudice to his liability under the civil and criminal laws, the publisher, editor, columnists or duly accrediter reporter of any newspaper, magazine or periodical of general circulation cannot be compelled to reveal the source of any news report or information appearing in said publication which was related in confidence to such publisher, editor or reported unless the court or a House or committee of Congress finds that such revelation is demanded by the security of the State.

That petitioner Tulfo has never bothered obtaining Atty. So's side of the story, as respondent insists,¹⁶⁷ cannot amount to malice. While substantiating facts does play an important role in reporting standards,¹⁶⁸ a reporter may rely on a lone source's information, even if such information only shows one side of the story, for as long as the reporter "does not entertain a 'high degree of awareness of [its] probable falsity.'"¹⁶⁹

This Court has also held that privileged communication "should not be subjected to microscopic examination to discover grounds of malice or falsity. Such excessive scrutiny would defeat the protection which the law throws over privileged communications."¹⁷⁰ No law requires the sources of a columnist to execute an affidavit putting their testimonies in writing.

Lastly, a defense witness testified on the strike staged by the brokers complaining about some officials of the Bureau of Customs:

(Direct Examination of witness Romeo B. Sulit)

"Atty. Marigomen:

Q: Now Mr. Witness, the private complainant in this case is Atty. Ding So. Do you know who Atty. Ding So is, the complainant in this case?

A: Yes, ma'am.

Q: How do you know the complainant in this case?

A: I know him because he was the one of the officials at the Bureau of Customs *na nirereklamo sa asosasyon ng CUCHERO*.

Q: Mr. Witness, how do you know that the private complainant was one of the Customs' officials who were complained of against by CUCHERO, Inc.?

A: *Bilang isang reporter na nakaassign sa Customs, ako'y pumunta doon sa lugar ng strike na kung saan binigyan ako ng mga impormasyon at tsaka mga dokumento na makapagpapatunay na sila ay nagreklamo sa mga officials na ito kasama na doon si Atty. So.*

Court:

Q: Was there a strike?

A: Yes, your honor.

....

Q: My question, your Honor, is aside from being personally present in the strikes reported, he was also provided a document by CUCHERO, Inc.,

¹⁶⁷ *Rollo* (G.R. No. 187113), p. 485.

¹⁶⁸ *Flor v. People*, 494 Phil 439, 454 (2005) [Per J. Chico-Nazario, Second Division].

¹⁶⁹ *Id.* citing *New York Times Company v. Connor*, 365 F. 2d 567, 576 (1966).

¹⁷⁰ *United States v. Bustos*, 37 Phil. 731, 743 (1918) [Per J. Malcolm, First Division].

I am showing to him documents that were previously marked by the defense as Exhs. "4," "5," and "6." I would like him to go over these and affirm whether or not these are the same documents that were furnished to him during the broker's strikes.

Court:

Exhs. "4," "5" and "6"

Witness:

A: Yes, ma'am. I am familiar with these documents. These are all the documents given to us.

Atty. So:

If, your Honor please, may I examine the notes that were referred to the witness?

Atty. Marigomen:

Your Honor, these are exhibits not notes.

Court:

Atty. Daproza, show him. (Atty. So scrutinizing the documents shown to him.)

Atty. So:

May I just make some comment on these, your Honor?

Court:

Not yet. Allow him to finish his testimony first.

Atty. Marigomen:

Q: Now Mr. Witness, you mentioned "ito "yung mga sinuply sa amin", who were you referring to aside from yourself with respect to the distribution of these documents?

Court:

Supplied by whom?

Witness:

A: Ang document pong iyan, Xerox copy, ay ipinamigay po sa amin ng members ng CUCHERO sa pangunguna ni Mr. Boy Simborio, Presidente ng CUCHERO."¹⁷¹

The Court of Appeals held that this testimony does not prove that there was no reckless disregard to ascertain if the articles were false or not. It also found that the documents identified by the witness to support the allegations against Atty. So were inadmissible for being photocopies.¹⁷²

Nonetheless, this testimony confirms petitioner Tulfo's statements in his articles that the brokers conducted a strike complaining about certain Customs officials, including Atty. So. At the very least, this corroborates

¹⁷¹ *Rollo* (G.R. No. 187113), pp. 129-131.

