

NEPLUM, INC., PETITIONER, VS. EVELYN V. ORBESO, RESPONDENT.

G.R. No. 141986. July 11, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Within what period may private offended parties appeal the civil aspect of a judgment acquitting the accused based on reasonable doubt? Is the 15-day period to be counted from the promulgation of the decision to the accused or from the time a copy thereof is served on the offended party? Our short answer is: from the time the offended party had actual or constructive knowledge of the judgment, whether it be during its promulgation or as a consequence of the service of the notice of the decision.

The Case

Before us is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court, seeking to set aside the February 17, 2000 Order[2] of the Regional Trial Court (RTC) of Makati City (Branch 133) in Criminal Case No. 96-246. The Order reads in full as follows:

“Opposition to Notice of Appeal being well-taken, as prayed for, the Notice of Appeal and the Amended Notice of Appeal are denied due course.”[3]

The foregoing Order effectively prevented petitioner from appealing the civil aspect of the criminal proceedings in which the accused was acquitted based on reasonable doubt.

The Facts

The factual antecedents, as narrated by petitioner in its Memorandum,[4] are as follows:

“2.01 On 29 October 1999, the trial court promulgated its judgment (the ‘Judgment’) in Criminal Case No. 96-246 acquitting the accused of the crime of estafa on the ground that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. The accused and her counsel as well as the public and private prosecutors were present during such promulgation.

‘2.01.1 The private prosecutor represented the interests of the petitioner who was the private offended party in Criminal Case No. 96-246.’

“2.02 On 12 November 1999, the petitioner, through the private prosecutor, received its copy of the Judgment.

“2.03 On 29 November 1999, petitioner filed its 25 November 1999 Motion for Reconsideration (Civil Aspect) of the Judgment.

‘2.03.1 Considering that 27 November 1999 was a Saturday, petitioner filed its Motion for Reconsideration on 29 November 1999, a Monday.’

“2.04 On 28 January 2000, a Friday, petitioner received its copy of the 24 January 2000 Order of the Trial Court denying for lack of merit petitioner’s Motion for Reconsideration.

“2.05 On 31 January 2000, a Monday, petitioner filed its 28 January 2000 Notice of Appeal from the Judgment. On the same day, petitioner filed by registered mail its 28 January 2000 Amended Notice of Appeal.

“2.06 On 17 February 2000, the Trial Court issued its Challenged Order, which petitioner received through the private prosecutor on 22 February 2000, denying due course to petitioner’s Notice of Appeal and Amended Notice of Appeal x x x.”[5]

Ruling of the Trial Court

The RTC refused to give due course to petitioner’s Notice of Appeal[6] and Amended Notice of Appeal.[7] It accepted respondent’s arguments that the Judgment from which the appeal was being taken had become final, because the Notice of Appeal and the Amended Notice of Appeal were filed beyond the reglementary period. The 15-day period was counted by the trial court from the promulgation of the Decision sought to be reviewed.

Hence, this Petition.[8]

The Issue

In its Memorandum, petitioner submits this lone issue for our consideration:

“Whether the period within which a private offended party may appeal from, or move for a reconsideration of, or otherwise challenge, the civil aspect of a judgment in a criminal action should be reckoned from the date of promulgation or from the date of such party’s actual receipt of a copy of such judgment considering that any party appealing or challenging such judgment would necessarily need a copy thereof, which is in writing and which clearly express the factual and legal bases thereof to be able to file an intelligent appeal or other challenge.”[9]

The Court’s Ruling

The Petition is unmeritorious.

Preliminary Matter:

Mode of Review

Petitioner brought this case to this Court through a Petition for Review on Certiorari under Rule 45 of the Rules of Court. The Petition seeks to set aside the February 17, 2000 Order of the RTC which, in effect, disallowed petitioner’s appeal of its Judgment.

An ordinary appeal from the RTC to the Court of Appeals (CA) is “taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.”[10] Consequently, the disallowance of the notice of appeal signifies the disallowance of the appeal itself.

