

PONCIANO PUNZALAN, PETITIONER AND APPELLANT, VS. HON. NICOLAS PAPICA, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 13804. February 29, 1960*

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

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-13804/>**REYES, J.B.L., J.:**

Sometime in December, 1955, Domingo Sabordo, et al., filed against Ponciano Punzalan Civil Case No. Ill in the Justice of the Peace Court of Bula, Camarines Sur, for the recovery of wage differentials and overtime pay. On January 26, 1956, service of summons was made on Punzalan by the sheriff of Manila by leaving a copy thereof with his nephew at his residence at 2126 Misericordia, Sta. Cruz, Manila. Punzalan was at the time in Cagayan and did not come to know of the summons until he returned to Manila on February 9, 1956, the same day fixed in the summons for him to appear, answer the complaint and present his evidence. Without losing any time, Punzalan on the same day sent a telegraphic motion to the Justice of the Peace of Bula, Camarines Sur, asking for the postponement of the hearing. Unfortunately, said telegram was not received by the judge until after the hearing, so that when the case was called for trial at 2 o'clock in the afternoon of February 9, Punzalan was declared in default.

Eight days later, on February 17, 1956, Punzalan received a letter from plaintiffs' counsel informing him that a default judgment had been rendered against him in the case, and proposing a compromise by reducing the amount of the judgment by one half. That was the first time Punzalan learned of said default judgment, and even if he had not been served a copy thereof, he filed, on February 24, a motion to lift the same and for a new trial, on the ground that he learned of the summons only on February 9, the date of the hearing, and did not have enough time to attend trial. Punzalan's motion was, however, denied by the court, notice of which denial Punzalan received on March 5, 1956, and the day following, Punzalan received a copy of the judgment by default rendered February 10, 1956.

Instead of appealing the order of the inferior court denying his motion for new trial, Punzalan filed, on March 19, 1956, with the Court of First Instance of Camarines Sur, a petition for certiorari urging (1) that the inferior court acted without jurisdiction over his person because, contrary to section 4, Rule 124, Rules of Court, the summons was served upon him outside the boundary of the province of Camarines Sur without the approval of the court of first instance of the province; and (2) that the inferior court acted with grave abuse of discretion in refusing to lift the judgment by default. The petition for certiorari was, however, dismissed by the Court of First Instance, upon the grounds (1) that the inferior court did not act without jurisdiction over Punzalan's person because the latter voluntarily submitted to the jurisdiction of the court when he filed a motion for the postponement of the hearing; and (2) that Punzalan's remedy was a petition for relief under Rule 38, which he failed to avail himself of. From this judgment, Punzalan appealed to this Court.

On the question of the alleged lack of jurisdiction of the inferior court over appellant's person, it is to be noted that appellant altogether failed to raise the question of the defective service of summons upon him at any time in the justice of the peace court of Bula. Assuming that his telegraphic motion for postponement was intended only as a

limited and special appearance to give him an opportunity to raise the question of jurisdiction at the trial, appellant, nevertheless, failed to raise the question: of defective process in his motion to set aside the default judgment, wherein he merely explained his absence at the trial and asserted that he had a good and meritorious defense to the complaint. It was only in the court of first instance that appellant raised the question of defective service of summons for the first time. Under the principle that defects in jurisdiction arising from defective process, or even absence of process, may be waived by failure to make seasonable objection (*De Castro vs. Cebu Portland Cement Co.*, 71 Phil, 479), the lower court correctly ruled that appellant had waived the lack of valid service of summons upon him in the inferior court.

Considering, however, that failure to appear, not failure to answer, is the sole ground for default in inferior courts (*Caraballo vs. Encarnacion*, 92 Phil., 974, 49 Off. Gaz. [4] 1383; *Quisan vs. Arellano*, 90 Phil., 644), judgment by default was not properly taken against appellant in the justice of the peace court because his telegraphic motion for postponement, sent on the day of the hearing, February 9, 1956 (it was deemed filed on the day sent under sec. 2, Rule 27), was equivalent to an appearance therein. It is true that the justice of the peace court did not learn of said telegraphic motion until after the hearing in which an order of default was entered against appellant. The court, however, was already aware of said motion when, on the following day, February 10, it still rendered a judgment of default against appellant. We think the court exceeded its jurisdiction when it promulgated said judgment by default, and that appellant acted within his rights when he filed a motion with the same court for the lifting of the default judgment and for a new trial.