¹⁷² *Id.* at 131.

petitioner Tulfo's submission that brokers gave him information on Atty. So's abuse of power in the Bureau of Customs.

Petitioner Tulfo reported on the alleged illegal activities of Atty. So in the exercise of his public functions. Our libel laws must not be broadly construed as to deter comments on public affairs and the conduct of public officials. Such comments are made in the exercise of the fundamental right to freedom of expression and the press.

Public officers are accountable to the people,¹⁷³ and must serve them "with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."¹⁷⁴ Speech that guards against abuses of those in public office should be encouraged. Petitioner Tulfo should be acquitted.

III

Since the author of the impugned articles himself is not guilty of libel, it follows that petitioners Macasaet and Quijano, the publisher and managing editor of the *Abante Tonite* columns, must likewise be acquitted.

Nonetheless, this Court sets the record straight on the seeming confusion as to what accounts for liability for libel under Article 360 of the Revised Penal Code.

Petitioners Macasaet and Quijano argue that their conviction was solely because they were the publisher and managing editor of *Abante Tonite*, without proof of their actual participation.¹⁷⁵

Assuming they did fail to prevent the publication of the impugned articles, they say that this was not unlawful.¹⁷⁶ They contend that the use of positions such as "editor" and "business manager" in Article 360 may have considered the smaller publishing houses then, and it was reasonable for legislators to assume that editors and business managers had a direct hand in publication.¹⁷⁷ On the other hand, corporations today operate on different levels given the nature and volume of business, rendering the publisher and managing editor, such as petitioners, "virtually ignorant of the exact contents of articles and news items published."¹⁷⁸ Petitioners seek a reconsideration of the interpretation, if not constitutionality, of Article 360.¹⁷⁹

¹⁷³ CONST. art. XI, sec. 1.

¹⁷⁴ CONST. art. XI, sec. 1.

¹⁷⁵ *Rollo* (G.R. No. 187230), pp. 40-48; and *rollo* (G.R. No. 187113) p. 532.

¹⁷⁶ *Rollo* (G.R. No. 187113), p. 532.

¹⁷⁷ *Id.* at 534.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

Respondent counters that Article 360, as amended by Republic Act No. 1289, provides that “the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.”¹⁸⁰ It contends that petitioners Macasaet and Quijano should have prevented the repeated publications of the allegedly defamatory articles.¹⁸¹

Article 360 of the Revised Penal Code, as amended, states:

ARTICLE 360. *Persons Responsible.* — Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.

The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.

The criminal action and the civil action for damages in cases of written defamation, as provided in this chapter, may be filed simultaneously or separately with the Court of First Instance of the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed.

No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de officio shall be brought except at the instance of and upon complaint expressly filed by the offended party.

In *Fermin v. People*,¹⁸² this Court discussed the logic behind the criminal liability of persons listed under Article 360 by quoting the 1910 case of *United States v. Ocampo*:¹⁸³

The rationale for the criminal culpability of those persons enumerated in Article 360 of the Revised Penal Code was enunciated in *U.S. v. Ocampo*, to wit:

“According to the legal doctrines and jurisprudence of the United States, the printer of a publication containing libelous matter is liable for the same *by reason of his direct connection therewith and his cognizance of the contents thereof*. With regard to a publication in which a libel is printed, not only is the publisher but also all other persons who in any way participate in or have any connection with its publication are liable as publishers.”

¹⁸⁰ REV. PEN. CODE, art. 360 as cited in *rollo* (G.R. No. 187113), p. 492.

¹⁸¹ *Rollo* (G.R. No. 187113), p. 492.

¹⁸² 573 Phil. 278, 284–286 (2008) [Per J. Nachura, Third Division].

¹⁸³ 18 Phil. 1 (1910) [Per J. Johnson, En Banc].

....

