

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ESMAEL SALIDO, MANNY BULOD, TENG CODALEZ, CAMARUDIN
SILANGAN, ROBERT BALABAGIN, ALLAN KAWASA, FAHAD ZACARIA
ALIAS “ALVIN,”...**

G.R. No. 116208. July 05, 1996

Ponente: MELO, J.

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MELO, J.:

Allan Kawasa is before us on appeal from the decision of the Regional Trial Court of the National Capital Judicial Region, convicting him, together with two others, Fahad Zacaria alias "Alvin" and Molibas Sindad (who did not appeal), of the crime of kidnapping and sentencing him to suffer the penalty of reclusion perpetua and to indemnify, jointly and severally with the other two above-named accused, the offended party in the sum of P20,000.00. He now seeks a retrial.

Accused-appellant, with ten others and several John Does, was charged in an Amended Information which reads as follows:

That on or about 06 January 1993 at around 7:00 in the morning along Taft Avenue, Pasay City . . . the above-named accused conspiring, confederating and mutually helping one another, after introducing themselves as CIS agents, did then and there, by force and intimidation, wilfully, unlawfully and feloniously take, carry away and thereafter, detain Elizabeth Luega, a female, in the middle of a sugar cane field at Sitio Malipa, Barangay Malaking Pulo, Tanauan, Batangas against her will and consent thereby depriving her of liberty.

(pp. 10-11, Rollo.)

Following a plea of not guilty and full-blown trial, the lower court rendered a decision on September 15, 1993, the dispositive portion of which reads:

WHEREFORE, accused Allan Kawasa, Molibas Sindad and Fahad Zacaria, alias Alvin, are found guilty beyond reasonable doubt of the crime of kidnapping, as charged in the aforequoted Amended Information; and they are each sentenced to suffer the penalty of reclusion perpetua and to pay jointly and severally the offended party, Elizabeth Luega, the sum of P20,000.00, as moral damages.

Accused Esmael Salido, Manny Bulod, Alex Inedal, Bartolome Mabuti and Roberto Divina, for failure of the prosecution to prove their guilt beyond reasonable doubt, are acquitted of the charge against them.

As aforesaid, only Allan Kawasa interposed an appeal, and in his brief, he assigns a single error, asserting that there was a mistrial resulting in a miscarriage of justice insofar as he is concerned due to the inefficiency and negligence of his counsel.

The facts of the case are as follows:

On January 6, 1993 at around 7 o'clock in the morning, Loreta Chua, her two sons Stanley and Jermyn, and her housemaid Elizabeth Luega, were on board Mrs. Chua's car, driven by Bartolome Mabuti, when they were blocked by another car, along Taft Avenue. Three unidentified men, later found to be Allan Kawasa, Molibas Sindad, and "Alvin" Zacaria alighted from the blocking car, introduced themselves as Criminal Investigation Service (CIS) agents and boarded Mrs. Chua's vehicle. Sindad took the wheel from Mabuti, Zacaria sat beside Mabuti and Stanley in the front seat, while Kawasa sat beside Luega, Jermyn, and Mrs. Chua at the back seat. They then proceeded towards South Super Highway, with the car that blocked them and another back-up car following them.

Upon reaching Susana Heights at around 9 o'clock, the three vehicles stopped. Mrs. Chua alighted from her car, with Kawasa following. They talked for a while. Then Kawasa returned and boarded Mrs. Chua's car. They drove away with the occupants of the two cars, leaving Mrs. Chua behind. Luega, Mabuti and the two children were then blindfolded and their hands tied. They were brought to a nipa hut in the middle of a sugar field where they were kept. Here, Luega was raped by one of the men whom she was not able to identify.

On January 7, 1993, the Criminal Investigation Service of the Philippine National Police (PNP) conducted an operation in Bongo, Laguna for the rescue of the kidnapped individuals. At about 7 o'clock of the same evening, police operatives rescued Mabuti Luega, and the Chua children, from the hands of their abductors after a brief gunfight.

On January 8, 1993, a team led by Chief Inspector Allen Fortes of the PNP from Camp Crame apprehended accused Bulod, Silangan, Balabagin, and Codalez in Bacoor, Cavite and brought them to Camp Crame for questioning.

On their way to Camp Crame, Fortes and his team met a speeding Ford Cortina car with Plate No. NKV 997, which was suspected as one of the cars used by the kidnappers. Upon intercepting said vehicle, the peace officers found Kawasa, Sindad, Zacaria, Salido, and Medal, who were thereupon arrested and subsequently charged with kidnapping and serious illegal detention.

