

THIRD DIVISION

[G.R. No. 253312. March 01, 2023]

**RODRIGO CONCHE Y OBILO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,
RESPONDENT.**

D E C I S I O N

GAERLAN, J.:

This is a Petition for Review on *Certiorari*^[1] seeking to reverse and set aside the Resolution^[2] dated January 18, 2019 and Resolution^[3] dated August 20, 2020 of the Court of Appeals (CA) in CA-G.R. CR HC No. 05710.

Petitioner Rodrigo O. Conche (Conche) was charged in an Information dated December 18, 2009 with violation of Section 5, Article II of Republic Act (R.A.) No. 9165.^[4] The case was heard by the Regional Trial Court (RTC) of Parañaque City, Branch 259, and docketed as Criminal Case No. 09-1288.^[5] Conche was represented by counsel *de parte*, Gutierrez and Trinidad Law Office (GT Law Office).

Conche was eventually convicted by the RTC through its Decision dated May 3, 2012. He sought reconsideration but was denied in the Order dated July 9, 2012.^[6]

He appealed but his conviction was sustained by the CA in its Decision^[7] dated September 21, 2015. It likewise affirmed his penalty of life imprisonment and to pay a fine of P500,000.00.

GT Law Office received a copy of the Decision on October 7, 2015 but did not timely file a motion for reconsideration or appeal.^[8] The Decision therefore became final and executory, and an Entry of Judgment^[9] was issued on October 23, 2015.

According to Conche's wife, Donna May L. Conche (Donna), Atty. Evelyn Gutierrez (Atty. Gutierrez) from GT Law Office promised them that an appeal would be filed to elevate the case to this Court. She and her husband were thus surprised when they received the Entry of Judgment informing them that the conviction had become final and executory.^[10]

After being informed of the Entry of Judgment, they immediately sought legal assistance from BNG Humanitarian Outreach Volunteer Paralegal Services (BNG) to verify the status of their appeal. BNG Chairperson Calixto G. Ballesteros, Jr. (BNG Chairperson Calixto) was able to speak with Atty. Gutierrez who informed him that she appealed Conche's case. However, she could not provide a copy of the Notice of Appeal when requested for it.^[11]

BNG was later on able to confirm that Atty. Gutierrez did not appeal Conche's case. It obtained the Letter^[12] dated July 15, 2016 from the CA certifying that Atty. Gutierrez did not file any appeal or motion for reconsideration of its Decision dated September 21, 2015.

In desperation, Conche, through BNG, sent a Letter dated June 13, 2016 and a Letter^[13] dated August 14, 2016 to the Office of the Chief Justice (OCJ),^[14] and a Letter^[15] dated October 17, 2016 to the Integrated Bar of the Philippines (IBP) to plead for assistance on how to elevate his appeal to this Court.

The OCJ issued a Letter^[16] dated June 27, 2016 instructing the Division Clerk of Court of the CA Fourth Division to take the appropriate action on Conche's case. It additionally sent a Letter^[17] dated September 13, 2016 to the IBP endorsing the case for possible legal assistance. The IBP National Center for Legal Aid then referred the case to its Pasay-Paranaque-Las Pinas-Muntinlupa Chapter for study and evaluation on October 18, 2016.^[18]

BNG also sent a Letter^[19] dated October 17, 2016 to GT Law Office requesting it to formally withdraw as Conche's counsel on record to allow the Public Attorney's Office (PAO) to take over the case. Atty. Gutierrez thus filed a Motion to Withdraw Appearance as Counsel^[20] on November 29, 2016.^[21]

On August 16, 2017, the OCJ sent another Letter^[22] of even date to the PAO endorsing Conche's case. On October 3, 2017, Conche also sent a handwritten Letter to the PAO pleading for legal assistance.^[23] In response, the PAO, through Public Attorney Kenneth Roy E. Sentillas (Atty. Sentillas), personally met Conche to discuss his case on November 3, 2017. Atty. Sentillas thereafter met with Donna sometime in December 2017 to retrieve the case records.

