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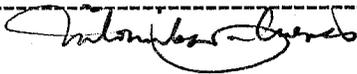
G.R. No. 164845 – WILLIAM TIENG, WILSON TIENG and WILLY TIENG, *petitioner*, v. HON. JUDGE SELMA PALACIO-ALARAS, in her capacity as Presiding Judge of Makati City RTC, Branch 62 and HILARION HENARES, [JR.], *respondents*.

G.R. No. 181732 – WILLY TIENG, *petitioner*, v. HILARION HENARES, JR., *respondent*.

G.R. No. 185315 – HILARION HENARES, JR., *petitioner*, v. WILLIAM TIENG, and PEOPLE OF THE PHILIPPINES, *respondents*.

Promulgated:

July 13, 2021

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I agree with the finding that Article 360 of the Revised Penal Code, as amended, operates to impose jurisdictional venue requirements upon charges of libel committed through radio and television broadcasts. However, Article 360, as adapted by the *ponencia* for radio and television, cannot extend to libel committed through the internet, despite referring to the Rule on Cybercrime Warrants to address the dilemma presented in *Bonifacio et al., v. RTC Makati*.¹

While libel committed through radio or television broadcast encounters the same issues as cyber libel when situating the place of printing and first publication, substantial differences between the two modes place cyber libel beyond the *ponencia*'s proposed solution. I reiterate, as I have discussed in previous separate opinions, that libel is best decriminalized.

I

The consolidated Petitions before this Court involve complaints for libel filed by William Tieng, Willy Tieng and Wilson Tieng (collectively, “the Tiengs”) against Hilarion Henares, Jr., (Henares) for the latter’s allegedly libelous statements on radio and television broadcasts.

G.R. No. 185315 involves criminal charges for libel against Henares for libelous remarks allegedly uttered against the Tiengs on his November 29,

¹ 634 Phil. 348 (2010) [Per J. Carpio-Morales, First Division].



2001 radio show. This information was eventually docketed as Criminal Case No. 02-0194 before Branch 274 of the Parañaque City Regional Trial Court.²

Henares moved to quash the information, arguing that it failed to state that the libelous remarks were printed and first published within the trial court's territorial jurisdiction, or that the private complainant resided within the same location when the crime was committed. Henares argued that these statements were jurisdictional under Article 360 of the Revised Penal Code, and the information should have been dismissed for failing to allege these.³

The Regional Trial Court rejected Henares' arguments and maintained that Article 360 of the Revised Penal Code applied specifically to written defamation and not those made through radio broadcasts. Hence, Rule 110, Section 15 of the Rules of Criminal Procedure governs the standards for the information's sufficiency.⁴ The Court of Appeals subsequently denied Henares' Petition for Certiorari under Rule 65 and maintained the trial court's jurisdiction.⁵

Thus, Henares filed a Petition for Review under Rule 45 with this Court, assailing the Court of Appeals' Decision and Resolution.⁶ On the other hand, both the Tiengs and the Office of the Solicitor General, as respondents, counter that there are "judicially-recognized distinctions between radio and print media"⁷ in support of their argument that Article 360's jurisdictional requirements for libel complaints are limited to written defamations.⁸

G.R. No. 181732 involves three libel complaints for Henares' statements on his radio and television programs, which allegedly impeached the integrity of Willy Tieng. The complaints led to three informations filed against Henares in the Makati City Regional Trial Court. These were eventually docketed as Criminal Case No. 02-3585, for statements Henares allegedly made on his television program on November 28, 2001, and Criminal Cases Nos. 02-3586 and 02-3587, for statements Henares allegedly made on his November 28 and 29, 2001 radio broadcasts, respectively.⁹ Henares moved to quash the informations but the trial court denied this as it found the allegations therein sufficient to confer jurisdiction upon it.¹⁰

In Henares's subsequent Petition for Certiorari, the Court of Appeals opposed the trial court's ruling and held that "cases of written libel" included "written defamation and other similar means under Article 355" of the

² Ponencia, p. 3.

³ Id. at 3-4.

⁴ Id. at 4.

⁵ Id. at 4-5.

⁶ Id. at 5.

⁷ Id. at 6.

⁸ Id. at 5-7.

⁹ Id. at 7-10.

¹⁰ Id. at 10.

Revised Penal Code.¹¹ It found that “other similar means” included defamation through “radio, phonograph. . . or any similar means.” Hence, the informations should state that the libelous remarks were printed and first published within the Makati Regional Trial Court’s territorial jurisdiction, or that any of the private complainants resided within the same territory when the crime was committed.

