

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FEANCISCO COLMENARES AND CELSO LLORICO, DEFENDANTS AND
APPELLANTS.**

G. R. No. 13284. February 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Negros Occidental, Hon. Jose Teodoro, Sr., Presiding, holding that the judgment of the Justice of the Peace court from which the appeal was made to the Court of First Instance in Criminal Case No. 4567 of said court, had already become final, by failure of the defendants to file their notice of appeal on time, and remanding the record to the Justice of the Peace for the execution of the latter's judgment.

Defendants-appellants were charged in the Justice of the Peace court of La Castellana, for the crime of theft of 15 cavans of palay, belonging to the complainant Pedro Monsale. A trial was held in the Justice of the Peace Court, and on April 18, 1955, the Justice of the Peace found the accused guilty of theft and sentenced each of them to pay a fine of P200.00, and in case of insolvency, to suffer subsidiary imprisonment. Accused Llorico received a copy of the decision on April 27, 1955, and accused Colmenares, on April 29, 1955. On May 2, 1955, the attorney for the accused filed a motion to reconsider the judgment, on the ground that in accordance with the documentary evidence presented during the trial it appears that the case involved the question of ownership of the land from which the palay allegedly stolen was raised. Some of the documents presented at the trial show that one J. L. Vda. de Colmenares is in possession of a parcel of land for which she had applied for registration; that a portion thereof, evidently the one from which the palay was harvested, was claimed by the District Forester to be part of the national park and as a matter of fact accused Colmenares had been informed by the District Forester of the Government claim to this portion of the land. The defendants also submitted tax receipts covering the property and two applications to purchase fertilizers, accompanied by promissory notes signed by complainant Pedro Monsale and Urbano Pamonel and guaranteed by one Modesto Colmenares.

The above motion for reconsideration was set for hearing on May 27. The private prosecutor filed an opposition thereto and a petition to strike the same, on the ground that it was pro forma. We have not been able to locate the order of the court on this motion for reconsideration, but it appears that on June 1, 1955, the record of the case was received by the clerk of Court of First Instance of Negros Occidental. We presume that the Justice of the Peace court did not act on said motion for reconsideration, or denied the same. Whichever happened is immaterial in this case. Appeal bonds were filed by the accused on May 28, 1955.

Upon the docketing of the case in the Court of First Instance, and on April 10, 1956, the assistant provincial fiscal immediately presented a motion to dismiss the appeal, on the ground that the decision of the justice of the peace court sentencing the accused, having been received by the latter on April 29 and the motion for reconsideration having been denied on May 28, 1955, a period of more than 15 days had elapsed when the appeal was perfected,

for the reason that the motion for reconsideration did not interrupt the period to perfect an appeal, it being a pro forma motion and, therefore, the decision of the Justice of the Peace court had become final when the appeal was entered. The Court of First Instance sustained this motion to dismiss the appeal. From this order an appeal was prosecuted to the Court of Appeals, which endorsed the case to Us as involving exclusively questions of law.

It is argued on behalf of appellants that the motion filed in the Justice of the Peace court was not a pro forma motion, and secondly, that said court had already ruled that the judgment had not become final when it forwarded the record to the Court of First Instance after appellants filed their notice of appeal. In reply, the Solicitor General supports the ruling of the court below that the motion was pro forma and that the same was apparently devoid of Merit, and it was therefore presented only for delay.

If, as we find from the documentary evidence submitted at the trial, the accused Colmenares is owner or possessor of a parcel of land belonging perhaps to his mother, which Parcel of land has been declared and taxes thereon paid for, the complainant must have been his tenant, and the claim that the motion was for purpose of delay is unfounded. In the motion for reconsideration in question it is claimed that as the ownership of the land is involved the case be suspended until after such ownership shall have been decided by the competent court. In their supplemental motion dated May 16, counsel for the accused again argued that the palay supposed to have been stolen appears to have been owned jointly by the accused and the complainant and therefore could not be the subject of theft. Both the first motion for reconsideration and the subsequent one cannot be said to be pro forma; they raise valid questions of law and fact. Said motions point to an error of law in the judgment prejudicial to the substantial rights of the accused. It can not therefore be said to be merely pro forma; it satisfied paragraph (a) of Section 2 of Rule 117 of the Rules of Court, which is as follows:

"Sec. 2. Grounds for a new trial.—The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the defendant;"

We also find that the pro forma rule in motions for reconsiderations has been incorrectly applied in the case at bar, a criminal case. The pro forma motion for new trial was first established in Section 497 of the original Code of Civil Procedure, which reads as follows:

* * * * *

(2) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require. But, if w Supreme Court shall be of the opinion that this exception is frivolous and not made in good faith, it may impose double or treble addition, costs upon the excepting party, and may order them to be paid by the counsel prosecuting the bill of exception, if in its opinion justice so requires."

The pro forma motion alleged that the evidence is insufficient to justify the decision and was a requirement order that the Supreme Court may review the evidence submitted and unless such a motion for insufficiency evidence is presented in the trial court, the Supreme Court could not review the evidence and make its own findings of fact.

When the present Rules of Court were promulgated the above mentioned provision of Section 497 of the Code of Civil Procedure was eliminated. Under the present rules, Rule 37, the movant must point out the findings or conclusions in the judgment which allegedly are not supported by the evidence or are contrary to law. Hence if a motion only makes a general statement that the evidence is insufficient to sustain the judgment or that the same is contrary to law, it can not be said to satisfy Rule 37, Sec. 2, of the Rules of Court. Motions under the old Code of

Civil Procedure were not considered as motions pro forma or intended for delay, and were not considered as interrupting the period to perfect an appeal. This change has been explained by Chief Justice Moran, as follows:

"When the motion is made upon the causes mentioned in subdivision (c), that is, mistake of fact or of law, it was not necessary, under the old procedure, to set forth, in detail, the reasons in support of the grounds alleged in the motion. This ruling is repealed by the new provision, which requires the motion to point out specifically the findings or conclusions of the judgment which allegedly are not supported by the evidence or are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusion. The reason for the old rule was obvious, for a motion for new trial on the ground of mistake of fact was presented as a matter of form, as necessary antecedent to appeal. Under the new procedure, motions of that kind are no longer antecedents to appeal. For this reason, where a motion for a new trial filed under the third Paragraph of this section and fails to "point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions," it shall be treated as a motion pro forma intended merely to delay the proceedings and it shall not interrupt or suspend the period of time for the perfection of an appeal." (1 Moran, 1957, pp: 515-516).

Rule 37 on new trial as found in the new Rules is applicable only in civil cases. The rule regarding new trial in criminal cases is contained in Rule 117. The pro forma rule is therefore, not applicable in criminal cases, and the Court below erred in applying said rule to the criminal case now under consideration.

Wherefore, the order of dismissal of the appeal must be reversed and the case remanded to the Court of First Instance of origin for trial on the merits. Without costs.

Paras C .J. Bengzon, Montemayor, Bautista Angela, E.Barrera, and Gutierrez David, JJ., concur.

Order reversed.

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