On April 13, 2018, the PAO entered its appearance as Conche's counsel and filed a Motion to Recall Entry of Judgment and Notice of Appeal^[24] with the CA. It asserted that Atty. Gutierrez was guilty of gross negligence and misrepresentations while handling Conche's case which resulted in the loss of his right to appeal and deprivation of liberty.^[25] This

allegedly constituted an exception to the general rule that the negligence of counsel binds the client. It asked the CA to set aside the Entry of Judgment to rectify a serious injustice and protect Conche's right to due process.^[26]

The State, represented by the Office of the Solicitor General (OSG), filed a Comment to the Motion to Recall Entry of Judgment and Notice of Appeal. It mainly reiterated the settled rule that the negligence and mistakes of counsel are binding on the client. In this case, Conche could not be excused since he should have actively followed up on his case and timely coordinated with Atty. Gutierrez to ensure that a Notice of Appeal was filed.^[27]

The CA issued its Resolution^[28] dated January 18, 2019 which denied Conche's Motion to Recall Entry of Judgment and Notice of Appeal. It held that there were no compelling reasons to apply the exception to the rule that the negligence of counsel binds the client.

Conche sought reconsideration but was denied by the CA in its Resolution^[29] dated August 20, 2020.

Hence, the instant petition.

Conche, represented by the PAO, reiterated in his petition that Atty. Gutierrez was grossly negligent and committed misrepresentations in handling his case.^[30] She promised him that she would appeal his conviction to the Supreme Court but did not fulfill her duties as counsel. This deprived him of his right to due process and resulted in the outright deprivation of his liberty.^[31]

The State, through the OSG, filed a Comment arguing that the CA did not err since no sufficient compelling reasons were given to set aside the Entry of Judgment and reopen the case. The general rule is clear that once a judgment becomes final, it is immutable and unalterable.^[32] Moreover, it is settled that the negligence or mistakes of counsel bind the client. This general rule must be applied in this case since Atty. Gutierrez' negligence was accompanied by Conche's own negligence. It highlighted that Donna and BNG only secured the PAO's assistance in March 2017, or about one year and six months after the issuance of the Entry of Judgment. If they were only diligent and requested assistance sooner, the case could have been remedied.^[33]

After a judicious review, the petition is granted.

It is a well-settled doctrine that final and executory judgments are immutable and

unalterable. This is grounded on the fundamental considerations of public policy and sound practice,^[34] and is required for the orderly administration of justice.^[35]

It is likewise established that the negligence of counsel binds the client, even for errors in the application of procedural rules.^[36] The reason for this rule is that

counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.^[37]

If this were not the rule, there would be no end to litigation so long as newly engaged counsel could prove that the prior counsel was not sufficiently diligent, experienced, or learned.^[38]

However, this rule is not absolute. This Court has recognized the following exceptions when the client will not be bound by counsel's negligence: (1) when the reckless or gross negligence of counsel deprives the client of due process of law; (2) when its application will result in the outright deprivation of the client's liberty or property; or (3) where the interests of justice so require.^[39] It was emphasized that in these cases, the courts must intervene to accord relief to a party-litigant.

It was accordingly established in *Curammeng v. People*^[40] that "the rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."^[41]

In *Callangan v. People*,^[42] the accused was convicted because of her counsel's omissions during trial which deprived her of a real opportunity to present evidence. It was held that her counsel's omissions and errors amounted to an abandonment and total disregard of her case which must be considered an exception to the rule that the negligence of counsel binds the client. It was deemed necessary to give the accused another chance to be heard if only to prevent a miscarriage of justice and to give meaning to the due process clause in the Constitution.

The Court pronounced in *Callangan* that "[i]n criminal cases, the right of the accused to be assisted by counsel is immutable. Otherwise, there will be a grave denial of due process.

The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.”^[43]

In *Hilario v. People*,^[44] (*Hilario*) the counsel defied the accused’s explicit instructions to file an appeal which resulted in his conviction becoming final and executory. It was held that the accused cannot be bound by his counsel’s gross negligence and that the deprivation of his right to appeal amounted to a denial of his right to due process.

It was stressed in *Hilario* that the right to appeal, although merely statutory, is an essential part of our judicial system and must, as much as possible, be afforded to every party:

In all criminal prosecutions, **the accused shall have the right to appeal in the manner prescribed by law.** The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals* where we ruled that **an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities.** While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution. Thus, the importance of finding out whether petitioner’s loss of the right to appeal was due to the PAO lawyer’s negligence and not at all attributed to petitioner.^[45] (Emphasis and underscoring supplied; citation omitted)

It additionally recognized that “[e]ven if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.”^[46] This is grounded on the principle that “[c]ases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better.”^[47]

Verily, the accused’s right to be heard by himself/herself and counsel is critical to protecting the right to due process. The right to be heard by himself/herself and counsel is explicitly provided in Section 14 (2), Article III of the 1987 Philippine Constitution and has been interpreted to mean that the accused should be provided with assistance by “effective”

counsel. The determination of what is considered sufficiently “effective” counsel is guided by relevant provisions of the Rules of Court, the Code of Professional Responsibility (CPR), and the Canons of Professional Ethics.^[48]

In this regard, Canon 17 of the CPR notably provides that a lawyer must owe fidelity to the cause of his/her client and should be mindful of the trust and confidence reposed in him/her. It is further mandated under Canon 18 that a lawyer should serve his/her client with competence and diligence. More specifically:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client’s request for information.

