

SECOND DIVISION

[G.R. No. 120706, January 31, 2000]

**RODRIGO CONCEPCION, PETITIONER, VS. COURT OF APPEALS
AND SPS. NESTOR NICOLAS AND ALLEM NICOLAS,
RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

Petitioner Rodrigo Concepcion assails in this petition for review on certiorari the Decision of the Court of Appeals dated 12 December 1994 which affirmed the decision of the Regional Trial Court of Pasig City ordering him to pay respondent spouses Nestor Nicolas and Allem Nicolas the sums of ₱50,000.00 for moral damages, ₱25,000.00 for exemplary damages and ₱10,000.00 for attorney's fees, plus the costs of suit.^[*] Petitioner claims absence of factual and legal basis for the award of damages.

The courts *a quo* found that sometime in 1985 the spouses Nestor Nicolas and Allem Nicolas resided at No. 51 M. Concepcion St., San Joaquin, Pasig City, in an apartment leased to them by the owner thereof, Florence "Bing" Concepcion, who also resided in the same compound where the apartment was located. Nestor Nicolas was then engaged in the business of supplying government agencies and private entities with office equipment, appliances and other fixtures on a cash purchase or credit basis. Florence Concepcion joined this venture by contributing capital on condition that after her capital investment was returned to her, any profit earned would be divided equally between her and Nestor.

Sometime in the second week of July 1985 Rodrigo Concepcion, brother of the deceased husband of Florence, angrily accosted Nestor at the latter's apartment and accused him of conducting an adulterous relationship with Florence. He shouted, "*Hoy Nestor, kabit ka ni Bing! x x x Binigyan ka pa pala ni Bing Concepcion ng P100,000.00 para umakyat ng Baguio. Pagkaakyat mo at ng asawa mo doon ay bababa ka uli para magkasarinan kayo ni Bing.*"^[1]

To clarify matters, Nestor went with Rodrigo, upon the latter's dare, to see some relatives of the Concepcion family who allegedly knew about the relationship. However, those whom they were able to see denied knowledge of the alleged affair. The same accusation was hurled by Rodrigo against Nestor when the two (2) confronted Florence at the terrace of her residence. Florence denied the imputations and Rodrigo backtracked saying that he just heard the rumor from a relative. Thereafter, however, Rodrigo called Florence over the telephone reiterating his accusation and threatening her that should something happen to his sick mother, in case the latter learned about the affair, he would kill Florence.

As a result of this incident, Nestor Nicolas felt extreme embarrassment and shame

to the extent that he could no longer face his neighbors. Florence Concepcion also ceased to do business with him by not contributing capital anymore so much so that the business venture of the Nicolas spouses declined as they could no longer cope with their commitments to their clients and customers. To make matters worse, Alleem Nicolas started to doubt Nestor's fidelity resulting in frequent bickerings and quarrels during which Alleem even expressed her desire to leave her husband. Consequently, Nestor was forced to write Rodrigo demanding public apology and payment of damages. Rodrigo pointedly ignored the demand, for which reason the Nicolas spouses filed a civil suit against him for damages.

In his defense, Rodrigo denied that he maligned Nestor by accusing him publicly of being Florence's lover. He reasoned out that he only desired to protect the name and reputation of the Concepcion family which was why he sought an appointment with Nestor through Florence's son Roncali to ventilate his feelings about the matter. Initially, he discussed with Nestor certain aspects of the joint venture in a friendly and amiable manner, and then only casually asked the latter about his rumored affair with his sister-in-law.

In contesting the decision of the appellate court, petitioner Rodrigo Concepcion raises the following issues: (a) whether there is basis in law for the award of damages to private respondents, the Nicolas spouses; and, (b) whether there is basis to review the facts which are of weight and influence but which were overlooked and misapplied by the respondent appellate court.

