

## JOHN HILARIO Y SIBAL, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 161070. April 14, 2008*

Ponente: AUSTRIA-MARTINEZ, J.

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### AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court filed by John Hilario y Sibal (petitioner), seeking to annul and set aside the Resolutions dated August 19, 2003[1] and November 28 2003[2] of the Court of Appeals in CA-G.R. SP No. 75820.

The antecedents are as follows:

Petitioner, together with one Gilbert Alijid (Alijid), was charged with two counts[3] of Murder in the Regional Trial Court (RTC), Branch 76, Quezon City to which petitioner, assisted by counsel de parte, pleaded not guilty.

During trial, Atty. Raul Rivera of the Public Attorney's Office (PAO), counsel of Alijid, took over representing petitioner in view of the death of the latter's counsel.

On December 5, 2001, the RTC rendered its Decision[4] finding petitioner and his co-accused Alijid guilty beyond reasonable doubt of the crime of homicide and sentencing them to suffer imprisonment of eight (8) years and one (1) day of prision mayor to fourteen (14) years and eight (8) months of reclusion temporal in each count.

On May 10, 2002, petitioner, this time unassisted by counsel, filed with the RTC a Petition for Relief[5] from the Decision dated December 5, 2001 together with an affidavit of merit. In his petition, petitioner contended that at the time of the promulgation of the judgment, he was already confined at Quezon City Jail and was directed to be committed to the National Penitentiary in Muntinlupa; that he had no way of personally filing the notice of appeal thus he instructed his lawyer to file it on his behalf; that he had no choice but to repose his full trust and confidence to his lawyer; that he had instructed his lawyer to file the necessary motion for reconsideration or notice of appeal; that on May 2, 2002, he was already incarcerated at the New Bilibid Prisons, Muntinlupa City and learned from the grapevine of his impending transfer to the Iwahig Penal Colony, Palawan; that believing that the notice of appeal filed by his counsel prevented the Decision dated December 5, 2001 from becoming final to warrant his transfer, he instructed his representative to get a copy of the notice of appeal from the RTC; that no notice of appeal was filed by his lawyer in defiance of his clear instructions; and that the RTC Decision showed that it was received by his counsel on February 1, 2002 and yet the counsel did not inform him of any action taken thereon.

Petitioner claimed that he had a meritorious defense, to wit:

- The Decision dated December 5, 2001, on page 16 thereof states an imprisonment term of eight (8) years and one (1) day of Prision Mayor to fourteen (14) years and eight (8) months of Reclusion Temporal - a matter which ought to be rectified;
- The undersigned is a first time offender;

- No ruling was laid down on the stipulated facts (Decision, p. 3) relative to the (1) absence of counsel during the alleged inquest, and (2) absence of warrant in arresting the accused after ten (10) days from the commission of the crime;
- Absence of a corroborating witness to the purported lone eyewitness, as against the corroborated testimony of accused-petitioner's alibi;
- The Commission on Human Rights investigation on the torture of the accused-petitioner;
- and others.[6]

Petitioner argued that he was meted a total of 16 years imprisonment or almost equal to the previous capital punishment of 20 years which was given an automatic review by the Supreme Court, thus it is of greater interest of justice that his case be reviewed by the appellate court; and that no damage will be sustained if the appeal is given due course since he continues to languish in jail while the Petition for Relief is pending.

The Assistant City Prosecutor filed his Comment on the Petition for Relief where he contended that the petition should no longer be entertained; and that perfection of appeal in the manner and within the period permitted by law was not only mandatory but jurisdictional and failure to perfect the appeal rendered the judgment final and executory.

The records do not show that the RTC required petitioner's counsel to whom petitioner attributed the act of not filing the notice of appeal to file his comment.

On September 30, 2002, petitioner's counsel filed a Withdrawal of Appearance[7] from the case with petitioner's consent. Again, the documents before us do not show the action taken by the RTC thereon.

In an Order[8] dated December 13, 2002, the RTC dismissed petitioner's petition for relief with the following disquisition:

After a careful study of the instant petition and the arguments raised by the contending parties, the Court is not persuaded by petitioner/accused's allegation that he was prevented from filing a notice of appeal due to excusable negligence of his counsel.

Accused's allegation that he indeed specifically instructed his counsel to file a notice of appeal of the Decision dated [sic] and the latter did not heed his instruction is at best self-serving and unsubstantiated and thus, unworthy of credence. At any rate, even if said omission should be considered as negligence, it is a well-settled rule that negligence of counsel is binding on the client. x x x Besides, nowhere does it appear that accused/petitioner was prevented from fairly presenting his defense nor does it appear that he was prejudiced as the merits of this case were adequately passed upon in the Decision dated December 5, 2001.