Thus, Willy Tieng (Willy) filed a Petition for Review under Rule 45 with this Court, questioning the Court of Appeals’ Decision to dismiss the criminal charges against Henares. Willy argues against the broadened interpretation of Article 360 which allowed its application to Henares’ statements made on radio and television. In any event, Willy argues that first publication of Henares’ statements should be deemed to include “all areas covered by the radio and television stations’ frequencies[.]”¹²

Finally, G.R. No. 164845 involves a civil complaint for damages docketed as Civil Case No. 02-359 before Makati Regional Trial Court Branch 62, arising from the same remarks subject of Criminal Case Nos. 02-3585 to 3587, and one other instance of defamation allegedly committed by Henares on November 23, 2001, without a “criminal case counterpart.” Civil Case No. 02-359 was later consolidated with another libel complaint docketed before Makati Regional Trial Court Branch 145 as Criminal Case No. 02-1103, which sprung from Henares’ statements against the Tiengs in his November 28, 2001 radio broadcast.¹³

After the consolidation of the cases in Makati Regional Trial Court Branch 62, Henares moved for their dismissal arguing that the “venue was improperly laid” because the complaint failed to allege the jurisdictional venue requirements provided by Article 360 of the Revised Penal Code.¹⁴

Branch 62 dismissed Civil Complaint 02-359 for “lack of jurisdiction and improper venue,”¹⁵ finding that Article 360 requires the civil action for libel to be filed with the same court that first acquired jurisdiction over the criminal action, or vice-versa. Since the Tiengs already had Criminal Case No. 02-0194 filed with Branch 274 of the Parañaque Regional Trial Court, Branch 62 dismissed Civil Case No. 02-359 without prejudice to its refileing in Parañaque.¹⁶ Both parties moved for reconsideration of the trial court’s Decision, but both were denied.¹⁷

¹¹ Id. at 11.

¹² Id. at 12.

¹³ Id. at 12–13.

¹⁴ Id. at 13–14.

¹⁵ Id. at 14.

¹⁶ Id.

¹⁷ Id.

Thus, the Tiengs filed a Petition for Certiorari under Rule 65 with this Court, arguing again that the jurisdictional requirements in Article 360 of the Revised Penal Code applied only to written defamation. In any event, the Tiengs argue that since venue is not jurisdictional in civil cases, it can be waived. Thus, Henares should be deemed to have waived any issues on venue when he filed his Answer and Pre-Trial Brief before the trial court.¹⁸

In response, Henares counters that he did not waive his objections to the improperly laid venue because he included these objections as affirmative defenses in his Answer.¹⁹

With these, the *ponencia* aptly summarized the issues as follows:

1. Whether the rules of venue and jurisdiction provided under Article 360 of the Revised Penal Code apply to radio and television broadcasts;
2. Whether the RTC of Makati, Branch 62 dismissal of Civil Case No. 02-359 was in accordance with Article 360 of the Revised Penal Code; and
3. Whether under Article 360 of the RPC, venue of the civil action is also jurisdictional.²⁰

I agree with the *ponencia's* disposal of the stated issues. Libelous remarks made through radio and television broadcasts are subject to the jurisdictional venue rules provided in Article 360 of the Revised Penal Code, as amended by Republic Act No. 4363.

However, I hold concerns regarding the *ponencia's* treatment of problems arising from the prosecution of cyber libel, which points to a need for further discussion.

II

The *ponencia* aptly found that Article 360 of the Revised Penal Code also applies to libelous remarks made through television or radio broadcasts, despite the provision's language which indicate a focus on written defamation. I agree that the Judiciary has the duty to ascertain the purpose of the laws sought to be applied, and to give effect to these purposes once determined.²¹

In view of the parties' contentions regarding the applicability of Article 360, *Agbayani v. Sayo*²² explained the purpose for Republic Act No. 4363's enactment:

¹⁸ Id. at 15–16.

¹⁹ Id. at 16.

²⁰ Id.

²¹ *Sarcos v. Castillo*, 136 Phil. 244 (1969) [Per J. Fernando, En Banc].

²² 178 Phil. 574 (1979) [Per J. Aquino, Second Division].

Before article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed[.] Under that rule, the criminal action is transitory and the injured party has a choice of venue.

Experience had shown that *under that old rule the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.*

....

