PEOPLE OF THE PHILIPPINES AND THE HON. BRICIO YGANA, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 153, PASIG CITY, PETITIONERS, VS. RAFAEL BITANGA, RESPONDENT.

G.R. NO. 159222. June 26, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

The Petition for Review on Certiorari[1] before this Court assails the March 31, 2003 Decision[2] and July 18, 2003 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 68797,[4] which granted a Petition for Annulment of Judgment under Rule 47 of the February 29, 2000 Decision[5] of the Regional Trial Court (RTC), Branch 153, Pasig City, in Criminal Case No. 103677.

The facts are not disputed.

On the basis of a complaint lodged by Traders Royal Bank (TRB),[6] an information for estafa was filed against Rafael M. Bitanga (Bitanga) before the RTC and docketed as Criminal Case No. 103677. Bitanga pleaded "not guilty" to the offense charged. He was allowed to post bail.

During trial on the merits, the People presented the testimonies of three TRB employees on how Bitanga duped the bank into accepting three foreign checks for deposit and encashment, which were however returned to TRB by reason of "unlocated accounts."[7]

When it was time for the defense to present his case, however, Bitanga and his counsel failed to appear and adduce evidence.[8] Upon motion of the public prosecutor, a warrant of arrest was issued against respondent and his right to adduce evidence was deemed waived.[9]

On February 29, 2000, the RTC promulgated in absentia a Decision finding Bitanga guilty as charged, thus:

> WHEREFORE, judgment is hereby rendered convicting accused Rafael M. Bitanga of the crime of estafa defined and penalized under Article 315, par. 2 (a) of the Revised Penal Code and hereby sentences him to suffer imprisonment of four (4) years and two (2) months of prision correccional as minimum to twenty (20) years of reclusion temporal as maximum with the necessary penalties provided by law and to indemnify private complainant Traders Royal Bank the amount of P742,884.00 and to pay the cost.
>
> SO ORDERED.[10]

On January 28, 2002, Bitanga filed with the CA a Petition for Annulment of Judgment with Prayer for Other Reliefs[11] on the ground that extrinsic fraud was allegedly perpetuated upon him by his counsel of record, Atty. Benjamin Razon.[12] He alleged that he received copy of the February 29, 2000 RTC Decision only on December 13, 2001.[13]

The People filed an Answer[14] opposing the Petition.

The CA granted the Petition for Annulment of Judgment in the March 31, 2003 Decision assailed herein, the decretal portion of which reads:

> WHEREFORE, in the light of the foregoing considerations, the petition is hereby GRANTED. Accordingly, the decision of the Regional Trial Court in Muntinlupa City, Branch 153 being tainted with circumstances constitutive of extrinsic fraud which deprived the petitioner herein of his day in court is SET ASIDE. Resultantly, Criminal Case No. 103677 is remanded to the court of origin for further proceedings to give herein petitioner opportunity to present his evidence in said case and for the trial court to render judgment in accordance with the evidence adduced. Corollarily, the petitioner may be released and allowed to be on bail unless there are other valid and legal reasons for his continued detention.
>
> SO ORDERED.[15]

and denied the People's Motion for Reconsideration in its Resolution[16] of July 18, 2003.

The foregoing CA Decision and Resolution are now being questioned by the People (petitioner) on these grounds:

> I
>
> The two previous counsels were not negligent in defending respondent.
>
> II
>
> Assuming without admitting the existence of negligence on the part of the previous counsels, the same does not constitute extrinsic fraud.
>
> III
>
> The Court of Appeals did not accord the previous counsels their right to procedural due process of law.
>
> IV
>
> Jumping bail, respondent waived his right to present his evidence.[17]

The Petition for Review is meritorious.