In the case of *State v. Mason* (26 L.R.A., 779; 26 Oreg., 273, 46 Am. St. Rep., 629), the question of the responsibility of the manager or proprietor of a newspaper was discussed. The court said, among other things (pp. 782, 783):

“The question then recurs as to whether the manager or proprietor of a newspaper can escape criminal responsibility solely on the ground that the libelous article was published without his knowledge or consent. When a libel is published in a newspaper, such fact alone is sufficient evidence *prima facie* to charge the manager or proprietor with the guilt of its publication.


“The manager and proprietor of a newspaper, we think ought to be held *prima facie* criminally for whatever appears in his paper; and it should be no defense that the publication was made without his knowledge or consent. . .

“*One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefore, whether he was individually concerned in the publication or not, . . . Criminal responsibility for the acts of an agent or servant in the course of his employment necessarily implies some degree of guilt or delinquency on the part of the publisher; . . .*

“We think, therefore, the mere fact that the libelous article was published in the newspaper without the knowledge or consent of its proprietor or manager is no defense to a criminal prosecution against such proprietor or manager.”

In the case of *Commonwealth vs. Morgan* (107 Mass., 197), this same question was considered and the court held that in the criminal prosecution of a publisher of a newspaper in which a libel appears, he is *prima facie* presumed to have published the libel, and that the exclusion of an offer by the defendant to prove that he never saw the libel and was not aware of its publication until it was pointed out to him and that an apology and retraction were afterwards published in the same paper, have him no ground for exception. In this same case, Mr. Justice Colt, speaking for the court, said:

“*It is the duty of the proprietor of a public paper, which may be used for the publication of improper communications, to use reasonable caution in the conduct of his business that no libels be published.*” (Wharton’s Criminal Law, secs. 1627, 1649; 1 Bishop’s Criminal Law, secs. 218, 221; *People vs. Wilson*, 64 Ill., 195; *Commonwealth vs. Damon*, 136 Mass., 441.)



The above doctrine is also the doctrine established by the English courts. In the case of *Rex v. Walter* (3 Esp., 21) Lord Kenyon said that he was “clearly of the opinion that the proprietor of a newspaper was answerable criminally as well as civilly for the acts of his servants or agents for misconduct in the management of the paper.”

This was also the opinion of Lord Hale, Mr. Justice Powell, and Mr. Justice Foster.

Lofft, an English author, in his work on Libel and Slander, said:

“An information for libel will lie against the publisher of a paper, although he did not know or its being put into the paper and stopped the sale as soon as he discovered it.”

In the case of *People vs. Clay* (86 Ill., 147) the court held that —

“A person who makes a defamatory statement to the agent of a newspaper for publication, is liable both civilly and criminally, and his liability is shared by the agent and all others who aid in publishing it.”¹⁸⁴ (Emphasis supplied)

When the accused has been specifically identified as “author, editor, or proprietor” or “printer/publisher” of the publication, there is no requirement to prove that they had knowledge and participation in the publication of the article.¹⁸⁵

Thus, a claim of absence of participation by those persons responsible under Article 360 will not shield them from liability. The law is clear: These persons are liable for libel as if they were the author of the defamatory writing.¹⁸⁶

Nevertheless, since this Court did not find petitioner Tulfo, who authored the allegedly libelous articles, to be liable, neither should liability attach to those persons enumerated in Article 360. Petitioners Macasaet and Quijano must likewise be acquitted.

¹⁸⁴ *Fermin v. People*, 573 Phil. 278, 284–286 (2008) [Per J. Nachura, Third Division] citing *United States v. Ocampo*, 18 Phil. 1, 50–52 (1910) [Per J. Johnson, En Banc].

¹⁸⁵ *Fermin v. People*, 573 Phil. 278, 283–284 (2008) [Per J. Nachura, Third Division] citing *United States v. Taylor*, 28 Phil. 599 (1914) [Per J. Johnson, En Banc]; *People v. Topacio and Santiago*, 59 Phil. 356 (1934) [Per J. Vickers, En Banc]; and *United States v. Ocampo*, 18 Phil. 1 (1910) [Per J. Johnson, En Banc].