It must also be pointed out that in his petition for relief, he stated that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal of the Decision dated December 5, 2001, whereas in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal thereof.[9] (Emphasis supplied)

Petitioner, again by himself, filed a petition for certiorari with the CA on the ground that the RTC committed grave abuse of discretion in dismissing his petition for relief. He claims that the delay in appealing his case without his fault constitutes excusable negligence to warrant the granting of his petition for relief.

In a Resolution dated August 19, 2003, the CA dismissed the petition in this wise:

It appearing that petitioner in the instant petition for certiorari failed to attach the following documents cited in his petition, namely:

- The December 5, 2001 Decision;
- Comment of the City Prosecutor;
- Manifestation of petitioner's counsel de officio signifying his withdrawal as petitioner's counsel.

The instant petition for certiorari is hereby DISMISSED pursuant to Section 2, Rule 42 of the 1997 Rules of Civil Procedure and as prayed for by the Solicitor General.[10]

Petitioner's motion for reconsideration was denied in a Resolution dated November 28, 2003 for having been filed beyond the 15-day reglementary period, in violation of Section 1, Rule 52 of the Rules of Court and for failure to attach to the petition, the relevant and pertinent documents. The CA also stressed that procedural rules are not to be belittled simply because their non-observance may have resulted in prejudice to a party's substantive rights.

Hence, herein recourse filed by petitioner, still unassisted by counsel, raising the following issues:

Whether or not the delay in appealing the instant case due to the defiance of the petitioner's counsel de officio to seasonably file a Notice of Appeal, constitutes excusable negligence to entitle the undersigned detention prisoner/ petitioner to pursue his appeal?

Whether or not pro hac vice, the mere invocation of justice warrants the review of a final and executory judgment?

Petitioner contends that the negligence of his counsel de officio cannot be binding on him for the latter's defiance of his instruction to appeal automatically breaks the fiduciary relationship between counsel-client and cannot be against the client who was prejudiced; that this breach of trust cannot easily be concocted in this situation considering that it was a counsel de officio, a lawyer from PAO, who broke the fiduciary relationship; that the assailed CA Resolutions both harped on technicalities to uphold the dismissal by the RTC of his petition for relief; that reliance on technicalities to the prejudice of petitioner who is serving 14 years imprisonment for a crime he did not commit is an affront to the policy promulgated by this Court that dismissal purely on technical grounds is frowned upon especially if it will result to unfairness; and that it would have been for the best interest of justice for the CA to have directed the petitioner to complete the records instead of dismissing the petition outright.

In his Comment, the OSG argues that the mere invocation of justice does not warrant the review of an appeal from a final and executory judgment; that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional and failure to perfect the appeal renders the judgment sought to be reviewed final and not appealable; and that petitioner's appeal after the finality of judgment of conviction is an exercise in futility, thus the RTC properly dismissed petitioner's petition for relief from judgment. The OSG further claims that notice to counsel is notice to clients and failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding on the client.

We grant the petition.

The CA dismissed the petition for certiorari filed under Rule 65 of the Rules of Court, in relation to Rule 46, on the ground that petitioner failed to attach certain documents which the CA found to be relevant and pertinent to the petition for certiorari.

The requirements to attach such relevant pleadings under Section 1, Rule 65 is read in relation to Section 3, Rule 46 of the Rules of Court, thus:

Section 1, Rule 65 provides:

SECTION. 1. Petition for certiorari. -

x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto x x x.

Section 3, Rule 46, provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. -

x x x x

[The petition] shall be x x x accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto x x x.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. If, upon its initial review of the petition, the CA is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, the following are its options: (a) dismiss the petition under the last paragraph of Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period.[11]

The RTC Decision dated December 5, 2001, finding petitioner guilty of two counts of homicide, the Comment of the City Prosecutor as well as the counsel's withdrawal of appearance were considered by the CA as relevant and pertinent to the petition for certiorari, thus it dismissed the petition for failure to attach the same. However, the CA failed to consider the fact that the petition before it was filed by petitioner, a detained prisoner, without the benefit of counsel. A litigant who is not a lawyer is not expected to know the rules of procedure. In fact, even the most experienced lawyers get tangled in the web of procedure.[12] We have held in a civil case that to demand as much from ordinary citizens whose only compelle intrare is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.[13] This finds application specially if the liberty of a person is at stake. As we held in *Telan v. Court of Appeals*:

The right to counsel in civil cases exists just as forcefully as in criminal cases, specially so when as a consequence, life, liberty, or property is subjected to restraint or in danger of loss.

In criminal cases, the right of an accused person to be assisted by a member of the bar is immutable. Otherwise, there would be a grave denial of due process. Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.

x x x x

Even the most experienced lawyers get tangled in the web of procedure. The demand as much from ordinary citizens whose only compelle intrare is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.

