

FIRST DIVISION

[G.R. No. 115129, February 12, 1997]

**IGNACIO BARZAGA, PETITIONER, VS. COURT OF APPEALS AND
ANGELITO ALVIAR, RESPONDENTS.
D E C I S I O N**

BELLOSILLO, J.:

The Fates ordained that Christmas 1990 be bleak for Ignacio Barzaga and his family. On the nineteenth of December Ignacio's wife succumbed to a debilitating ailment after prolonged pain and suffering. Forewarned by her attending physicians of her impending death, she expressed her wish to be laid to rest before Christmas day to spare her family from keeping lonely vigil over her remains while the whole of Christendom celebrate the Nativity of their Redeemer.

Drained to the bone from the tragedy that befell his family yet preoccupied with overseeing the wake for his departed wife, Ignacio Barzaga set out to arrange for her interment on the twenty-fourth of December in obedience *semper fidelis* to her dying wish. But her final entreaty, unfortunately, could not be carried out. Dire events conspired to block his plans that forthwith gave him and his family their gloomiest Christmas ever.

This is Barzaga's story. On 21 December 1990, at about three o'clock in the afternoon, he went to the hardware store of respondent Angelito Alviar to inquire about the availability of certain materials to be used in the construction of a niche for his wife. He also asked if the materials could be delivered at once. Marina Boncales, Alviar's storekeeper, replied that she had yet to verify if the store had pending deliveries that afternoon because if there were then all subsequent purchases would have to be delivered the following day. With that reply petitioner left.

At seven o'clock the following morning, 22 December, Barzaga returned to Alviar's hardware store to follow up his purchase of construction materials. He told the store employees that the materials he was buying would have to be delivered at the Memorial Cemetery in Dasmariñas, Cavite, by eight o'clock that morning since his hired workers were already at the burial site and time was of the essence. Marina Boncales agreed to deliver the items at the designated time, date and place. With this assurance, Barzaga purchased the materials and paid in full the amount of P2,110.00. Thereafter he joined his workers at the cemetery, which was only a kilometer away, to await the delivery.

The construction materials did not arrive at eight o'clock as promised. At nine o'clock, the delivery was still nowhere in sight. Barzaga returned to the hardware store to inquire about the delay. Boncales assured him that although the delivery truck was not yet around it had already left the garage and that as soon as it arrived the materials would be brought over to the cemetery in no time at all. That left

petitioner no choice but to rejoin his workers at the memorial park and wait for the materials.

By ten o'clock, there was still no delivery. This prompted petitioner to return to the store to inquire about the materials. But he received the same answer from respondent's employees who even cajoled him to go back to the burial place as they would just follow with his construction materials.

After hours of waiting - which seemed interminable to him - Barzaga became extremely upset. He decided to dismiss his laborers for the day. He proceeded to the police station, which was just nearby, and lodged a complaint against Alviar. He had his complaint entered in the police blotter. When he returned again to the store he saw the delivery truck already there but the materials he purchased were not yet ready for loading. Distressed that Alviar's employees were not the least concerned, despite his impassioned pleas, Barzaga decided to cancel his transaction with the store and look for construction materials elsewhere.

In the afternoon of that day, petitioner was able to buy from another store. But since darkness was already setting in and his workers had left, he made up his mind to start his project the following morning, 23 December. But he knew that the niche would not be finish in time for the scheduled burial the following day. His laborers had to take a break on Christmas Day and they could only resume in the morning of the twenty-sixth. The niche was completed in the afternoon and Barzaga's wife was finally laid to rest. However, it was two-and-a-half (2-1/2) days behind schedule.

