

CARMELITA G. ABRAJANO, PETITIONER, VS. HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. 120787. October 13, 2000*

Ponente: KAPUNAN, J.

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On January 4, 1993, the Regional Trial Court (RTC) of Manila convicted petitioner Carmelita Gilbuena-Abrajano of Bigamy,[1] which conviction was subsequently affirmed by the Court of Appeals (CA). Petitioner pleaded her innocence before this Court, but we denied her petition for review. After taking a second hard look, we now grant her a new trial.

The facts upon which petitioner's conviction rests, as gathered from the decisions of the courts below, are as follows:

The killing of Atty. Jose J. Alfane of the Citizens Legal Assistance Office (CLAO) on June 11, 1983 prompted the National Bureau of Investigation (NBI) to look into the possible complicity of Atty. Carmelita Gilbuena-Abrajano, a lawyer from the same office. During the investigation, CLAO furnished the NBI with a Memorandum dated July 21, 1983 addressed to the Minister of Justice and signed by Atty. Marcial Lagunzad, CLAO Officer-in-Charge. The Memorandum recommended the termination of Carmelita's services for immorality, among other grounds. Attached as annexes to the Memorandum were several documents, including certified copies of two marriage contracts. The first marriage contract,[2] dated January 3, 1968, was by and between Mauro Espinosa, the principal suspect in the killing of Atty. Alfane, and a certain Carmen Gilbuena. The second,[3] dated June 21, 1974, was by and between Roberto Abrajano and Carmelita Gilbuena. Likewise attached to the Memorandum was Carmelita's Personal History Statement that she had previously submitted to the Ministry of Justice.

From these documents, the NBI concluded that a *prima facie* case for bigamy against petitioner existed. They inferred that Atty. Carmelita Gilbuena, who contracted marriage with Roberto Abrajano on June 21, 1974, is the same person as Carmen Gilbuena who married Mauro Espinosa on January 3, 1968, since:

First, Carmelita and Carmen have the same set of parents (Filomeno Gilbuena and Adelaida Juangco), as stated in both Carmelita and Carmen's respective marriage contracts.

Second, Carmelita declared in her Personal History Statement, which she had previously submitted to the Ministry of Justice, that her date of birth is November 9, 1948. When Carmen married Mauro Espinosa on January 3, 1968, Carmen, according to their marriage contract, was 19 years and 1 month old, then about the same age as Carmelita.

Third, in the same Personal History Statement, Carmelita listed her brothers and sisters, none of whom was named "Carmen."

Charged with bigamy before the Manila RTC, petitioner attempted to dispel the theory that she and Carmen

Gilbuena are the same person. In her testimony, she claimed that Carmen is her half-sister, the daughter of her father with another woman. Petitioner also offered in evidence a Birth Certificate[4] to prove that her true name is "Carmelita."

Petitioner likewise presented Josefina L. dela Cruz, a document examiner from the Philippine National Police Crime Laboratory. Ms. dela Cruz examined the signature of Carmen Gilbuena appearing in the marriage contract dated January 3, 1968, and that of Carmelita Gilbuena in the marriage contract dated June 21, 1974, as well as petitioner's specimen handwritings. From said examination, Ms. dela Cruz concluded that the signature appearing in the marriage contract of Carmen Gilbuena, on one hand, and the signature of Carmelita appearing in the marriage contract dated June 21, 1974, on the other, were made by two different persons.

The RTC was not impressed with petitioner's defense, however. The fact that Carmen Gilbuena had approximately the same age and set of parents as that of the accused, as reflected in the two marriage certificates, was deemed by the RTC as too much of a coincidence. It concluded that Carmen and Carmelita are indeed one and the same person.

The trial court faulted petitioner for not presenting corroborative evidence to prove the existence of Carmen Gilbuena. Further, the failure of the accused to refute the contents of the Memorandum recommending her dismissal from the Ministry of Justice for contracting a second marriage while the first was still subsisting was also deemed by the trial court as an admission by silence.

The RTC did not put too much stock on the findings of petitioner's handwriting expert, holding that:

x x x inasmuch as the specimen handwritings submitted by the accused are undated, and there is absolutely no showing on their faces that they were indeed written by the accused herself sometime in the past, said specimen handwritings are at most self-serving that this Court would not swallow them hook, line and sinker. They are handwritings made on pieces of documents, their origin of which were not explained to the satisfaction of the Court. Their credibility as the handwriting of the accused is not at all shown other than the mere assertion of the accused herself.

