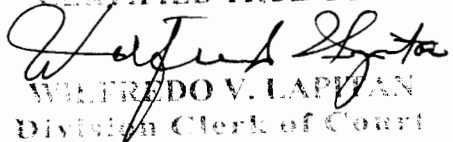




Republic of the Philippines
Supreme Court
 Manila

CERTIFIED TRUE COPY

 WILFREDO V. LAPID
 Division Clerk of Court
 Third Division

FEB 08 2018

THIRD DIVISION

**MARILOU
 VISITACION,**

PUNONGBAYAN-

G.R. No. 194214

Petitioner,

Present:

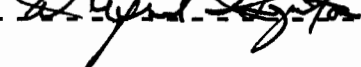
- versus -

VELASCO, JR.,
Chairperson,
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, *JJ.*

**PEOPLE OF THE PHILIPPINES AND
 CARMELITA P. PUNONGBAYAN,**
 Respondents.

Promulgated:

January 10, 2018


X -----  ----- X

DECISION

MARTIRES, J.:

This petition for review on certiorari seeks to reverse and set aside the 30 January 2009 Decision¹ and 18 October 2010 Resolution² of the Court of Appeals (CA) in CA-G.R. SP No. 77040 which affirmed the 12 May 2003 Judgment³ of the Regional Trial Court, Branch 5, Iligan City (RTC).

THE FACTS

Petitioner Marilou Punongbayan-Visitacion (*Visitacion*) was the corporate secretary and assistant treasurer of St. Peter's College of Iligan City. On 26 July 1999, acting on the advice of her counsel, she wrote a letter 

¹ *Rollo*, pp. 23-32; penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson.
² *Id.* at 34-36; penned by Associate Justice Rodrigo F. Lim Jr., and concurred in by Associate Justices Angelita A. Gacutan and Nina G. Antonio-Valenzuela.
³ *Id.* at 37-53; penned by Judge Maximino Magno-Libre.

to private respondent Carmelita P. Punongbayan (*Punongbayan*). The correspondence substantially read:

Upon advise of our legal counsel which I had been instructed to hereunder quote this should answer the concerns you embodied in the July 19 memo to Security Bank as well as the July 23, memo to the office of the treasurer to wit:

- A. You had been preening (sic) as the school's validly appointed/designated president when such is not the fact. The validity of the alleged March 10 meeting of the management is still the subject of an on-going determination by the SEC and your misrepresentation as the school's President has no basis in law and in fact.
- B. Even as Officer-in-Charge, your actions on school matters need prior consultation and ratification of the management committees. No such consultation/ratification was had on these matters.
- C. You KNOWINGLY COMMITTED ACTS OF FALSIFICATION when you misrepresented to the bank that your signature is essentially required in disbursements above P5,000.00. Your inordinate desire to poke into the school's finances could be the by-product of an erroneous advice from some defrocked members of the committee. Otherwise, there would have been need to calibrate amounts in the checks vis-à-vis the signatories thereto.⁴

Insulted, Punongbayan filed a Complaint for Libel against Visitacion. On 25 October 1999, the Office of the City Prosecutor of Iligan City issued a resolution approving the filing of a case for libel against Visitacion.⁵

The RTC Ruling

In its 12 May 2003 judgment, the RTC convicted Visitacion of libel. The trial court disregarded Visitacion's defense of good faith finding that her act of writing the disputed letter was motivated by hostility or malice. It opined that if it was true that Visitacion merely wanted to safeguard the corporation funds, her resort to an uncivil and confrontational manner was unwarranted. The RTC highlighted that the letter belittled, disparaged, and willfully hurt Punongbayan's sensibilities. It ruled:

WHEREFORE, premises considered, the Court perceives that the evidence on record is not only adequate to prove the guilt of accused beyond reasonable doubt, but overwhelming that she has committed the

⁴ Id. at 6-7.

⁵ Id. at 7.



crime of libel, hence judgment of conviction is hereby rendered, the terms of which provide:

- a. Since there is no aggravating nor mitigating circumstance accused is condemned to suffer a straight prison term of one (1) year; and
- b. Considering that the malicious imputation of a crime referred to in the libelous letter had caused private complainant to be subjected to public contempt and ridicule, and this had caused the latter to underwent (sic) sleepless nights and moral sufferings, additionally, and in accordance with Article 104 of the Revised Penal Code, accused is adjudged to pay by way of civil liability, moral damages to the tune of Three Million Pesos (P3,000,000.00), and the costs of the suit.⁶

Aggrieved, Visitacion filed a petition for certiorari with a prayer for Temporary Restraining Order and/or Writ of Preliminary injunction before the CA.