On 21 January 1991, tormented perhaps by his inability to fulfill his wife's dying wish, Barzaga wrote private respondent Alviar demanding recompense for the damage he suffered. Alviar did not respond. Consequently, petitioner sued him before the Regional Trial Court.^[1]

Resisting petitioner's claim, private respondent contended that legal delay could not be validly ascribed to him because no specific time of delivery was agreed upon between them. He pointed out that the invoices evidencing the sale did not contain any stipulation as to the exact time of delivery and that assuming that the materials were not delivered within the period desired by petitioner, the delivery truck suffered a flat tire on the way to the store to pick up the materials. Besides, his men were ready to make the delivery by ten-thirty in the morning of 22 December but petitioner refused to accept them. According to Alviar, it was this obstinate refusal of petitioner to accept delivery that caused the delay in the construction of the niche and the consequent failure of the family to inter their loved one on the twenty-fourth of December, and that, if at all, it was petitioner and no other who brought about all his personal woes.

Upholding the proposition that respondent incurred in delay in the delivery of the construction materials resulting in undue prejudice to petitioner, the trial court ordered respondent Alviar to pay petitioner (a) P2,110.00 as refund for the purchase price of the materials with interest per annum computed at the legal rate from the date of the filing of the complaint, (b) P5,000.00 as temperate damages, (c) P20,000.00 as moral damages, (d) P5,000.00 as litigation expenses, and (e) P5,000.00 as attorney's fees.

On appeal, respondent Court of Appeals reversed the lower court and ruled that

there was no contractual commitment as to the exact time of delivery since this was not indicated in the invoice receipts covering the sale.^[2]

The arrangement to deliver the materials merely implied that delivery should be made within a reasonable time but that the conclusion that since petitioner's workers were already at the graveyard the delivery had to be made at that precise moment, is non-sequitur. The Court of Appeals also held that assuming that there was delay, petitioner still had sufficient time to construct the tomb and hold his wife's burial as she wished.

We sustain the trial court. An assiduous scrutiny of the record convinces us that respondent Angelito Alviar was negligent and incurred in delay in the performance of his contractual obligation. This sufficiently entitles petitioner Ignacio Barzaga to be indemnified for the damage he suffered as a consequence of delay or a contractual breach. The law expressly provides that those who in the performance of their obligation are guilty of fraud, negligence, or delay and those who in any manner contravene the tenor thereof, are liable for damages.^[3]

Contrary to the appellate court's factual determination, there was a specific time agreed upon for the delivery of the materials to the cemetery. Petitioner went to private respondent's store on 21 December precisely to inquire if the materials he intended to purchase could be delivered immediately. But he was told by the storekeeper that if there were still deliveries to be made that afternoon his order would be delivered the following day. With this in mind Barzaga decided to buy the construction materials the following morning after he was assured of immediate delivery according to his time frame. The argument that the invoices never indicated a specific delivery time must fall in the face of the positive verbal commitment of respondent's storekeeper. Consequently it was no longer necessary to indicate in the invoices the exact time the purchased items were to be brought to the cemetery. In fact, storekeeper Boncales admitted that it was her custom not to indicate the time of delivery whenever she prepared invoices.^[4]

Private respondent invokes fortuitous event as his handy excuse for that "bit of delay" in the delivery of petitioner's purchases. He maintains that Barzaga should have allowed his delivery men a little more time to bring the construction materials over to the cemetery since a few hours more would not really matter and considering that his truck had a flat tire. Besides, according to him, Barzaga still had sufficient time to build the tomb for his wife.

This is a gratuitous assertion that borders on callousness. Private respondent had no right to manipulate petitioner's timetable and substitute it with his own. Petitioner had a deadline to meet. A few hours of delay was no piddling matter to him who in his bereavement had yet to attend to other pressing family concerns. Despite this, respondent's employees still made light of his earnest importunings for an immediate delivery. As petitioner bitterly declared in court " x x x they (respondent's employees) were making a fool out of me."^[5]

We also find unacceptable respondent's justification that his truck had a flat tire, for this event, if indeed it happened, was foreseeable according to the trial court, and as such should have been reasonably guarded against. The nature of private respondent's business requires that he should be ready at all times to meet