For the reason that said specimen handwritings were not fully established to be that of the accused written on or at the time the questioned signature was also written, the "significant divergences in handwriting movement, stroke, structures, quality of line, pen lift, spacing and other individual handwriting characteristics" would naturally be found by the Document Examiner.

An examination by this Court of the signature reading "Carmen J. Gilbuena" on Exhibit "B" and the signature reading "Carmelita J. Gilbuena" on Exhibit "D" shows that there is a visible general resemblance between the two signatures. The general resemblance which the Court observes is still visible, notwithstanding the gap of about 6 years between the time the first signature was affixed and that of the second. In the case of *Alcos vs. Intermediate Appellate Court*, 162 SCRA 823, it was ruled that the Court can by itself also examine questioned documents.[5]

Consequently, the RTC found petitioner guilty of Bigamy and sentenced her to suffer the penalty of imprisonment for six (6) years and one (1) day to eight (8) years of prision mayor.

In a Decision dated May 11, 1995, the Court of Appeals affirmed the decision of the RTC. Petitioner's motion for reconsideration was denied for lack of merit in a Resolution dated June 22, 1995.

Petitioner sought the reversal of the Court of Appeals' decision and resolution by filing a petition for review on August 14, 1995 in this Court.

The Court, in a Resolution dated September 20, 1995, denied the petition thus:

Considering the allegations, issues and arguments adduced in the petition for review on certiorari of the decision and resolution of the Court of Appeals, the Court Resolved to DENY the petition for being factual and for failure of the petitioner to sufficiently show that the respondent court had committed any reversible error in rendering the questioned judgment.[6]

Subsequently, on January 31, 1996, the Court issued a resolution stating:

It appearing that a copy of the resolution of September 20, 1995 denying the petition for review on certiorari addressed to counsel for petitioner was returned unserved with notation "unclaimed," the Court Resolved to consider aforesaid resolution as SERVED.[7]

On February 23, 1996, this Court's resolution denying the petition for review became final and executory. Entry of judgment was made on April 12, 1996.[8]

Apparently unaware of the resolution denying her petition and of the subsequent entry of judgment, petitioner on July 15, 1996 filed a motion for leave to admit the supplemental petition attached therewith.

The Court, in a Resolution[9] dated August 5, 1996, denied the motion for leave to admit supplemental petition in view of the denial of the petition, and the entry of judgment. Considering the denial of the motion for leave, the Court merely noted without action petitioner's supplemental petition.

On August 6, 1996, petitioner moved for a reconsideration of the September 20, 1995 Resolution denying her petition. On September 18, 1996, the Court issued a resolution[10] noting without action said motion since entry of judgment was already made.

On January 7, 1998 petitioner filed an "Omnibus Motion," which the Court, on March 4, 1998, also resolved to note without action.

On the same date, the Office of then Chief Justice Andres R. Narvasa received a letter from petitioner reiterating her innocence and praying for the Chief Justice's kind intercession. On March 11, 1998, the Court, without setting aside the entry of judgment, resolved to require the Solicitor General to comment on petitioner's letter. After several motions for extensions, the Solicitor General complied, and filed his Comment. This was followed by a Reply from petitioner.

We shall resolve petitioner's Omnibus Motion.

Petitioner prays that the Court vacate the entry of judgment and set aside the judgment of conviction on grounds of reasonable doubt. In the alternative, she asks that the Court remand the case to the trial court so that petitioner may prove her innocence by means of additional evidence.

Petitioner's prayer to vacate the entry of judgment is granted.

Before the latest revision of the Rules of Civil Procedure, Section 8, Rule 13[11] read as follows:

Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time. (Underscoring supplied.)

Aguilar vs. Court of Appeals[12] restated the well-settled principles relating to this provision:

The general rule is that service by registered mail is complete upon actual receipt thereof by the addressee. The exception is where the addressee does not claim his mail within five (5) days from the date of the first notice of

the postmaster, in which case the service takes effect upon the expiration of such period.

Inasmuch as the exception only refers to constructive and not actual service, such exception must be applied upon conclusive proof that a first notice was duly sent by the postmaster to the addressee. Not only is it required that notice of the registered mail be sent but that it should also be delivered to and received by the addressee. Notably, the presumption that official duty has been regularly performed is not applicable in the situation. It is incumbent upon a party who relies on constructive service or who contends that his adversary was served with a copy of a final order or judgment upon the expiration of five days from the first notice of registered mail sent by the postmaster to prove that the first notice was sent and delivered to the addressee.

