VICTORIA G. CALLANGAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES,[] RESPONDENT.

G.R. NO. 153414. June 27, 2006

Ponente: CORONA, J.

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CORONA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court assails the January 10, 2002 decision of the Regional Trial Court (RTC) of Pasig City, Branch 69, in SCA No. 1933. The challenged decision dismissed petitioner Victoria G. Callangan's petition for certiorari imputing grave abuse of discretion to the Metropolitan Trial Court (MTC) of Pasig City, Branch 68, for issuing an order on October 8, 1999 denying petitioner's motion for new trial in Criminal Case No. 38674.

On May 28, 1999, petitioner was found guilty of the crime of perjury in Criminal Case No. 38674. On July 5, 1999, petitioner filed a timely motion for new trial on the ground that she was deprived of her day in court because of the gross negligence of her counsel, Atty. Ricardo C. Valmonte, and his utter lack of diligence in the performance of his duty to represent her in every stage of the suit. She attributed the following omissions to her counsel:

- failure to file the demurrer to evidence despite leave of court previously granted;

- failure to inform his client of the April 14, 1999 order of the court considering the intended demurrer to evidence as abandoned;

- failure to attend the hearing for the reception of the evidence for the defense (i.e., petitioner) despite notice, which failure was deemed by the MTC as a waiver of petitioner's right to present her evidence;

- failure to seek proper relief from the adverse effects of said orders and

- failure to appear on the promulgation of judgment.

On October 8, 1999, the MTC denied the motion for new trial. It held that the ground invoked by petitioner was not among those provided in the Rules of Court for new trial in criminal cases. Petitioner sought the reconsideration of the order but the same was also denied in the MTC's December 27, 1999 order.

Aggrieved, petitioner questioned the October 8, 1999 and December 27, 1999 orders of the MTC by filing a petition for certiorari under Rule 65 of the Rules of Court with the RTC of Pasig City. It was docketed as SCA No. 1933.

On January 10, 2002, the RTC rendered its decision. It dismissed the petition on the ground that the remedy of appeal was still available to petitioner. It also ruled that the MTC did not commit any abuse of discretion in issuing the orders assailed by petitioner.

Petitioner moved for reconsideration but the RTC denied it. Hence, this petition.

The Court is called upon to resolve these issues: (a) whether a petition for certiorari under Rule 65 of the Rules of Court, not appeal, is the proper remedy for relief from the denial of a motion for new trial and (b) whether the MTC committed grave abuse of discretion in denying the motion for new trial.

Petitioner insists that its resort to a petition for certiorari under Rule 65 to impugn the order denying its motion for new trial was proper. She also claims that the RTC erred in declaring that the MTC did not abuse its discretion when it denied her motion for new trial.

The petition is meritorious.

Rule 41, Section 1 of the Rules of Court provides that no appeal may be taken from an order denying a motion for new trial. Such final order is not appealable. In such a case, the aggrieved party may file an appropriate special civil action under Rule 65 of the Rules of Court. In Rivera v. Court of Appeals,[1] the Court ruled that an order denying a motion for new trial cannot be the subject of an appeal. The proper remedy against such an order is a petition for certiorari under Rule 65 on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.[2]

While this rule pertains to civil cases, there is no cogent reason why the same principle cannot be applied in criminal cases.[3] Thus, in criminal cases, the special civil action for certiorari under Rule 65 is a proper remedy to question an order denying a motion for new trial.

True, there was no grave abuse of discretion on the part of the MTC when it issued the order denying petitioner's motion for new trial. The records of the case are bereft of any indication that Judge Cornejo arbitrarily, despotically or deliberately failed to afford petitioner her constitutionally mandated right to be heard. The cause of petitioner's travails and misfortune was the negligence of her own counsel.

However, in view of the circumstances of this case, outright deprivation of liberty will be the consequence of petitioner's criminal conviction based solely on the evidence for the prosecution. Thus, to prevent a miscarriage of justice and to give meaning to the due process clause of the Constitution, the Court deems it wise to allow petitioner to present evidence in her defense.

The rule that the negligence of counsel binds the client admits of exceptions. The recognized exceptions are: (1) where reckless or gross negligence of counsel deprives the client of due process of law, (2) when its application will result in outright deprivation of the client's liberty or property or (3) where the interests of justice so require.[4] In such cases, courts must step in and accord relief to a party-litigant.[5]

The omissions of petitioner's counsel amounted to an abandonment or total disregard of her case. They show conscious indifference to or utter disregard of the possible repercussions to his client. Thus, the chronic inaction of petitioner's counsel on important incidents and stages of the criminal proceedings constituted gross negligence.

The RTC itself found that petitioner never had the chance to present her defense because of the nonfeasance (malfeasance, even) of her counsel. It also concluded that, effectively, she was without counsel.[6] Considering these findings, to deprive petitioner of her liberty without affording her the right to be assisted by counsel is to deny her due process.

