

PRIMITIVO A. MACARAIG, PETITIONER, VS. VICENTE DY SUN, SR., ET AL., RESPONDENTS.*G.R. No. 12497. March 23, 1959*

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12497/>**BAUTISTA ANGELO, J.:**

On June 9, 1953, Vicente Dy Sun, Sr. and Gloria R. Dy Sun, spouses, filed an action in the Court of First Instance of Manila against Primitivo A. Macaraig and Francisco A. Quisumbing to recover the sum of P23,000 as damages, P2,000 as attorney's fees, and costs, which were sustained as a result of a collision which occurred on June 4, 1953 between their car driven by Victoriano Narzabal and a taxicab driven by Macaraig belonging to Quisumbing. Summons was served on Quisumbing, but not on Macaraig who could not be found, and so upon plaintiffs' petition, the court ordered that Macaraig be summoned by publication in a local newspaper giving him up to September 15, 1953 to answer the complaint.

On July 9, 1953, Quisumbing answered the complaint alleging that the collision occurred because of the negligence and imprudence and disregard of traffic regulations on the part of plaintiffs' driver. Macaraig having failed to appear within the period set in the notice was declared in default and the case was set for hearing on November 5, 1953. On said date, plaintiffs presented their evidence but the case was reset on February 25, 1954 for the reception of the rest of the evidence.

On February 24, Macaraig came to Manila from Pangasinan and having been informed of the order of default entered against him, he hired a lawyer who, on the following day, filed in court a verified motion asking that the order be set aside and Macaraig be given ten days within which to answer. He also explained therein the reasons why Macaraig was not able to appear and answer the complaint on time. Notice of said motion was served on counsel for plaintiffs and defendant Quisumbing who were then present in court for the continuation of the trial of the case. When the case was called for hearing, counsel for Macaraig invited the court's attention to his motion for the setting aside of the order of default, but the court refused to act thereon advertent that the same should first be set for hearing as required by the rules.

On April 20, 1954, the court rendered judgment ordering defendant Macaraig to pay plaintiffs the aggregate sum of P22,251.51 by way of medical expenses, repair of plaintiffs' car, attorney's fees and moral damages, and making Quisumbing liable thereof in case of Macaraig's insolvency. In due time, Quisumbing perfected his appeal. Macaraig, on his part filed a motion reiterating his prayer that the order of default be set aside, at the same time, asking for the reconsideration of the decision. This motion was denied and Macaraig also perfected his appeal. On June 14, 1954, the record was elevated to the Court of Appeals.

On April 26, 1956, Quisumbing filed a petition for new trial based on the ground that on February 28, 1955 the Municipal Court of Manila, in Criminal Case No. U-36972, wherein Macaraig was accused of serious and slight physical injuries through reckless imprudence arising out of the same collision which is the subject matter of the civil case, rendered judgment acquitting Macaraig on reasonable doubt, Macaraig made his own this motion for

new trial. The Court of Appeals deferred action on this motion until the case is decided on the merits. And on April 27, said court rendered judgment setting aside the decision of the lower court as against Quisumbing and ordering that the case be remanded to the court of origin with instructions to permit Quisumbing (a) to present evidence to prove his defense of diligence of good father of a family to prevent damage and (b) to present in evidence a certified copy of the decision of the Municipal Court of Manila in Criminal Case No. U-36972 wherein Macaraig was acquitted, at the same time allowing plaintiffs to submit such evidence in rebuttal as they may offer under the Rules of Court. With respect however to defendant Macaraig, the decision of the lower court was affirmed, the court holding that his failure to appear cannot be ascribed to accident, mistake or excusable negligence but rather "it was the result of a deliberate attempt to stay away from the long arm of the law." It is against this ruling that Macaraig has interposed the present petition for review.

This appeal merely hinges on whether the Court of Appeals was justified in denying Macaraig's petition to set aside the order of default entered against him to enable him to present his evidence in support of his defense for his failure to appear at the hearing set by the trial court when he was ordered summoned by publication.