The best evidence to prove that notice was sent would be a certification from the postmaster, who should certify not only that the notice was issued or sent but also as to how, when and to whom the delivery was made. The mailman may also testify that the notice was actually delivered.

Aguilar also illustrated how these principles operate by citing previous cases:

In *Barrameda v. Castillo*, we again faulted the trial court for applying the presumption as to constructive service 'literally and rigidly, and failing to require the adverse party to present the postmaster's certification that a first notice was sent to opposing party's counsel and that notice was received. The envelope containing the unclaimed mail was presented in court. On its face, the envelope bore the notation "Returned to sender. Reason: Unclaimed.' On the back-side of the envelope bore the legend 'City of San Pablo, Philippines, Jan. 29, 1966' with the dates '2-3-66 and 2-9-66,' and 'R to S, notified 3/3/66.' We stated that the mere exhibition in court of the envelope containing the unclaimed mail is not sufficient proof that a first notice was sent.

In *De la Cruz v. De la Cruz*, we held as error the trial court's mere reliance on the notations on the envelope of the returned order consisting of 'R & S,' 'unclaimed' and the stamped box with the wordings '2nd notice' and 'last notice' indicating that the registered mail was returned to sender because it was unclaimed in spite of the notices sent by the postmaster to the addressee. No other proof of actual receipt of the first notice was presented in court.

In another case, *Johnson & Johnson (Phils.), Inc. v. Court of Appeals*, petitioners assailed the following resolution of the appellate court:

Considering that the copy of the resolution dated November 29, 1990 served upon counsel for respondent was returned unclaimed on January 3, 1991, and afterwards the same copy sent to the private respondent itself at given address was likewise returned unclaimed on February 28, 1991, the Court RESOLVED to DECLARE service of the said resolution upon the private respondent complete as of February 28, 1991, pursuant to Sec. 8, Rule 13, Rules of Court.

We held that the Court of Appeals erred in ruling that therein petitioner had been duly served with a copy of the assailed resolution, as there was utter lack of sufficient evidence to support the appellate court's conclusion. Nothing in the records showed how, when, and to whom the delivery of the registry notices of the registered mail addressed to petitioner was made and whether said notices were received by the petitioner. The envelope containing the unclaimed mail merely bore the notation 'return to sender: unclaimed' on its face and 'Return to: Court of Appeals' at the back. We concluded that the respondent court should not have relied solely on these notations to support the presumption of constructive service, and accordingly, we sent aside the questioned resolution and ordered the appellate court to properly serve the same on therein petitioner.

In the case of *Aguilar* itself, we held that there was no proof of notice to the addressee since:

x x x in the Court of Appeals rollo there is no postmaster's certification to the effect that the registered mail was unclaimed by the addressee Atty. Amador and thus returned to sender, after first notice was sent to and received by addressee on a specified date. Thus, there is no conclusive proof that notice was sent to Atty. Amador and actually received by him. Absent such proof, the disputable presumption of completeness of

service does not arise as to the registered mail addressed to Atty. Amador.[13]

The need for conclusive proof of the first notice was also stressed in Santos vs. Court of Appeals,[14] thus:

The finding of respondent court that petitioner and his co-appellees were considered to have received a copy of the decision on 20 June 1995 or five (5) days from the date of first notice of the postmaster, in the absence of conclusive proof as it merely relied on the dates of the notices and the notation 'Unclaimed: Return to Sender' stamped on the envelope containing its decision, was clearly arrived at arbitrarily. Consequently, certiorari lies.

In this case, all that appears in the Rollo[15] is an envelope that contained the Resolution dated September 20, 1995, and addressed to Atty. Roberto C. Abrajano. Stamped on the front of the envelope are the dates indicating the first, second and third attempts to serve the same on petitioner. At the back thereof are the notations "RTS" (meaning, "Return To Sender"), "UNCLAIMED," and "ALWAYS NOBODY HOME." Said envelope, as we have seen above, does not constitute sufficient proof of completeness of service. The fact is, no certification from the postmaster that first notice was sent by him, and actually received by petitioner, appears on record, a point the Solicitor General himself concedes.[16]

On the other hand, attached as Annex 2[17] to petitioner's Omnibus Motion is a certification dated October 25, 1996 from Postmaster Joseph O. Edradan of the Antipolo Post Office stating that -

x x x eversince, [sic] the letter carrier assigned in that area [Atty. Roberto Abrajano's address] [,] actually deliver[s] registered mails [sic] to the given address and/or addresses Agent [sic] by schedule (M-W-F) and [does] not issue or serve notices to the addressee because he believed, he was able to speed-up deliveries and at the same time, he minimized congestion as people do not have to line up anymore to claim their registered mails.