¹⁸⁶ *Tulfo v. People*, 587 Phil. 64, 92 (2008) [Per J. Velasco, Jr., Second Division].

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IV

By reason of petitioners' acquittal, this Court need not delve into the issue of the proper imposable penalty. However, for clarity, we shall discuss the import of Administrative Circular No. 08-2008.

Petitioner Tulfo argues that the imposable penalty should not include imprisonment, pursuant to Administrative Circular No. 08-2008, or the *Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases*.¹⁸⁷ He contends that, should he be guilty, only a fine should be imposed since he is a known media practitioner who wrote the articles because of his honest duty as a journalist.¹⁸⁸

Respondent counters that Administrative Circular No. 08-2008 did not abandon the penalty of imprisonment, as the presiding judge is given sound discretion to determine whether imprisonment or mere fine should be imposed.¹⁸⁹ It argues that petitioner Tulfo made *ad hominem* attacks on the person of Atty. So,¹⁹⁰ referring to him as, among others, an extortionist, a "lady killer," a "bribe-taker," a "bribe-giver," "*masamang damo*," and "*walanghiya*."¹⁹¹ These malicious attacks, respondent says, justify the penalty of imprisonment.¹⁹²

Administrative Circular No. 08-2008, issued on January 25, 2008, indeed provides that:

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[.]¹⁹³

Erwin Tulfo,¹⁹⁴ promulgated on September 16, 2008, involved libel charges for articles published in the daily tabloid *Remate*, which similarly indicated Atty. So as, among others, a corrupt public official, an extortionist, and a smuggler.¹⁹⁵ This Court imposed a fine in lieu of imprisonment, with subsidiary imprisonment in case of insolvency.¹⁹⁶

¹⁸⁷ *Rollo* (G.R. No. 187113), p. 56.

¹⁸⁸ *Id.* at 505.

¹⁸⁹ *Id.* at 493.

¹⁹⁰ *Id.* at 494.

¹⁹¹ *Id.* at 493.

¹⁹² *Id.*

¹⁹³ Supreme Court Administrative Circular No. 08-2008 (2008).

¹⁹⁴ 587 Phil. 64 (2008) [Per J. Velasco, Jr., Second Division].

¹⁹⁵ *Id.* at 71-74.

¹⁹⁶ *Id.* at 99.

In *Fermin*,¹⁹⁷ promulgated on March 28, 2008, this Court likewise imposed on the convicted petitioner for libel a fine in lieu of imprisonment, with subsidiary imprisonment in case of insolvency.¹⁹⁸ It discussed that Administrative Circular No. 08-2008 expresses preference for fine in lieu of imprisonment for libel cases, considering the circumstances of the case.¹⁹⁹ Nevertheless, this Court noted that the Circular allows the exercise of sound discretion in imposing imprisonment if “a fine alone would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice.”²⁰⁰

Even before Administrative Circular No. 08-2008 was issued, there are libel cases where this Court, after considering the circumstances, deleted the penalty of imprisonment and only maintained the fine.

In 2005, this Court in *Brillante v. Court of Appeals*²⁰¹ deleted the penalty of imprisonment, considering that “[t]he intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter.”²⁰²

In 2006, this Court in *Buatis, Jr. v. People*²⁰³ opted to impose the penalty of fine as it was “petitioner’s first offense of this nature”²⁰⁴ and after finding that the petitioner believed that the letter he wrote to the private complainant was in exercise of his civil or moral duty.²⁰⁵

Of course, since this Court finds that the articles are not libelous, petitioners should be acquitted, and Administrative Circular No. 08-2008 finds no application.

Besides, the constitutionality of criminalizing libel is doubtful. In libel, the kinds of speech actually deterred are more valuable than the State interest the law against libel protects.²⁰⁶ The libel cases that have reached this Court in recent years generally involve notable personalities for parties, highlighting a propensity for the powerful and influential to use the advantages of criminal libel to silence their critics.²⁰⁷

¹⁹⁷ 573 Phil. 278 (2008) [Per J. Nachura, Third Division].

¹⁹⁸ Id. at 300.

¹⁹⁹ Id. at 298.