Section 1, Rule 47 of the Rules of Court, limits the scope of the remedy of annulment of judgment to the following:

> Section 1. Coverage.– This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

The remedy cannot be resorted to when the RTC judgment being questioned was rendered in a criminal case. The 2000 Revised Rules of Criminal Procedure itself does not permit such recourse, for it excluded Rule 47 from the enumeration of the provisions of the 1997 Revised Rules of Civil Procedure which have suppletory application to criminal cases. Section 18, Rule 124 thereof, provides:

> Sec. 18. Application of certain rules in civil procedure to criminal cases. – The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

There is no basis in law or the rules, therefore, to extend the scope of Rule 47 to criminal cases. As we explained in Macalalag v. Ombudsman,[18] when there is no law or rule providing for this remedy, recourse to it cannot be

allowed, viz.:

> Parenthetically, R.A. 6770 is silent on the remedy of annulment of judgments or final orders and resolutions of the Ombudsman in administrative cases. In Tirol, Jr. v. Del Rosario, the Court has held that since The Ombudsman Act specifically deals with the remedy of an aggrieved party from orders, directives and decisions of the Ombudsman in administrative disciplinary cases only, the right to appeal is not to be considered granted to parties aggrieved by orders and decisions of the Ombudsman in criminal or non-administrative cases. The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right. This legal axiom is also applicable and even more true in actions for annulment of judgments which is an exception to the rule on finality of judgments.[19]

The Petition for Annulment of Judgment of the February 29, 2000 Decision of the RTC in Criminal Case No. 103677 was therefore an erroneous remedy. It should not have been entertained, much less granted, by the CA.

Even on substantive grounds, the Petition for Annulment of Judgment does not pass muster.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting,[20] and only if the judgment sought to be annulled was rendered by a court lacking jurisdiction or through proceedings attended by extrinsic fraud.[21]

When the ground invoked is extrinsic fraud, annulment of judgment must be sought within four years from discovery of the fraud, which fact should be alleged and proven.[22] In addition, the particular acts or omissions constituting extrinsic fraud must be clearly established.[23]

Extrinsic or collateral fraud is trickery practiced by the prevailing party upon the unsuccessful party, which prevents the latter from fully proving his case. It affects not the judgment itself but the manner in which said judgment is obtained. [24]

In the present case, respondent Bitanga complained that his own counsel perpetrated fraud upon him by abandoning his cause. He attributed the following acts and omissions to them:

> - Atty. Benjamin Razon failed to inform his client of the scheduled hearings for the receptioon of defense evidence. This resulted in depriving herein petitioner of a chance to prove his innocence by presenting a valid defense;
>
> - He failed to attend the scheduled hearing for reception of petitioners' evidence for which reason the case was deemed submitted for decision without his evidence;
>
> - He never bother to verify what transpired at the hearing he failed to attend, and thus, was not able to file the necessary pleadings to lift the order considering the case submitted for decision without petitioners' evidence;
>
> - He withdrew his appearance as counsel for the petitioner without getting the express conformity of his client. Thus, the court appointed a counsel de officio from the Public Attorney's Office;
>
> - The counsel de officio, however, exerted no effort in contacting the petitioner to prepare him for defense evidence. He simply submitted the case for decision and waived the presentation of Defense evidence;
>
> - After receiving the court a quo's adverse decision, convicting herein petitioner, he did not notify or inform his clients, herein petitioners; and
>
> - He did not appeal the case to the Court of Appeals; or avail themselves of other remedies under the law.[25]

The CA equated the foregoing behavior of said counsels to extrinsic fraud in that it impaired Bitanga's right to due process and rendered the proceedings in Criminal Case No. 103677 a farce. Citing a ruling of the appellate court

in Sps. Carlos and Erlinda Ong v. Nieves Jacinto, et al.,[26] the CA held:

> While it is true that neglect or failure of counsel to inform his client of an adverse judgment resulting in the loss of his right to appeal will not justify setting aside a judgment that is valid and regular on its face, this rule is not unbending and admits of exceptions as where reckless or gross negligence of counsel deprives the client of due process. This Court believes, and so holds, that the enumerated deplorable acts and omissions of petitioner's counsel on record, finding no abatement either later from his court-appointed lawyer, taken together, more than suffice to paint a clear picture of delinquency, gross negligence and recklessness constitutive of extrinsic fraud.[27]

Bitanga defends the foregoing view of the CA as consistent with a basic rule in criminal procedure that every leeway must be given an accused person to defend himself, lest he be wrongfully deprived of liberty.[28]

Disagreeing with the CA, the People maintain that the acts and omissions imputed to said counsels amounted to mere professional negligence which cannot be equated with extrinsic fraud in the absence of allegation and evidence of malice.[29] The People point out that it was Bitanga's own act of jumping bail which did him in, for had he showed up in court when summoned, he would not have lost the right to present his defense.[30]

The People's arguments are tenable.

