

MELCHOR MANUGO, PETITIONER VS. DOMINADOR B. MANALO, ET AL., RESPONDENTS.*G.R. No. L-10275. December 29, 1958*

Ponente: PADILLA, J.

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In the graduation exercises at the North Provincial High School of San Jose, Nueva Ecija, held on 20 April 1951 Lourdes Maniego, the petitioner's daughter, delivered a defamatory speech against the respondents who were 14 teachers of the school. Laboring under the belief that the petitioner was the one who instigated his daughter to slander them, the respondents filed separate criminal complaints for serious slander against him and his daughter in the Justice of the Peace Court of San Jose, Nueva Ecija. After preliminary investigation the defendants were bound over to the Court of First Instance of the province. Upon motion of the fiscal the Court dismissed the 14 criminal cases as to the petitioner. Subsequently, the Court also dismissed the cases as to Lourdes Maniego, the fiscal being of the opinion that only one offense was committed. However, the fiscal failed to take any further action on the matter.

In the Court of First Instance of Nueva Ecija the petitioner brought against the respondents an action for damages. The respondents answered the complaint with a counterclaim for damages. After trial, on 9 August 1955 the Court rendered judgment dismissing the petitioner's complaint and ordering him to pay each respondent P200 for moral and pecuniary damages, without costs. On 22 August 1955 the petitioner received a notice and copy of the judgment. On 22 September 1955 he filed a motion for reconsideration and new trial, which was denied on 5 October 1955 for having been filed out of time. On 28 October 1955 another motion, dated 27 October 1955, for reconsideration of the order of denial was filed. The motion explains why the first motion for reconsideration and new trial was one day late, to wit:

In the law office of the undersigned (petitioner's counsel), Mr. Remegio Payawal is in charge of the mail(s) in the law office; that is, mailing communications and receiving mail(s) from the post office, He is charged (of) with signing for the undersigned the registry return receipt and other mail (s) from the post office addressed to the undersigned or to his law office.

That when he received the copy of the decision in this case at bar, he annotated on the upper right hand corner of the first page the figures "8-23-55", meaning that the said copy of the decision was received on August 23, 1955. The undersigned has as his guide in the computation of time for the filing of motion for reconsideration or appeal as the case may be the aforementioned annotation "8-23-55*"; so that the undersigned computed the time for filing the appeal or motion for reconsideration of 30 days beginning August 23, 1955 which will expire on September 22, 1955. In effect, the undersigned filed the motion for reconsideration on September 22, 1955 which is to be the last day. But after the filing of the said motion for reconsideration on September 22, 1955, it was discovered in Court that truth of the matter is that said Mr. Remigio Payawal actually received the copy of the decision on August 22, 1955 as per the registry return card united in the records of this case which registry return card is that which accompanied the copy of the decision received by the law office of the undersigned.

Finding the above explanation unsatisfactory, on 7 November 1955 the Court denied the motion for reconsideration of the order of denial of the motion for reconsideration of the judgment. On 15 November 1955 the petitioner filed a notice of appeal which was held filed out of time in an order entered on 28 November 1955.

In this proceedings for certiorari and mandamus the petitioner seeks first, to annul the orders of 7 and 28 November 1955; second, to restrain the execution of the judgment of 9 August 1955; third, to compel the trial court to grant the motion for reconsideration of the order of 5 October 1955; and fourth, to secure any other relief of equitable nature.

In his motion for reconsideration of the order of 5 October 1955 the petitioner explained only the one-day delay in filing his motion for reconsideration and new trial in the court below. The explanation is supported by the affidavit of Remigio Payawal, the counsel's clerk. He did not attempt to show the error of the Court in dismissing his complaint and ordering him to pay to each respondent P200 as moral and pecuniary damages.

Whether the mistake of counsel's clerk in noting down the date of receipt of the court's notice of judgment, which caused one day delay in the filing of a motion for reconsideration and/or new trial or in perfecting an appeal, is an excusable mistake or neglect, which would warrant relief to a litigant from an adverse judgment, need not be passed upon, because the motion for reconsideration of the order of 5 October 1955 denying the motion for reconsideration of the judgment and for new trial which may be deemed for relief under Rule 38 does not show and allege "facts constituting the petitioner's good and substantial cause of action or defense, ? which he may prove if his petition be granted" and because from 22 or 23 August 1955, when petitioner's counsel was notified of the judgment rendered in the case, to 28 October 1955, when the motion for relief was filed, more than 60 days had elapsed, thereby withdrawing from the petitioner the availability of the relief provided for in Rule 38.[1]

The petition is denied, with costs against the petitioner.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

Petition denied.

[1] *Rafanan vs. Rafanan*, 98 Phil., 162; 52 Off. Gaz. 228; *Gana vs. Albaya*, 98 Phil., 165; 52 Off. Gaz., 231

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