*To forestall such harassment, Republic Act No. 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts[.]*²³ (Citations omitted, emphasis supplied)

Thus, Article 360 of the Revised Penal Code was enacted to minimize or prevent the possibility of inconveniencing or harassing an accused by allowing the offended party an indiscriminate choice of venue in filing libel actions. The *ponencia* correctly recognized that the dangers of filing libel suits for harassment exist just as much, if not more so, for broadcast media like television and radio.²⁴ As discussed in *Bocobo v. Estanislao*:²⁵

It is the contention of respondents that the alleged libel, having arisen from a radio broadcast, is triable by a municipal court, for in a later portion of Article 360 the phrase "by other similar means," is not repeated thus leading them to conclude that it is only where there is "defamation in writing" that there is conferment of exclusive jurisdiction in a court of first instance. Such an argument does not carry weight. It loses sight of *the basic purpose of the act, namely, to prevent inconvenience or even harassment to those unfortunate enough to be accused of libel, if any municipal court where there was publication could be chosen by the complainant as the venue. Since a radio broadcast may be spread far and wide, much more so than in cases of newspaper publications, it is not difficult to imagine how deplorable the effect would be for one indicted for such an offense even if he could rely on a sound and valid offense.*²⁶ (Citations omitted, emphasis supplied).

It was therefore proper and consistent with the purpose of amending Article 360 to extend the jurisdictional venue requirements to charges for libel committed through radio or television broadcasts.

²³ Id. At 579-580.

²⁴ Ponencia, p. 18.

²⁵ 164 Phil. 516 (1976) [Per J. Fernando, Second Division].

²⁶ Id. at 520.

III

I also agree that *Bonifacio, et al. v. RTC Makati*²⁷ supports the *ponencia's* reading of Article 360's expanded scope. In *Bonifacio*, the representative of the Yuchengco Group of Companies filed complaints for libel against the trustees, officers, and members of Parents Enabling Parents Coalition, Inc. (Coalition). The criminal complaints charged the Coalition with publishing and maintaining several articles on its websites that supposedly damaged the reputation of the Yuchengcos and that of the companies they owned.

The Coalition eventually moved to quash the informations for failure to designate an offense, and for failure "to allege a particular place within the trial court's jurisdiction where the subject article was printed and first published *or* that the offended parties resided"²⁸ within the territorial jurisdiction of the trial court at the time of the offense's commission.

In its ruling, this Court in *Bonifacio* first laid down the requirements and purpose of Article 360 of the Revised Penal Code, as amended:

It becomes clear that the venue of libel cases where the complainant is a private individual is limited to only *either of two places*, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published. The Amended Information in the present case opted to lay the venue by availing of the second. Thus, it stated that the offending article "was first published and *accessed* by the private complainant in Makati City." In other words, it considered the phrase to be equivalent to the requisite allegation of printing and first *publication*.

....

*Clearly, the evil sought to be prevented by the amendment to Article 360 was the indiscriminate or arbitrary laying of the venue in libel cases in distant, isolated or far-flung areas, meant to accomplish nothing more than harass or intimidate an accused. The disparity or unevenness of the situation becomes even more acute where the offended party is a person of sufficient means or possesses influence, and is motivated by spite or the need for revenge.*²⁹ (Citations omitted, emphasis supplied)

However, it also recognized the problems with locating the place of printing and first publication of allegedly libelous internet articles:

The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the situs of its printing and first publication.

²⁷ 634 Phil. 348 (2010) [Per J. Carpio-Morales, First Division].

²⁸ Id. at 356.

²⁹ Id. at 361-362.

To credit Gimenez's premise of equating his first access to the defamatory article on petitioners' website in Makati with "printing and first publication" would spawn the very ills that the amendment to Article 360 of the RPC sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website.

*For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the pepcoalition website is likewise accessed or capable of being accessed.*³⁰ (Emphasis supplied)

Thus, the Court in *Bonifacio* had no choice but to dismiss the informations for insufficiency of their allegations as to the venue. The *ponencia* correctly noted that *Bonifacio* was promulgated before the enactment of Republic Act No. 10175,³¹ which now provides the penalties for cyber libel. Recognizing Article 360's inadequacy in dealing with cyber libel, the *ponencia* directed issues of venue in cyber libel to Section 2.1 of the Rule on Cybercrime Warrants.³²

However, I opine that the problem of locating the situs of printing and first publication remains a persistent problem when filing charges for cyber libel.

