

CARLOS MAGPAYO, WILLIAM LIAMA COA, NG WAN, AND FELIX MANONGTONG, PETITIONERS, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-35966. November 19, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari against the Court of Appeals for having allegedly gravely abused its discretion in dismissing their appeal from a judgment of conviction by the Court of First Instance of Nueva Ecija upon the ground that they had failed to file their brief within the reglementary period, the petitioners claiming that their failure was due to lack of proper notice to then counsel of record.

The record shows that from the beginning of Criminal Case No. 121 in the court below, all the four petitioners were represented by Atty. Ceferino E. Dulay. He appeared for all of them at the preliminary investigation before the Provincial Fiscal, he filed the motion to quash when the information was filed against them, he co-signed their waiver of appearance and subsequently filed a motion to dismiss the case against all of them dated April 17, 1971. At the trial, however, Atty. Mario T. Garcia entered his appearance for appellants William Liama Coa and Ng Wan. While it seems that in most instances, Attys. Dulay and Garcia thereafter made separate appearances for petitioners Magpayo and Manongtong and petitioners Liama Coa and Ng, respectively, it does not appear and it is not pretended that Atty. Dulay had made any formal withdrawal of his appearance for the last two-named petitioners. And at the reading of the sentence, both lawyers were present, but because Atty. Dulay had to attend to the preparation of the bail bond for the provisional release of the petitioners pending their appeal, the notice of appeal on behalf of all four of them was signed by Atty. Garcia.

At this point, it should be mentioned that on April 17, 1972, even before any notice to file brief had been sent out, Atty. Garcia addressed a letter to the Clerk of Court of the Court of Appeals requesting, "as one of the attorneys for the accused in the above-entitled case," for a certification that the case of petitioner William Liama Coa was as still pending in said court, which request was granted the next day. (Annexes A & B of Motion for Reconsideration in this Court dated March 26, 1973.)

Under date of May 19, 1972, notice to file brief for petitioners within thirty (30) days from receipt thereof was addressed to Atty. Mario T. Garcia and, strangely, to Atty. Cezar Francisco who had appeared as private prosecutor at the trial. On August 10, 1972, as no brief had been filed, the respondent appellate court issued a resolution requiring both Attys. Garcia and Francisco to show cause within ten (10) days why the appeal of petitioners should not be dismissed for failure to file brief. As to be expected, Atty. Francisco retorted that he was not concerned, since he was private prosecutor, whereas Atty. Garcia made an explanation which the court deemed unsatisfactory. So, on September 19, 1972, the Court dismissed the appeal of all the petitioners. The motion for reconsideration of Atty. Garcia was denied.

In the meanwhile, on August 24, 1972, four days before Atty. Garcia was supposed to have been served with the

resolution of August 10, 1972, Atty. Dulay filed a motion for new trial on behalf of all the four petitioners, but on September 5, 1972, the Court of Appeals denied the same on the ground that "what this court is waiting is for the explanation to show cause why appeal should not be dismissed for failure to file brief as required in the resolution of 10 August, 1972" and this denial was reiterated in a resolution dated December 14, 1972, the court holding that the motion for new trial had been filed beyond the period for the filing of the brief and only after petitioners had been made to show cause why the appeal should not be dismissed, overlooking that the show-cause resolution was actually received in the office of Atty. Garcia only on August 28, 1972, four days after said motion was filed.

Upon these facts, petitioners would want this Court to order the Court of Appeals to reinstate their appeal, contending that the notice to file brief addressed to Atty. Garcia is void, considering that Atty. Dulay is, as he has always been, the counsel of record of all the petitioners. The Solicitor General concedes that as far as petitioners Magpayo and Manongtong are concerned, the instant petition is well taken, so much so that in his comment on the petition dated February 28, 1973, he recommends that the petition herein be correspondingly "given due course with respect to said petitioners, with the end in view of reinstating their appeal." People's counsel objects, however, to the plea of petitioners Liama Coa and Ng. It is his position that the appearance of Atty. Garcia on their behalf at the trial and the specific appearance thereafter of Atty. Dulay for the other petitioners, even without saying that he was withdrawing his appearance for Liama Coa and Ng, amounted to separation of the appearances of the two lawyers, such that thenceforth the appearance of Atty. Dulay for Liama Coa and Ng should be considered as having been withdrawn and substituted by that of Atty. Garcia.

