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June 16, 1976 and amended on July 21, 1976 is ordered lifted, effective immediately. Without costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

De Castro, J., took no part.

FIRST DIVISION

[G.R. Nos. L-44550-51 & L-44552-53. July 30, 1979]

NORA AGUILAR MATURA, *petitioner, vs.* **HON. ALFREDO C. LAYA, as Presiding Judge of Branch XII, Court of First Instance of Cebu, and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; NEW TRIAL; LACK OF OFFICIAL COURT STENOGRAPHER IS NOT A GROUND FOR NEW TRIAL; REASON THEREFOR.— Without going into the veracity of petitioner's allegation that there was no court stenographer in the municipal court of Argao, it is clear from the decision rendered by the municipal court that the two criminal cases were tried jointly, the proceedings were duly recorded in accordance with R.A. 6031 and a detailed statement of the evidence presented by the prosecution and the defense was made. In the decision of respondent judge, he made express reference to "the transcripts of stenographic notes of the proceedings before the court below in its session of July 24, 1971 which stenographer Leonisa B. Gonzales took down." In *Celestino Luzano v. Hon. Honorio Romero, et al.*, this Court held that "even when there is no duly appointed court stenographer, the proceedings can still be recorded by a competent stenographer duly designated by the Judge or upon agreement of the parties."

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2. ID.; ID.; ID.; GRANT THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT; CASE AT BAR.— A petition for a new trial is addressed to the sound discretion of the trial court and the Court will not disturb the latter's action on appeal in the absence of a showing of grave abuse. There has been no abuse of judicial discretion here. From the record, it is shown that during the trial in the municipal court of Argao, the complainant testified as a witness for the prosecution. If petitioner-accused wanted to propound questions to her, this could have been readily accomplished during the cross-examination of the complaining witness. If petitioner's counsel failed to do so or to elicit the desired testimony from the complainant, it is now too late to cure that deficiency. But the accused had called no less than nine (9) witnesses in her behalf.

3. CIVIL LAW; DAMAGES; MORAL DAMAGES; AWARD THEREOF IS JUSTIFIED IN CASE AT BAR; BASIS CITED.— But the award of moral damages is justified under Art. 100 of the Revised Penal Code which provides that every person criminally liable for a felony is also civilly liable, and Art. 2219 of the Civil Code which states that moral damages may be recovered in a criminal offense resulting in physical injuries, in libel, slander, and any other form of defamation, among others. Article 2216 of the Civil Code provides that no proof of pecuniary loss is necessary in order that moral damages may be adjudicated. Such damages may be adjudicated in crimes pursuant to Art. 2204 of the Civil Code according to the aggravating or mitigating circumstances present.

APPEARANCES OF COUNSEL

Valeriano S. Carrillo for petitioner.

Solicitor General Estelito P. Mendoza, Assistant Solicitor General Octavio R. Ramirez and *Solicitor Mariano M. Martinez* for respondents.

D E C I S I O N

TEEHANKEE, *J.*:

The Court affirms on the merits the judgment of the court of first instance of Cebu presided by respondent judge affirming

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the judgment after joint trial of the municipal court of Cebu finding the petitioner-accused guilty beyond reasonable doubt of the crimes of grave oral defamation and slight physical injuries, and reduces the award to the offended party of ₱7,000.00 for moral and exemplary damages to the sum of ₱5,000.00 by way solely of moral damages.

Petitioner Nora Aguilar Matura is the accused in two criminal cases docketed as Criminal Case No. R-3165, for grave oral defamation and Criminal Case No. R-3166, for slight physical injuries, of the municipal court of Argao, Cebu City. Said cases were tried jointly after which a judgment dated March 22, 1976 was rendered by municipal judge Manuel Trinidad, Jr., the dispositive portion of which follows:

"WHEREFORE, judgment is hereby rendered in this joint trial:

"1. Finding accused Nora Aguilar Matura, in Crim. Case No. R-3165, guilty beyond reasonable doubt of the crime of grave oral defamation (slander) defined and penalized in Art. 358 of the Revised Penal Code, and, appreciating one (1) mitigating circumstance, without any aggravating circumstance, she is hereby sentenced to suffer imprisonment for six (6) months of *arresto mayor*; and

"2. Finding accused Nora Aguilar Matura, in Crim. Case No. R-3166, guilty beyond reasonable doubt of the crime of slight physical injuries defined and penalized in Art. 266 of the Revised Penal Code, and, allowing one (1) mitigating circumstance in her favor, without any aggravating circumstance to offset the same, she is hereby sentenced to suffer imprisonment for ten (10) days of *arresto menor*."

