



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LEO A. LASTIMOSA,
Petitioner,

G.R. No. 233577

Present:

- versus -

CAGUIOA, J., Chairperson,
INTING,
GAERLAN,
DIMAAMPAO,* and
SINGH, JJ.

PEOPLE OF THE PHILIPPINES,
Respondent.

Promulgated:

December 5, 2022

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DECISION

CAGUIOA, J.:

Before the Court is a Petition for Review on *Certiorari*¹ filed by the accused-appellant Leo A. Lastimosa (Lastimosa) assailing the Decision² dated July 27, 2016 and Resolution³ dated August 2, 2017 of the Court of Appeals – Cebu City Special Nineteenth Division (CA) in CA-G.R. CEB-CR No. 02233, which affirmed his conviction for Libel.

The Facts

The present case stemmed from an Information for Libel, the accusatory portion of which reads:

That on or about the 29th day of June 2007, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-

* On official leave.

¹ *Rollo*, pp. 9-29.

² Id. at 31-54. Penned by Associate Justice Edgardo L. Delos Santos (retired Member of the Court), with Associate Justices Edward B. Contreras and Pablito A. Perez concurring.

³ Id. at 55-56.

named accused, with evident purpose of impeaching the virtue, honesty, integrity and reputation of the person of GWENDOLYN F. GARCIA, the Governor of the Province of Cebu, a [C]ebuana woman, mother and grandmother[,] and with malicious intent of exposing her to public contempt and ridicule[,] did then and there willfully, unlawfully, and feloniously compose, prepare, write, publish and cause to be composed, prepared, written and published in the 29th day of June, 2007 issue of The Freeman, a newspaper of general and public circulation throughout the Visayas area, printed and published in Cebu City, the contents of which are in the column "Arangkada" and are herein set forth as follows:

x x x x

Roughly translated to English, as follows:

[Doling the thief]

Doling is a fish-monger, whose life suddenly changed. Suddenly, her vehicles increased in numbers. Like mushrooms, her property sprouted. Suddenly, her business grew and widened. In short, it seemed she won the lotto grand prize.

That's the story she told her inquisitive neighbors, But none of them believed her. Nobody heard that there was a lotto grand prize winner in their area. Even the inveterate gamblers have not heard of a neighbor getting lucky, or even one who won a minor prize.

That is why Doling was blanketed with widespread suspicion. Where did her huge money really came (sic) from?

Due to her wealth, Doling easily won as Barangay captain.

Even if her election was contested, nobody was able to stop her from assuming office. This led to her true character to surface.

Her being a loudmouth was known when she was yet a fish-monger. But nobody was prepared for her abrasiveness when she already amassed wealth. More so nobody else knew how to shield themselves from her scathing tirades, which even a mad dog could not swallow, when she already held political power.

That is why when a neighbor insinuated that her wealth was ill-gotten, Doling viciously erupted like a lightning strike at high noon.



Immediately, the person who had the nerve to cast a doubt as to her integrity was vilified: She called him names, she shamed him by the use of insulting terms, she mobilized all her subordinates to save her reputation and angrily, she filed a case in court.

Her own tenants and helpers, whom she suspected of squealing to her hated neighbor, [were] not spared from her cruelty: Their personal belongings were forcibly pried open, they were threatened to be banished to the farthest swine farm; and aside from being threatened with termination, without any concern that their families would suffer from hunger, they would also be hailed to court so that they would really learn their lesson.

The neighbor concerned got rattled defending himself from her harassment. Instead of being commended in his search for truth, his private business was even scrutinized for every imaginable fault or wrongdoing. Most pitiable is the situation of the poor tenants and helpers.

The whole neighborhood felt fear. Afraid even to contemplate the calvary they will experience if, god forbid, they will be the object of her cruelty. Thus, even if they know something, and even with her cruel excesses, the majority chose to keep silent.