But even granting that appellant was validly declared in default and that judgment by default was also validly taken against him, it still appears that a petition for relief under Rule 38 was not the proper remedy under the circumstances. It is a well-known rule that such petition may be filed only when the order or judgment from which it is sought has already become final and executory (*Veluz vs. J. P. of Sariaya*, 42 Phil., 557; *Anuran vs. Aquino*, 38 Phil., 29; *Quirino vs. PNB*, 101 Phil., 705; 54 Off. Gaz. [14] 4248), so that as long as the judgment against which relief is sought has not yet become final, the petition aforesaid is not available as a remedy. Instead, the aggrieved party may file a motion for a new trial, under Rule 37 in courts of first instance, and under section 16, Rule 4, in inferior courts, in order that the court may correct any errors, mistakes, or injustices committed in its judgment. Thus, we have held that the proper remedy of the aggrieved party against a judgment by default of an inferior court, before the finality of such judgment, is a motion for new trial under section 16, Rule 4 (*Veluz vs. J. P. of Sariaya* and *Quirino vs. PNB*, *supra*). This was the course that appellant took—namely, file a motion to lift default judgment and ask for a new trial, since only fourteen days had elapsed and the judgment by default had not yet become final and executory. The lower court was, therefore, clearly in error in dismissing appellant's petition on the ground that he did not file a petition for relief under Rule 38.

Coming now to the merits of appellant's motion for setting aside the default judgment and for a new trial, it appears that appellant failed to be present at the hearing of February 9, 1956 in the justice of the peace court of Bula due to excusable accident; i. e., he did not know of the summons until the very day of the hearing, and it was physically impossible for him then to attend trial because the court was many miles away from his residence in Manila. Appellant did the only thing he could under the circumstances—send a telegraphic motion for postponement. It also appears that appellant has a good and meritorious defense to the complaint. This was pleaded in his motion for new trial, alleged in paragraph 9 of his petition in the First Instance, and is admitted by respondents in the court below (*Orig. Records*, p. 37). Under the circumstances obtaining, it was grave abuse of discretion for the inferior court to refuse to lift its default judgment and give defendant a chance to present his defense.

Appellees argued in the court below that the proper remedy against the inferior court's order denying appellant's

motion to lift the default judgment and for a new trial was seasonable appeal and not certiorari; and since the writ will not lie as a substitute for appeal, appellant's petition for certiorari was properly dismissed. There have been instances, however, in which certiorari has been allowed in meritorious cases where the right to appeal had been lost through excusable negligence or mistake of petitioner, and where the denial of the writ would leave petitioner without a remedy (e. g., *Cavan vs. Wislizenus*, 48 Phil., 632; *Dais vs. CFI*, 51 Phil., 396; *Domingo, etc. vs. Yatco*, 101 Phil., 226; 55 Off. Gaz. [5] 811). Petitioner mistook the remedy of certiorari for appeal because he believed that the inferior court did not acquire jurisdiction over him in view of the defective service of summons. And although we hold against him on this count, we nevertheless found that the inferior court acted with grave abuse of discretion amounting to excess of jurisdiction in rendering a default judgment against appellant, in refusing later to set it aside, and in denying a new trial. Appellant's period for appeal has long expired, so that a denial of the writ now would leave him without any other remedy. In view of the particular merits of appellant's case, we feel that we should take a liberal attitude in applying the rules of procedure, and grant appellant the writ of certiorari in order that the judgment of default in the justice of the peace court of Bula could be set aside and the appellant afforded an opportunity to present his admittedly meritorious defense to the complaint.

Wherefore, the decision appealed from is reversed and another one entered, setting aside the order and judgment of default against appellant in the justice of the peace court of Bula, Camarines Sur. The records shall be remanded to said court for a new trial, after which a new judgment shall be rendered based on all the evidence of the parties. Costs against appellees Domingo Sabordo, et al.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, 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.