

## EMMA DELGADO, PETITIONER, VS. HON. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

*G.R. No. L-46392. November 10, 1986*

Ponente: PARAS, J.

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### PARAS, J.:

This is a petition for "Certiorari and Mandamus with prayer for a Writ of preliminary injunction" to review the following orders:

(a)

Order of the Court of Appeals dated April 20, 1977 denying petitioner's Urgent Motion to Set Aside Entry of Judgment, to Recall the Records and allow the movant to personally receive copy of the decision dated February 16, 1977;

(b)

Resolution of the Court of Appeals dated June 3, 1977 denying petitioner's Motion for Reconsideration dated May 23, 1977; and

(c)

Order dated May 11, 1977 of the Court of First Instance of Manila ordering petitioner's arrest and confiscation of her bond.

Emma R. Delgado, herein petitioner, together with Gloria C. Tortona, Celia Capistrano and Catalino Bautista alias Atty. Paulino Bautista, the last named still at large, was charged with estafa thru falsification of public and/or official documents resulting in deceiving one Erlinda Rueda, a Medical Technologist, in arranging her travel to the United States.

All the accused (except Catalino Bautista) pleaded not guilty upon arraignment and trial on the merits ensued. Herein petitioner Emma R. Delgado was assisted and represented by her counsel de parte, Atty. Lamberto G. Yco. On December 13, 1973, the date set for the continuation of the defense evidence, said Atty. Yco failed to appear despite proper and previous notice. Instead, he sent a telegram requesting for postponement on the ground allegedly that he was sick. No medical certificate was however submitted. The trial fiscal objected, believing that the motion was dilatory because there had been numerous postponements in the past at petitioner's behest. The trial Court sustained the fiscal's objection thereto, considered Emma Delgado to have waived presentation of her evidence, and considered the case submitted for decision.

Thereafter, a judgment of conviction was rendered by the trial court, dated March 20, 1974, the dispositive portion of which reads as follows:

"WHEREFORE, in view of the foregoing, the Court finds the accused Gloria C. Tortona, Emma R. Delgado and Celia Capistrano guilty beyond reasonable doubt of the complex crime of Estafa thru Falsification of

Public and/or Official Documents, and each is hereby sentenced to an indeterminate penalty ranging from two (2) years and four (4) months of prision correccional, as minimum, to six (6) years, also of prision correccional, as maximum, to pay a fine of P5,000.00, without subsidiary imprisonment in case of insolvency and to indemnify the offended party Erlinda Ruedas in the amount of P7,431.00. Each is further ordered to pay, jointly and severally, said complainant moral damages in the amount of P5,000.00, and one fourth of the costs of the proceedings.

SO ORDERED."

Accused Gloria C. Tortona did not appeal from the aforesaid decision. Accused Celia Capistrano and petitioner Emma R. Delgado appealed to the Court of Appeals raising the issue of "whether or not on the basis of the evidence and the law the judgment appealed from should be maintained."

On December 6, 1976, the Court of Appeals rendered judgment affirming the decision of the trial court as to herein accused-petitioner Emma R. Delgado and reversing the judgment as to Celia Capistrano, the dispositive part of which judgment reads as follows:

"IN VIEW WHEREOF, on reasonable doubt, judgment as to appellant Capistrano is reversed with proportionate costs de officio and cancellation of bail bond, but judgment as to appellant Delgado is affirmed with proportionate costs.

SO ORDERED."

On December 27, 1976, an entry of final judgment was issued and on February 1, 1977, the records of the case were remanded to the lower court for execution of judgment.

Believing that there was irregularity in the sending of notices and copy of the decision as petitioner was not informed or notified of said decision by her counsel on record, Atty. Lamberto G. Yco, herein petitioner filed on February 17, 1977 with respondent Court of Appeals an "Urgent Motion to Set Aside Entry of Judgment, to Recall the Records and Allow the Movant to Personally Receive Copy of the Decision."

This motion was denied by respondent Court of Appeals in its Resolution dated April 20, 1977.

On May 11, 1977 an Order was issued by respondent Court of First Instance of Manila directing the arrest of herein petitioner Emma R. Delgado and the confiscation of her bond for failure to appear at the execution of judgment on May 11, 1977.

On May 27, 1977, petitioner filed a Motion for the Reconsideration of the Order denying her Motion to Set Aside Entry of Judgments, etc., invoking as one of the grounds therein, the newly discovered fact that petitioner came to know for the first time only on May 19, 1977 that Atty. Lamberto G. Yco is not a member of the Philippine Bar. Petitioner prayed that she be granted a new trial on the ground that she was deprived of her right to be defended by competent counsel.

On June 3, 1977, respondent Court of Appeals denied petitioner's motion, hence, she filed the instant petition before this Court.

The main thrust of petitioner's arguments is that she is entitled to a new trial and therefore, all the assailed orders of respondent courts should be vacated and set aside, because her "lawyer", Atty. Lamberto G. Yco, is not a lawyer.

We find the petition impressed with merit.

This is so because an accused person is entitled to be represented by a member of the bar in a criminal case filed

against her before the Regional Trial Court. Unless she is represented by a lawyer, there is great danger that any defense presented in her behalf will be inadequate considering the legal perquisites and skills needed in the court proceedings. This would certainly be a denial of due process.

WHEREFORE, the assailed judgment is SET ASIDE, and a new one is hereby rendered, remanding the case to the trial court for new trial.

Feria, (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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