When majority of the neighborhood [was] already fear[-]stricken, and nobody was brave enough to voice support for the few who stood up but already emaciated, Doling, in a supremely arrogant voice brought about by her unbridled power, admitted:

“Yes, I am indeed a thief! Can anybody do anything about it?”

and through the aforequoted imputations, had thus attributed to her the commission of vice, defects and/or acts, condition, status or circumstances which have undermined her integrity and caused her dishonor and discredit, to the damage and prejudice of said GWENDOLYN F. GARCIA.⁴

During the arraignment, Lastimososa pleaded not guilty.⁵ In the pre-trial of the case, the parties stipulated on the following facts:

⁴ Id. at 31-35.

⁵ Id. at 35.



- 1) That the accused-appellant is a tri-media practitioner who has a regular opinion column (“*Arangkada*”) in [T]he Freeman, a Cebu-based daily newspaper;
- 2) That the accused-appellant also has a radio commentary show from 6 to 10 a.m., Monday to Friday, aired over DYAB, an AM band radio station of ABS-CBN;
- 3) For television, the accused-appellant is a daily anchor of a news program (“TV Patrol-Central Visayas”) from 6-7 p.m. aired[,] locally over Channel 3 by ABS-CBN;
- 4) On 29 June 2007, [T]he Freeman published in the opinion column (“*Arangkada*”) an article written by the accused-appellant [titled] “*Si Doling Kawatan*”;
- 5) Private complainant, Gwendolyn F. Garcia, is presently the incumbent Governor of the Province of Cebu, serving her third consecutive term;
- 6) At the time the said article was published, private complainant was also the Governor of the Province of Cebu then serving the penultimate date of her first term;
- 7) That the accused-appellant herein is the same person who wrote the subject article “*Si Doling Kawatan*”;
- 8) That the private complainant, Honorable Governor Gwendolyn F. Garcia, had proclaimed the accused appellant as the pride of Cebu in the field of media, for the year 2006 by granting him the most prestigious Garbo sa Sugbo Award;
- 9) That it is a matter of public knowledge that Governor Gwendolyn F. Garcia of the Province of Cebu had never been a fish-monger; and
- 10) That [it] is likewise a matter of public knowledge that Governor Garcia had not been a Barangay Captain of any barangay in the country.⁶

Trial on the merits ensued thereafter.

According to the prosecution, Lastimososa had been a constant and vocal critic of then Governor Gwendolyn Garcia (Garcia), which resulted in the filing of several other libel cases against him.⁷ The prosecution asserts that the article “*Si Doling Kawatan*” was about Garcia, and that Lastimososa wrote the same to tarnish her reputation as governor, “and as a Cebuana woman, mother and grandmother.”⁸ In support of its theory, the prosecution presented the following witnesses: 1) Glenn Baricuatro (Baricuatro), 2) Atty. Pacheco Seares (Atty. Seares); and 3) Garcia. Baricuatro was presented to prove that a third person would immediately know that Garcia was the one referred to in the article “*Si Doling Kawatan*.” Atty. Seares was presented to prove that, in his media class at the University of the Philippines, nine of his 15 students observed that a plain reading of the said article pointed to Garcia as the

⁶ Id. at 36.

⁷ Id. at 37.

⁸ Id.



character “Doling.” Lastly, the prosecution submitted some of Lastimosa’s older articles as documentary evidence to prove that Lastimosa had intimated in the past that Garcia was corrupt, ill-tempered, or foul-mouthed.⁹

On the other hand, Lastimosa maintained that the article was merely a work of fiction in the third person narrative form.¹⁰ He insisted that “Doling” did not refer to Garcia since the personal circumstances of “Doling” were different from Garcia’s.¹¹ Ultimately, he argued that he could not be convicted of Libel as there was no clear identification of Garcia as “Doling.” To substantiate Lastimosa’s defense, they presented Atty. Democrito Barcenas (Atty. Barcenas) to prove that a third person would not think of Garcia when the article was read in full.

RULING OF THE REGIONAL TRIAL COURT

After trial, Branch 14, Regional Trial Court of Cebu City (RTC) issued a Decision¹² dated August 30, 2013, convicting Lastimosa of Libel. The dispositive portion of the said Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered finding accused, **LEO A. LASTIMOSA, GUILTY** beyond reasonable doubt of **LIBEL** and sentences him to a penalty of **FINE** of **SIX THOUSAND [PESOS] with SUBSIDIARY IMPRISONMENT in case of INSOLVENCY.**

Accused is, likewise, ordered to pay private complainant, (Ex) **Governor GWENDOLYN F. GARCIA** the amount of **TWO MILLION (Php2,000,000.00)]**, for and as moral damages.

