

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. OSCAR CASTELO, ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-10774. February 16, 1961*

Ponente: BARRERA, J.

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Defendant-appellant Oscar Castelo, who has been sentenced to death by the Court of First Instance of Rizal, (Pasay City) in Criminal Case No. 3023-P for murder", which case is now pending review by this Court, filed a "Motion for Urgent Disposition of Petition for New Trial and Bail", dated January 9, 1961, based mainly on the ground that the stenographic notes containing the testimonies of Edgar Bond (now deceased), Mariano Almeda, Raymundo Tal Villareal, Matias Soriano, and Francisco Espiritu are already definitely lost; that said testimonial evidence is vital to the disposition of the case on the merits; that the aforementioned loss of the notes would delay the filing of appellee's brief and, consequently, the termination of the appeal, for an indefinite period of time; that to allow, the continued detention of movant during the pendency of the appeal for such an uncertain or indefinite period is violative of his constitutional right to a speedy trial. Thus, it is prayed that the case be set for new trial, and in the meantime, defendant-appellant Oscar Castelo be released on bail.

This argument was also the basis of the petitions previously filed by the same appellant on May 31, 1957 (Petition for New Trial and Bail), December 18, 1959 (Urgent Motion for Bail); November 14, 1960 (Motion for Release on Bail); and January 3, 1961 (Petition for a Writ of Habeas Corpus).

Except for the missing transcript of the stenographic notes containing the testimonies of the five witnesses mentioned heretofore, we find the record of this case complete, with the other evidence and the original decision of the trial court intact. It has been suggested however, that under the circumstances, the only remedy left to the Court is to set aside the decision of the trial court and order a new trial under the provisions of Rule 117, Section 2, on the alleged ground that the loss of the stenographic notes in question constitutes an irregularity that has been committed during the trial prejudicial to the substantial rights of the defendant. We do not think so. The irregularity that justifies a new trial under this Rule is, as the rule itself prescribes, one that has been committed during the trial. There is no pretense that an actual irregularity has been committed during the trial. The proceedings have been all in accordance with law and a decision on the merits has been duly rendered and promulgated. This present appellant has already filed his brief and no reference to any irregularity has been made therein. All that he assails is the correctness of the decision on the merits.

We rather believe that the remedy is the reconstitution of the missing evidence as provided in Sections 14 and 15 of Act 3110,[1] dealing with pending criminal cases, which read:

"Sec. 14. The testimony of witnesses, if any has already been taken, shall be reconstituted by means of an authentic copy there of or by a new transcript of the stenographic notes; but if it is impossible to obtain an authentic copy of the evidence and if the stenographic notes have been destroyed, the case shall be heard anew as if it had never been tried."

Sec. 15. If the case has already been decided, the decision shall be reconstituted by means of an authentic copy. If an authentic copy is not obtainable, the case shall be decided anew, as if it had never been decided."

Under these legal provisions, the original decision, which is, as already stated, extant upon the records, need not be set aside as no new judgment can be rendered. It is only when the decision itself has been lost and no authentic copy thereof is obtainable that the case be decided anew as if it had never been decided. This Court has had an occasion to interpret Sections 6 and 7 of Act 3110, the counterpart in civil cases of Sections 14 and 15 above quoted, in the case of *Benigno Madalang vs. Court of First Instance of Romblon, et al.*, 49 Phil. 487, 490. There, in a unanimous decision, this Court said:

"The pertinent provisions of Act No. 3110 are contained in the following sections:

'Sec. 6. Testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy thereof or a new transcript of the stenographic notes. If no authentic copy can be obtained and the stenographic notes have also been destroyed, the cases shall be tried de novo as if called for trial for the first time.

Sec. 7. If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the court shall make a new decision, as if the case had never been decided.'

"It appears from section 7 above quoted that a new judgment can be rendered, as if the case had never been decided, only when the original decision cannot be reconstructed by means of an authentic copy. So that if an authentic copy of the original decision exist, the latter must be reconstructed by means thereof. If this is so, the reconstruction of the oral evidence introduced at the original trial of civil cases, when no authentic copy thereof exists, or when the stenographic notes have been destroyed and it is impossible to secure another transcript of the same, the testimony of the witnesses who testified at the original trial shall be taken again; because, as the original decision is reconstructed by means of an authentic copy of the same, it is not necessary to render a new one, and the reconstruction of the oral evidence is only for the purpose of permitting the court of appeal to review it and determine whether the appealed decision is in accordance therewith.

"Consequently, Act 3110 in providing in its section 7 that if an authentic copy exists the decision shall be reconstructed by means thereof, it was the intention that in the reconstruction of the oral evidence, provided in section 6, only the testimony of the same witnesses who testified at the original trial must be taken again and not the testimony of additional witnesses, because neither the literal meaning of the verb 'reconstitute' used in said law, nor the spirit, nor the object of the same warrants a different interpretation."

This doctrine was later ratified and amplified in the case of *Almario vs. Ibañez* (81 Phil. 592, 600) where this Court held that in case one of the principal witnesses who testified in the original trial and whose testimony has been lost, is no longer available because he has disappeared, as in the *Almario-Ibañez* case, or has died, as in the present case of witness Edgar Bond, the party presenting the unavailable original witness may substitute his testimony with that of another witness or witnesses who may have knowledge of the same facts to which the first witness testified in the original trial.