Petitioner appealed the judgment of conviction to the Court of First Instance of Cebu, Branch XII, and the cases were therein docketed as Criminal Case No. AR-368 for Grave Oral Defamation and Criminal Case No. AR-369 for Slight Physical Injuries.

In the course of her appeal, petitioner herein moved for a trial *de novo* on the ground that the municipal court of Argao was not a court of record as it had no qualified stenographer. This motion was denied by respondent judge. A motion for new trial on August 28, 1975 was also filed alleging that "errors

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of law and irregularities were committed during the trial in the municipal court of Argao which prejudiced the substantial rights of the accused." This motion was also denied by respondent judge in his order of September 16, 1975 for lack of merit.

On April 14, 1976, on the basis of the testimonial and documentary evidence before him, Judge Laya rendered judgment affirming the municipal court's judgment of conviction and ordering her besides to pay the offended party Luisa Samargo the amount of ₱7,000.00 as moral and exemplary damages. The pertinent portions of the decision follow:

"The complaining witness, Luisa Sarmago, is a public school teacher at Argao Central Elementary School. She is a holder of a BSE degree and has served as public school teacher for 19 years.

"Accused Nora Aguilar Matura is likewise a public school teacher, assigned at Canbanua Primary School, this Municipality, a distance of about two kilometers from the Central Elementary School where complaining witness is assigned.

"On December 7, 1970, the offended party held classes as usual, and shortly before dismissal at 4:00 o'clock in the afternoon, two (2) intermediate girls went inside her room and told her that the herein accused requested to see her at the Guidance Counselling Room. The complaining witness acceded to the request, and after dismissal of classes she proceeded to the Guidance Counselling Room, about 10 to 15 meters from her own room.

"Upon arrival at the Guidance Counselling Room, the persons present were the accused, Miss Judith Wedney Gamelo, guidance coordinator, Mrs. Gloria Alfafara, home economics teacher. The complaining witness asked the accused what it was that she wanted, but almost immediately the accused started to flare up, accusing the complaining witness of being a paramour of the accused's husband. The accused shouted at the complainant witness in the vernacular:

'Bigaon, bigaon, imong gidaginot ang akong bana. Nagatulotulo ang imong biga. Mao gyud ka, lalaki ang imong bisyo. Nagpakaulaw ka dili lang sa imong kaugalingon, kon dili hasta pa usab sa imong mga kadugo. Mamuno ka sa akong bana. Nagingon si Inday Soling ug si Meding nga alaut lang kono kong pobreng asawa. Wala lang kono ka mahibalo nga

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imong gidanglas-danglasan ang akong bana. Maulaw ka, bigaon ka, dalaga ka, way sapayan nako kay minyo ko.'

which means in effect:

'Lascivious, lascivious, your lasciviousness is dripping. You even took advantage of my husband. You have made use of my husband. You are like that, men are your vices. Shameful for you, you are an unmarried woman. It is not only a shame to you but also to your relatives. You should be ashamed not only to yourself, but also to your relatives. You would be the cause of the death of my husband. Inday Soling and Meding told me that I am an unfortunate wife, because I just do not know that you had immoral caresses with my husband. You even went up and down my husband. You lascivious you! You should be ashamed of yourself; you are an unmarried woman. Don't mind about myself, because I am already married.'

"Accused further said: 'From A to Z, you have done with my husband.' Many other things were said by the accused against the offended party, imputing immorality or lack of the feminine virtues generally cherished by respectable unmarried women. These imputations which tend to cause dishonor of the offended party were made in the premises of the school and in the presence of teachers and students.

"While the accused continued with her verbal insults, she approached the offended party in a menacing manner, pointing an accusing finger close to the face of the complaining witness. The latter brushed aside the pointed finger, and the accused became more violent. She physically assaulted the complaining witness, inflicting about ten (10) different abrasions and contusions and requiring medical attendance for a period of three (3) to four (4) days (Exhibit 'A').

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"The issue raised is whether or not the Court below erred in convicting the accused.

