



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

TESSIE A. FERNANDEZ,
Petitioner,

G.R. No. 233460

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

- versus -

HONORABLE COURT OF
APPEALS, TWENTY-THIRD
DIVISION, CAGAYAN DE
ORO CITY, and SALVIO F.
ARGUELLES,

Respondents.

Promulgated:

19 FEB 2020

X-----X

RESOLUTION

INTING, J.:

This resolves the Petition for *Certiorari*¹ under Rule 65 of the Rules of Court assailing the Decision² dated December 12, 2016 and Resolution³ dated May 25, 2017 issued by the Twenty-Third Division, Court of Appeals (CA), Cagayan de Oro City in CA-G.R. SP No. 06654-MIN. The assailed CA Decision granted the appeal filed by Salvio F. Arguelles (respondent), and reversed and set aside the Decision⁴ dated July 31, 2014 rendered by Branch 15, Regional Trial Court (RTC), Davao City in the exercise of its appellate jurisdiction in Criminal Case

¹ Rollo, pp. 4-23.
² *Id.* at 28-37; penned by Associate Justice Ruben Reynaldo G. Roxas with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring.
³ *Id.* at 39-41.
⁴ *Id.* at 42-44; penned by Presiding Judge Ridgway M. Tanjili.

No. 76,256-13. Hence, despite the RTC's affirmance of the Decision⁵ dated January 2, 2013 of Branch 3, Municipal Trial Court in Cities (MTCC), Davao City, acquitting Tessie A. Fernandez (petitioner) in the criminal case for Grave Slander, the CA ordered petitioner to pay in favor of respondent moral and exemplary damages in the amount of ₱25,000.00 each.

The assailed CA Resolution, on the other hand, denied the Motion for Reconsideration (of the Decision dated 12 December 2016)⁶ filed by petitioner but granted the Motion for Partial Reconsideration⁷ filed by respondent. Thus, the CA awarded in favor of respondent the amount of ₱10,000.00 as attorney's fees, in addition to the moral and exemplary damages awarded in the assailed CA Decision.⁸

The Antecedents

The present case arose from Criminal Case No. 65,647-DC-1998 for Grave Slander, which was filed against petitioner before the MTCC, Davao City. The criminal case was originally raffled to Branch 4 of the same court. However, after respondent was presented as first witness for the prosecution, petitioner filed a motion for inhibition, which Presiding Judge George E. Omelio of Branch 4 granted.⁹ Consequently, the criminal case was re-raffled and transferred to Branch 3 of the same court.¹⁰

A brief summary of the facts follows.¹¹

The incident happened on November 21, 1997. At that time, respondent was the president of the Parent-Teacher Community Association (PTCA) of the Davao City Special School, while petitioner was the homeroom teacher of respondent's son.

⁵ *Id.* at 82-86; penned by Presiding Judge Silverio M. Mandaiupe.

⁶ *Id.* at 45-50.

⁷ *Id.* at 53-60.

⁸ *Id.* at 41.

⁹ *Id.* at 82.

¹⁰ *Id.*

¹¹ As culled from the MTCC Decision dated January 2, 2013. *Id.* at 83-84.

Version of the Prosecution

At around 8:00 a.m. of November 21, 1997, respondent was standing near the principal's office when petitioner confronted him and asked if his son told him about the strike which the teachers staged two days ago against Mrs. Florita A. Masing (Mrs. Masing), the school principal. Respondent told petitioner that it was useless to discuss it as it was already done. Petitioner suddenly pointed a finger at respondent's face and then made a bold fist sign at him. After respondent told her to stop the gesture, petitioner shouted, "*Why? Because you are the PTCA president? You should be the president of everybody and not side with the teachers. You don't know us!*" Petitioner continued ranting harsh words. While still pointing a finger at respondent, petitioner shouted "*Bullshit ka!*" more than once. Respondent no longer reacted. Respondent was folding his arms when he then noticed from a half-open jalousie window of the multi-purpose room a hand holding a tape recorder. Meanwhile, the other teachers, who participated in the strike for the ouster of Mrs. Masing, were sneering at respondent.¹²

Respondent claimed that the collective acts of petitioner and the other teachers were deliberate and malicious. According to respondent, the teachers resented the fact that he testified as a witness on October 21, 1997 on the collective stand of the PTCA Board and the parents, based on a referendum, to retain Mrs. Masing as principal.¹³

Version of the Defense

For her part, petitioner admitted having spoken to respondent and asked him about the silent protest where she was accused of being the instigator. She was hurt and disgusted when respondent replied, "*That protest was perpetrated by radical people like you.*" She wanted to explain her side; however, to avoid altercation, she headed towards the teachers' lounge and saw her co-teachers, Lea Diez (Diez) and Panchito Fontillas, who led her inside and proceeded to her table. She laid down her things, looked down at the table, and shouted "*Bullshit!*" out of disgust.¹⁴

¹² *Id.* at 83.