Accused-appellant denies involvement in the crime and claims he was deprived the opportunity to submit his evidence and to disprove the evidence for the prosecution due to the inefficiency and negligence of his counsel, for which reason, accused-appellant urges us to reopen the case with respect to him.

Such submission is not acceptable.

It is a well-settled rule that the client is bound by his counsel's conduct, negligence, and mistakes in handling the case and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently (*Tupas vs. Court of Appeals*, 193 SCRA 597 [1991]; *Alabangas vs. Intermediate Appellate Court*, 204 SCRA 304 [1991]). *Aguila vs. CFI of Batangas*, Br. 7, 160 SCRA 352 [1988], *Pulido vs. CA*, 122 SCRA 63 [1983], *Aylion vs. Sevilla*, 156 SCRA 257 [1987], *Legarda vs. CA*, 195 SCRA 418 [1991].

In *Tesoro vs. Court of Appeals*, 54 SCRA 296, 304 [1973], this Court, reiterating the rule on the effects of counsel's acts upon his client, categorically declared:

It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A client is bound by the mistakes of his lawyer. If such grounds were to be admitted and reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned x x x. Mistakes of attorneys as to the competency of a witness, the sufficiency, relevancy or irrelevancy of certain evidence, the proper defense, or the burden of proof x x x failure to introduce certain evidence, to summon witnesses, and to

argue the case are not proper grounds for a new trial, unless the incompetency of counsel is so great that this client is prejudiced and prevented from properly presenting his case" (Vol. 2, Moran, Comments on the Rules of Court, pp. 218-219-220; citing Rivero vs. Santos et al., 98 Phil. 500, 503-540; Isaac vs. Mendoza, 89 Phil. 279; Montes vs. Court, 48 Phil. 64; People vs. Manzanilla, 43 Phil. 167; U.S. vs. Dungca, 27 Phil. 274; U.S. vs. Umali, 15 Phil. 33; see also People vs. Ner, 28 SCRA 1151, 1164). In the 1968 case of Palanca vs. American Food etc. (24 SCRA 819,828), this principle was reiterated.

It is only in cases involving gross or palpable negligence of counsel when the courts must step in and accord relief to a client who has suffered thereby (Legarda vs. CA, 195 SCRA 418 [1991]; Alabang vs. IAC, 204 SCRA 304 [1991]).

In the case at bar, accused-appellant has not shown such carelessness or negligence in his lawyer's discharge of his duties, or that his counsel was singularly inept or motivated by bad faith or excusably misled by the facts, so as to justify us in not applying the rule that clients are bound by the acts of their counsel, including his mistakes.

The record shows that accused-appellant's counsel attended the hearings, cross-examined the prosecution witnesses, presented accused-appellant to testify and introduced his own evidence which to him was sufficient and relevant, and after an adverse decision, appealed the case.

If there is anybody to blame, it is accused-appellant himself. Accused-appellant, in his testimony and in his brief, admitted having accosted or blocked the car drive by Mrs. Chua's driver, Bartolome Mabuti, allegedly because he was requested to help arrest Mabuti (Appellant's brief, p. 14). Such testimony and related evidence were considered by the trial court (Decision RTC, par. 3, p. 4). This belies accused-appellant's claim that his counsel did not present evidence. This is perhaps the reason why accused-appellant does not challenge the decision of the trial court, but opted to train his guns on his former counsel.

If indeed accused-appellant felt and believed that his counsel was inept, that he should have taken action, such as discharging him earlier, instead of waiting until an adverse decision was handed, and thereupon heap all blame and condemnation on his counsel, who cannot now be heard to defend himself. This cannot be allowed, for to do otherwise would result in a situation where all a defeated party would have to do salvage his case is to claim neglect or mistake on the part of his counsel as a ground for reversing an adverse judgment. There would be no end to litigation if this were allowed as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on ad infinitum. This would render court proceedings indefinite, tentative, and subject to reopening at any time by the mere subterfuge of replacing counsel (Aguila vs. CFI of Batangas, Br. I, supra; Tupas vs. CA, 193 SCRA 597 [1991]).

WHEREFORE, the decision appealed from is hereby **AFFIRMED**, with the slight modification that the civil indemnity of P20,000.00 which accused-appellant was ordered to pay offended party is increased to P50,000.00 in consonance with current jurisprudence.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Francisco, and Panganiban, JJ., concur.

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