²⁰⁰ Id. at 299.

²⁰¹ 511 Phil. 96 (2005) [Per J. Tinga, Second Division].

²⁰² Id. at 99.

²⁰³ 520 Phil. 149 (2006) [Per J. Austria-Martinez, First Division].

²⁰⁴ Id. at 166.

²⁰⁵ Id.

²⁰⁶ J. Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 382 [Per J. Abad, En Banc].

²⁰⁷ Id. at 388.

In any event, alternative legal remedies exist to address unwarranted attacks on a private person's reputation and credibility, such as the Civil Code chapter on Human Relations.²⁰⁸ Civil actions for defamation are more consistent with our democratic values since they do not threaten the constitutional right to free speech, and avoid the unnecessary chilling effect on criticisms toward public officials. The proper economic burden on complainants of civil actions also reduces the possibility of using libel as a tool to harass or silence critics and dissenters.²⁰⁹

This Court is not unmindful of the far-reaching implications that our deliberation may bring journalists and members of the press actively engaged in disseminating news. We regard the vital role that the media plays in ensuring that the government and its officials remain true to their oath in carrying out their mandates in a manner prescribed by law.

Nevertheless, the constitutionally protected freedoms enjoyed by the press cannot be used as a shield to advance the malicious propagation of false information carried out by unscrupulous entities to injure another's reputation.

The acquittal meted out to petitioners does not mean that journalists have unbridled discretion in publishing news and information below the standards expected of them. These standards are prominently provided under the Philippine Press Institute's (PPI) Journalist's Code of Ethics and the Society of Professional Journalists (SPJ) Code of Ethics.

Under the PPI's Code of Ethics,²¹⁰ journalists and members of the press shall scrupulously report news while avoiding the suppression and distortion of facts. In disseminating news, they "shall refrain from writing reports which will adversely affect a private reputation unless the public interests justifies it."²¹¹ Moreover, they shall not "ridicule . . . or degrade any person by reason of sex, creed, religious belief, political conviction, cultural and ethnic origin."²¹²

Meanwhile, the SPJ Code of Ethics provides that journalists should report news accurately and fairly; treat sources, subjects, colleagues, and members of the public as human beings; place service to the public as their highest and primary obligation; and be accountable for their work.²¹³ It bears emphasis: "An ethical journalist acts with integrity."²¹⁴

²⁰⁸ Id. at 376.

²⁰⁹ Id. at 383.

²¹⁰ *Journalists' Code of Ethics*, PHILIPPINE PRESS INSTITUTE <<https://philpressinstitute.net/journalists-code-of-ethics-2/>> (last accessed December 9, 2019).

²¹¹ Id.


²¹² Id.

²¹³ *Society of Professional Journalists*, SOCIETY OF PROFESSIONAL JOURNALISTS CODE OF ETHICS <<https://www.spj.org/pdf/spj-code-of-ethics.pdf>> (last accessed December 9, 2019).

²¹⁴ Id. See Preamble.


WHEREFORE, the Petitions are **GRANTED**. The Court of Appeals' March 17, 2009 Amended Decision in CA-G.R. CR No. 29194, which affirmed the conviction of petitioners Raffy T. Tulfo, Allen A. Macasaet, and Nicolas V. Quijano, Jr. in Criminal Case Nos. 99-1463, 99-1465, 99-1471, 99-1473, 99-1474, and 99-1475, is **REVERSED** and **SET ASIDE**. Petitioners are **ACQUITTED** of the crime charged.

SO ORDERED.




MARVIC M.V.F. LEONEN
Associate Justice


WE CONCUR:



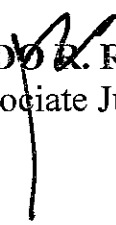
RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



RICARDO R. ROSARIO
Associate Justice

ATTESTATION

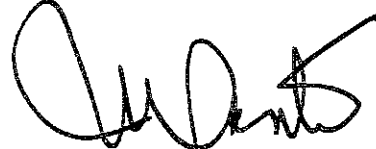
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

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.



DIOSDADO M. PERALTA
Chief Justice