¹³ *Id.*

¹⁴ *Id.* at 84.

Diez testified that she blocked the entrance of the teachers' lounge when respondent was about to enter it. Respondent stood at the doorway and mumbled, "*Bullshit pala ha, bullshit pala ha.*"¹⁵

The MTCC Ruling

On January 2, 2013, Branch 3 of the MTCC, Davao City rendered its Decision, the dispositive portion of which reads:

IN LIGHT OF THE FOREGOING, this Court finds that the guilt of accused Tessie A. Fernandez was not proven beyond reasonable doubt and is therefore "not guilty" and is hereby acquitted of the crime charged. This case as against Tessie A. Fernandez is hereby ordered DISMISSED. No pronouncement as to costs.

SO ORDERED.¹⁶

The MTCC ratiocinated:

x x x The alleged defamatory word is "Bullshit ka" or "You are cow's dung" spoken during the heat of anger of the accused against the private complainant.

To the mind of the Court such word, taken under the preceding circumstances like the strike held by the teachers against their principal (Mrs. Masing), is not of a serious and insulting nature. Such expression was only uttered during the heat of the moment because of an existing strenuous relationship between the PTCA President (Private Complainant) and the teacher (accused) involved in the strike. It is noted herein that private complainant was a witness to a referendum that wanted to retain the principal as admitted by him when he testified, while the accused, was one of the teachers who went on strike against their principal.

In one case, the expression "Putang Ina mo" which is considered a more serious and insulting expression than "Bullshit ka" was not held to be libelous. In *Reyes vs. People* (137 Phil. 112, 120), the expression "Putang Ina mo" is such a common enough expression in the dialect that is often employed, not really to slander but rather to express anger or displeasure. It is seldom, if ever, taken in its literal sense by the hearer, that is, as a reflection on the virtues of a mother.

¹⁵ *Id.*

¹⁶ *Id.* at 86.

x x x x

x x x an accused in a criminal case may only be convicted if his guilt is established by proof beyond reasonable doubt. x x x

Such is wanting in this case.¹⁷

Respondent appealed to the RTC under Rule 40 of the Rules of Court with respect to the civil aspect of the case. However, in its Decision¹⁸ dated July 31, 2014, Branch 15, RTC, Davao City dismissed respondent's appeal and affirmed *in toto* the MTCC Decision.

The RTC ruled that respondent's assertion that petitioner should have been held civilly liable for damages despite her acquittal has no basis in law and in fact. It held that "[a]cquittal in a criminal action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the act imputed to him."¹⁹

Respondent filed a Motion for Reconsideration²⁰ of the RTC Decision, but it was denied in the RTC's subsequent Order²¹ dated December 9, 2014.

Thereafter, respondent filed a Petition for Review²² with the CA assailing the RTC Decision dated July 31, 2014 and Order dated December 9, 2014. On December 12, 2016, the CA rendered the herein assailed Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the appeal is GRANTED.

The 31 July 2014 Decision rendered by the Regional Trial Court 11th Judicial Region, Branch 15, Davao City, in Criminal Case No. 76,256-13 is REVERSED and SET ASIDE.

The Court hereby awards petitioner:

1) Moral Damages in the amount of P25,000.00;

¹⁷ *Id.* at 85-86.

¹⁸ *Id.* at 42-44.

¹⁹ *Id.* at 44.

²⁰ *Id.* at 87-92.

²¹ *Id.* at 97-98.

²² *Id.* at 99-129.

2) Exemplary Damages in the amount of P25,000.00.

SO ORDERED.²³

The CA ruled that the RTC erred when it denied respondent's appeal on the premise that the MTCC acquitted respondent based on the finding that she did not commit the act imputed to her. The CA noted that the MTCC, on the contrary, ruled that respondent was acquitted based on reasonable doubt.²⁴

To the CA, the preponderance of the evidence on record, despite petitioner's acquittal, warrants the award of damages in favor of respondent under Article 21²⁵ of the Civil Code. Thus, it held that respondent is entitled to moral damages under item (10) of Article 2219²⁶ and to exemplary damages under Article 2229,²⁷ both of the Civil Code.

On May 25, 2017, the CA rendered the herein assailed Resolution denying petitioner's Motion for Reconsideration (of the Decision dated 12 December 2016)²⁸ while granting respondent's Motion for Partial Reconsideration.²⁹ In his motion, respondent submitted that the award of attorney's fees is warranted in view of the award of exemplary damages and as provided in items (1) and (11) of Article 2208³⁰ of the Civil Code.

²³ *Id.* at 36.

²⁴ *Id.* at 32-33.

²⁵ Article 21 of the Civil Code reads:

Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

²⁶ Article 2219 of the Civil Code partly reads:

Art. 2219. Moral damages may be recovered in the following and analogous cases:

x x x x

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, and 35.

x x x x. (Emphasis supplied.)

²⁷ Article 2229 of the Civil Code reads:

Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

²⁸ *Rollo*, pp. 45-52.