Finally, accused is ordered to pay the costs of these proceedings.

SO ORDERED.¹³

In convicting Lastimosa, the RTC explained that all the elements of the crime had been established by the prosecution beyond reasonable doubt. The RTC gave full credence to Baricuatro’s testimony that he feels or believes that the character “Doling” was actually Garcia.¹⁴ The RTC also considered Atty. Seares’ testimony that nine of his 15 students thought that the article was about Garcia as additional proof that Garcia was sufficiently identified in the article.¹⁵ Moreover, the RTC ruled that Lastimosa’s older articles about Garcia further established that he views Garcia to be “[a] thief, corrupt, arrogant,

⁹ Id. at 38.

¹⁰ Id. at 37.

¹¹ Id.

¹² *CA rollo*, p. 23-60. Penned by Presiding Judge Raphael B. Yraztorza, Sr.

¹³ Id. at 60.

¹⁴ Id. at 35-36.

¹⁵ Id. at 36.



vindictive, ill-tempered, foul-mouthed, and cruel”¹⁶ which were the words used to describe “Doling” in the article.¹⁷

The RTC held that the article “*Si Doling Kawatan*” was undoubtedly libelous and was published maliciously. Thus, the RTC convicted Lastimososa.

Aggrieved, Lastimososa appealed to the CA.

Ruling of the CA

In the assailed Decision¹⁸ dated July 27, 2016, the CA affirmed Lastimososa’s conviction albeit with modification as to the amount of damages awarded. The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing premises, the appeal is hereby **PARTIALLY GRANTED**. Accordingly, the Judgment of the Regional Trial Court, Branch 14 in Cebu City is hereby **AFFIRMED WITH MODIFICATION** as to the amount of moral damages which is reasonably reduced to Php500,000 herein. The rest of the court *a quo*’s ruling stands.

SO ORDERED.¹⁹

In affirming Lastimososa’s conviction, the CA found that the prosecution was indeed able to establish all the elements of the crime. The CA held that the article was undoubtedly defamatory, published with malice as it was not privileged communication, and clearly identified Garcia. As to the identification, the Court explained:

Moreover, the circumstances under which the subject article was published by the accused-appellant bolsters the inference that the accused-appellant was motivated by revenge or ill will towards Garcia due to the latter’s filing of both civil and criminal cases against the former on account of his negative articles and commentaries against the latter. Furthermore, the descriptions of Doling used in the assailed article to refer to Garcia were mostly uncalled for, strongly sending the message that the accused-appellant’s purpose was to incite doubts or mistrust in the readers’ minds and ultimately cause injury or discredit to the name and reputation of Garcia. This is certainly indicative of malice on the part of the accused-appellant. It is worthy to note that the existence of malice in fact may be shown by extrinsic evidence that the defendant bore a grudge against the offended party, or that there was a rivalry or ill-feeling between them which existed at the date of the publication of the defamatory imputation or that the defendant had an intention to injure the reputation of the offended party as shown by the words used and the circumstances attending the publication of the defamatory imputation, as in this case.

x x x x

¹⁶ Id. at 45.

¹⁷ Id. at 38-44.

¹⁸ Supra note 2

¹⁹ *Rollo*, p. 53.



With respect to the last element, jurisprudence holds that defamatory words must refer to an ascertained or ascertainable person, and that person must be the plaintiff, or the private complainant herein. The accused-appellant, however, raises the defense that his article “*Si Doling Kawatan*” did not refer to Garcia since no mention of Garcia’s name was made therein and neither did the description of Doling in that article correspond to the personal circumstances of Garcia. On this score, the Honorable Supreme Court has elucidated that while it is essential that the victim be identifiable in order to maintain a libel suit, it is not necessary that the person be named. It is enough if by reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to, or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he was the person referred to. *Kunkle vs. Cablenews-American and Lyons* laid the rule that this requirement is complied with where a third person recognized or could identify the party vilified in the article.