Extrinsic fraud is that perpetrated by the prevailing party, not by the unsuccessful party's own counsel.[31] As a general rule, counsel's ineptitude is not a ground to annul judgment, for the latter's management of the case binds his client.[32] The rationale behind this rule is that, once retained, counsel holds the implied authority to do all acts which are necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, and any act performed by said counsel within the scope of such authority is, in the eyes of the law, regarded as the act of the client himself.[33]

There is an exception to the foregoing rule, and that is when the negligence of counsel had been so egregious that it prejudiced his client's interest and denied him his day in court.[34] For this exception to apply, however, the gross negligence of counsel should not be accompanied by his client's own negligence or malice.[35] Clients have the duty to be vigilant of their interests by keeping themselves up to date on the status of their case.[36] Failing in this duty, they suffer whatever adverse judgment is rendered against them. As we held in Tan v. Court of Appeals:[37]

> Moreover, annulment of judgment may either be based on the ground that the judgment is void for want of jurisdiction or that the judgment was obtained by extrinsic fraud. By no stretch of the imagination can we equate the negligence of the petitioner and his former counsel to extrinsic fraud as contemplated in the cited rules. Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. The fraud or deceit cannot be of the losing party's own doing, nor must it contribute to it. The extrinsic fraud must be employed against it by the adverse party, who, because of some trick, artifice, or device, naturally prevails in the suit. This Court notes that no such fraud or deceit was properly proved against the private respondent. Indeed, the petitioner has no reason to protest his own negligence.[38] (Emphasis supplied)

In the present case, the acts and omissions attributed to counsel amounted to negligence only, which cannot be considered extrinsic fraud. Moreover, said counsel's negligence was caused by Bitanga's act of jumping bail.

There appears to be no issue about how Atty. Razon represented Bitanga during the presentation of the evidence of the prosecution. The CA itself noted that during said period, Atty. Razon conducted the cross-examination and re-cross-examination of the witnesses for the prosecution.[39]

Problems arose only when it was Bitanga's turn to present his defense. As noted by the CA, Atty. Razon failed to attend the hearings scheduled on December 10, 1998, February 18, 1999, April 20, 1999, and May 25, 1999.[40]His absences, however, appear to be justified. When he was required by the RTC to submit an explanation for his absences, Atty. Razon clarified:

> - That on May 25, 1999 from 7:00AM to 9:30AM counsel waited for the accused to pick him up at his residence in order both counsel and accused can go to court together, it being the defense evidence of the accused, counsel was not even feeling well that morning on account of his swollen leg;
>
> - That the accused never showed up putting counsel in a quandary whether he has been relieved as counsel for the accused or not. The accused likewise never contacted counsel nor showed up in person x x x counsel in his residence or office or called up by telephone x x x counsel made inquiry at the accused place of business but was informed that the accused had already vacated the premises leaving no forwarding address where he can be located or contacted. It is now June and still accused never contacted counsel so that counsel is left without alternative but to withdraw from the case.[41] (Emphasis added)

The RTC accepted the foregoing explanation of Atty. Razon and allowed him to withdraw his appearance as counsel even without the conformity of Bitanga whose whereabouts could not be traced.[42]Moreover, the RTC ordered the arrest of Bitanga and the forfeiture of his cash bond because of his continued non-appearance. The RTC also considered his right to present evidence waived.[43]

It is apparent that Bitanga left Atty. Razon in the dark. While said counsel exerted effort to contact Bitanga, the latter made himself completely scarce: he vacated his old business address without leaving a forwarding address or informing Atty. Razon about the change; worse, after moving to a different address, Bitanga did not bother to resume communication with Atty. Razon. Even if said counsel could have appeared in court without his client, his presence would not have salvaged the case for he had no witness to present or evidence to submit.