As there is no conclusive proof of service of the Resolution dated September 20, 1995 denying the petition - indeed, petitioner has produced proof to the contrary - said resolution cannot be deemed final and executory. The entry of judgment must be vacated.

We are not prepared, however, to grant petitioner an acquittal. Nevertheless, we consider her plea for a new trial.

In her Omnibus Motion, petitioner gives a background - or at least, her version - of the circumstances that led to the filing of the charge of bigamy.

Hinting at a possible ill motive for the charge, petitioner claims that, while a CLAO Trial Attorney in the office of Deputy CLAO Chief Marcial Lagunzad, she was sexually harassed by the Deputy CLAO Chief himself. Petitioner however rebuffed Atty. Lagunzad's advances and physically injured him in the process. We gather that petitioner would like us to believe that the animosity between her and Atty. Lagunzad would account for the purportedly dubious Memorandum signed by Lagunzad recommending her dismissal for bigamy. Notably, it was CLAO which furnished the NBI with the documents implicating petitioner.

Petitioner also attempts to shed light on her alleged complicity in the killing of Atty. Alfane. To escape Atty. Lagunzad's revolting behavior and possible retaliation, petitioner was able to work for her transfer to another station under the late Atty. Jose Alfane. Petitioner's relationship with her new boss soon turned sour, however, when Atty. Alfane allegedly instructed petitioner to appear in a private case. Petitioner declined, causing Atty. Alfane to react violently. The incident later led to a physical confrontation between petitioner and Atty. Alfane, culminating in the filing of charges and counter-charges. The charges against petitioner were subsequently dismissed but not those against Atty. Alfane, who was forced to make bail. Nevertheless, petitioner is quick to state that she and Atty. Alfane had buried the hatchet way before his death; consequently, petitioner desisted in her complaint against him.

Petitioner likewise explains her reasons for not presenting any relative to testify that she and Carmen Gilbuena, supposedly her father's daughter with another woman, are two different persons. She claims that she did not have the heart to tell her parents about her predicament since, at the time she learned of the charge, her father was paralyzed and her mother had just suffered a stroke. Nor did she bother to share her burden with her brothers and sister for fear that news of the case would reach her sick parents.

As regards her failure to state Carmen Gilbuena's name in her Personal History Statement, petitioner explains that she did not want to make official her father's womanizing and infidelity. Moreover, she did not consider any of her half siblings, Carmen among them, as "family" since petitioner did not have any contact with any of them.

All the foregoing, of course, are mere allegations unsubstantiated by any evidence; we only have petitioner's word to go by. If at all, the only sustainable ground for a new trial is petitioner's ascription to her lawyer, Atty. Reynaldo Calabio, several "serious mistakes" in the conduct of the trial.

First, petitioner faults Atty. Calabio for failing to present Mrs. Priscila C. Alimagno, the only surviving witness to the marriage of Mauro Espinosa and Carmen Gilbuena. Atty. Calabio purportedly advised her that the prosecution was not able to establish the identity of Carmen and Carmelita. He was confident that petitioner's testimony, as well as that of the handwriting expert, was sufficient to cast doubt on the prosecution's case. Nor did counsel take steps to challenge the veracity or authenticity of the Lagunzad Memorandum recommending the termination of petitioner's services for bigamy, believing that the document was hearsay.