In this case, this requirement is satisfied by the testimony of Baricuatro, a third person apart from the private complainant, who had recognized and had sufficiently identified Garcia as the one depicted in the character of Doling.²⁰

The CA thus affirmed Lastimosa’s conviction. It, however, modified the amount of damages from ₱2,000,000.00 to ₱500,000.00 as moral damages are not awarded to enrich the complainant but instead to alleviate the moral suffering that resulted from the defendant’s culpable action.

Lastimosa sought reconsideration of the CA Decision. However, the CA denied the motion for reconsideration through a Resolution²¹ dated August 2, 2017.

Hence, the instant appeal.

Issue

For resolution of the Court is whether the CA erred in affirming the conviction of Lastimosa for Libel.

The Court’s Ruling

The appeal is meritorious. Lastimosa is acquitted of the crime charged.

At the outset, it bears emphasis that “the Court, in the course of its review of criminal cases elevated to it, still commences its analysis from the fundamental principle that the accused before it is presumed innocent.”²² This assumes further significance in criminal prosecutions for libel as the Court

²⁰ *Rollo*, pp. 42-43.

²¹ *Supra* note 3.

²² *Cuico v. People*, G.R. No. 232293, December 9, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67047>>.



needs to carefully tread the line between freedom of expression and of the press, on the one hand, and the power of the State to impose subsequent punishment on harmful speech, on the other. Thus, the Court would meticulously ensure first that all the elements of the crime are individually proven beyond reasonable doubt before arriving at a judgment of conviction. In this case, there is reasonable doubt in one of the elements, namely, the element that the person allegedly defamed must be identifiable in the subject writing.

Libel is defined as 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.”²³ “For an imputation to be libelous, the following requisites must concur: a) it must be defamatory; b) it must be malicious; c) it must be given publicity and d) the victim must be identifiable.”²⁴ Absent any one of these elements precludes the commission of the crime of libel.²⁵

Regarding the first element, the Court finds that the imputation in the article “*Si Doling Kawatan*” is indeed defamatory. According to jurisprudence, “[i]n 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.”²⁶ Here, the character “Doling” was described in the article as “abrasive,” “cruel,” “arrogant,” and worst, “a thief.” There is thus no doubt that the subject article was defamatory.

As to the second element — the element of malice — the Court similarly finds that it was present as the law presumes malice because of the defamatory nature of the imputation.²⁷ While it is true that criticisms against public officials or public figures are considered privileged — and thus malice is not presumed — according to jurisprudence,²⁸ the said exception does not apply where the comment or criticism was about, or extends to the private life of the public figure. Thus:

x x x the rule is that defamatory remarks and comments on the conduct or acts of public officers which are *related to the discharge of their official duties* will not constitute libel if the defendant proves the truth of the imputation. But any attack upon the private character of the public officer on *matters which are not related to the discharge of their official functions* may constitute libel.²⁹

²³ REVISED PENAL CODE, Art. 353.

²⁴ *Lopez v. People*, 658 Phil. 20, 20 (2011).

²⁵ *Id.*

²⁶ *Novicio v. Aggabao*, 463 Phil. 510, 516 (2003).

²⁷ See REVISED PENAL CODE, Art. 354.

²⁸ See *Borjal v. Court of Appeals*, 361 Phil. 1, 24 (1999).

²⁹ *Sazon v. Court of Appeals*, 325 Phil. 1053, 1067 (1996).

In this case, the subject article was talking about the private life of the character “Doling.” The article talked about the dealings of “Doling” with her neighbors, particularly how she was abrasive with them when she amassed wealth and gained political power. The article talked about how “Doling” instilled fear in the community, and that none of her neighbors could go against her excesses. The article was not making any comment against the public life of “Doling” or her actions as a public official, *i.e.*, as a *barangay captain*. Therefore, malice could be presumed from the defamatory nature of the article.

There is no question that the requirement of publicity is likewise present in this case. Lastimososa does not deny writing and publishing the subject article. Undoubtedly, therefore, the element of publicity is present.