²⁹ *Id.* at 53-62.

³⁰ Article 2208 of the Civil Code partly reads:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

x x x x

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

Finding merit therein, the CA in the assailed Resolution ordered the award of ₱10,000.00 as attorney's fees in favor of respondent, in addition to the moral and exemplary damages that were granted in the assailed Decision.

Hence, the present Petition for *Certiorari* submitting the following issues for resolution:

I.

WHETHER OR NOT [THE CA] COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING THE RULINGS OF THE REGIONAL TRIAL COURT AND MUNICIPAL TRIAL COURT IN CITIES, THEREBY AWARDING MORAL AND EXEMPLARY DAMAGES TO PRIVATE RESPONDENT.

II.

WHETHER OR NOT [THE CA] COMMITTED GRAVE ABUSE OF DISCRETION IN AWARDING PRIVATE RESPONDENT WITH ATTORNEY'S FEES.³¹

The Court's Ruling

The Court resolves to dismiss the petition.

By filing a special civil action for *certiorari* under Rule 65 of the Rules of Court to assail the CA Decision dated December 12, 2016 and Resolution dated May 25, 2017, petitioner availed herself of the wrong remedy. It bears stressing that the proper remedy to question a CA's judgment, final order or resolution, as in the instant case, is a petition for review on *certiorari* under Rule 45 of the same Rules.³² Under Supreme Court Circular 2-90,³³ an appeal taken to this Court or to the CA by a wrong or an inappropriate mode warrants its outright dismissal.³⁴

³¹ *Rollo*, p. 13.

³² See Section 1, Rule 45, Rules of Court.

³³ Guidelines to be Observed in Appeals to the Court of Appeals and to the Supreme Court; issued on March 9, 1990.

³⁴ *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 208 (2013), citing *Villaran, et al. v. Dep't. of Agrarian Reform Adjudication Board, et al.*, 683 Phil. 536, 545 (2012) and *Sea Power Shipping Enterprises Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

In his Comment to Petition for *Certiorari*,³⁵ respondent avers, among others, that the assailed CA Decision and Resolution have become final and executory for failure of petitioner to file a petition for review on *certiorari* under Rule 45 before the expiration of the 15-day reglementary period to file it. On the other hand, petitioner admits in her Reply (Re: Private Respondent's Comment to Petition for *Certiorari*)³⁶ that her petition assigns errors of judgment and appreciation of facts and law on the part of the CA. However, she asserts that even if the petition was designated as one that sought the remedy of *certiorari* under Rule 65, the Court may, in the interest of substantial justice, exercise its discretion to treat it as a petition for review on *certiorari* under Rule 45.

The Court reminds petitioner, as it has consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that automatically compels the Court to set aside technical rules.³⁷ A petition for *certiorari* under Rule 45 must be filed within 15 days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.³⁸ In this case, petitioner received the CA Resolution denying her motion for reconsideration on June 19, 2017 and filed the instant petition 46 days later or on August 4, 2017, by which time she had already lost her appeal under Rule 45.

In *Le Soleil Int'l. Logistics Co., Inc., et al. v. Sanchez, et al.*,³⁹ the Court emphatically declared:

Time and again, we have stressed that procedural rules do not exist for the convenience of the litigants; the rules were established primarily to provide order to, and enhance the efficiency of, our judicial system. While procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business. The timeliness of filing a pleading is a jurisdictional caveat that even this Court cannot trifle with.⁴⁰

³⁵ *Rollo*, pp. 271-278.

³⁶ *Id.* at 284-287.

³⁷ *Supra* note 34 at 209. Citations omitted.

³⁸ See Section 2 of Rule 45, Rules of Court.

³⁹ 769 Phil. 466, 473 (2015).

⁴⁰ *Id.* at 473, citing *Labao v. Flores, et al.*, 649 Phil. 213, 222 (2010).


Notably, petitioner did not present any explanation for failing to timely file a petition under Rule 45 and filing instead a petition under Rule 65. It bears stressing that the remedy of *certiorari* under Rule 65, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that under Rule 45.⁴¹

WHEREFORE, the petition is **DISMISSED**. The assailed Decision dated December 12, 2016 and the Resolution dated May 25, 2017 issued by the Twenty-Third Division, Court of Appeals, Cagayan de Oro City in CA-G.R. SP No. 06654-MIN are **AFFIRMED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

⁴¹ *Phil. Bank of Communications v. Court of Appeals, et al.*, 805 Phil. 964, 971 (2017), citing *Mercado v. Valley Mountain Mines Exploration, Inc.*, 677 Phil. 13 (2011).

Reyes
ANDRES B. REYES, JR.
Associate Justice

Peralta
RAMON RAUL L. HERNANDO
Associate Justice

✓
EDGARDO L. DELOS SANTOS
Associate Justice

ATTESTATION

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

W. Bernabe
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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

Diosdado M. Peralta
DIOSDADO M. PERALTA
Chief Justice

PS