Petitioner also submitted documents, attached as annexes to her Omnibus Motion, to prove that Carmen Gilbuena actually exists and thus belie the theory of the prosecution that petitioner and Carmen are one and the same person. These documents, which were not offered during the trial, include:

1. Death Certificate of Carmen Gilbuena Espinosa (Annex "17"). The death of Carmen, her lying in state for four (4) days and her cremation can easily be verified at the Henry's Funeral Parlor and confirmed by witnesses.
2. Affidavit of Mrs. Priscila Alimagno (Annex "16") - widow of the late mayor who solemnized the marriage between Mauro Espinosa and Carmen Gilbuena-Espinosa and who is now the only living witness to the said marriage and who was also chosen "ninang". Alimagno was all the while available for presentation during the trial, had petitioner not been persuaded by her former lawyer that there was no need anymore because according to him (former lawyer), nobody from the prosecution not even the complainant NBI nor the witness Local Civil Registrar, personally knew the accused in answer to questions of the Honorable Judge. Such non-identification of the accused according to counsel was fatal to the prosecution.
3. Joint Affidavit (Annex "23") of petitioner's parents - her 76 year old father and her late mother (who died only last July 11, 1997) and who, upon learning about this case, wanted to testify that:
 - a) Her father actually had children with other women, one of whom was Carmen, which fact was even mentioned by petitioner during the trial.
 - b) As an infant, Carmen was left by her mother, a night-club employee, with petitioner's father. In turn, the common father of both Carmen and Carmelita gave the child to her paternal grandmother and her aunt with whom the child grew up. Petitioner never came to know Carmen's mother. Because their father was a government employee who was afraid of being charged with immorality, Carmen was represented as a daughter of petitioner's mother. There was no contact between Carmen and Carmelita because of the animosity between the legitimate family and the illegitimate children. Moreover, Carmen grew up in the province while Carmelita was in Metro Manila. When Carmen was finally accepted by petitioner's mother, Carmelita was in Sta. Cruz, Manila.
 - c) [P]etitioner's parents were the ones who gave consent, being the ones fetched, they were indicated as parents

with their permission, considering that her father is the real father, who worked in the government and who could not be expected to indicate on record that he had a daughter with another woman. Both parents explained that they would do that to anybody under similar circumstances even to a foundling or informally adopted one.

d) [I]t was even petitioner's mother who accompanied Carmen to a doctor when the latter gave birth in 1969 (Annex "26").

e) Carmen died on April 8, 1996 and was at the Henry's Funeral Parlor for four (4) days (Annex "17").

4. Affidavit of petitioner's sister Jocelyn Gilbuena (Annex "18") who took charge of the wake and funeral of Carmen Gilbuena-Espinosa being the only one close to her. Had Mauro Espinosa not have a standing warrant of arrest, he could have testified also.

5. Birth certificate of Carmela Espinosa (Annex "26") proving that Mauro Espinosa and Carmen even had a child.

6. Death Certificate of Carmen Gilbuena Espinosa (Annex "17") proving that she was really a person different from petitioner who is very much alive.

7) Letter of petitioner's husband, Roberto Abrajano (Annex "24"), categorically asking whether or not petitioner resigned or was really dismissed as falsely testified to by complainant NBI.

8) Certification or Reply of the Public Attorney's Office (PAO or formerly CLAO- Annex "1") proving that contrary to the malicious, false/falsified xerox copy of a partial document merely recited by the NBI without presenting anybody to identify the same, petitioner actually resigned.[18]

The Solicitor General, although of the opinion that these pieces of evidence are not sufficient to reverse petitioner's conviction, does not oppose the presentation of other evidence by petitioner through a new trial. He states:

While the OSG is the counsel of the Republic and the People of the Philippines, it is likewise mandated by law to see to it that justice is done to all citizens in court.

Considering that it is the petitioner's freedom which is at stake, and considering further that the present proceeding is the very last chance for petitioner to prove her innocence, the OSG will not interpose any objection to the presentation of additional evidence in the trial court by way of new trial to allow petitioner to establish that Carmelita Gilbuena and Carmen Gilbuena are to different persons particularly the official copy of the birth certificate of Carmen Gilbuena-Espinosa issued the National Statistics Office, school and employment records of, and, permits or licenses issued to, petitioner and to Carmen Gilbuena-Espinosa.[19]

The rule is that the client is bound by the mistakes of his counsel. The mistakes of counsel as to the competency of witnesses, the sufficiency and relevance of evidence, the proper defense, or the burden of proof, his failure to introduce certain evidence, or to summon witnesses or to argue the case, are not proper grounds for a new trial, unless the incompetence of the counsel be so great that his client is prejudiced and prevented from fairly presenting his case.[20] A client is bound by the action of his counsel in the conduct of his case, and can not be heard to complain that the result of the litigation might have been different had counsel proceeded differently.[21] Petitioner, therefore, is precluded from harping on the alleged tactical blunders of her lawyer, Atty. Calabio.

