

JOSE A. GARCIA, PETITIONER, VS. ADELAIDA CRUZ, RESPONDENT.

G.R. No. L-25790. September 27, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Jose A. Garcia seeks review of a decision of the Court of Appeals, in its Case CA-G.R. No. 28971-R, sentencing him to pay Adelaida Cruz the sum of P2,000.00, with interest thereon at 6% per annum from September 28, 1958 until paid, plus P500.00 attorneys' fees and costs.

There is no serious dispute concerning the basic facts from which this litigation arose. They are set forth in the judgment under appeal to be the following:

" 'The present case was originally filed by Adelaida Cruz against the spouses Felicidad P. Garcia and Jose A. Garcia for the recovery of the sum of P4,000.00 with interest plus attorney's fees in the sum of P1,000.00 plus costs. The defendants were declared in default and the plaintiff was permitted to present her evidence ex-parte. Judgment was rendered against both defendants, jointly and severally, requiring them to pay the plaintiff the amount of P4,000.00 with interest at the legal rate from September 28, 1958 until the whole amount has been fully paid, plus attorney's fees in the amount of P500.00 and costs.

'On November 24, 1959 defendant Jose A. Garcia filed a motion before the Court of First Instance of Bulacan praying that the decision rendered in said case be declared null and void insofar as it referred to him on the ground that he was not served with summons and, therefore, the court a quo did not acquire jurisdiction over his person to render a valid judgment against him, which motion was on November 29, 1959 substituted with a petition for relief filed with the same Court of First Instance of Bulacan. The petition was opposed by the plaintiff and on January 11, 1960, the Court of First Instance of Bulacan granted the petition and gave the defendant an opportunity to file his answer to the original complaint.

'The answer of the defendant Jose A. Garcia alleged that he had occasional separations from his wife Felicidad P. Garcia in 1946 and 1950 and since November 1957 he lived separately from her up to the date of the trial of this case. He alleged further that the transaction entered into between his wife and the plaintiff was done without his consent; that he never failed in his obligation to support his family including his wife; and, that the transaction between his wife and the plaintiff was usurious and contrary to law. This last defense was abandoned by defendant when during the trial, his counsel made a manifestation that the only purpose of the hearing was to determine whether or not the defendant should be relieved from liability (pp. 6-7, t.s.n.). By way of counterclaim defendant Jose A. Garcia asked for an award of moral and actual damages in the sum of P50,000.00 plus attorney's fees of P2,000.00, plus costs.

'After trial the court reversed the original decision in Civil Case No. 1875 insofar as the defendant Jose A. Garcia was concerned and dismissed the complaint against him, without special pronouncement as to costs. Plaintiff appealed.' (Cruz vs. Garcia, et al., CA-G.R. No. 28971-R, promulgated January 3, 1966)."

Dissatisfied with the judgment of the Court of First Instance, Adelaida Cruz duly appealed to the Court of Appeals, and the latter, by a special division reversed the appealed judgment on January 3, 1966. Unable to secure reconsideration, Jose A. Garcia elevated the case to us for review.

Garcia argues that the Appeals Court committed an error of law in not firming the Court of First Instance's dismissal of the case against him, since the respondent Adelaida Cruz (plaintiff-appellant below) is bound by the trial court's finding that herein petitioner had lived separate and apart from his wife for more than one year, because respondent Cruz had failed to assign such finding as error in the Court of Appeals; and he invokes in his favor Article 113, No. 2 of the new Civil Code of the Philippines, that prescribes:

"ART. 113. The husband must be joined in all suits by or against his wife, except:

...

(2) If they have in fact been separated for at least one year."

We see no merit in the appeal, for the majority decision of the Court of Appeals (concurred in by four of the five justices of the special division) was predicated upon the finding that the petitioner, Jose A. Garcia, had "really promised to pay plaintiff the value of the jewels sold by Felicidad" (wife of petitioner). Said the Court of Appeals in its decision:

"With respect to the second issue it must be stated in the first place that Jose A. Garcia does not dispute that his wife received from the plaintiff-appellant pieces of jewelry valued at P4,000.00 and that the same were not returned by her nor its value paid to the plaintiff.

Plaintiff testified to the effect that out of the P4,000.00 realized by Felicidad P. Garcia in the sale of plaintiff's jewels, Felicidad spent P2,000.00 for her maintenance and that of her children and the balance was used by her husband. This was the information given to the plaintiff by Felicidad P. Garcia herself. When said information was given by Felicidad to the plaintiff it was made in the presence of Emilia M. Cruz (p. 30, t.s.n.). Both plaintiff and Emilia Cruz testified that the defendant Jose A. Garcia admitted to them that he received said P2,000.00 from his wife (p. 44, t.s.n.) and promised to pay to the plaintiff the value of the jewelry (pp. 10, 16, 26-27, t.s.n.).

The foregoing evidence for the plaintiff, however, was denied by the defendant Jose A. Garcia. We find, however, from the testimony of defendant Garcia himself that it is more probable that said defendant really promised to pay plaintiff the value of the jewels sold by Felicidad." (Italics supplied)

It is too elementary to require citation of precedents that the findings of fact of the Court of Appeals, unless clearly baseless or irrational (which is not the case here) are binding upon this Court and will not be disturbed. As petitioner promised to pay for the jewelry, it is totally irrelevant that he should have been living apart from his wife. This is particularly true since there is no evidence to show that respondent Cruz (plaintiff below) had knowledge of the separation. As the appealed decision says (pages 9-10):

"From the foregoing testimony of the defendant-appellee Jose A. Garcia it seems fairly well established that he was aware that his wife was in the habit of incurring obligations without his consent. He also knew the remedy to prevent his wife from entering into valid contracts which would bind him to pay to his wife's creditors for as he himself stated he has been given legal advise by a lawyer whom he consulted. In spite of all these, however, he did not take any step to place his wife under guardianship. This, to say the least, would constitute negligence on his part for which he should be held liable if his wife enters into contract¹ with unsuspecting victims."

The appealed decision refused to lend credence to petitioner's claims that he had adequately provided for the maintenance of his wife and children, and hence, that his wife's statement that he used P2,000.00 of the proceeds of the sale of plaintiff's jewelry in order to support herself and her children could not be possibly true. On this basis, the Court of Appeals held petitioner responsible only for the amount of P2,000.00, but not for the other P2,000.00, because the evidence did not show delivery of the latter sum to the husband. The estimate of the Court

of Appeals as to the credibility of witnesses is not subject to review, in the absence of abuse, which is not here present.

In view of the foregoing considerations we find no reason to disturb the decision under appeal. It is well to note, however, that the award should be understood as a debt of the conjugal partnership of the defendant spouses, support of the family being one of the obligations of the community (Civil Code of the Philippines, Article 161, paragraph No. 5) and the separation de facto of the consorts being without effect upon the partnership (Article 178, Civil Code).

Subject to the qualification above noted, the decision under appeal is affirmed, with costs against the petitioner.

Conception, C.J., Makalintal, Sanchez, Ruiz Castro, Angeles, Fernando, and Capistrano, JJ., concur.

Dizon, J., did not take part.

Zaldivar, J., is on official leave.

Judgment affirmed.

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