"After a careful and thorough analysis and synthesis of the evidence on record in these cases, this Court is of the opinion, and so holds, that this Court could not give due credence to the evidence

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of the accused. The guilt of the accused had been convincingly and duly established beyond reasonable doubt and that the judgment of the Court below, except for the modification hereinafter stated, should be affirmed.

"The slight physical injuries and the grave oral defamation complained of took place in the Guidance Counselling Room.

"Aside from the accused and the offended party only three other persons were there: Miss Judith Gamelo, Mrs. Alejandra K. Muñoz and Mrs. Gloria Alfafara.

"Miss Gamelo and Mrs. Muñoz were witnesses for the prosecution. Mrs. Alfafara was presented by the accused, but surprisingly, she did not testify on the incident at the Guidance Counselling Room.

"Thus in so far as the incident at the Guidance Counselling Room is concerned, the accused must have to rely solely on her own version thereof. The testimonies of Miss Tovilla and Mrs. Alberastine could not be believed not only because they were positively shown to be not around the premises but also because their testimonies as to the alleged exchange of words between Miss Sarmago and the accused were not positive nor convincing as they were merely 'their own gist' of what they allegedly heard. At the most, such testimony is inconclusive and at the least it is purely imaginary.

"The version of the accused that she was the one attacked by the offended party and that she did not utter the defamatory words cannot be sustained not only because of the strong, convincing and positive evidence for the prosecution but also because her version is unnatural and against the ordinary experience of man.

"In the first place, there can be no question that before December 7, 1970, as admitted by her, her feelings were beyond description. The rumor that linked her husband to the offended party was too much to bear. It not only pricked her pride as a wife. It was a cause for disillusionment and disappointment. It was as well a solid ground for contempt, ill-will and hatred.

"Since she had not seen the offended party from the time Miss Nazareno visited her, as well as from the time she allegedly heard the confession of her husband, she was just waiting for an occasion to see Miss Sarmago. And, as admitted by her, she was prepared for a 'solo' confrontation with Miss Sarmago. Such preparedness was beyond reason. She left Canbanua School not knowing what

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her feelings were. She travelled all the way to the Central School not knowing still what her feelings were. She arrived at the Guidance Counselling Room not knowing yet what her feelings were. With more reason that she could not describe her feelings when she saw Miss Sarmago. As she puts it on her own words, her feelings during all these times were 'indescribable.'

"She further admitted that the incident was an outlet for the unburdening of her emotions. She felt unburdened after that. She was relieved after that and for the first time she could describe her feelings.

"It is therefore to be expected that when she decided to meet Miss Sarmago she was prepared for the firing line and to hold at bay her imagined enemy.

"Thus, upon seeing Miss Sarmago, the accused completely forgot herself. It was her most natural reaction.

"Convincingly, therefore, the accused was the aggressor.

"Then again, if it were true that Miss Sarmago was the aggressor, it is surprising that the accused had her injuries treated only the following day and she did not file any action, whether criminal or administrative, against Miss Sarmago.

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"IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered affirming the decision of the Court below promulgated on April 17, 1975, with the modification that the accused is hereby ordered to pay the offended party the amount of ₱7,000.00 as moral and exemplary damages. With costs against the accused."

On June 30, 1976 within the reglementary period, petitioner-accused filed a notice of appeal from respondent judge's joint judgment of conviction to this Court "since the issues to be raised are purely questions of law." In his order of July 16, 1976, respondent judge ordered the elevation of the records and the evidence to this Court.

Subsequently, however, the private prosecution filed with respondent judge under date of July 8, 1976 a motion to dismiss

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the appeal on the ground that the appeal taken to respondent judge's court was "improper and erroneous since the crime of grave oral defamation calls for a penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period (from 4 months and one day to two (2) years and 4 months), it is clearly within the range of concurrent jurisdiction prescribed in Sections 44 (f) and 87 (c) of the Judiciary Act of 1948 as amended," and the appeal from the municipal court's conviction of the offense of grave oral defamation should have been taken direct to the Court of Appeals or to this Court. In an Order dated August 27, 1976, respondent judge, ignoring the fact that he had already taken cognizance of the joint appeal (and that the appeal from the municipal court's conviction for the crime of slight physical injuries was concededly within his court's exclusive appellate jurisdiction and was in no way being challenged by the prosecutor) and rendered his earlier judgment of April 14, 1976 affirming the municipal court's judgment of conviction, granted the motion to dismiss the appeal further ordering that "if the accused could not obtain a writ of preliminary injunction or restraining order from the Supreme Court, this court will automatically issue a writ of execution of judgment after twenty-one (21) days from today."