The right to counsel is absolute and may be invoked at all times. More so, in the case of an on- going litigation,

it is a right that must be exercised at every step of the way, with the lawyer faithfully keeping his client company.

No arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal.[14] (Emphasis supplied)

The filing of the petition for certiorari by petitioner without counsel should have alerted the CA and should have required petitioner to cause the entry of appearance of his counsel. Although the petition filed before the CA was a petition for certiorari assailing the RTC Order dismissing the petition for relief, the ultimate relief being sought by petitioner was to be given the chance to file an appeal from his conviction, thus the need for a counsel is more pronounced. To repeat the ruling in *Telan*, no arrangement or interpretation of law could be as absurd as the position that the right to counsel exists only in the trial courts and that thereafter, the right ceases in the pursuit of the appeal.[15] It is even more important to note that petitioner was not assisted by counsel when he filed his petition for relief from judgment with the RTC.

It cannot be overstressed therefore, that in criminal cases, as held in *Telan*, the right of an accused person to be assisted by a member of the bar is immutable; otherwise, there would be a grave denial of due process.

Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better.[16]

The CA denied petitioner's motion for reconsideration for having been filed late. It appears that the CA Resolution dismissing the petition for certiorari was received at the address written in the petition on September 1, 2003, and that petitioner filed his motion for reconsideration on September 18, 2003, or two days late.

While as a general rule, the failure of petitioner to file his motion for reconsideration within the 15-day reglementary period fixed by law rendered the resolution final and executory, we have on some occasions relaxed this rule. Thus, in *Barnes v. Padilla*[17] we held:

However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.

Invariably, 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 eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.

In *De Guzman v. Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:

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 justice have always been, as they ought to be 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.

Indeed, the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for

the proper and just determination of his cause, free from the constraints of technicalities.[18]

Moreover, in *Basco v. Court of Appeals*,[19] we also held:

Nonetheless, procedural rules were conceived to aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. Recognizing this, Section 2, Rule 1 of the Rules of Court specifically provides that:

SECTION 2. Construction. -- These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.[20]

Petitioner claims that he actually received the CA Resolution dismissing his petition for certiorari only on September 4, 2003 even as the same Resolution was earlier received on September 1, 2003 at the address written in his petition, i.e., c/o Robert S. Bacuraya, No. 9 Iris St., West Fairview, 1118, Quezon City, by a certain Leonora Coronel. Apparently, Bacuraya is not a lawyer. Ordinarily, petitioner being detained at the National Penitentiary, Muntinlupa, the CA should have also sent a copy of such Resolution to his place of detention. Considering that petitioner only received the Resolution on September 4, 2003, we find the two days delay in filing his motion for reconsideration pardonable as it did not cause any prejudice to the other party. There is no showing that petitioner was motivated by a desire to delay the proceedings or obstruct the administration of justice. The suspension of the Rules is warranted in this case since the procedural infirmity was not entirely attributable to the fault or negligence of petitioner.

Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.[21]

In dismissing the petition for certiorari filed before it, the CA clearly put a premium on technicalities and brushed aside the issue raised before it by petitioner, i.e., whether the RTC committed grave abuse of discretion in dismissing petitioner's petition for relief thus preventing him from taking an appeal from his conviction.

Even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.[22] However, instead of remanding the case to the CA for a decision on the merits, we opt to resolve the same so as not to further delay the final disposition of this case.

The RTC denied the petition for relief as it found petitioner's claim that his counsel did not heed his instruction to file an appeal to be unsubstantiated and self serving; and that if there was indeed such omission committed by the counsel, such negligence is binding on the client.

Petitioner insists that the failure of his counsel to timely file a notice of appeal of his judgment of conviction despite his explicit instruction to do so constitutes excusable negligence and so his petition for relief should have been granted.

We find that the RTC committed grave abuse of discretion in dismissing petitioner's petition for relief from judgment.

Petitioner was represented in the RTC by Atty. Rivera of the PAO. Section 1, Article IV of PAO Memorandum Circular No.18 series of 2002, the Amended Standard Office Procedures in Extending Legal Assistance (PAO Memorandum Circular), provides that all appeals must be made upon the request of the client himself and only meritorious cases shall be appealed; while Section 2, Article II of PAO Memorandum Circular provides that in criminal cases, the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence cases of defendants in criminal actions are considered meritorious and therefore, should be appealed, upon the

client's request.

In this case, petitioner claims he had instructed the PAO lawyer to file an appeal. Under the PAO Memorandum Circular, it was the duty of the latter to perfect the appeal. Thus, in determining whether the petition for relief from judgment is based on a meritorious ground, it was crucial to ascertain whether petitioner indeed gave explicit instruction to the PAO lawyer to file an appeal but the latter failed to do so.