A petition for review under Rule 45 is a mode of appeal of a lower court’s decision or final order direct to the Supreme Court. However, the questioned Order is not a “decision or final order” from which an appeal may be taken. The Rules of Court states explicitly:

“No appeal may be taken from:

x x x x x x x x

(d) An order disallowing or dismissing an appeal;”[11]

On the other hand, a petition for certiorari is the suitable remedy that petitioner should have used, in view of the last paragraph of the same provision which states:

“In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.”[12]

In turn, Rule 65, Section 1, provides:

“SEC. 1. Petition for certiorari -- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.”[13] (Italics supplied)

By availing itself of the wrong or inappropriate mode of appeal, the Petition merits an outright dismissal.[14] Supreme Court Circular No. 2-90[15] (hereinafter “Circular”) is unequivocal in directing the dismissal of an inappropriate mode of appeal thus:

“4. Erroneous Appeals – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed.”[16]

The same Circular provides that petitioner’s counsel has the duty of using the proper mode of review.

“e) Duty of counsel – It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client’s cause.”[17]

This Court has often admonished litigants for unnecessarily burdening it with the task of determining under which rule a petition should fall. It has likewise warned lawyers to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to the client’s cause.[18]

On this score alone, the Petition could have been given short shrift and outrightly dismissed. Nevertheless, due to the novelty of the issue presented and its far-reaching effects, the Court will deal with the arguments raised by petitioner and lay down the rule on this matter. As an exception to Circular 2-90, it will treat the present proceedings as a petition for certiorari under Rule 65.

Main Issue:

Timeliness of Appeal

Petitioner contends that an appeal by the private offended party under the Rules of Criminal Procedure must be made within 15 days from the time the appealing party receives a copy of the relevant judgment. It cites Section 6, Rule 122 of the 1985 Rules on Criminal Procedure, which provides:

“SEC. 6. When appeal to be taken. – An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel.” (Italics supplied)

The italicized portion of the provision uses the conjunctive “or” in providing for the reckoning period within which an appeal must be taken. It shall be counted from the promulgation or the notice of the judgment or order.

It is petitioner's assertion that "the parties would always need a written reference or a copy of the judgment x x x to intelligently examine and consider the judgment from which an appeal will be taken." [19] Thus, it concludes that the 15-day period for filing a notice of appeal must be counted from the time the losing party actually receives a copy of the decision or order. Petitioner ratiocinates that it "could not be expected to capture or memorize all the material details of the judgment during the promulgation thereof." [20] It likewise poses the question: "why require all proceedings in court to be recorded in writing if the parties thereto would not be allowed the benefit of utilizing these written [documents]?" [21]

We clarify. Had it been the accused who appealed, we could have easily ruled that the reckoning period for filing an appeal be counted from the promulgation of the judgment. In *People v. Tamani*, [22] the Court was confronted with the question of when to count the period within which the accused must appeal the criminal conviction. Answered the Court:

"The assumption that the fifteen-day period should be counted from February 25, 1963, when a copy of the decision was allegedly served on appellant's counsel by registered mail is not well-taken. The word 'promulgation' in section 6 should be construed as referring to 'judgment', while the word 'notice' should be construed as referring to 'order'." [23]

The interpretation in that case was very clear. The period for appeal was to be counted from the date of promulgation of the decision. Text writers [24] are in agreement with this interpretation.

In an earlier case, [25] this Court explained the same interpretation in this wise:

"It may, therefore, be stated that one who desires to appeal in a criminal case must file a notice to that effect within fifteen days from the date the decision is announced or promulgated to the defendant. And this can be done by the court either by announcing the judgment in open court as was done in this case, or by promulgating the judgment in the manner set forth in [S]ection 6, Rule 116 of the Rules of Court." [26]

Clear as those interpretations may have been, they cannot be applied to the case at bar, because in those instances it was the accused who appealed, while here we are confronted with the offended party's appeal of the civil aspect only. Thus, the question arises whether the accused-appellant's period for appeal, as construed in the cited cases, is the same as that for the private offended party. We answer in the negative.