Notably, Atty. Calabio's co-counsel during the trial is petitioner's (alleged second) husband, Atty. Roberto C. Abrajano who, it can be safely assumed, was vigilantly looking after the interests of his client-wife and mother of his children. Moreover, petitioner is herself a trial lawyer who admittedly was advised of, and consented to, the strategy proposed and employed by Atty. Calabio.

Nevertheless, courts of last resort have occasionally relaxed the strict application of the rule that the acts of

counsel bind the client in criminal cases, where the defendants, having otherwise a good case were able to satisfy the Court that acquittal would in all probability have followed the introduction of certain testimonies, which were not submitted at the trial under improper or injudicious advise of incompetent counsel.[22] While conceding that these cases are extremely rare, the Court, in *United States v. Umali*,^[23] allowed for the relaxation of the rule. Where there are very exceptional circumstances, and where a review of the whole record taken together with the evidence improvidently omitted would clearly justify the conclusion that the omission had resulted in the conviction of one innocent of the crime charged, a new trial may be granted.

Thus did the Court grant a new trial in *De Guzman v. Sandiganbayan*,^[24] where the counsel for the accused demurred to the prosecution evidence even after leave of court was denied. This Court allowed petitioner to present his evidence, rationalizing that:

The power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned. In not a few instances, this Court ordered a new trial in criminal cases on grounds not mentioned in the statute, viz: retraction of witness, negligence or incompetency of counsel, improvident plea of guilty, disqualification of an attorney de officio to represent the accused in trial court, and where a judgment was rendered on a stipulation of facts entered into by both the prosecution and the defense.

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Under the circumstances, higher interests of justice and equity demand that petitioner be not penalized for the costly importunings of his previous lawyers based on the same principles why this Court had, on many occasions where it granted new trial excused parties from the negligence or mistakes of counsel. To cling to the general rule in this case is only to condone rather than rectify a serious injustice to petitioners whose only fault was to repose his faith and entrust his innocence to his previous lawyers.

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Let us not forget that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case.

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The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation." And the grim reality petitioner will surely face, if we do not compassionately bend backwards and flex technicalities in this instance, is the disgrace and misery of incarceration for a crime which he might not have committed after all. More so, considering that petitioner's record as public servant remained unscathed until his prosecution. Indeed, "while guilt shall not escape, innocence should not suffer.

In resume, this is a situation where a rigid application of rules of procedure must bow to the overriding goal of courts of justice to render justice where justice is due-to secure to every individual all possible legal means to prove his innocence of a crime of which he is charged. To borrow Justice Padilla's words in "*People v. CA, et al.*," (where substantial justice was upheld anew in allowing therein accused's appeal despite the withdrawal of

his notice of appeal and his subsequent escape from confinement) that "if only to truly make the courts really genuine instruments in the administration of justice," the Court believes it imperative, in order to assure against any possible miscarriage of justice resulting from petitioner's failure to present his crucial evidence through no fault of his, that this case be remanded to the Sandiganbayan for reception and appreciation of petitioner's evidence.

Another case, *Jose vs. Court of Appeals*,^[25] which involved evidence that was not newly discovered, also demonstrates the attitude by which the Court has applied the rules for a new trial. Consider the following facts:

x x x petitioner was facing a criminal prosecution for illegal possession of a handgrenade in the court below. He claimed to be an agent of the Philippine Constabulary with a permit to possess explosives such as the handgrenade in question. However, he found himself in a situation where he had to make a choice-reveal his identity as an undercover agent of the Philippine Constabulary assigned to perform intelligence work on subversive activities and face possible reprisals or even liquidation at the hands of dissidents considering that Floridablanca, the site of the incident, was in the heart of "Huklandia", or ride on the hope of a possible exoneration or acquittal based on insufficiency of the evidence of the prosecution. Without revealing his identity as an agent of the Philippine Constabulary, he claimed before the trial judge that he had a permit to possess the handgrenade and prayed for time to present the same. The permit however could not be produced because it would reveal his intelligence work activities. Came the judgment of conviction and with it the staggering impact of a five-year imprisonment. The competent authorities then realized that it was unjust for this man to go to jail for a crime he had not committed, hence, came the desired evidence concerning petitioner's appointment as a Philippine Constabulary agent and his authority to possess a handgrenade for the protection of his person, but, it was too late according to the trial court because in the meantime the accused had perfected his appeal.