There was therefore no factual or legal basis to the conclusion of the CA that extrinsic fraud prejudiced the right of Bitanga to present his defense. He has only himself to blame for jumping bail and leaving his case in disarray.

WHEREFORE, the petition is GRANTED. The March 31, 2003 Decision and July 18, 2003 Resolution of the Court of Appeals are ANNULLED and SET ASIDE.

Upon finality of herein Decision, let the Regional Trial Court, Branch 153, Pasig City be furnished a copy hereof for execution of its final Decision dated February 29, 2000 in Criminal Case No. 103677.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Under Rule 45 of the Rules of Court.

[2]Penned by Associate Justice Eliezer R. delos Santos (now deceased) and concurred in by Associate Justices Buenaventura J. Guerrero (retired) and Rodrigo V. Cosico; rollo, p. 39.

[3] Id. at 46.

[4] Entitled "Rafael Bitanga, Petitioner, v. People of the Philippines and the Hon. Briccio Ygaña, Presiding Judge Regional Trial Court (Branch 153, Pasig City), Respondents."

[5]CA rollo, p. 104.

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[6]Now known as Bank of Commerce.

[7] RTC Decision, CA rollo, pp. 104-110.

[8] Id. at 110-111.

[9] Id. at 111.

[10]Id. at 114.

[11] Id. at 2.

[12] The petition mentions a counsel de officio but did not identify him.

[13]CA rollo, p. 3.

[14] Id. at 128.

[15] Rollo, p. 45.

[16] Id. at 46.

[17] Id. at 27.

[18] G.R. No. 147995, March 4, 2004, 424 SCRA 741.

[19] Id. at 745-746.

[20]Orbeta v. Sendiong, G.R. No. 155236, July 8, 2005, 463 SCRA 180, 192.

[21] RULES OF COURT, Rule 47, Secs. 1 and 2.

[22]Ancheta v. Guersey-Dalaygon, G.R. No. 139868, June 08, 2006, 490 SCRA 140, 148-149.

[23] Espinosa v. Court of Appeals, G.R. No. 128686, May 28, 2004, 430 SCRA 96, 103.

[24] Republic of the Philippines v. "G" Holdings, Inc., G.R. No. 141241, November 22, 2005, 475 SCRA 608, 620-621; Tan v. Court of Appeals, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 462.

[25] CA rollo, pp. 8-9.

[26] CA-G.R. SP No. 61777 (no date given), CA Decision, rollo, p. 42.

[27] Id. at 44.

[28] Id. at 133-134.

[29]Id. at 26-32.

[30] Id. at 34-35.

[31] Gacutana-Fraile v. Domingo, 401 Phil. 604, 615 (2000), citing Sanchez v. Tupas, G.R. No. L-76690, February 29, 1988, 158 SCRA 459, 465; Velayo v. Shell Company of the Philippines, Ltd., 105 Phil. 1114, 1117 (1959).

[32] Dela Cruz v. Sison, G.R. No. 142464, September 26, 2005, 471 SCRA 35, 42; Republic of the Philippines v. "G" Holdings, Inc., supra note 24, at 621-622.

[33] Juani v. Alarcon, G.R. No.166849, September 5, 2006, 501 SCRA 135, 153-154; Grande v. University of the

Philippines, G.R. No. 148456, September 15, 2006, 502 SCRA 67, 74.

[34] APEX Mining, Inc. v. Court of Appeals, 377 Phil. 482, 493 (1999), citing Salonga v. Court of Appeals, 336 Phil. 514, 527 (1997); Legarda v. Court of Appeals, G.R. No. 94457, March 18, 1991, 195 SCRA 418, 426. See also Sarraga, Sr. v. Banco Filipino Savings and Mortgage Bank 442 Phil. 55 (2002), which involved a Petition for Relief from Judgment under Rule 38.

[35] Tan v. Court of Appeals, supra note 24.

[36]Mercado v. Security Bank Corporation, G.R.No. 160445, February 16, 2006, 482 SCRA 501, 506.

[37] Supra note 24.

[38]Id. at 462.

[39] Rollo, p. 40.

[40]Id.

[41]CA rollo, p. 226.

[42]Id. at 233.

[43] Id. at 111.

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