

SPECIAL ELEVENTH DIVISION

[CA-G.R. CR No. 35022, November 19, 2014]

**REINALDO FLORES, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

PAREDES, J.:[*]

THE CASE

THIS Petition for Review filed by accused Reinaldo Flores (petitioner) assails the Decision^[1] dated January 12, 2012 of the Regional Trial Court, Branch 61, Makati City, which affirmed the Metropolitan Trial Court's (MeTC) finding^[2] petitioner guilty beyond reasonable doubt of Slight Oral Defamation in Criminal Case No. 11-1855 (353622). Also for review is the Resolution^[3] dated June 15, 2012 denying petitioner's Motion for New Trial or Reconsideration.

THE ANTECEDENTS

On October 19, 2007, petitioner was charged with Slight Oral Defamation in an Information^[4] which reads, thus:

That on or about the 2nd day of June 2007, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with the deliberate intent of bringing DR. VALENTIN F. YABES III into discredit, disrepute and contempt, did then and there willfully, unlawfully, feloniously and publicly speak and utter against said complainant the following insulting and defamatory words and expressions, while in complainant's Laser Medical Clinic, Ground Floor, 111 Paseo de Roxas St., Legaspi Vill., Makati City, to wit:
"NAGDO-DOKTOR-DOKTORAN LANG!" and other words of similar import.

CONTRARY TO LAW.

On February 18, 2008, petitioner was arraigned and, with the assistance of counsel, entered a plea of "Not Guilty"^[5]. After pre-trial, trial on the merits proceeded.

The prosecution presented the testimonies of private complainant Dr. Valentin Yabes III^[6] (Dr. Yabes), Renen Castillo^[7], Janelle Dela Cruz^[8], Roy Gilbert Ortega^[9], and Virginia Francisco^[10], whose combined testimonies tended to establish, that:

On June 2, 2007, petitioner went to see Dr. Yabes at his clinic complaining that the

laser treatment his mother, Mrs. Emilia Flores, received from Dr. Yabes was making her condition worst, that Dr. Yabes had no right to remove his mother's medication as Dr. Yabes was not a neurologist, and the nutrition prescribed by Dr. Yabes was not suited for her, and demanding that Dr. Yabes refund the expenses they had incurred. When he would not be appeased, petitioner raised his voice and shouted, "*Nagdo-doktor-doktoran ka lang!*", and repeatedly shoved Dr. Yabes as the latter stood up to leave the premises. Renen Castillo, a staff of Dr. Yabes, called the police. The disturbance caused by appellant subjected Dr. Yabes to disgrace and ridicule in front of his patients; hence, the complaint.

Thereafter, the prosecution formally offered its exhibits consisting of the following, *viz.*: "A" - Complaint-Affidavit^[11] of Dr. Valentin G. Yabes; "B" - Reply to Counter-affidavit^[12]; "C" - Sinumpaang Salaysay of Renen Castillo^[13]; "D" - Certified true copy of the Barangay Blotter;^[14] "E" - Sinumpaang Salaysay of Janelle dela Cruz^[15]; "F" - Sinumpaang Salaysay of Roy Gilbert Ortega^[16]; and, "G" - Sinumpaang Salaysay of Virginia Francisco^[17].

Petitioner and his counsel failed to appear, despite notice, at the scheduled reception of defense evidence. On motion of the public prosecutor, the presentation of defense evidence was considered waived and the case submitted for decision^[18]. Petitioner moved for reconsideration from the order of the MeTC, which was granted on December 14, 2010. The case was set anew for reception^[19] of defense evidence on March 15, 2011. However, on the appointed date, the purported witness for the defense, Jocelyn Taat failed to appear; hence, the reception of defense evidence was deemed waived and the case was submitted for decision^[20].

On April 15, 2011, the MeTC rendered a Decision^[21], the *fallo* reads, thus:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the court renders judgment finding the accused Reinaldo C. Flores GUILTY of the crime of Slight Oral Defamation under Article 358 of the Revised Penal Code and hereby sentenced (*sic*) him to a penalty of FIFTEEN (15) DAYS IMPRISONMENT and to pay the costs of suit. No award of civil liability as complainant Dr. Valentin Yabes III reserved its (*sic*) right to file a separate civil action.