The Court, considering these peculiar circumstances, allowed petitioner therein a new trial, describing the same as a "new invention to temper the severity of a judgment or prevent the failure of justice."^[26]

The Court was even more liberal in *People v. del Mundo*.^[27] The accused therein presented, on automatic review by this Court, an affidavit from the alleged rape victim recanting her testimony, as well as a medico-legal report contradicting that offered in the court a quo and relied upon in rendering the judgment of conviction. Although these pieces of evidence did not constitute newly discovered evidence under Section 2 (b), Rule 121 of the Rules of Court, the Court nevertheless -

x x x grant[ed] the motion for new trial on the broader ground of substantial justice, taking into account the variance in the two aforesaid reports. It is the sense of this Court that such serious discrepancy raised substantial doubt as to the guilt of the accused-appellant. Furthermore, the penalty imposed on accused-appellant is death. Here is a situation where a rigid application of the rules must bow to the overriding goal of courts of justice to render justice to secure to every individual all possible legal means to prove his innocence of a crime of which he is charged.

The rule for granting a motion for new trial, among others, should be liberally construed to assist the parties in obtaining a just and speedy determination of their rights. Court litigations are primarily for the search of truth, and a liberal interpretation of the rules by which both parties are given the fullest opportunity to adduce proofs is the best way to ferret out such truth. The dispensation of justice and vindication of legitimate grievances should not be barred by technicalities.

In the case at bar, the circumstance that petitioner allegedly used the name "Carmen" in her first marriage instead of Carmelita, together with the affidavits she submitted, particularly those of Mrs. Priscila Alimagno, supposedly a witness to Carmen's marriage to Mauro Espinosa, and petitioner's sister Jocelyn Gilbuena, who attested that Carmen is indeed their half-sister, would in our mind probably alter the result of this case. A new trial is therefore

necessary if justice is to be served.

Indeed, the basic ground for the grant of a new trial is that there has been a miscarriage of justice and that the grant of a new trial will be in the interest of justice.[28] Where an injustice has been done, and a further trial is necessary to secure justice, courts have not only the right and inherent power, in its discretion, but also the duty, to grant a new trial.[29] The State is not less interested than the individual accused of a crime in his acquittal if he is innocent.[30]

WHEREFORE, the entry of the Resolution dated September 20, 1995 denying the petition in the book of entries of judgments is VACATED. The case is hereby REMANDED to the trial court for the presentation of additional evidence. In accordance with Section 5, Rule 122 of the Rules of Court, the evidence already taken shall stand and the additional evidence that petitioner may introduce shall be taken and considered together with the evidence already in the record.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Defined and punished under Article 349 of the Revised Penal Code.

[2] Exhibit "B."

[3] Exhibit "D."

[4] Exhibit "12."

[5] Rollo, pp. 367-368.

[6] Id., at 69.

[7] Id., at 70.

[8] Id., at 73.

[9] Id., at 110.

[10] Id., at 177.

[11] Now Section 10, Rule 13 of the 1997 Rules of Civil Procedure, which provides:

Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

[12] 310 SCRA 395 (1999).

[13] Note, though, that while there was lack of proof of completeness of service upon the lawyer in Aguilar, we ruled that service upon the party himself was complete.

[14] 295 SCRA 147 (1998).

[15] Rollo, p. 71.

[16] *Id.*, at 435.

[17] *Id.*, at 223.

[18] *Id.*, at 210-212. Underscoring in the original.

[19] *Id.*, at 439.

[20] *People v. Manzanilla*, 43 Phil. 167 (1922), citing 16 C.J. 1145.

[21] *United States v. Umali*, 15 Phil. 33 (1910).

[22] *Ibid.*

[23] *Supra*. See also *United States vs. Dungca*, 27 Phil. 274 (1914).

[24] 256 SCRA 171 (1996).**[25] 70 SCRA 257 (1976).**

[26] Citing *U.S. vs. Laranja*, 21 Phil 500.

[27] 262 SCRA 266 (1996).

[28] 66 C.J.S. New Trial § 14.

[29] 66 C.J.S. New Trial § 202, citing cases. The reference is to trial courts but it has been held that the Supreme Court also has the power to grant a new trial. See *Cuenca vs. Court of Appeals*, 250 SCRA 485 (1995) and cases cited therein.

[30] *United States vs. Raymundo*, 14 Phil. 416 (1909).

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