We do not agree. We hold that there is enough basis in the record for the conclusion that Atty. Dulay had not definitely ceased to be the counsel of record of all the petitioners. In *Olivares vs. Leola*, 97 Phil. 653, the Court explained that the mere fact that a second lawyer enters a formal written appearance and conducts the rest of the trial of a case does not constitute an effective or legal substitution of the first counsel of record, unless it be so expressly stated in the appearance of the second counsel. More than that, We have held in several cases that "no substitution of attorneys will be allowed unless the following requisites concur: (1) there must be filed a written application for substitution; (2) there must be filed the written consent of the client to the substitution; (3) there must be filed the written consent of the attorney to be substituted, if such consent can be obtained; (4) in case such written consent cannot be procured, there must be filed with the application for substitution, proof of the service of notice of such motion in the manner required by the rules, on the attorney to be substituted. Unless these formalities are complied with, no substitution may be permitted and the attorney who appeared last in the case before such application for substitution would be regarded as the attorney of record and would be held responsible for the conduct of the cause." (*U.S. vs. Borromeo*, 20 Phil. 189; *Olivares vs. Leola*, supra; *Ramos vs. Potenciano*, 9 SCRA 590; *Fojas vs. Navarro*, 32 SCRA 476.) Interestingly, in *Palteng vs. Justices of the Court of Appeals*, 26 SCRA 736, although Atty. Teodulo E. Mirasol was the one who filed the notice of appeal, appeal bond and record on appeal, similarly, as Atty. Garcia filed the notice of appeal in the case at bar, the Court held that since Atty. Pacifico T. Capuctino was the lawyer of record, notice to the latter was the effective one. Indeed, in *Ortega vs. Pacho*, 98 Phil. 618, which is cited as precedent in *Deluao vs. Casteel*, 26 SCRA 475, for the rule that where a client is represented by several counsels on record, a notice to one of them is a sufficient notice to all, it was clarified that such rule obtains only when there is no principal counsel of record, for in the latter case, it is the said principal counsel who must be served with notices and pleadings (at p. 622). Additionally, in *Dirige vs. Biranya*, 17 SCRA 840, it was held, citing *Esquivias vs. Sison*, 61 Phil. 211, that it is not enough that an attorney appears at the trial; if he does not make formal appearance, he is not entitled to notice.

One consideration is formidably persuasive. We are dealing with a criminal case. If the petitioners are to be deprived of their right to be heard on appeal, the ground must be one that leaves the conscience free from all reasonable doubt as to its soundness and fairness, just like the degree of moral conviction needed for declaring

them guilty. The least that can be said for petitioners in the case at bar is that even the Court of Appeals was somehow initially confused as to who were the lawyers supposed to be notified; thus, Atty. Francisco was mistaken for a defense counsel when in fact he is the private prosecutor. But it cannot be denied that Atty. Dulay had actually notified the court of the character of his representation on behalf of the accused in his letter-request above-referred to touching on petitioner Liama Coa. Taken together with the other actuations of Atty. Dulay on behalf of all the four petitioners, by and large, the conclusion is justified that he continues and remains to be the counsel of record of all the petitioners and, therefore, notice to him was indispensable. Under the circumstances, it would not serve the best interests of justice to accede to the Solicitor General's recommendation as regards petitioners Magpayo and Manongtong only, leaving the other two petitioners without any chance to be heard on appeal, just because of the inconclusive actuations of their lawyers. Undoubtedly, it is more desirable that the said lawyers should have acted more unequivocally, even if precedents there are overlooking the shortcoming just pointed out, for the sake of allowing the unknowing client a full day in court.

IN VIEW OF ALL THE FOREGOING, the writ prayed for is granted. The resolutions of the Court of Appeals dismissing the appeal of petitioners is set aside and said court is ordered to give due course to said appeal, without prejudice to its acting on the merits on petitioners' motion for new trial of August 24, 1972. No costs.

Fernando, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

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