While the *Madalang* and *Almario* cases were civil actions, there is no reason of law or justice why the same principles should not apply in criminal cases. In fact, the legal provisions concerning the reconstitution of pending criminal cases are identical in terminology *mutatis mutandi* to those referring to pending civil cases. And, since the law in both cases is procedural or adjective and is only a means to an end—an aid to substantive law—it should be interpreted and applied to accomplish that end.

Following these precedents and in the exercise of its inherent power to restore and supply deficiencies in its records and proceedings[2] and of its discretion to adopt, in the absence of specific procedure provided in the Rules, any suitable process or mode of proceeding which appears most conformable to the spirit of said Rules,[3]

this Court, pursuant to Section 64 of Act 3110, resolves to remand this case to the court of origin solely for the purpose of reconstructing the testimony of the witnesses the stenographic notes of whose original testimony had been lost, by retaking the testimony of those original witnesses still available and, if desired and necessary, of some other witness who had personal knowledge of the facts testified to by the first witness who had already died.

In connection with appellant's petition for bail upon the ground of the subsequent further delay in the final dispositive of this case, the records show that upon being informed of the loss of the stenographic notes taken by stenographer Claro Leuterio, of the testimonies of the five witnesses in question, this Court took the necessary steps to determine whether said notes had actually been lost, ordering, for the purpose of compelling the stenographer to transcribe his notes, his confinement in the Supreme Court premises until he shall have filed said transcript or proved to the satisfaction of the Court that the same can not be done. The stenographer concerned was given opportunity to go, under custody, to Cebu City where he claimed to have entrusted his notes to a certain individual. Upon his return to Manila, he reported that he was unable to locate the same. Then later, upon the Court's requiring the Solicitor General to state whether he could present his brief based on the evidence existing on the record (appellant Oscar Castelo having filed his brief notwithstanding the absence of the testimonies of said five witnesses), the Solicitor General informed the Court that another stenographer who was engaged privately by appellant Oscar Castelo during the trial might be able to reproduce the testimonies of these witnesses. Upon further inquiry, however, said other stenographer manifested that he took down no notes of the testimonies in question inasmuch as he was not present during the time they were given in court. Confronted with this situation, the Court ordered the release from detention of stenographer Claro Leuterio, at the same time requesting the Secretary of Justice to have the loss of these official records investigated with a view to prosecuting, if warranted, stenographer Leuterio for infidelity in the custody of official documents.

The Government can not, therefore, be blamed for the resulting¹ delay in the final termination of this case. In this connection, we quote the following from the decision of this Court, speaking through Chief Justice Ricardo Paras, in the case of *People vs. Dagatan*, 90 Phil., 294:

"In the present case, there might have been a delay that has worked hardship or disadvantage on the accused, but the same cannot be attributed solely to the Government, since reconstitution is as much the duty of the prosecution as of the defense (*Gunabe vs. Director of Prisons*, 77 Phil. 993; 44 Off. Gaz., 1244).

* * *

"The following passage from the decision of this Court in *U. S. vs. Laguna*, 17 Phil. 532, 540, has full application to the case now before us: Every person who finds himself in a court of justice, in whatever capacity, must hold himself while there subject to those unforeseen events which suddenly and unavoidably intervene and change the whole aspect of things. The sickness or death of the judge, or of counsel for the prosecution, the destruction by fire or flood of the court-house and all the records and evidence of the pending trial—any of these things are sufficient to interrupt the course of the proceedings and to require that they be begun anew. Such their occurrence, so no one can legally lose or profit by their events weigh equally against all. As no one can be charged with results. While the law protects persons charged with crime from the unjust and arbitrary acts of man, there is no shield which may be interposed against the tyranny of unforeseen events. Until the proceedings which, under the system which the law provides, constitute his trial are terminated, the happening of an unforeseen event which renders the continuance of his trial for the time impossible, as it can not be used for his conviction, can not be urged for his absolution."

Wherefore, the petition for bail presented by accused-appellant Castelo are hereby denied, and this case is remanded to the court of origin with directions to reconstruct, in the manner indicated above, the testimony of the witnesses, the stenographic notes of whose original testimony have been lost, within sixty (60) days from the receipt of this Resolution, and to elevate the same to this Court within ten (10) days after the same has been

retaken. The stenographer or stenographers who will assist during the re-hearing shall immediately transcribe their notes and shall file their transcripts with this Court within thirty (30) days after the conclusion of the retrial. So ordered.

Bengzon, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes and Dizon, JJ., concur.

[1] Approved March 19, 1923.

[2] Sec. 5(h), Rule 124.

[3] Sec. 6, Rule 124.

PARAS, C. J., dissenting:

In my opinion, Rule 117, Section 2 and Section 5 are applicable. Even Act No. 3110, Section 6, can be made applicable. See also U. S. vs. Tan, 4 Phil., 626-627 and U. S. vs. Laguna, 17 Phil., 537.

PADILLA, J., concurring and dissenting:

I agree to that part of the majority opinion concerning the reconstruction of the lost stenographic notes of the testimony of witnesses taken at the trial of the appellant in the Court below, but disagree to that part thereof which denies the appellant's petition for bail, the disposition of his appeal having been long delayed due to the fault or negligence of the stenographer who took down the notes of the testimony of some witnesses and lost them. In this circumstance, although the appellant was sentenced to death, his release on bail may be granted under such terms and conditions as would insure his availability or personal appearance and surrender of his person to the Court when the reading and execution of the final judgment rendered in the case be set by the trial court.

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