Hence, the two petitions at bar. The first (L-44550-51) seeks a review of respondent judge's judgment affirming her conviction and the second (L-44552-53) seeks the setting aside of respondent judge's later order of dismissal of her appeal (to the court of first instance) and to restrain the announced execution of the municipal court's judgment of conviction and to have this Court review her conviction by respondent judge as per her notice of appeal on questions of law.

The Court considered the two petitions together and in its Joint Resolution of February 7, 1977 gave due course to both petitions. The petitions were submitted for decision on December 7, 1977 after the parties' filing of their respective joint briefs.

Petitioner's brief on appeal concentrated on the alleged errors committed by respondent judge in affirming the conviction, *viz:*

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(1) in not granting a trial *de novo*; (2) in not granting a new trial; (3) in finding petitioner-accused guilty of grave oral defamation and slight physical injuries; and (4) holding her liable for moral and exemplary damages.

The Court in the interest of an expeditious disposition of cases on their merits and its aversion to splitting jurisdiction and multiplicity of actions and appeals has resolved to squarely pass upon the assigned errors on their merits. This approach renders moot the second petition seeking to set aside respondent judge's later order of August 27, 1976 dismissing the appeal to his court, which he had already passed upon anyway in his earlier decision of April 14, 1976 affirming the conviction and imposing furthermore the ₱7,000.00 award for moral and exemplary damages. Suffice it to note that assuming that the private prosecutor, without the intervention of the fiscal on behalf of the State, had the authority and personality to file the motion for dismissal of the appeal, respondent judge, if he found the petition to be meritorious, should not have ordered the dismissal of the appeal (which had been timely filed within the fifteen (15) day reglementary period) but instead should have forwarded the appeal to this Court, as the court of proper appellate jurisdiction. This would have been in consonance with the ruling in *Bello vs. Court of Appeals*[1] that a timely appeal misdirected to a court of first instance should not be dismissed but should be instead certified by it to the proper appellate court, so as not to sacrifice substance to form and subordinate substantial justice to a mere matter of procedural technicality.

1. Petitioner's first contention is that respondent judge should have conducted a trial *de novo* on her appeal from the municipal court of Argao because the latter was not a court of record as it had no court stenographer. We find the same to be without merit.

Without going into the veracity of petitioner's allegation that there was no court stenographer in the municipal court of Argao,

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[1] 56 8CRA 509 (1974).

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it is clear from the decision rendered by the municipal court that the two criminal cases were tried jointly, the proceedings were duly recorded in accordance with R.A. 6031 and a detailed statement of the evidence presented by the prosecution and the defense was made. In the decision of respondent judge, he made express reference to "the transcripts of stenographic notes of the proceedings before the court below in its session of July 24, 1971 which stenographer Leonisa B. Gonzales took down."[2] In *Celestino Luzano v. Hon. Honorio Romero, et al.*, this Court held that "even when there is no duly appointed court stenographer, the proceedings can still be recorded by a competent stenographer duly designated by the Judge or upon agreement of the parties."[3] It is noteworthy that neither in the petition filed nor in any of the pleadings submitted as annexes does it appear (at any time during the hearing in the municipal court or before judgment was rendered or at any time before appeal was taken therefrom) that any objections to the correctness of the transcript of stenographic notes were ever made by petitioner-accused.

2. It is next contended by petitioner that respondent judge erred in denying her motion for a new trial. The ground invoked is that certain errors of law and irregularities were committed during the trial in the municipal court consisting principally in the denial by the municipal judge of her right to present the complainant Luisa Sarmago as her witness. We find the contention to be untenable.

A petition for a new trial is addressed to the sound discretion of the trial court and the Court will not disturb the latter's action on appeal in the absence of a showing of grave abuse. There has been no abuse of judicial discretion here. From the record, it is shown that during the trial in the municipal court of Argao, the complainant testified as a witness for the prosecution. If petitioner-accused wanted to propound questions to her, this could have been readily accomplished during the cross-

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[2] *Rollo* in L-44550-51, p. 36.

[3] 41 SCRA 247.

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examination of the complaining witness. If petitioner's counsel failed to do so or to elicit the desired testimony from the complainant, it is now too late to cure that deficiency. But the accused had called no less than nine (9) witnesses in her behalf.