Furthermore, the Canons of Professional Ethics pertinently provides:

5. The defense or prosecution of those accused of crime

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law.

x x x x

15. How far a lawyer may go in supporting a client’s cause

x x x x

The lawyer owes “entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,” to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public popularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client. (Emphases supplied)

It is thus the duty of counsel to exercise competence and diligence to serve as “effective” counsel. The quality of counsel’s assistance can be put in question when the accused is deprived of his/her right to due process.^[49]

Applying the foregoing to this case, We rule that Conche’s right to due process was denied which warrants a reversal of the assailed CA rulings.

Conche claimed that when he learned that the CA upheld his conviction, Atty. Gutierrez promised him that she would file a notice of appeal to elevate his case to this Court.^[50] Regrettably, Atty. Gutierrez did not fulfill her promise which resulted in his conviction becoming final and executory. He narrated in his Affidavit:

(5) Noong ang aking apela sa Court of Appeals ay hindi kinatigan ng nasabing korte, nangako si Atty. Gutierrez na siya ay magpapasa ng *notice of appeal* upang maiapela ang aking kaso sa Korte Suprema. Sa mga sumunod na pagkakataon na aking nakausap si Atty. Gutierrez, sinabi niyang siya ay nakapagpasa na ng *notice of appeal* sa Court of Appeals. Maging ang chairman ng BNG Humanitarian Outreach Volunteer Paralegal Services na si G. Calixto G. Ballesteros, Jr. ay nakausap din si Atty. Gutierrez tungkol sa bagay na ito.

(6) Taliwas sa kanyang pangako at sa naging usapan, nagulat na lamang ako ng aking napag-alaman na walang naisumite na notice of appeal o anumang naaangkop na *pleadings* si Atty. Gutierrez at mayroon ng *entry of judgment* sa

aking kaso.^[51]

This claim was corroborated by Donna who also executed an Affidavit wherein she stated that they requested Atty. Gutierrez for a copy of the *notice of appeal* they expected her to file, but she could not give it.^[52] Donna alleged that they were surprised upon learning that Atty. Gutierrez did not do anything to appeal her husband's case:

(6) Kalakip ng mga nasabing bayad ang representasyon sa amin ni G. Gutierrez na siya at ang kanyang asawang si Atty. Evelyn na ang bahala sa kaso ng aking asawa. Kung sakaling hindi pabor ang maging desisyon ng Regional Trial Court at Court of Appeals sa kaso ng aking asawa at iaapela ito ni Atty. Evelyn sa Korte Suprema.

(7) Taliwas sa aming usapan, nagulat na lamang kami ng aming napag-alaman na walang naisumite na *notice of appeal* o anumang naaangkop na *pleadings* si Atty. Evelyn upang maiapela ang kaso ng aking asawa sa Korte Suprema.^[53] (Italics in the original)

This was further supported by the fact that Atty. Gutierrez herself told BNG Chairperson Calixto that she filed a notice of appeal when she was confronted about the case. It was only when they asked her for a copy of the notice of appeal she supposedly filed that they discovered her misrepresentation. BNG Chairperson Calixto's handwritten Letter^[54] dated August 14, 2016 addressed to the OCJ pertinently recounted:

Sa pangyayari pong ito, nais po naming ipaabot sa inyo na ang nasabing apila ni Ginoong Rodrigo O. Conche, sa kanya pong pagkakaalam, ito po'y ini-akyat sa Supreme Court na siya ring ipinaabot ng kanyang abogado, **at ganun din po ng ako av tumawag mismo sa kanyang abogado na si Gutierrez and Trinidad Law Office na kanya pong ginaranturan at sinabi niya sa akin na inakyat niya ang naturang kaso. Humihingi po ako sa kanya ng copy ng Notice of Appeal at ipinangako niya na tutugunan niya ang aking kahilingan, subalit wala po siyang pinadala na Notice of Appeal.** Umasa po ng lubusan ang kanyang client ngunit di po siya tumugon. Nais ko po sanang humingi sa kanya ng kanyang [sic] Withdrawal Certificate ng kanyang serbisyo sa kanyang client ngunit pinangakuan niya kami na nai-akyat niya sa Supreme Court para

muling mareview ang kaso.

