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Criminal Procedure pc1 Normal JOJO 5 15 2002-01-11T09:22:00Z 2002-01-16T04:04:00Z 1 315 1801 sc 15 3 2211 9.2720 110

8. MOTION FOR NEW TRIAL OR RECONSIDERATION

1. Grounds For New Trial²³⁹

1. That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused;
2. That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment;
3. Meritorious circumstances as determined by the court on a case-to-case basis, such as:
 - 3.1 retraction of a witness²⁴⁰
 - 3.2 negligence or incompetency of counsel²⁴¹
 - 3.3 improvident plea of guilty;
 - 3.4 disqualification of an attorney de officio to represent the accused in trial court²⁴²

2. Ground For Reconsideration²⁴³

1. Errors of law or fact in the judgment.

3. Form Of Motion For A New Trial Or Reconsideration²⁴⁴

1. The motion shall be in writing and filed with the court.²⁴⁵
2. It shall state the grounds on which it is based.
3. If based on newly discovered evidence, it must be supported by affidavits of witnesses by whom such evidence is expected to be given or by duly authenticated copies of documents which it is proposed to introduce in evidence.
4. Steps to take
 1. Ascertain whether motion is seasonably filed with notice to the prosecutor and in due form;
 2. Where a motion for the decision of any question of fact: hear evidence of such motion by affidavits or otherwise;²⁴⁶
 3. When a new trial on the ground of errors of law or irregularities committed during the trial is granted, see to it that all the proceedings and evidence not affected by the commission of such errors and irregularities remain: set

aside those affected thereby. In the interest of justice, allow the introduction of additional evidence;

4. When a new trial is granted on the ground of newly discovered evidence, let the evidence already taken stand; take and consider together with the evidence already in the record the newly discovered and such other evidence allowed to be introduced, in the interest of justice;

5. In all cases, when a new trial or reconsideration is granted, set aside the original judgment and render a new judgment accordingly.²⁴⁷

239 Rules of Court, Rule 121, Sec. 2.

240 *People v. Bocar*, 97 Phil. 398 [1955]; *People v. Curiano*, Nos. L-15256-7, October 31, 1963, 9 SCRA 323, 9 SCRA 323.

241 Negligence or incompetence is not a ground for new trial unless it is so gross as to amount to deprivation of due process.

242 *Jose v. Court of Appeals*, No. L-38581, March 31, 1976, 70 SCRA 257

243 Rules of Court, Rule 121, Sec. 3.

244 Rules of Court, Rule 121, Sec. 4.

245 In criminal cases, the lack of affidavits of merit in a motion for new trial is not a fatal defect and can be cured by the testimony presented at the new trial. *Paredes v. Borja*, L-15559, November 29, 1961, 3 SCRA 495.

246 Rules of Court, Rule 121, Sec. 5 .

247 Rules of Court, Rule 121, Sec. 6 .

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