IV

Section 2.1 of the Rule on Cybercrime Warrants provides the venue of actions for crimes covered by Chapter II, Sections 4 and 5 of Republic Act No. 10175, including cyber libel:

Section 2.1 *Venue of Criminal Actions*. – The criminal actions for violation of Section 4 (Cybercrime offenses) and/or Section 5 (Other offenses), Chapter II of RA 1175, shall be filed *before the designated cybercrime court of the province or city where the offense or any of its elements is committed, or where any part of the computer system used is situated, or where any of the damage caused to a natural or juridical person took place*: Provided, that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of the other courts.

All other crimes defined or penalized by the Revised Penal Code, as amended, and other special laws, committed by, through, and with the use of ICT, as provided under Section 6, Chapter II or RA10175, shall be filed before the regular or other specialized regional trial courts, as the case may be. (Emphasis supplied)

³⁰ Id. at 362-363.

³¹ Ponencia, pp 21–22.

³² RULE ON CYBERCRIME WARRANTS (A.M. No. 17-11-03-SC), Section 2.1.

While Section 2.1 attempts to lay a venue for libel committed through the internet, the nature of cyberspace and of the content that may possibly be published on it, poses problems distinct to cyber libel.

The peculiarities of social interactions on online platforms are discussed in a previous separate opinion.³³

Social media allows users to create various groups of various sizes. Some of these sites are for specific purposes. Others are only open to a select group of “friends” or “followers”. The ponencia’s *distinction between the author and those who share (or simply express their approval) of the posted message oversimplifies the phenomenon of exchanges through these sites.*

.....

These platforms in social media allow users to establish their own social network. It enables instantaneous online interaction, with each social networking platform thriving on its ability to engage more and more users. In order to acquire more users, the owners and developers of these social media sites constantly provide their users with more features, and with more opportunities to interact. The number of networks grows as each participant is invited to bring in more of their friends and acquaintances to use the platforms. Social media platforms, thus, continue to expand in terms of its influence and its ability to serve as a medium for human interaction. These also encourage self-expression through words, pictures, videos, and a combination of these genres.

.....

A post, comment or status message regarding government or a public figure has the tendency to be shared. It easily becomes “viral.” After all, there will be more interest among those who use the internet with messages that involve issues that are common to them or are about people that are known to them – usually public officers and public figures.³⁴ (Citations omitted, emphasis supplied)

Internet content can take many forms, be posted or published instantaneously from anywhere, and spread exponentially without action from the original author or publisher. Problems of extraterritoriality also arise when seeking to file libel charges for online content:

Then, there is the problem of extraterritoriality and the evils that it spawns on speech. *Enforcement of the crime of libel will be viable only if the speaker is within our national territory.* Those residing in other countries are beyond our jurisdiction. To be extradited, they will have to have laws similar to ours. If they reside in a state different from our 1930

³³ J. Leonen, Separate Concurring and Dissenting Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28 (2014) [Per J. Abad, En Banc].

³⁴ *Id.* at 377-381.

version of libel, then we will have the phenomenon of foreigners or expatriates having more leeway to criticize and contribute to democratic exchanges than those who have stayed within our borders.³⁵ (Emphasis supplied)

These aspects of the internet, and of content published thereon, fall beyond Article 360's ability to address. In my opinion, the *ponencia* was correct to refer issues of venue to the Rule on Cybercrime Warrants but was also prudent in withholding a statement of categorical solutions to the problem of laying the venue for cyber libel prosecution.

Under Section 2.1 of the Rule on Cybercrime Warrants, the complaint for cyber libel shall be filed with the designated cybercrime court of the city or province: 1) Where the offense or any of its elements is committed; 2) where any part of the computer system used is situated; or 3) where any of the damage caused to a natural or juridical person took place.

Content on the internet, once published, is published everywhere it may be accessed, and all at once. Publication on the internet is also facilitated by an array of interconnected systems and equipment that may be hosted anywhere within the Philippines' territorial jurisdiction, or even beyond it. Recourse to internet protocol addresses may also be circumvented by proxy address services and virtual private networks. Thus, the first and second rules for determining venue of cyber libel charges are hardly specific when dealing with the nature of online content. This lack of specific standards in determining venue may result in giving unreasonable discretion to the offended party when determining the venue of an action for cyber libel.

The third rule, which looks at where damage was incurred, is essentially the place where the offended party may have first accessed the allegedly libelous online content. The argument that the place of first access is the place of first publication was already rejected in *Bonifacio*:

For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the pepcoalition website is likewise accessed or capable of being accessed.³⁶

Laying venue under the third rule would, therefore, give rise to the very same problems sought to be prevented by the amendments to Article 360 of the Revised Penal Code.