No Need to Reserve

Independent Civil Action

At the outset, we must explain that the 2000 Rules on Criminal Procedure deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal ones. Thus, the civil actions referred to in Articles 32, [27] 33, [28] 34 [29] and 2176 [30] of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:

1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.
2. The institution or waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.
3. The only limitation is that the offended party cannot recover more than once for the same act or omission.

Thus, deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability ex delicto), but not those liabilities from quasi-delicts, contracts or quasi-contracts. In fact, even if a

civil action is filed separately, the ex delicto civil liability in the criminal prosecution remains, and the offended party may -- subject to the control of the prosecutor -- still intervene in the criminal action in order to protect such remaining civil interest therein.[31] By the same token, the offended party may appeal a judgment in a criminal case acquitting the accused on reasonable doubt, but only in regard to the civil liability ex delicto.

And this is precisely what herein petitioner wanted to do: to appeal the civil liability arising from the crime -- the civil liability ex delicto.

Period for Perfecting an Appeal

Section 6 of Rule 122 of the 2000 Rules on Criminal Procedure declares:

“Section 6. When appeal to be taken. – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motions has been served upon the accused or his counsel at which time the balance of the period begins to run.”

This provision is similar, though not identical, to Section 6 of Rule 122 of the 1985 Rules invoked by petitioner. The difference is that the former makes clear that promulgation refers to “judgment,” and notice refers to “final order appealed from.”

Taken on its face, the provision seems to suggest that the period for any appeal, whether by the accused or by the private offended party, must be counted from and understood in conjunction with the provision on the promulgation of the judgment. This provision mentions the presence of the accused, the judge or the clerk of court in certain instances, and/or the counsel or representative of the accused. Petitioner is correct in observing that the private offended party is not required to be present during the promulgation; in fact, the said party is not even mentioned in the provision.

For clarity, the 2000 Rule on the promulgation of judgment is quoted in full hereunder:

“Section 6. Promulgation of judgment – The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

“If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

“The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

“In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

“If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within

fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.”[32]

Appeal of the Accused Different from That of the Offended Party

Clearly, the Rule on the promulgation of judgment refers to the accused, not to the private offended party, who is not even required to be present during the proceedings. Since the judgment may be promulgated in the absence of the latter, it will be inequitable to count from that date the period of appeal for the said party. It is but logical to begin tolling such period only upon service of the notice of judgment upon the offended party, and not from its promulgation to the accused. It is only through notice to the former that an appeal can reasonably be made, for it is only from that date that the complainant will have knowledge of the need to elevate the case. Till then, the remedy of appeal would not be an option in the event of an adverse judgment.

We clarify also that the situations covered by this Rule (Section 6, Rule 122) are limited to appeals of judgments rendered by regional trial and inferior courts. In higher courts, there is no promulgation in the concept of Section 6 Rule 122 of the 2000 Rules on Criminal Procedure. In the Supreme Court and the Court of Appeals, a decision is promulgated when the signed copy thereof is filed with the clerk of court, who then causes copies to be served upon the parties or their counsels.[33] Hence, the presence of either party during promulgation is not required.

The period to appeal, embodied in Section 6 of Rule 122 of the Rules on Criminal Procedure, cannot be applied equally to both accused-appellant and private offended party. Further bolstering this argument is the second sentence of this provision which mandates as follows:

“x x x. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motions has been served upon the accused or his counsel at which time the balance of the period begins to run.”[34] (Italics supplied)

The above-quoted portion provides for the procedure for suspending and resuming the reglementary period of appeal specifically mentioned in the preceding sentence. However, it is clear that the procedure operates only in relation to the accused. This conclusion can be deduced from the fact that after being interrupted, the period to appeal begins to run again only after the accused or the counsel of the accused is given notice of the order overruling the motion for reconsideration or for new trial. Verily, the assumption behind this provision is that the appeal was taken by the accused, not by the private offended party.

