

IRENEO M. SANTOS, PLAINTIFF AND APPELLE VS. MANUEL S. RUSTIA, DEFENDANT AND APPELLANT.*G.R. No. 4917-R. October 31, 1951*

Ponente: FERIA, J.

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This case has been certified by the Court of Appeals for final determination on the ground that there are no questions of fact involved in the present appeal.

The defendant-appellant in his brief assigns that the lower Court of First Instance erred, among others, in denying his motion for reconsideration and new trial based on the ground of "excusable negligence which ordinary prudence could have guarded against and by reason of which such aggrieved party has probably been impaired in his rights." (section 1 (a), Rule 37 of the Rules of Court). The facts and circumstances alleged to constitute excusable negligence by which the defendant could not be present during the trial of the case and judgment "was rendered against him without having had an opportunity to present evidence in his behalf, are stated in the appellant's motion for new trial and reiterated in his brief.

The question whether or not defendant's absence during the hearing of the case in the lower Court of First Instance was due to excusable negligence under the facts and circumstances specified by him in his motion for new trial under oath dated March 3, 1949 (pages 2125 of Record on Appeal) is a question of fact. The attorney for the plaintiff filed an opposition to said motion for reconsideration and new trial alleging the facts and circumstances (pages 27-35 of Record en Appeal) tending to show that there was no excusable negligence. And the lower court in its order dated April 12, 1949, denied the defendant's motion for new trial on the ground "that the motion was without merit and not presented according to the Rules of Court." Now the appellant assigns as erroneous said order denying his motion for new trial on the ground of excusable negligence, and submits again, among others, the same question to the appellate court for review and reversal of the decision of the court a quo.

Corpus Juris, Vol. 45, Sec. 852 has to say the following, applicable a fortiori to excusable negligence;

"Negligence, that is, a failure to comply with some duty of care owed by one to another, is a mixed question of law and fact, of standards of care and compliance therewith, involving the preliminary question as to whether defendant owed any duty of care to plaintiff, and leaving it for the jury to decide the ultimate facts of negligence, subject to the exceptions hereinafter stated. Where the standard of care is fixed and the measure of duty is defined by the law and is the same under all circumstances, and where compliance therewith is proved or disproved by uncontradicted evidence or undisputed facts from which only one inference can reasonably be made, the court may declare defendant to be guilty or not guilty of negligence as matter of law. Cases, where the standard of care is fixed, go to the jury only where the evidence of compliance rests on contradictory evidence or upon disputed facts. But where the standard of duty is not fixed, but variable, shifting with the circumstances, as is generally the case, it is for the jury to determine, under instructions, what the standard of care required in a particular case is, and whether there has been a compliance with such requirements."

The resolution of this Supreme Court in the case of Gabriel Zari vs. Jose R. Santos, [*] promulgated on September

29, 1951, from which the dissenter has also dissented, is squarely applicable to the present case, because a motion for new trial on the ground of fraud, accident, mistake or excusable negligence, is substantially similar to the motion for relief on the same grounds under section 2 of Rule 38. The only difference is that the petition is called a motion for new trial if filed before a judgment or order has become final and the petitioner has not been declared in default, and a motion for relief if filed within sixty days after the petitioner learns of the judgment, and not more than six months after that judgment or order complained of was entered.

The distinguished dissenter is confusing a motion for postponement of a trial before the judgment with a motion for new trial on the ground of excusable negligence filed after judgment, as well as the effect of court's order denying the former with the order denying the latter in the present case. In his dissenting opinion he only quotes first the order denying the motion for postponement and then the two assignment of errors which assails as erroneous the order of February 8, 1949, denying the motion for postponement, and the order of April 12, 1949, denying the appellant motion for new trial. In reply thereto, it is sufficient to say that the facts alleged in the motion as grounds for new trial are, not only those alleged in the motion for postponement, but also others tending to show excusable negligence, as will readily be seen by reading both motions in the Record on Appeal. And the assignment that "the lower court erred in denying the appellant's motion for reconsideration and new trial" does not say nor mean to say that only question of law is involved, but both question of fact and law as clearly shown on pages from 4 to 10 of the appellant's brief.

The dissenter in reply to our answer in the decision to his dissenting opinion insist in confusing the effects of both motions for postponement and new trial and of the orders denying them, and says that he purposely did not quote the order denying the motion for reconsideration and new trial for lack of merit, because the lower court, in denying the motion for new trial on the ground that it was without merit, meant "in effect that the denial was based on the insufficiency of the facts or reasons alleged in the motion, and not on the falsity of said facts or reasons which may not have been controverted or denied." This is not also correct. As the motion for reconsideration and new trial is based on excusable negligence as ultimate fact, and the probatory facts supported by affidavits alleged to constitute excusable negligence, the denial of the motion for lack of merits simply means that the probatory facts, assuming that they are true, do not constitute excusable negligence, which is primarily a finding or conclusion of fact. "Negligence, that is, a failure to comply with some duty or care owed by one to another, is a mixed question of law and fact," as well stated in *Corpus Juris* above quoted and in the resolution of this Supreme Court in the said case of *Zari vs. Santos*.