The State aptly refuted petitioner's contention in this wise: "The charges against petitioner of grave oral defamation and slight physical injuries do not involve a complicated factual setting. Both charges arose from a single incident. As it was, the records were already bloated with the testimonies of nine (9) defense witnesses. Viewed from this perspective, respondent Judge Laya, or the Municipal Court of Argao at that, was justified in denying petitioner's Motion for New Trial, since under Section 6, Rule 133 of the Rules of Court:

'The court may stop the introduction of further testimony upon any particular point when the evidence upon it is already so full that more witnesses to the same point cannot be reasonably expected to be additionally persuasive. But this power should be exercised with caution."[4]

3. Petitioner's plaint against her conviction has no basis for reversal, As correctly held by respondent judge, petitioner's version denying that she had uttered the defamatory words and that the offended party had attacked her cannot be sustained "not only because of the strong, convincing and positive evidence from the prosecution but also because her version is unnatural and against the ordinary experience of man." Following settled jurisprudence, this Court holds the findings of fact of the municipal court as affirmed by respondent judge to be final, particularly, since this appeal is avowedly one of "purely questions of law."

4. All that remains to be considered is the award of ₱7,000.00 as moral and exemplary damages.

The Solicitor General correctly submits that there is no basis for awarding exemplary damages in the instant case. Art. 2230 of the Civil Code provides that in criminal offenses exemplary

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[4] Respondent's brief. pp. 9-10.

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damages as a part of a civil liability may be imposed when the crime is committed with one or more aggravating circumstances. In the present case, no aggravating circumstance was established by the prosecution.

But the award of moral damages is justified under Art. 100 of the Revised Penal Code which provides that every person criminally liable for a felony is also civilly liable, and Art. 2219 of the Civil Code which states that moral damages may be recovered in a criminal offense resulting in physical injuries, in libel, slander, and any other form of defamation, among others. Article 2216 of the Civil Code provides that no proof of pecuniary loss is necessary in order that moral damages may be adjudicated. Such damages may be adjudicated in crimes pursuant to Art. 2204 of the Civil Code according to the aggravating or mitigating circumstances present.

The Solicitor General further correctly submitted that respondent judge's basis for his award of moral damages is fully justified by his decision, quoting therefrom as follows:

"The law is well settled that 'Every person criminally liable for a felony is also civilly liable.' (Art. 100, Revised Penal Code)

xxx xxx xxx

"It is also well settled in this jurisdiction that moral damages may be recovered in (1) a criminal offense resulting in physical injuries; (2) libel, slander, or any other form of defamation. (Art. 2219, Civil Code). No proof of pecuniary loss is necessary in order that moral damages may be adjudicated. (Art. 2216, Civil Code). This is so because moral damages include physical sufferings, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injury and although incapable of pecuniary computation, they may be recovered if they are the proximate result of the defendant's wrongful act. (Art. 2217, Civil Code) as in the case at bar.

"With the foregoing legal touchstone in the light of the uncontroverted fact that the offended party is a public school teacher of good repute and that the defamatory utterances were made by the accused who is also a public school teacher in the presence of

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her co-teachers and within the view and hearing distance of the pupils whose characters they are supposed to mold by their teachings and examples but lamentably the herein accused had shown otherwise, this Court is left without any choice but to apply the law as the evidence directs and its conscience clearly dictates."

We hold that the offenses committed by petitioner may be deemed mitigated by the circumstance of her having acted under passion and obfuscation as asserted by her and found in the decision of respondent judge and that the award of ₱7,000.00 may accordingly be reduced to ₱5,000.00 as moral damages.

WHEREFORE, the appealed judgment of April 14, 1976 is affirmed with the modification that petitioner-accused is ordered to pay the offended party Luisa Sarmago the sum of ₱5,000.00 as moral damages. With costs against petitioner-accused.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera JJ.*, concur.

De Castro, J., took no part.

FIRST DIVISION

[G.R. No. L-44625. July 30, 1979]

BRUNO B. PACOLI, representing AUREA PACOLI CAGURING (deceased), *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES (Bureau of Public Schools),** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; WORKMENS' COMPENSATION ACT; EMPLOYER'S FAILURE TO CONTROVERT EMPLOYEE'S CLAIM; EFFECT THEREOF.**— Failure of which results in the renunciation of its right to controvert the claim; as a consequence of which all its defenses