Madam, lumalapit po kami sa inyo na sana po’y mabigyan pang pagkakataon na mai-akyat ang apila ng nasabing client o magmotion for Reconsideration at ito po’y ililipat na lamang sa Public Attorney’s Office sa opisina ng kagalang-galang na si Atty. Persida Rueda V. Acosta at amin pong hihingin kay Atty. Gutierrez and Trinidad Law Office ang kanilang Certificate of Withdrawal of Service.^[55]
(Emphasis and underscoring supplied)

It is evident from the foregoing that Conche relied heavily on Atty. Gutierrez’s promise that his conviction would be appealed. In view of the circumstances of this case, he cannot be faulted for believing in her misrepresentations.

For one, he was a paying client of Atty. Gutierrez who handled his case during both the trial stage and his appeal to the CA. Donna in her Affidavit enumerated the payments she made to Atty. Gutierrez for this purpose.^[56] This was supported by the Affidavits dated April 12, 2018 executed by Maria Theresa Cabo^[57] and Heidi T. Dayawon^[58] who accompanied Donna when she made such payments. It is therefore only reasonable to expect that Conche would believe Atty. Gutierrez when she said that she already filed an appeal as they agreed upon.

Moreover, Conche at that time was a detained prisoner who had limited means to monitor his case. He was dependent mainly on Atty. Gutierrez to look out for his best interests. He had no choice after speaking with her for only a few times to trust that she would faithfully fulfill her duties as his counsel. Unfortunately, worse than just being negligent, she made prejudicial misrepresentations to him.

The actions of Conche and Donna immediately after learning about the Entry of Judgment supports the fact that they lost the opportunity to appeal solely because of Atty. Gutierrez’s misrepresentations and gross negligence. The CA erred in ruling that Conche was guilty of contributory negligence for the loss of his right to appeal. On the contrary, Conche was very diligent in trying to exhaust all available remedies within his limited means to revive his appeal.

Notably, the CA informed the parties of the issuance of the Entry of Judgment through its Resolution dated April 26, 2016.^[59] This was sent through registered mail to GT Law Office and Conche, through the Director of the Bureau of Corrections in Muntinlupa City. The records show that this Resolution was received by the Bureau of Corrections Administrative

Division on May 26, 2016.^[60] It appears that after being notified of the Resolution, Conche and Donna immediately conferred with BNG for legal assistance. BNG thus reached out to GT Law Office to verify the status of the case and shortly thereafter sent the Letter dated June 13, 2016 to the OCJ to forward Conche's predicament.

Conche and Donna then sent handwritten letters and continuously coordinated with the OCJ, the PAO, and the IBP for assistance to revive the appeal. Although the Motion to Recall Entry of Judgment and Notice of Appeal was eventually only filed by the PAO on April 13, 2018, no fault can be attributed to Conche for the delay. This delay was caused by the multiple, back and forth endorsements by the OCJ, the IBP, and the PAO, and the time it took for the Public Attorney to study the facts of the case.

Lastly, based on a cursory perusal of the facts of this case, it appears that there could have been basis for the appeal if it were timely filed. This Court undoubtedly cannot rule on the substantive merits of this case here, but there are ostensible issues involving lapses in the mandatory chain of custody requirements provided under the law.^[61] These significant issues warrant a review by this Court in the fulfillment of its duty to reach a just and proper disposition of this case.

All told, in view of the facts of this specific case, Conche's right to appeal was denied because of Atty. Gutierrez's gross negligence and misrepresentations. He was not guilty of contributory negligence for the loss of his right to appeal. The manner by which Atty. Gutierrez handled his case deprived him of his right to be assisted by "effective" counsel. This Court must therefore intervene to protect and prevent the violation of his Constitutional right to be heard by himself and counsel.^[62]

To deprive him of his right to appeal because of his reliance in good faith on his counsel would amount to a violation of his right to due process. To send him to prison for life without allowing him to exhaust his rights and remedies under the law would be a travesty of justice and a failure of our judicial system which this Court will not stand for. Consequently, in the interest of equity and substantial justice, We rule to grant the petition and set aside the Entry of Judgment to give due course to Conche's right to a final appeal of his case.