The last element — the element of identifiability of the victim — was, however, not established beyond reasonable doubt. The rule is that “[i]n order to maintain a libel suit, it is essential that the victim be identifiable although it is not necessary that he be named.”³⁰ The Court, in *MVRS Publications v. Islamic Da'wah Council of the Philippines*,³¹ cited then Associate Justice Reynato S. Puno who expounded on the importance of the requirement of identifiability in litigations involving libel as follows:

The law of defamation protects the interest in reputation — the interest in acquiring, retaining and enjoying one’s reputation as good as one’s character and conduct warrant. The mere fact that the plaintiff’s feelings and sensibilities have been offended is not enough to create a cause of action for defamation. Defamation requires that something be communicated to a third person that may affect the opinion others may have of the plaintiff. The unprivileged communication must be shown of a statement that would tend to hurt plaintiff’s reputation, to impair plaintiff’s standing in the community.

Although the gist of an action for defamation is an injury to reputation, the focus of a defamation action is upon the allegedly defamatory statement itself and its predictable effect upon third persons. A statement is ordinarily considered defamatory if it “tend[s] to expose one to public hatred, shame, obloquy, contumely, odium, contempt, ridicule, aversion, ostracism, degradation or disgrace x x x.” The Restatement of Torts defines a defamatory statement as one that “tends to so harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”

Consequently as a prerequisite to recovery, it is necessary for the plaintiff to prove as part of his *prima facie* case that the defendant (1) published a statement that was (2) defamatory (3) of and concerning the plaintiff.

The rule in libel is that the action must be brought by the person against whom the defamatory charge has been made. In the American

³⁰ *Borjal v. Court of Appeals*, supra note 28, at 15.

³¹ 444 Phil. 230 (2003).



jurisdiction, no action lies by a third person for damages suffered by reason of defamation of another person, even though the plaintiff suffers some injury therefrom. **For recovery in defamation cases, it is necessary that the publication be “of and concerning the plaintiff.” Even when a publication may be clearly defamatory as to somebody, if the words have no personal application to the plaintiff, they are not actionable by him. If no one is identified, there can be no libel because no one’s reputation has been injured x x x.**

In fine, in order for one to maintain an action for an alleged defamatory statement, it must appear that the plaintiff is the person with reference to whom the statement was made.³² (Emphasis supplied)

The element of identifiability is easily complied with when the writing in question explicitly names the subject or the person being defamed. In cases, however, where the person subject of the defamatory words was not named, a libel suit may only prosper “if by intrinsic reference the allusion is apparent *or* if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the plaintiff was intended, *or* if he is pointed out by extraneous circumstances so that persons knowing him could and did understand that he was the person referred to.”³³ There are, therefore, three ways to establish the identity of the person defamed when he or she was not explicitly mentioned in the writing:

- a) Identification through intrinsic reference — wherein by the words used in the writing in question, the identity of the person defamed could readily be established;
- b) Identification through description — wherein the identity of the person defamed could be established by piecing together the descriptions and the facts and circumstances surrounding the character; and
- c) Identification through extrinsic evidence — whereby extraneous pieces of evidence are presented to prove the link between the character and the person defamed, such as when a third person would testify that when he or she read the writing, he or she knew that it was referring to the person defamed because of his or her own knowledge of the characteristics and circumstances surrounding the person defamed and/or the latter’s relationship with the writer.

In the present case, there is no question that Garcia was not explicitly referred to in the article “*Si Doling Kawatan.*” Thus, in convicting Lastimosa of the crime, the CA relied heavily on identification through description and by extrinsic evidence — through Baricuatro’s testimony — to establish the link between “Doling” and Garcia. The CA ratiocinated:

³² Id. at 246-247.

³³ *Corpus v. Cuaderno, Sr.*, 123 Phil. 651 (1966).