SO ORDERED.

On appeal, the RTC affirmed the findings of the MeTC in its Decision^[22] dated January 12, 2012, to wit:

WHEREFORE, premises duly considered, the instant appeal of the herein accused-appellant REINALDO C. FLORES (Mr. Flores) is hereby DISMISSED for sheer dearth of merit.

The assailed "Decision" of Branch 66 of the Metropolitan Trial Court of the City of Makati in Criminal Case No. 353622 for "Slight Oral Defamation"

entitled "The People of the Philippines -versus- "Reinaldo C. Flores" and dated 15 April 2011 is hereby AFFIRMED IN TOTO.

No costs.

SO ORDERED.

Petitioner's Motion for New Trial or Reconsideration^[23] having been denied in the Resolution^[24] dated June 15, 2012, he filed this Petition, raising the following issues:

I

WHETHER THE REMEDY OF NEW TRIAL IS AVAILABLE TO THE PETITIONER WHILE PENDING APPEAL BEFORE THE REGIONAL TRIAL COURT OR NOT.

II

WHETHER THE PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW OR NOT.

III

WHETHER THE DECISION CONFORMS TO THE EVIDENCE ON RECORD OR NOT.^[25]

THE COURT'S RULING

The petition is, in part, meritorious.

Petitioner assails the RTC's denial of his Motion for New Trial or Reconsideration arguing that newly discovered evidence emerged during the pendency of the case before the RTC; and such remedy was still available pursuant to Section 2(b), Rule 121 of the Rules of Court.

Section 1, Rule 121, provides, that:

SECTION 1. *New trial or reconsideration.* – At anytime before a judgment of conviction becomes final, the court may, on motion of the accused or at its own instance but with the consent of the accused, grant a new trial or reconsideration.

A motion for new trial should be filed with the trial court within fifteen (15) days from the promulgation of the judgment^[26]. If an appeal has already been perfected, a motion for new trial on the ground of newly discovered evidence may be filed in the appellate court^[27]. In this case, the RTC issued its decision on January 12, 2012. The motion for new trial was filed on February 21, 2012, or seven (7) days from petitioner's receipt of his copy of the RTC decision on February 14, 2012. The motion^[28] was set for hearing on March 8, 2012. On the scheduled

date, the RTC issued an order^[29] directing the filing of pleadings in lieu of a formal hearing. When the adverse party had been afforded the opportunity to be heard, and has indeed been heard through the pleadings filed in opposition to the motion, the requirements of procedural due process are substantially complied with^[30].

After the required pleadings were filed, the RTC issued its Resolution on June 15, 2012, denying petitioner's Motion for New Trial or Reconsideration. This Resolution is assailed. **We affirm but for reasons other than those stated in the assailed Resolution.**

Procedurally, the RTC denied the subject motion on the following grounds, that: (a) the case is covered by the Rules on Summary Proceeding which proscribes the filing of a motion for new trial or for reconsideration, a prohibited pleading, pursuant to Section 19(c) of the rules; (b) Sections 1 and 2, Rule 121 of the Rules of Court do not find application in this case "because the said reglementary stipulations apply solely when the second-level court concerned is in the exercise of its original jurisdiction and not when it is performing its appellate authority as in the case at bench"; and (c) Section 14, Rule 124 is also inapplicable "since the said procedural regulation, read together with Section 15 of the same Rule refers exclusively to any motion for new trial to be filed with the Honorable Court of Appeals where the appeal of the accused is pending repugning a judgment of the lower court.