In criminal cases, the right of the accused to be assisted by counsel is immutable.[7] Otherwise, there will be a grave denial of due process.[8] The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned.[9]

In People v. Ferrer,[10] the essence of the right to counsel was enunciated:

> The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who

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> commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence. The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client. Tersely put, it means an efficient and truly decisive legal assistance and not a simple perfunctory representation.[11] (Emphasis supplied)

Petitioner was accorded grossly insufficient legal assistance by a counsel who did not devote himself to the defense of her cause. Counsel's utter lack of action after the prosecution rested its case revealed an extreme shortcoming on his part. Such inaction definitely proved infidelity to and abandonment of petitioner's cause.

Considering that this case involved personal liberty, the gross negligence of counsel shocks our sense of justice. It should not be allowed to prejudice petitioner's constitutional right to be heard.[12] The Court's pronouncement in Reyes v. Court of Appeals,[13] applies strongly in this case:

> The judicial conscience certainly cannot rest easy on a conviction based solely on the evidence of the prosecution just because the presentation of the defense evidence had been barred by technicality. Rigid application of rules must yield to the duty of courts to render justice where justice is due – to secure to every individual all possible legal means to prove his innocence of a crime with which he or she might be charged.[14]

Otherwise, the likelihood of convicting and punishing an innocent man and of inflicting a serious injustice on him becomes great.

In Reyes, the Court, after finding that the conviction of Zenaida Reyes had been caused by the gross negligence of her counsel, reconsidered its earlier resolution which denied the petition for review of the decision of the Court of Appeals affirming her conviction. The case was remanded to the trial court for the purpose of allowing Reyes to present evidence in her defense.

In De Guzman v. Sandiganbayan,[15] the Court also set aside its decision affirming Domingo de Guzman's conviction by the Sandiganbayan, after being shown that his conviction had been brought about by his counsel's gross ignorance of law and procedure. The case was then ordered remanded to the Sandiganbayan for reception and appreciation of petitioner's evidence.

Therefore, in consonance with the demands of justice and to prevent any outright deprivation of liberty, the Court deems it best to give petitioner a chance to present evidence in her defense. The case should be remanded to the MTC for acceptance and appraisal of petitioner's evidence.

Petitioner does not seek her exoneration but the opportunity to present evidence in her defense. Considering the gross negligence of her counsel on whom she reposed her trust to protect her rights, justice demands that she be given that chance.

In sum, it is better to allow petitioner another occasion to present her evidence than to let her conviction stand based solely on the evidence of the prosecution.[16] In accordance with Rule 121, Section 6 of the Rules of Court, the evidence of the prosecution shall be understood preserved, subject to the right of the prosecution to supplement it and/or to rebut the evidence which petitioner may present.[17]

WHEREFORE, the petition is hereby GRANTED. The January 10, 2002 decision of the Regional Trial Court of Pasig City, Branch 69, in SCA No. 1933 and the October 8, 1999 and December 27, 1999 orders of the Metropolitan Trial Court of Pasig City, Branch 68 in Criminal Case No. 38674 are SET ASIDE.

This case is hereby REMANDED to the Metropolitan Trial Court of Pasig City for a new trial for the purpose of

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allowing petitioner to present evidence in her defense with directive to the court to decide the case with deliberate speed.

Let a copy of this decision be furnished to the Commission on Bar Discipline of the Integrated Bar of the Philippines for further investigation of Atty. Ricardo C. Valmonte's liability as a member of the bar.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[*] Judge Lorifel Lacap Pahimna, Presiding Judge of the RTC of Pasig City, Branch 69, was impleaded as a party in this case. However, under Rule 45, Section 4 of the Rules of Court, the lower court or judges thereof need not be impleaded in petitions for review filed before this Court.

[1] G.R. No. 141863, 26 June 2003, 405 SCRA 61.

[2] Id.

[3] The provisions of Section 1, Rule 41 of the Rules of Court had been applied in criminal cases. In Casalla v. People, 439 Phil. 958 (2002), the Court invoked Rule 41 and held that no appeal may be taken from an order denying a motion for new trial or reconsideration and an order of execution. The appropriate recourse is a special civil action under Rule 65. See also Basco v. Court of Appeals and People, 383 Phil. 671 (2000), where Rule 41 was employed to resolve the issue on the proper remedy against an order denying a petition for relief.

[4] Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank, 442 Phil. 55 (2002).

[5] Id.

[6] RTC Decision of January 10, 2002 in SCA No. 1933, Annex "A" of Petition; rollo, pp. 22-27.

[7] Spouses Telan v. Court of Appeals, G.R. No. 95026, 04 October 1991, 202 SCRA 534.

[8] Id.

[9] People v. Ferrer, G.R. No. 148821, 18 July 2003, 406 SCRA 658.

[10] Id.

[11] Id.

[12] Reyes v. Court of Appeals, 335 Phil. 206 (1997).

[13] Id.

[14] Id.

[15] 326 Phil. 182 (1996).

[16] Reyes v. Court of Appeals, supra.

[17] Id.

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