In the case at bar, Baricuatro was admittedly familiar with Garcia and was knowledgeable about the issues and strained relations between the parties, he having served in the Provincial Government from July 2004 to March 2008. His statements, therefore, hold material weight. Considering that Baricuatro's testimony is positive, straightforward and consistent, the Court is inclined to give his testimony credence. Settled is the rule that when there is no evidence to show any dubious reason or improper motive why the prosecution witnesses should testify falsely against the accused or implicate him in a serious offense, their testimonies deserve full faith and credit.

x x x x

On this point, it may not be amiss to mention the jurisprudential rule that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on the findings are accorded high respect, if not conclusive effect. The Court has carefully reviewed the testimonial and documentary evidence on record and finds no cogent reason to depart from this rule.³⁴

After a circumspect and assiduous study of the records, the Court finds contrary to the CA. A fair appreciation of Baricuatro's testimony reveals that his basis is primarily anchored on the auditory similarities between "Doling" and Garcia's name, *Gwendolyn*. Baricuatro testified:

Q: Mr. Baricuatro, did I get you right saying that immediately after reading the article in question in the column of Mr. Leo Lastimoso, you immediately got the impression that "Doling", the character in the article refers to the Honorable governor Gwendolyn Garcia?

A: Yes, Sir.

Q: What is your basis in arriving to that conclusion?

A: The term Gwendoly[n] or Doling as if it refers to the Honorable Gwendolyn Garcia.

Q: And that is your only basis of your impression that Doling refers to the governor?

A: Yes, Sir.

Q: The only reason or basis of your conclusion that the name of the character Doling refers to Governor Gwendolyn Garcia?

A: I cannot directly answer that Sir, but one of the reasons

Q: But you will candidly admit that Governor Gwen Garcia has not been a fish monger, fish vendor or fish peddler?

³⁴ *Rollo*, pp. 45-46.



A: No, Sir, I have not heard or knew that she is a fish monger.

Q: So during your entire lifetime you have never called the governor by the name, Doling?

A: No, I have known her to be Gwendolyn Garcia, the governor of Cebu.

Q: You do not know of anyone among the members of the family of Governor Gwen Garcia as well as the member of the official staff had ever called her Doling?

A: No, Sir.

x x x x

Q: In the information, the article which appeared in the column of the accused, Leo Lastimoso was quoted verbatim, please go over it before I will ask you the next question.

Witness reading...

Q: Will you please single out or point to the Court, the particular article in question which leads you to conclude that the character Doling refers to Governor Gwendolyn Garcia?

A: Only the word Doling.

Atty. Espinosa: That is all, Your Honor.³⁵ (Emphasis supplied)

Upon the continuation of his testimony, Baricuatro was again asked regarding the same matters. He testified:

Q – You will admit Mr. Baricuatro that the word arrogant, foul-mouthed and other description or the character in the article is to[o] general which can be applied to any person to several persons?

A – Yes it can be (*sic*) refer to any other person but in my belief he [was] refer[ring] to Gwendolyn Garcia in his column.

Q – But you will admit that those descriptions of the character in the feature article can be applied to several persons not only to the governor?

A – I will stick to my affidavit that as I said in my own belief the column refers to Gov. Gwendolyn Garcia although it is not clear but I think it refer[s] to Gwendolyn Garcia.

Q – Alright. As I have stated earlier the feature article in question is quoted verbatim in the information. [Please] point out to the Honorable Court the particular portion of the article in question which leads you to have that impression that the name Doling refers to the Honorable Gov. Gwendolyn Garcia?

³⁵ TSN dated June 3, 2011, pp. 2, 5.



A – This name Doling I think it's a play of the name of Gwendolyn Garcia.

Q – That is only your impression or opinion?

A – Yes that's my opinion

x x x x

Q – You cannot state with absolute certainty that the name Doling actually refers to the Honorable Governor Gwendolyn Garcia?

A – I signed my affidavit because I believe that Doling was referred to Gov. Gwendolyn Garcia.

Q – It is only your belief?

A – That is why I signed it.³⁶

Baricuatro also admitted that he had no knowledge of the “facts” that link “Doling” to Garcia:

Q – You will likewise candidly admit that Governor Garcia had never been elected as a Barangay Captain of any Barangay in the country?

A – No, she was elected Governor.

Q – No, I am asking you whether she had been elected as Barangay Captain?

A – No, as far as I know.

Q – You will likewise admit candidly that the Governor never acquire[d] a big house and in fact she is now renting her dwelling house?

A – I do not know about that, sir.

Q – You will likewise admit that the Governor did not acquire several numbers of vehicles as referred to in the article in question?