³⁵ Id. at 381-382.

³⁶ *Bonifacio v. Regional Trial Court of Makati*, 634 Phil. 348, 363 (2010) [Per J. Carpio-Morales, First Division].

The foregoing discussion highlights the insufficiency of our prevailing rules on the prosecution of cyber libel. These discrepancies point to the need for this Court to take every opportunity to either re-examine existing rules, or seriously consider the decriminalization of libel.

I maintain my position in a prior opinion that libel, as currently provided for in the Revised Penal Code, and as re-enacted in Chapter II, Section 4(c)(4) of Republic Act No. 10175, should be declared unconstitutional:

The crime of libel in its 1930 version in the Revised Penal Code was again reenacted through the Cybercrime Prevention Act of 2012. It simply added the use of the internet as one of the means to commit the criminal acts. *The reenactment of these archaic provisions is unconstitutional for many reasons. At minimum, it failed to take into consideration refinements in the interpretation of the old law through decades of jurisprudence. It now stands starkly in contrast with the required constitutional protection of freedom of expression.*

....

It is difficult to accept the majority's view that present jurisprudence is read into the present version of the law. This is troubling as it is perplexing. The majority of the 200 plus members of the House of Representatives and the 24 Senators chose the old text defining the crime of libel. *The old text does not conform to the delicate balance carved out by jurisprudence.* Just the sheer number of distinguished and learned lawyers in both chambers would rule out oversight and negligence. As representatives of our people, they would have wanted the crime to be clearly and plainly spelled out so that the public will be properly informed. They could not have wanted the ordinary Filipino to consult the volumes of the Philippine Reports in order to find out that the text did not mean plainly what it contained before they exercised their right to express.

....

With the definite evolution of jurisprudence to accommodate free speech values, it is clear that the reenactment of the old text of libel is now unconstitutional. Articles 353, 354, and 355 of the Revised Penal Code – and by reference, Section 4(c)4 of the law in question – are now overbroad as it prescribed a definition and presumption that have been repeatedly struck down by this court for several decades.

A statute falls under the overbreadth doctrine when “a governmental purpose may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” Section 4(c)4 of Rep. Act No. 10175 and Article 252, 254, and 255 produce a chilling effect on speech by being fatally inconsistent with *Ayer Productions* as well as by imposing criminal liability in addition to civil ones. *Not only once, but several times, did this court uphold the freedom of speech and expression under Article III, Section 4 of the 1987 Constitution over an alleged infringement of privacy or defamation. This trend implies an evolving rejection of the criminal nature of libel and must be expressly recognized in*



*view of this court's duty to uphold the guarantees under the Constitution.*³⁷
(Emphasis supplied, citations omitted)

Alternatively, a civil action for damages provides adequate protection against one who allegedly defames another, while continuing to uphold the primacy of Constitutionally protected free speech:

Libel law now is used not so much to prosecute but to deter speech. What is charged as criminal libel may contain precious protected speech. There is very little to support the view of the majority that the law will not continue to have this effect on speech.

....

This does not mean that abuse and unwarranted attacks on the reputation or credibility of a private person will not be legally addressed. *The legal remedy is civil in nature and granted in provisions such as the Chapter on Human Relations in the Civil Code, particularly Articles 19, 20, and 21[.]*

....

The state's interest to protect private defamation is better served with laws providing for civil remedies for the affected party. It is entirely within the control of the offended party. The facts that will constitute the cause of action will be narrowly tailored to address the perceived wrong. The relief, whether injunctive or in damages, will be appropriate to the wrong.

Declaring criminal libel as unconstitutional, therefore, does not mean that the state countenances private defamation. It is just consistent with our democratic values.³⁸ (Emphasis supplied, citations omitted)

Until such a time that the rules for prosecuting cyber libel are clearly and specifically threshed out, or until criminal libel is declared unconstitutional, the courts will have to make do with the *ponencia's* discussion of Article 360's extended applicability only to radio and television broadcasts.

IN VIEW OF THE FOREGOING, I concur in the result.


MARVIC M.V.F. LEONEN
Associate Justice

³⁷ J. Leonen, Separate Concurring and Dissenting Opinion in *Disini v. Secretary of Justice*, 727 Phil. 28, 366-375 (2014) [Per J. Abad, En Banc].

³⁸ *Id.* at 388-392.