Petitioner argues that in awarding damages to private respondents, the Court of Appeals was without legal basis to justify its verdict. The alleged act imputed to him by respondent spouses does not fall under Arts. 26^[2] and 2219^[3] of the Civil Code since it does not constitute libel, slander, or any other form of defamation. Neither does it involve prying into the privacy of another's residence or meddling with or disturbing the private life or family relation of another. Petitioner also insists that certain facts and circumstances of the case were manifestly overlooked, misunderstood or glossed over by respondent court which, if considered, would change the verdict. Impugning the credibility of the witnesses for private respondents and the manner by which the testimonial evidence was analyzed and evaluated by the trial court, petitioner criticized the appellate court for not taking into account the fact that the trial judge who penned the decision was in no position to observe first-hand the demeanor of the witnesses of respondent spouses as he was not the original judge who heard the case. Thus, his decision rendered was flawed.

The Court has ruled often enough that its jurisdiction in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact, unless the factual findings complained of are devoid of support by the evidence on record or the assailed judgment is based on misapprehension of facts.^[4] The reason behind this is that the Supreme Court respects the findings of the trial court on the issue of credibility of witnesses, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial.^[5] Thus it accords the highest respect, even finality, to the evaluation made by the lower court of the testimonies of the witnesses presented before it.

The Court is also aware of the long settled rule that when the issue is on the credibility of witnesses, appellate courts will not generally disturb the findings of the trial court; however, its factual findings may nonetheless be reversed if by the evidence on record or lack of it, it appears that the trial court erred.^[6] In this respect, the Court is not generally inclined to review the findings of fact of the Court of Appeals unless its findings are erroneous, absurd, speculative, conjectural, conflicting, tainted with grave abuse of discretion, or contrary to the findings culled by the trial court of origin.^[7] This rule of course cannot be unqualifiedly applied to a case where the judge who penned the decision was not the one who heard the case, because not having heard the testimonies himself, the judge would not be in a better position than the appellate courts to make such determination.^[8]

However, it is also axiomatic that the fact alone that the judge who heard the evidence was not the one who rendered the judgment but merely relied on the record of the case does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies not having heard all the witnesses speak nor observed their deportment and manner of testifying. Thus the Court generally will not find any misapprehension of facts as it can be fairly assumed under the principle of regularity of performance of duties of public officers that the transcripts of stenographic notes were thoroughly scrutinized and evaluated by the judge himself.

Has sufficient reason then been laid before us by petitioner to engender doubt as to the factual findings of the court a quo? We find none. A painstaking review of the evidence on record convinces us not to disturb the judgment appealed from. The fact that the case was handled by different judges brooks no consideration at all, for preponderant evidence consistent with their claim for damages has been adduced by private respondents as to foreclose a reversal. Otherwise, everytime a Judge who heard a case, wholly or partially, dies or lives the service, the case cannot be decided and a new trial will have to be conducted. That would be absurd; inconceivable.

According to petitioner, private respondents' evidence is inconsistent as to time, place and persons who heard the alleged defamatory statement. We find this to be a gratuitous observation, for the testimonies of all the witnesses for the respondents are unanimous that the defamatory incident happened in the afternoon at the front door of the apartment of the Nicolas spouses in the presence of some friends and neighbors, and later on, with the accusation being repeated in the presence of Florence, at the terrace of her house. That this finding appears to be in conflict with the allegation in the complaint as to the time of the incident bears no momentous significance since an allegation in a pleading is not evidence; it is a declaration that has to be proved by evidence. If evidence contrary to the allegation is presented, such evidence controls, not the allegation in the pleading itself, although admittedly it may dent the credibility of the witnesses. But not in the instant case.

It is also argued by petitioner that private respondents failed to present as witnesses the persons they named as eyewitnesses to the incident and that they presented instead one Romeo Villaruel who was not named as a possible witness during the pre-trial proceedings. Charging that Villaruel's testimony is not credible and should never have been accorded any weight at all, petitioner capitalizes on the