Indeed, the rules governing the period of appeal in a purely civil action should be the same as those covering the civil aspects of criminal judgments. If these rules are not completely identical, the former may be suppletory to the latter. As correctly pointed out by petitioner, “[t]he appeal from the civil aspect of a judgment in a criminal action is, for all intents and purposes, an appeal from a judgment in a civil action as such appeal cannot affect the criminal aspect thereof.”[35] Being akin to a civil action, the present appeal may be guided by the Rules on Civil Procedure.

In *People v. Santiago*,[36] the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the solicitor general. As a rule, only the solicitor general may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.

However, the offended party or complainant may appeal the civil aspect despite the acquittal of the accused. As such, the present appeal undertaken by the private offended party relating to the civil aspect of the criminal judgment can no longer be considered a criminal action per se, wherein the State prosecutes a person for an act or omission punishable by law. Instead, it becomes a suit analogous to a civil action.

Being in the nature of a civil case, the present intended appeal involves proceedings brought to the Court of Appeals from a decision of the RTC in the exercise of the latter's original jurisdiction. Thus, it should be properly done by filing a notice of appeal.[37] An appeal by virtue of such notice shall be filed within 15 days from notice of the judgment or final order appealed from.[38] For the private offended party, this rule then forecloses the counting of the period to appeal from the "promulgation" of the judgment to the accused.

In sum, we hold that an offended party's appeal of the civil liability ex delicto of a judgment of acquittal should be filed within 15 days from notice of the judgment or the final order appealed from. To implement this holding, trial courts are hereby directed to cause, in criminal cases, the service of their judgments upon the private offended parties or their duly appointed counsels -- the private prosecutors. This step will enable them to appeal the civil aspects under the appropriate circumstances.

General Rule Not Applicable to the Present Case

Having laid down the general rule on the appeal of civil liabilities ex delicto, we now determine its application to the present controversy. In short, was petitioner's appeal timely filed?

If we were to follow the reasoning of petitioner, the Notice of Appeal filed on January 31, 2000 was on time, considering that (1) the Judgment had been received by its counsel only on November 12, 1999; and (2) the Motion for Reconsideration filed on November 29, 2000 interrupted the running of the reglementary period.

However, a peculiar circumstance in this case militates against this conclusion. Here, the private prosecutor himself was present during the promulgation of the Judgment. This fact is undeniable, as petitioner itself admits his presence in its Memorandum as follows:

"2.01 On 29 October 1999, the Trial Court promulgated its judgment (the 'Judgment') in Criminal Case No. 96-246 acquitting the accused of the crime of estafa on the ground that the prosecution failed to prove the guilt of the accused beyond reasonable doubt. The accused and her counsel as well as the public and private prosecutors were present during such promulgation." [39] (Italics supplied)

Further, private prosecutor [40] even signed a copy of the Judgment dated October 29, 1999, a signature which in unequivocal terms signifies notification of the party he represents -- herein petitioner.

Having been present during the promulgation and having been furnished a copy of the judgment at the time, private offended party was in effect actually notified of the Judgment, and from that time already had knowledge of the need to appeal it. Thus, the very *raison d'être* of this Decision is already satisfied: the filing of an appeal by the said party, only after being notified of the Judgment. As argued by respondent, "did not the public and private prosecutors acquire notice of Judgment at its promulgation because of their presence? Notice of the judgment may not be defined in any other way x x x." [41]

Petitioner stresses the need for service of the Judgment on the offended party. It harps on the fact that -- based on constitutional, statutory and even jurisprudential edicts -- judgments must be in writing and with the factual and legal bases thereof clearly expressed.

Petitioner posits that it can make an appeal only after receiving a written copy of the Judgment, for "the parties would always need a written reference or a copy [thereof which] they can review or refer to from time to

time.”[42] To rule otherwise would supposedly deny them due process.