The facts relative to this incident are: Immediately after the accident, Macaraig transferred his residence to Pangasinan for which reason summons could not be personally served on him. On plaintiffs' motion, the court ordered that summons be served on him by publication wherein he was required to appear on September 16, 1953. Upon his failure to appear as required, the court declared him in default. On February 25, 1954,; the last day of the hearing, Macaraig appeared accompanied by counsel asking that the order of default be set aside on the basis of a written motion he filed on the very same day serving copies thereof on counsel of both parties, but the court refused to act thereon holding that the same should first be set for hearing. Trial then proceeded. Thereafter, counsel for Quisumbing moved for postponement pending action on Macaraig's motion on the ground that if said motion is granted there would be duplicity of evidence for both defendants. This motion was however denied and on April 27, 1957, the Court of Appeals rendered judgment granting Quisumbing's motion for new trial but affirming the decision with respect to Macaraig.

The Court of Appeals, in denying Macaraig's motion to set aside the order of default, made the following comment "On the foregoing facts, appellant (Macaraig) cannot rightfully complain that he was deprived of his day in court. If judgment was rendered against him, it was through his own fault. His failure to appear in court on time certainly cannot be ascribed to accident, mistake or excusable negligence. Bather, it was the result of a deliberate attempt to stay away from the long arm of the law. He did not as much as diligently pursue his remedy thereafter."

While Macaraig may be blamed for having gone to the province right after the accident in disregard of the consequences that may follow from the collision of which he was a direct participant, he however appeared in court as soon as he came to know of the filing of the case against him and of the order declaring him in default and filed in no time a verified motion explaining his failure to appear and stating that he had a good and valid defense that may relieve him from the complaint. In fact, he came to court accompanied by counsel when the trial was still going on and before plaintiffs had completed the presentation of their evidence. The only mistake he committed was in not giving plaintiffs' counsel three-days notice as required by the rules. But this shortcoming would appear to be insubstantial considering the fact that there was no objection to the motion and the court acted on it only *motu proprio* in spite of the fact that the merits of the motion were argued by counsel of both parties in connection with the motion for postponement filed by Quisumbing's counsel on the ground that if said motion is granted there might be duplicity of evidence on the part of both defendants.

That Macaraig has a good and valid defense as stated in his verified motion cannot be gainsaid for in truth and in fact he was acquitted by the Municipal Court of the City of Manila in Criminal Case No. U-36972 wherein he was accused of serious and slight physical injuries through reckless imprudence arising out of of the same accident

which is the subject matter of the present action. On the other hand, no prejudice can be caused to plaintiffs. If Macaraig's order of default be set aside for the case against his co-defendant Quisumbing has not yet been finally terminated for, as already stated, the Court of Appeals has granted his motion for new trial to enable him not only to present evidence to prove his defense of diligence of a good father of a family but likewise to present in evidence a certified copy of the decision of the Municipal Court of Manila in the criminal case already adverted to. In other words, Quisumbing still has every chance to prove that the collision took place not necessarily through the negligence of his driver Macaraig but a result of an unavoidable accident. At any rate, the case is merely being remanded to the Court of origin for a new trial and no prejudice can be caused to plaintiffs if Macaraig is allowed to present his evidence in order that the truth may be established.

The granting of a motion to set aside an order of default rests in the discretion of the court, but "It must be remembered that the only discretion conferred upon officers is a legal discretion, and when anything is left to any officer to be done according to his discretion the law intends it to be done with a sound discretion and according to law; and if a given case falls within both the letter and spirit of section 113, supra, (Rule 38, Rules of Court) a denial of the relief sought will amount to an abuse of such discretion" (Coombs vs. Santos, 24 Phil., 446). Considering the circumstances of this case, equity demands that Macaraig be given an opportunity to present evidence in support of his defense as stated in his verified motion in order that the truth may come out.

Wherefore, the decision appealed from with respect to Macaraig is hereby set aside. The case is remanded to the court of origin to allow him to answer the complaint and present evidence in support of his defense. No costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Reyes, J. B. L., and Endencia, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.