A – I do not know about that, sir.³⁷

From the foregoing, it is thus the Court's considered view that Baricuatro's testimony cannot be made the basis to conclude that a third person recognized Garcia to be the subject of the defamatory article.

To reiterate, Baricuatro based his “belief” merely on the auditory similarities between “Doling” and “Gwendolyn.” He even admitted to not having knowledge of the other circumstances or descriptions used to describe

³⁶ TSN dated August 26, 2011, pp. 6-8.

³⁷ TSN dated April 29, 2011, pp. 7-8.



“Doling”, *i.e.*, sudden acquisition of properties and vehicles, becoming a *Barangay Captain*, and starting as a fishmonger. The similarities in how “Doling” and “Gwendolyn” sound when pronounced cannot, standing alone, be made the basis for establishing the link between the character “Doling” and Garcia.

Even the testimony of the other prosecution witness, Atty. Seares, is insufficient to establish said link. The core of his testimony — that nine of his 15 students in a media studies class recognized “Doling” to be Garcia — does not establish anything in evidence. None of the said nine students was presented as a witness, and the defense therefore did not have the opportunity to cross-examine them as regards the circumstances leading to such identification. The fact that those nine students recognized “Doling” as Garcia cannot be admitted into evidence as they constitute hearsay testimony.

Moreover, when read in full, the testimony of Atty. Seares is in fact detrimental to the prosecution’s cause. He testified:

COURT: I think the better would be, did you to see (*sic*) with Leo Lastimosa of the column. Did you have any conversation as to its substance?

A: I am teaching libel law, your Honor, and the accused twice came to me and asked me if the column item was lavished, so in these two occasions we talked about the case and I gave him some advice.

COURT: Did he [Lastimosa] intimate to you the person involved in the identification of the person?

A: He said it was not the governor.

COURT: Proceed.

x x x x

Q: Atty. Seares, in [paragraph] 4 of your column you stated that [it is] an allegory story and it didn’t have any symbolic meaning, am I correct in my perception that the column in question of the accused Leo Lastimosa represents a work of fiction?

A: A work of fiction, it is a column of an opinion, it is not a work of fiction, however a writer or any journalist for that matter can use allegory to drive on that point, if you look at the attribute that he cited some of them or few of them fitted the governor **but many of them did not fit the governor.**

Q: **But the same attributes mentioned by the accused Leo Lastimosa can be applied to thousands of people?**

A: **That is right, not only thousand but to many people.**



Q: The character Doling cannot be singled out also as the one referring to Governor Gwen Garcia?

A: No, even my students did not think so, they just said it was the governor because some commentator said it was the governor and those who said it was not the governor said you don't heard (sic) or read anything about it. I wrote a second column explaining that and this column was dated May 3, 2011.³⁸ (Emphasis and underscoring supplied)

Clear from the foregoing is the fact that none of the two witnesses who were meant to establish that third persons could recognize “Doling” as Garcia was able to confirm beyond reasonable doubt that it indeed referred to her. This case is thus similar to the early case of *Kunkle v. Cablenews-American*,³⁹ cited by the CA Decision itself, which laid down the rule that liability for libel will not attach,

x x x unless it appears that the description of the person referred to in the defamatory publication was sufficiently clear **that at least one third person** would have understood the description as relating to him. It is not sufficient that the plaintiff in the action should have recognized himself as the person intended in the libel.⁴⁰

While the requirement of identifiability is already complied with even if just one other person identifies the plaintiff as the subject of the defamatory words, it is material — for purposes of the plaintiff's recovery and/or the author's conviction — to establish *how* such third person was able to make the connection between the writing and the plaintiff. Such third person's recognition must be anchored in some description intrinsic to the writing and/or through some other extrinsic evidence. In this case, there is no anchor apart from the auditory similarities between “Doling” and Garcia's first name, Gwendolyn.