We clarify. If petitioner or its counsel had never been notified of the Judgment, then the period for appeal would never have run. True, no law requires the offended party to attend the promulgation, much less to secure a copy of the decision on that date. But fiction must yield to reality. By mere presence, the offended party was already actually notified of the Decision of acquittal and should have taken the necessary steps to ensure that a timely appeal be filed.

Besides, all that petitioner had to do was to file a simple notice of appeal -- a brief statement of its intention to elevate the trial court’s Decision to the CA. There was no reason why it could not have done so within 15 days after actually knowing the adverse Judgment during the promulgation.[43] Parties and their counsels are presumed to be vigilant in protecting their interests and must take the necessary remedies without delay and without resort to technicalities.

Appeal Not Part of Due Process

It should be stressed that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of law authorizing its exercise.[44] Hence, its requirements must be strictly complied with.[45] The failure of petitioner to file a timely notice of appeal from the Judgment, thus rendering the Judgment final and executory, is not a denial of due process. It might have lost its right to appeal, but it was not denied its day in court.

It would be incorrect to perceive the procedural requirements of the rules on appeal as merely harmless and trivial technicalities that can be discarded.[46] Indeed, deviations from the rules cannot be tolerated.[47] “The rationale for this strict attitude is not difficult to appreciate. These rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, these rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants.”[48]

Neither has petitioner justified a deviation from an otherwise stringent rule. Anyone seeking exemption from the application of the reglementary period for filing an appeal has the burden of proving the existence of exceptionally meritorious instances warranting such deviation.[49]

A fundamental precept is that the reglementary periods under the Rules are to be strictly observed, for they are indispensable interdictions against needless delay and for an orderly discharge of judicial business.[50] After judgment has become final, vested rights are acquired by the winning party. Just as the losing party has the right to file an appeal within the prescribed period, so does the winning party also have the correlative right to enjoy the finality of the resolution of the case.[51] This principle becomes even more essential in view of the fact that the criminal aspect has already been adjudicated.

WHEREFORE, the Petition is hereby DENIED and the assailed Order AFFIRMED. Costs against petitioner.

SO ORDERED.

Puno, (Chairman), Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Rollo, pp. 54-73.

[2] Rollo, p. 73; issued by Judge Napoleon E. Inoturan.

[3] Assailed RTC Order, Annex “A” of the Petition; rollo, p. 73.

[4] Rollo, pp. 131-143.

[5] Petitioner's Memorandum, pp. 2-3; rollo, pp. 132-133; italics supplied.

[6] Annex "F" of the Petition; *ibid.*, pp. 88-89.

[7] Annex "G" of the Petition; *id.*, pp. 91-92.

[8] The Court deemed the case submitted for resolution on May 16, 2001, upon receipt of petitioner's Memorandum signed by Atty. Riche L. Tiblani of Picazo Buyco Tan Fider & Santos. The Memorandum for respondent, signed by Atty. Horacio R. Makalintal Jr., was filed on April 6, 2001.

[9] Petitioner's Memorandum, p. 3; rollo, p. 133. Original in upper case.

[10] §2(a), Rule 41, 1997 Rules of Civil Procedure. However, an appeal in cases decided by the RTC in the exercise of its appellate jurisdiction shall be by a petition for review, not by a simple notice of appeal.

[11] §1(d), Rule 41, 1997 Rules of Court.

[12] *Ibid.*

[13] §1, Rule 65, 1997 Rules of Court.

[14] *Sea Power Shipping Enterprises, Inc v. CA*, GR No. 138270, June 28, 2001.

[15] Circular No. 2-90 dated March 9, 1990, signed by the then Chief Justice Marcelo B. Fernan.

[16] *Ibid.* at No. 4.

[17] *Id.* at No. 4(e).

[18] *Sea Power Shipping Enterprises, Inc. v. CA*, *supra.*; *Ybañez v. CA*, 253 SCRA 540, February 9, 1996.