The CA Ruling

In its 30 January 2009, the CA dismissed Visitacion's petition. The appellate court posited that the promulgation of the judgment despite Visitacion's absence was proper. It explained that under Rule 120, Section 6 of the Rules of Court, trial *in absentia* is permitted should the accused fail to appear during the date of promulgation despite due notice. The CA noted that Visitacion was notified of the scheduled promulgation through her previous counsel and was in fact able to file a motion to defer promulgation of judgment. Further, the appellate court pointed out that the sheriff visited Visitacion at her house on several occasions but she was conveniently not around during those times. Thus, it believed that her excuse for her absence was specious.

In addition, the CA expounded that Visitacion should have filed an appeal and not a petition for certiorari. The appellate court opined that it should have been through an appeal where she could have raised the issues in the present petition for certiorari. It noted that at the time Visitacion filed her petition, the period to file an appeal had yet to expire. Thus, the CA elucidated that the use of an erroneous mode of appeal is cause for dismissal of the petition for certiorari because it is not a substitute for a lost appeal. It ruled:

ACCORDINGLY, the Petition is **DISMISSED**.⁷



⁶ Id. at 53.

⁷ Id. at 30.

Visitacion moved for reconsideration but it was denied by the CA in its 18 October 2010 resolution.

Hence, this present petition raising the following:

ISSUES

I

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, BRUSHED ASIDE PETITIONER'S ALTERNATIVE PLEA FOR THE APPLICATION OF PREFERENCE OF FINE OVER IMPRISONMENT AS PENALTY FOR LIBEL;

II

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW WHEN IT, IN EFFECT, AFFIRMED THE COURT A QUO'S IMPOSITION OF MORAL DAMAGES UPON PETITIONER IN THE EXCESSIVE AMOUNT OF THREE MILLION PESOS (P3,000,000.00); AND

III

[WHETHER] THE COURT OF APPEALS ACTED CONTRARY TO LAW IN NOT TREATING PETITIONER'S PETITION FOR CERTIORARI AS APPEAL, NOTWITHSTANDING THE FACT THAT SUCH PETITION WAS FILED WITHIN THE REGLEMENTARY PERIOD OF TIME TO FILE AN APPEAL AND DESPITE EXISTENCE OF VALID REASONS TO TREAT IT AS AN APPEAL.⁸

OUR RULING

Before proceeding to the merits of the case, we resolve certain procedural matters.

Petition for certiorari treated as an appeal

Visitacion assails that her petition for certiorari should have been treated as an appeal. On the other hand, both public and private respondents counter that the CA correctly dismissed Visitacion's petition for certiorari because it cannot be a substitute for a lost appeal and that a wrong mode of appeal is dismissible.



⁸ Id. at 11.

In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,⁹ the Court had extensively differentiated an appeal from certiorari. Thus, it is settled that appeal and certiorari are two different remedies, which are generally not interchangeable, available to litigants. In *Butuan Development Corporation v. CA*,¹⁰ the Court held that the special civil action of certiorari is not a substitute for an appeal:

A party cannot substitute the special civil action of certiorari under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of certiorari. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

Nevertheless, the general rule that an appeal and a certiorari are not interchangeable admits exceptions. In *Department of Education v. Cuanan*,¹¹ the Court exercised liberality and considered the petition for certiorari filed therein as an appeal:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. **Recourse to a petition for certiorari under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.** As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for certiorari, immediate recourse to the extraordinary remedy of certiorari is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to object. These exceptions find application to Cuanan's petition for certiorari in the CA.

At any rate, Cuanan's petition for certiorari before the CA could be treated as a petition for review, the petition having been filed on November 22, 2004, or thirteen (13) days from receipt on November 9, 2004 of CSC Resolution No. 041147, clearly **within the 15-day**

⁹ 479 Phil. 768, 779-782 (2004).

¹⁰ G.R. No. 197358, 5 April 2017.

¹¹ 594 Phil. 451 (2008).



reglementary period for the filing of a petition for review. Such move would be in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice.¹² (emphases and underslining supplied)

In the case at bar, the Court finds that the interest of substantial justice warrants the relaxation of the rules and treats Visitacion's petition for certiorari as an appeal. This is especially true considering that the same was filed within the reglementary period to file an appeal. It is noteworthy that in the litany of cases¹³ where the Court did not consider certiorari as an appeal, the former remedy was filed beyond the 15-day period to interpose an appeal.

Issues raised for the first time on appeal; exceptions

The Office of the Solicitor General (*OSG*) argues that Visitacion merely raised the issue of the correctness of the penalties and liabilities imposed in her supplemental motion for reconsideration before the CA. It bewails that in her petition for certiorari, she merely questioned the propriety of the denial of her motion to inhibit before the RTC; the exclusion of some of her exhibits; and the alleged lack of personal service of the notice of the promulgation of judgment. Thus, the OSG laments that the issues put forth in Visitacion's petition for review before the Court were raised for the first time on appeal.