A more recent application of the principle is the case of *Diaz v. People (Diaz)*.⁴¹ In *Diaz*, the subject article, which was published in a tabloid, imputed to a certain “Miss S” the characteristics of being a sexual pervert and possessing lascivious and immoral habits. The complainant in the case claimed that she was the person described in the article as “Miss S” because her screen name was “Patricia Santillan” and that she had sexual relations with the man who was explicitly named in the article, Philip Henson. The complainant even presented a witness, similar to this case, who testified that she recognized “Miss S” to be the complainant. However, since there was not enough evidence linking the complainant to “Miss S” apart from the fact that her screen name had a last name that starts with S, the Court acquitted the accused therein for libel. The Court held:

³⁸ TSN dated November 8, 2011, p. 4.

³⁹ 42 Phil. 757 (1922).

⁴⁰ Id. See Syllabus.

⁴¹ 551 Phil. 192 (2007).



The last element of libel is that the victim is identified or identifiable from the contents of the libelous article. In order to maintain a libel suit, it is essential that the victim be identifiable, although it is not necessary that the person be named. It is enough if by intrinsic reference the allusion is apparent or if the publication contains matters of description or reference to facts and circumstances from which others reading the article may know the person alluded to, or if the latter is pointed out by extraneous circumstances so that those knowing such person could and did understand that he [or she] was the person referred to. *Kunkle v. Cablenews-American and Lyons* laid the rule that this requirement is complied with where a third person recognized or could identify the party vilified in the article.

The libelous article, while referring to “Miss S,” does not give a sufficient description or other indications which identify “Miss S.” In short, the article fails to show that “Miss S” and Florinda Bagay are one and the same person.

Although the article is libelous, we find that Florinda Bagay could not have been the person defamed therein. In *Uy Tioco v. Yang Shu Wen*, we held that where the requirement for an identified or identifiable victim has not been complied with, the case for libel must be dismissed.⁴² (Emphasis and underscoring supplied)

The same principle applies here. To repeat, there is no third person who was presented that established beyond reasonable doubt that “Doling” and Garcia are the same person. Neither do Lastimososa’s previous articles sufficiently establish the said fact, for they are not the articles subject of this libel case, and it does not necessarily follow that because he had previously written about Garcia that the latter would automatically be the subject of the article in question. In other words, that “Doling” refers to Garcia is not a logical conclusion of the fact that Lastimososa had previously written about Garcia.

All told, there is reasonable doubt as to the element of identifiability which is necessary for a libel suit to prosper. Therefore, Lastimososa must perforce be acquitted.

WHEREFORE, in view of the foregoing, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated July 27, 2016 and Resolution dated August 2, 2017 of the Court of Appeals in CA-G.R. CEB-CR No. 02233 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Leo A. Lastimososa is **ACQUITTED** of the crime charged. Let entry of judgment be issued immediately.

⁴² Id. at 199-200.




SO ORDERED.

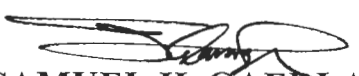


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:



HENRI JEAN PAUL B. INTING
Associate Justice
Chairperson



SAMUEL H. GAERLAN
Associate Justice

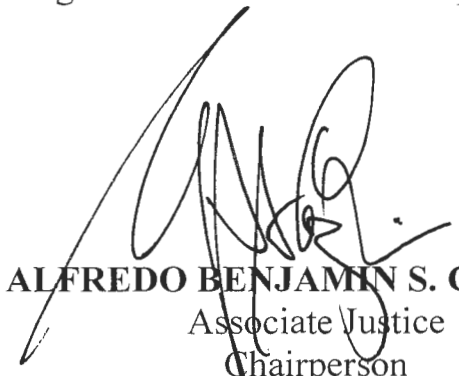
(on official leave)
JAPAR B. DIMAAMPAO
Associate Justice



MARIA FILOMENA D. SINGH
Associate Justice

✓
ATTESTATION

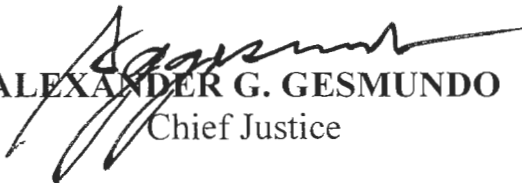
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALFREDO BENJAMIN S. CAGUIOA
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.



ALEXANDER G. GESMUNDO
Chief Justice