Since the case before the MeTC was for slight oral defamation, the penalty for which is *arresto menor* or a fine not exceeding 200 Pesos, it was governed^[31] by the Rules on Summary Procedure. However, the motion for new trial or reconsideration that petitioners allege to be a prohibited pleading was filed before the RTC acting as an appellate court. The appeal before the RTC is no longer covered by the Rules on Summary Procedure. Hence, petitioner's motion for new trial or reconsideration filed with the RTC is not a prohibited pleading^[32]. Contrary to the RTC's interpretation of Sections 1 and 2, Rule 121 of the Rules of Court, it had jurisdictional authority to entertain the motion for new trial prescinding, as it does, from the general rule that a motion for new trial or reconsideration should be filed with the court 'before the judgment becomes final.' As there is no distinction between a judgment issued in the exercise of the original or appellate jurisdiction of the RTC, then We should not distinguish. And where the law does not distinguish the courts should not distinguish; where the law does not make exception the court should not except^[33]. Moreover, the interpretation of the RTC regarding Sections 1 and 2 of Rule 121 and that regarding Sections 14 and 15 of Rule 124 of the Rules of Court would render the filing of a motion for new trial or reconsideration, on appeal to the RTC, as in the instant petition, nugatory. The RTC interpretation would create a vacuum in the application of the law, a situation which is anathema in statutory construction.

On the other hand, the RTC denied petitioner's motion for new trial or reconsideration based on the newly discovered evidence of the affidavit of Ms. Edeleine Silvestre (Silvestre) finding that it is not newly discovered material evidence "because it is a mere recantation of her (Silvestre's) previous sworn statement. **We do not find Silvestre's present affidavit a mere recantation of her previous statement, albeit her affidavit cannot be considered newly discovered evidence.**

By definition, to recant^[34] is to withdraw or repudiate formally and publicly; while to repudiate is to put away, reject, disclaim or renounce a right, duty, obligation or privilege^[35]. A repugnancy exists when there is an inconsistency, opposition or contrariety between two or more clauses of the same deed, contract or statute, or between two or more material allegations of the same pleading, or any two writings^[36]. A mere perusal of the affidavits submitted by Silvestre shows that there is no repugnancy between these documents; hence, there can be no recantation of the prior affidavit by the later affidavit.

The June 23, 2007 affidavit^[37] of Silvestre refers to an incident which occurred on May 29, 2007, where there was no confrontation between petitioner and Dr. Yabes as the latter was out of the Laser Medical Clinic; this is not the incident subject of the charge against petitioner for slight oral defamation. On the other hand, the January 16, 2012 affidavit^[38] of Silvestre narrates the incident which took place several days after June 2, 2007, where she claims that a commotion occurred inside the office of Dr. Yabes, voices were raised but she could not hear what was being said, except for the voice of Roy Ortega who was yelling to Renen Castillo to call the police; and that what she heard as Dr. Yabes was exiting his office through the back door, was Dr. Yabes saying "Do you want to punch me? Do you want to punch me?" and petitioner responding, saying "Doc, you are just provoking me. *Bakit pabalikin nyo pa kami eh andito na nga kami*". Instead of a recantation, Silvestre's January 16, 2012 affidavit is a supplement to her June 23, 2007 affidavit.

For Silvestre's January 16, 2012 affidavit to be considered newly discovered evidence, it must be shown that: (1) the evidence was discovered after trial; (2) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; (3) it is material, not merely cumulative, corroborative, or impeaching; and (4) the evidence is of such weight that it would probably change the judgment if admitted. If the alleged newly discovered evidence could have been very well presented during the trial with the exercise of reasonable diligence, the same cannot be considered newly discovered^[39].

The threshold question in resolving a motion for new trial based on newly discovered evidence is whether the [proffered] evidence is in fact a "newly discovered evidence which could not have been discovered by due diligence." In order that a particular piece of evidence may be properly regarded as newly discovered to justify a new trial, what is essential is not so much the time when the evidence offered first sprang into existence nor the time when it first came to the knowledge of the party now submitting it; what is essential is that the offering party had exercised reasonable diligence in seeking to locate such evidence before or during trial but had nonetheless failed to secure it^[40].

The Rules do not give an exact definition of due diligence, and whether the movant has exercised due diligence depends upon the particular circumstances of each case. In other words, the concept of due diligence has both a time component and a good faith component. The movant for a new trial must not only act in a timely fashion in gathering evidence in support of the motion; he must act reasonably and in good faith as well. Due diligence contemplates that the defendant acts reasonably and in good faith to obtain the evidence, in light of the totality of the circumstances and the facts known to him^[41].