It is axiomatic that issues raised for the first time on appeal will not be entertained because to do so would be anathema to the rudiments of fairness and due process.¹⁴ Nonetheless, there are also exceptions to the said rule. In *Del Rosario v. Bonga*,¹⁵ the Court explained that there are instances that issues raised for the first time on appeal may be entertained, viz:

Indeed, there are exceptions to the aforesaid rule that no question may be raised for the first time on appeal. Though not raised below, the issue of lack of jurisdiction over the subject matter may be considered by the reviewing court, as it may be raised at any stage. The said court may also consider an issue not properly raised during trial when there is plain error. Likewise, it may entertain such arguments when there are jurisprudential developments affecting the issues, or when the issues raised present a matter of public policy.



¹² Id. at 459-461.

¹³ *Abadilla v. Spouses Obrero*, 775 Phil. 419 (2015); *Malayang Manggagawa ng Stayfast Phils., Inc., v. National Labor Relations Commission*, 716 Phil. 500 (2013); and *Spouses Dycoco v. CA*, 715 Phil. 550 (2013).

¹⁴ *S.C. Megaworld Construction and Development Corporation v. Engr. Parada*, 717 Phil. 753, 760 (2013).

¹⁵ 402 Phil. 949 (2001).

Further, the matters raised in the present petition warrant the relaxation of the rules concerning issues raised for the first time on appeal especially considering the jurisprudential developments since the RTC decision and the needs for substantial justice. In liberally applying the rules in the case at bar, the Court does not wish to brush aside its importance; rather, it emphasizes the nature of the said rules as tools to facilitate the attainment of substantial justice.¹⁶

Having settled procedural matters, the Court finds the petition meritorious.

Penalty imposed for libel

In her present petition for review on certiorari,¹⁷ Visitacion no longer questions her conviction for the crime of libel. Rather, she assails the decisions of the courts *a quo* in sentencing her to one (1) year imprisonment and to pay Punongbayan ₱3,000,000.00 as moral damages.

Relevant is Administrative Circular (*A.C.*) No. 08-08¹⁸ which provides for guidelines in the imposition of penalties in libel cases. The pertinent portion thereof reads:

The foregoing cases indicate an emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases under the circumstances therein specified.

All courts and judges concerned should henceforth take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;
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 imperatives of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provisions on subsidiary imprisonment.

¹⁶ *Sumbilla v. Matrix Finance Corporation*, 762 Phil. 130, 137-138 (2015).

¹⁷ *Rollo*, pp. 3-21A.

¹⁸ 25 January 2008.



A review of A.C. No. 08-08 reveals that it was issued to embody the Court's preference, as espoused in previous jurisprudence, to impose only a fine for conviction of libel. The said circular, however, does not remove the discretion of courts to sentence to imprisonment the accused in libel cases should the circumstances warrant. In other words, judicial policy states a fine alone is generally acceptable as a penalty for libel. Nevertheless, the courts may impose imprisonment as a penalty if, under the circumstances, a fine is insufficient to meet the demands of substantial justice or would depreciate the seriousness of the offense.

Thus, pursuant to the policy in A.C. No. 08-08, the Court finds that the imposition of a fine, instead of imprisonment, is sufficient in the present case. It is noteworthy that Visitacion is a first-time offender with no other criminal record under her name. Further, the degree of publication is not that widespread considering that the libelous letter was circulated only to a few individuals.

Moral damages in libel cases

Visitacion likewise assails the award of moral damages. She does not question the basis for the award of moral damages per se but bewails the unjust amount set by the trial court.

Moral damages is the amount awarded to a person to have suffered physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury.¹⁹ It is given to ease the victim's grief and suffering, and should reasonably approximate the extent of the hurt caused and the gravity of the wrong done.²⁰

The RTC found Punongbayan entitled to moral damages because Visitacion's libelous act caused her to suffer ridicule, sleepless nights, and moral damage. In *Tulfo v. People*,²¹ the Court explained that moral damages can be recovered in cases of libel or slander, viz:

It was the articles of Tulfo that caused injury to Atty. So, and for that Atty. So deserves the award of moral damages. **Justification for the award of moral damages is found in Art. 2219 (7) of the Civil Code, which states that moral damages may be recovered in cases of libel, slander, or any other form of defamation.** As the cases involved are criminal cases of libel, they fall squarely within the ambit of Art. 2219 (7).



¹⁹ Article 2217 of the Civil Code.

²⁰ *Mariano v. People*, 738 Phil. 448, 462 (2014).

²¹ 587 Phil. 64 (2008).