[19] Petitioner's Memorandum, p. 7; rollo, p. 137.

[20] *Ibid.*

[21] *Id.*

[22] 55 SCRA 153, January 21, 1974.

[23] *Ibid.*, p. 157, per Aquino, J. (later CJ).

[24] Pamaran, *The 1985 Rules on Criminal Procedure Annotated*, 1998 ed., pp. 497-498; Herrera, *Remedial Law*, Vol. IV, 1999, p. 595.

[25] *Landicho v. Tan*, 87 Phil 601, November 16, 1950.

[26] *Ibid.*, p. 605, per Bautista Angelo, J.

[27] "ART. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages.

"(1) Freedom of religion;

"(2) Freedom of speech;

"(3) Freedom to write for the press or to maintain a periodical publication;

“(4) Freedom from arbitrary or illegal detention;

“(5) Freedom of suffrage;

“(6) The right against deprivation of property without due process of law;

“(7) The right to a just compensation when private property is taken for public use;

“(8) The right to the equal protection of the laws;

“(9) The right to be secure in one’s person, house, papers, and effects against unreasonable searches and seizures;

“(10) The liberty of abode and of changing the same;

“(11) The privacy of communication and correspondence;

“(12) The right to become a member of associations or societies for purposes not contrary to law;

“(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

“(14) The right to be free from involuntary servitude in any form;

“(15) The right of the accused against excessive bail;

“(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;

“(17) Freedom from being compelled to be a witness against one’s self, or from being forced to confess guilt, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

“(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

“(19) Freedom of access to the courts.

“In any of the cases referred to in this article, whether or not the defendant’s act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

“The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

“The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute.”

[28] “ART. 33. In cases of defamation, fraud, and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.”

[29] “ART. 34. When a member of a city or municipal police force refuses or fails to render aid or protection to any person in case of danger to life or property, such peace officer shall be primarily liable for damages, and the city or municipality shall be subsidiarily responsible therefor. The civil action herein recognized shall be independent of any criminal proceedings, and a preponderance of evidence shall suffice to support such action.”

[30] “ART. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)”

[31] Panganiban, *Transparency, Unanimity & Diversity*, 2000 ed., pp. 214-215.

[32] §6, Rule 120, 2000 Rules on Criminal Procedure.

[33] §9, Rule 51, 1997 Rules of Court; §4, Rule 56, 1997 Rules of Court.

[34] §6, Rule 122, 2000 Rules on Criminal Procedure.

[35] Petitioner’s Memorandum, p. 9; rollo, p. 139. *Italics supplied.*

[36] 174 SCRA 143, June 20, 1989.

[37] §2, Rule 41, 1997 Rules of Court.

[38] §3, Rule 41, 1997 Rules of Court.

[39] Petitioner’s Memorandum, p. 2; rollo, p. 132.

[40] Atty. Froilan Rocas; records, p. 245-A.

[41] Respondent’s Memorandum, p. 3; rollo, p. 124.

[42] Petitioner’s Memorandum, p. 7; rollo, p. 137.

[43] *Republic v. CA*, 322 SCRA 81, January 18, 2000.

[44] *Oro v. Judge Diaz*, GR No. 140974, July 11, 2001; *Mercury Drug Corp. v. CA*, 335 SCRA 567, July 13, 2000; *Ortiz v. CA*, 299 SCRA 708, December 4, 1998.

[45] *Pedrosa v. Hill*, 257 SCRA 373, June 14, 1996; *Del Rosario v. CA*, 241 SCRA 553, February 22, 1995.

[46] *Casim v. Flordeliza*, GR No. 139511, January 23, 2002.

[47] *People v. Marong*, 119 SCRA 430, December 27, 1982.

[48] *Del Rosario v. CA*, *supra*, at p. 557, per Bidin, J.

[49] *Republic v. CA*, *supra*.

[50] *Videogram Regulatory Board v. CA*, 265 SCRA 50, November 28, 1996.

[51] *Ibid.*

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