Finally, as warranted by the established facts of this case, the Court institutes disciplinary proceedings^[63] against Atty. Gutierrez for her actions that appear to have violated the Lawyer's Oath and the CPR. This case is referred to the Commission on Bar Discipline of the

IBP for investigation, report, and recommendation.

WHEREFORE, the petition is **GRANTED**. The Resolution dated January 18, 2019 and the Resolution dated August 20, 2020 of the Court of Appeals in CA-G.R. CR HC No. 05710 are **REVERSED** and **SET ASIDE**. The Entry of Judgment in Criminal Case No. 09-1288 issued by the Court of Appeals is **RECALLED**. The Court of Appeals is **DIRECTED** to give due course to Rodrigo Conche y Obilo's appeal and is **ORDERED** to elevate the records of the case for this purpose.

Let a copy of this Decision be furnished to the Commission on Bar Discipline of the Integrated Bar of the Philippines, which is hereby **DIRECTED** to investigate Atty. Evelyn Gutierrez for her administrative liability as a member of the Bar.

SO ORDERED.

Caguioa (Chairperson), Inting, Dimaampao, and Singh, JJ., concur.

^[1] *Rollo*, pp. 12-27.

^[2] *Id.* at 32-33; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Ramon R. Garcia and Jhosep Y. Lopez (now a Member of this Court), concurring.

^[3] *Id.* at 35-36.

^[4] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES; approved on June 7, 2002.

^[5] *Rollo*, p. 52.

^[6] *Id.* at 56.

^[7] *Id.* at 52-63; penned by Associate Justice Noel G. Tijam (now a retired Member of this Court), with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

^[8] *Id.* at 80.

^[9] *Id.* at 67.

^[10] *Id.* at 91-92.

^[11] *Id.* at 64.

^[12] *Id.* at 80-81.

^[13] *Id.* at 69-70.

^[14] *Id.* at 80.

^[15] *Id.* at 71.

^[16] *Id.* at 79.

^[17] *Id.* at 82.

^[18] *Id.* at 90.

^[19] *Id.* at 83.

^[20] *Id.* at 48-50.

^[21] *Id.* at 41.

^[22] *Id.* at 73.

^[23] *Id.* at 15.

^[24] *Id.* at 37-47.

^[25] *Id.* at 42.

^[26] *Id.* at 42-44.

^[27] *Id.* at 101.

^[28] *Id.* at 32-33.

^[29] *Id.* at 35-36.

^[30] *Id.* at 20-21.

[31] *Id.* at 21.

[32] *Id.* at 120.

[33] *Id.* at 122-123.

[34] **One Shipping Corp. v. Penafiel**, 751 Phil. 204, 211 (2015).

[35] **Mocorro, Jr. v. Ramirez**, 582 Phil. 357, 366-367 (2008).

[36] **Ong Lay Hin v. CA**, 752 Phil. 15, 23 (2015).

[37] **Bejerasco, Jr. v. People**, 656 Phil. 337, 340 (2011).

[38] **Mendoza v. CA (Eighth Division)**, 764 Phil. 53, 63 (2015).

[39] **Duremdes v. Jorilla, G.R. No. 234491**, February 26, 2020; and **Callangan v. People**, 526 Phil. 239, 245 (2006).

[40] 799 Phil. 575 (2016).

[41] *Id.* at 582-583.

[42] 526 Phil. 239 (2006).

[43] *Id.* at 245-246.

[44] 574 Phil. 348 (2008).

[45] *Id.* at 366-367.

[46] *Id.* at 363.

[47] *Id.* at 361.

[48] **People v. Liwanag**, 415 Phil. 271, 292-293 (2001).

[49] *Id.* at 294.

[50] *Rollo*, p. 14.

[51] *Id.* at 91.

^[52] *Id.* at 95.

^[53] *Id.* at 94 and 92.

^[54] *Id.* at 69-70.

^[55] *Id.* at 69.

^[56] *Id.* at 94.

^[57] *Id.* at 96.

^[58] *Id.* at 98.

^[59] *Id.* at 68.

^[60] *Id.*

^[61] *Id.* at 53-55.

^[62] **Callangan v. People**, *supra* note 39, at 245-246.

^[63] Section 1, Rule 139-B of the Rules of Court provides that proceedings for disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*.