Moral damages can be awarded even in the absence of actual or compensatory damages. The fact that no actual or compensatory damage was proven before the trial court does not adversely affect the offended party's right to recover moral damages.²² (emphasis supplied)

For moral damages to be awarded, proof of pecuniary loss is unnecessary but the factual basis of damages and its causal connection to the defendant's acts must be satisfactorily established.²³ In short, the complainant's injury should have been due to the actions of the offending party.

Here, the evidence on record justify the award of moral damages to Punongbayan. She was a high-ranking officer of an educational institution whom Visitacion accused of criminal or improper conduct. Such accusations were not made known only to the victim but also to other persons such as her staff and employees of a bank the school had transactions with. Thus, Punongbayan's reputation was besmirched and she was humiliated before her subordinates and other people. Clearly, her reputation was tarnished after being accused of unsavory and questionable behavior, primarily attributable to Visitacion's act of circulating the letter imputing wrongdoing of Punongbayan.

In addition, it is noteworthy that in her present petition for review on certiorari before the Court, Visitacion simply challenges the unreasonable amount of moral damages awarded and prays for its reduction. By inference, she admits she had caused Punongbayan injury, thus, the issue remains to be the amount of moral damages warranted under the circumstances.

In *Yuchengco v. The Manila Chronicle Publishing Corporation*,²⁴ the Court explained that in awarding moral damages, the surrounding circumstances are controlling factors but should always be commensurate to the perceived injury:

While there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, the same should not be palpably and scandalously excessive. **Moral damages are not intended to impose a penalty to the wrongdoer, neither to enrich the claimant at the expense of the defendant.**

Even petitioner, in his Comment dated June 21, 2010, agree that moral damages "are not awarded in order to punish the respondents or to make the petitioner any richer than he already is, but to enable the latter to find some cure for the moral anguish and distress he has undergone by reason of the defamatory and damaging articles which the respondents wrote and published." Further, petitioner cites as sufficient basis for the

²² Id. at 96-97.

²³ *Almendras, Jr. v. Almendras*, 750 Phil. 634, 644-645 (2015).

²⁴ 677 Phil. 422 (2011).



award of damages the plain reason that he had to “go through the ordeal of defending himself everytime someone approached him to ask whether or not the statements in the defamatory article are true.”

In *Philippine Journalists, Inc. (People's Journal) v. Thoenen*, citing *Guevarra v. Almario*, We noted that the **damages in a libel case must depend upon the facts of the particular case and the sound discretion of the court, although appellate courts were “more likely to reduce damages for libel than to increase them.”** So it must be in this case.

Moral damages are not a bonanza. They are given to ease the defendant's grief and suffering. Moral damages should be reasonably approximate to the extent of the hurt caused and the gravity of the wrong done. The Court, therefore, finds the award of moral damages in the first and second cause of action in the amount of P2,000,000.00 and P25,000,000.00, respectively, to be too excessive and holds that an award of P1,000,000.00 and P10,000,000.00, respectively, as moral damages are more reasonable.²⁵ (emphases supplied)

With this in mind, the Court finds the award of P3,000,000.00 as moral damages to be unwarranted. Such exorbitant amount is contrary to the essence of moral damages, which is simply a reasonable recompense to the injury suffered by the one claiming it. It was neither meant to punish the offender nor enrich the offended party. Thus, to conform with the present circumstances, the moral damages awarded should be equitably reduced to P500,000.00.


WHEREFORE, the petition is **GRANTED**. The 12 May 2003 Judgment of the Regional Trial Court, Branch 5, Iligan City, in Criminal Case No. 7939 is **AFFIRMED** with **MODIFICATION**. Petitioner Marilou Punongbayan-Visitacion is sentenced to pay a fine in the amount of Six Thousand Pesos (P6,000.00), with subsidiary imprisonment in case of insolvency, and to pay private respondent Carmelita P. Punongbayan P500,000.00 as moral damages.

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

²⁵ Id. at 435-436.

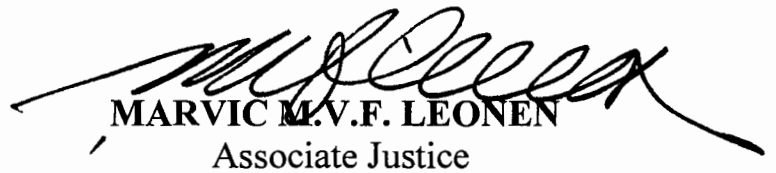
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice




MARVIC M.V.F. LEONEN
Associate Justice



ALEXANDER G. GESMUNDO
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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

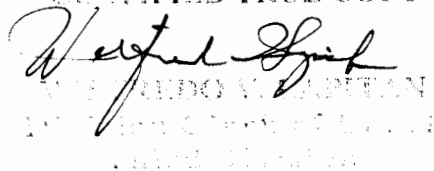
CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice

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WELFREDO V. CAPITAN
1st Deputy Clerk of Court
En Banc Division

FEB 06 2018