The last argument in support of the amended dissenting opinion is: If as assigned by the appellant, "the lower court erred in ruling that the motion for postponement filed by the defendant was not meritorious and thereby erred in denying the motion for reconsideration and new trial", it follows that the lower court did not commit any error in denying the motion for postponement it did not commit any error in denying the motion for reconsideration and new trial, because the latter is a mere outcome of the former. The argument of the appellant is correct, because if the court have erred in denying the motion for reconsideration and new trial as a necessary consequence, inasmuch the latter is also based on the facts alleged in a motion for postponement. But the reverse is not true, and therefore the argument of the dissenter is fallacious because, as we have already said, the motion for new trial is based not only on facts alleged in the motion for postponement, but on other facts and circumstance which occurred afterwards as shown in the following excerpt from the defendant's motion for new trial (Record on Appeal, pp. 24-25):

"That as the undersigned attorney, in whom the defendant entrusted his case is the only one who knows the facts of the present case, it would have been unwise for him to send another lawyer in his office to handle the defense thereof.

"That, moreover, counsel for the defendant submitted a motion for postponement, dated January. 18, 1949. Wherein he prayed that the hearing of this case be transferred to February 7, 1949, having precisely selected that date because he had in mind the said meeting of the Pampanga Bus Co., Inc. to held on the following day, February 8, 1949, and to enable him to return to Manila from Baguio in time to attend the said meeting.

"That it is true that a petition for postponement should be presented at least three days before the hearing of a case. We respectfully invite the attention of this Honorable Court to the effect that the petition for postponement was deposited in the Post Office of the City of Manila by registered air mail on February 5, 1949, that is, three days before the date set for the hearing of this case. It is a well established rule under the Rules of Court, and sanctioned by various decisions of the Supreme Court, that the date of mailing of a pleading is considered the date of its filing with the court, * * *."

Wherefore, the present case is remanded to the Court of Appeals for further proceedings.

Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[*] Supra, p. 159.

DISSENTING

PARAS, C. J.

I dissent.

The hearing of this case was set for January 26, 1949. upon motion of the parties, the court postponed hearing to February 8, 1949, stating that "no further postponement shall be granted in this case."

In a motion submitted to the court on the very day of the hearing, the defendant again asked for postponement, but the court denied said motion in the following order:

"When this case was called for trial on the merits, plaintiff, accompanied by this attorney Mr. Ramon P. Mitra, appealed and manifested his readiness to enter into trial. Neither defendant nor his attorney appeared. The Court, therefore, permitted plaintiff to present about to take his oath, a petition for postponement was handed by the Clerk of court to the Presiding Judge, sent by Atty. Manuel O. Chan, for the defendant. Plaintiff vigorously objected to this petition. In the order of this Court of Januray 25, 1949, postponing the trial of this case for today, it was clear that no further postponement could be granted. Defendant and his attorney, Mr.Chan, were duly notified of this order. The ground upon which the defendant bases his petition for postponement is not sufficient. Attorney Chan, as secretary of an organization, can be substituted as his assistant or by any member of the said organization to act as such during a meeting. The petition doe postponement signed by one Attorney F. R. Enrile who is supposed to be an associate in the law firm of Attorney Chan, or at least an employee in his firm, could have come to appear in this case. Postponements can not be entertained without powerful reasons, especially if presented on the day and hour of the trial. Postponement petitions must be presented at least three days before the hearing with copies furnished to the opposing counsels to avoid trouble and expenses in coming to court.

"Petition dated February 5, 1949, is therefore, hereby denied. Plaintiff may present his evidence.

"IT IS SO ORDERED."

After receiving the evidence for the plaintiff, this court rendered judgment ,in his favor as prayed for in the complaint. Appeal was taken by the defendant who has assigned the following errors:

"The lower court erred in ruling that the motion for postponement filed by the defendant-appellant was not meritorious and thereby erred in denying the motion for reconsideration and new trial.

"The lower court erred in rendering judgment without giving the defendant opportunity to present his evidence."

As may be seen in the above seen in the above assignment of errors, no findings of facts are assailed, and the only point raised is whether or not the reasons for the last postponement asked by the appellant are sufficient. It is significant that the lower court denied appellant's motion for postponement and subsequent motion for reconsideration and new trial, not because the facts relied upon by the appellant are not true, but because the facts relied upon by the appellant are not true, but because the facts relied upon by the appellant are not true, but because said facts did not justify the postponement. In my opinion, the question is purely of law.

I have not in this case, as supposed in the majority opinion, misapprehended a motion for postponement before judgment and a motion for postponement before judgment and a motion for new trial based on excusable negligence after judgment; for I purposely did not quote the order denying the motion for reconsideration and new trial, because it is of no moment. As admitted in the majority opinion, the motion for reconsideration and new trial was denied by the lower court on the ground "that the motion was without merit and not presented according the rules of court," and this clearly means, in effect that the denial was based on this insufficiency of the facts or reasons alleged in the motion, and not on the facts or reasons alleged in the motion, and not on the falsity of said facts or reasons which have not been controverted or denied.

The majority opinion stated: "And the assignment that 'the lower court erred in denying the appellant's motion for reconsideration and new trial' does not say nor mean to say that only question of law is involved, but both questions of fact and law as clearly shown on pages from 4 to 10 of the appellant's brief." It should be observed carefully, however, that the assignment of errors of the following tenor: "The lower court erred in ruling that the motion for postponement filed by the defendant-appellant was not meritorious and thereby erred in ruling that the motion for reconsideration and new trial." (Italics mine.) The consequence, therefore, is that the assigned error as to the denial of the motion for reconsideration and new trial is a mere outcome of the assigned error as to the denial of the motion for postponement. In other words, the ultimate and decisive question is whether or not the trial court, upon the undisputed facts appearing not the trial court, upon the undisputed facts appearing in the record, erred in denying the motion for postponement. If the court did not commit any error, the motion for reconsideration and new trial must necessarily be denied. Otherwise, it must be granted.

Tuason, J., concurs.

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