To determine the veracity of petitioner's claim, it was incumbent upon the RTC to have required the PAO lawyer to comment on the petition for relief. However, it appears from the records that the RTC only required the City Prosecutor to file a comment on the petition.

The RTC Order dismissing the petition for relief did not touch on the question whether the PAO lawyer was indeed negligent in not filing the appeal as it merely stated that even if said omission, i.e., not filing the appeal despite his client's instruction to do so, should be considered as negligence, it is a well-settled rule that negligence of counsel is binding on the client.

While as a general rule, negligence of counsel may not be condoned and should bind the client,[23] the exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[24] In *Aguilar v. Court of Appeals*,[25] we held:

x x x Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:

x x x x

The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.

x x x x

The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.

x x x x

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities.[26]

The PAO lawyer, Atty. Rivera, filed his Withdrawal of Appearance on September 30, 2002, almost three months before the RTC rendered its assailed Order dated December 13, 2002, dismissing the petition for relief. The RTC had ample time to require the PAO lawyer to comment on the petition for relief from judgment, before issuing the questioned Order. Had the RTC done so, there would have been a factual basis for the RTC to determine whether or not the PAO lawyer was grossly negligent; and eventually, whether the petition for relief from judgment is meritorious. If there was no instruction from petitioner to file an appeal, then there was no obligation on the part

of the PAO lawyer to file an appeal as stated in the PAO Memorandum Circular and negligence could not be attributed to him. However, if indeed there was such an instruction to appeal but the lawyer failed to do so, he could be considered negligent.

Thus, there was no basis for the RTC to conclude that the claim of petitioner that he instructed the PAO lawyer to file an appeal as self-serving and unsubstantiated. The RTC's dismissal of the petition for relief was done with grave abuse of discretion amounting to an undue denial of the petitioner's right to appeal.

The RTC faulted petitioner for claiming in his petition for relief that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal; while in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal. We do not find such circumstance sufficient ground to dismiss the petition considering that he filed the petition for relief unassisted by counsel.

In all criminal prosecutions, the accused shall have the right to appeal in the manner prescribed by law. The importance and real purpose of the remedy of appeal has been emphasized in *Castro v. Court of Appeals*[27] where we ruled that an appeal is an essential part of our judicial system and trial courts are advised to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party- litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution. Thus, the importance of finding out whether petitioner's loss of the right to appeal was due to the PAO lawyer's negligence and not at all attributed to petitioner.

However, we cannot, in the present petition for review on certiorari, make a conclusive finding that indeed there was excusable negligence on the part of the PAO lawyer which prejudiced petitioner's right to appeal his conviction. To do so would be pure speculation or conjecture. Therefore, a remand of this case to the RTC for the proper determination of the merits of the petition for relief from judgment is just and proper.

WHEREFORE, the petition is GRANTED. The Resolutions dated August 19, 2003 and November 28, 2003 of the Court of Appeals are REVERSED and SET ASIDE. The Order dated December 13, 2002 of the Regional Trial Court of Quezon City, Branch 76, is SET ASIDE. The RTC is hereby ordered to require Atty. Raul Rivera of the Public Attorney's Office to file his comment on the petition for relief from judgment filed by petitioner, hold a hearing thereon, and thereafter rule on the merits of the petition for relief from judgment, with dispatch.

### **SO ORDERED.**

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

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[1] Penned by Justice Sergio L. Pestaño and concurred in by Justices Rodrigo V. Cosico and Rosalinda Asuncion-Vicente; rollo, p. 26.

[2] Id. at 28-29.

[3] Docketed as Criminal Case Nos. Q-00-91647-48.

[4] Penned by Judge Monina A. Zenarosa, rollo, pp. 36-52.

[5] Id. at 53-60.

[6] Id. at 57.

[7] Id. at 65.

[8] Id. at 67-68.

[9] Id.

[10] Id. at 26.

[11] Garcia v. Philippine Airlines, Inc., G.R. No. 160798, June 8, 2005, 459 SCRA 768, 780.

[12] See Telan v. Court of Appeals, G.R. No. 95026, October 4, 1991, 202 SCRA 534, 541.

[13] Id.

[14] Id. at 540-541.

[15] Id. at 541.

[16] Garcia v. Philippine Airlines, Inc., supra note 11, at 781.

[17] G.R. No. 160753, September 30, 2004, 439 SCRA 675.

[18] Id. at 686-687.

[19] 392 Phil. 251 (2000).

[20] Id. at 266.

[21] Cusi- Hernandez v. Spouses Diaz, 390 Phil. 1245, 1252 (2000).

[22] Telan v. Court of Appeals, supra note 12, at 540-541; People of the Philippines v. Holgado, 85 Phil. 752, 756-757 (1950); Flores v. Judge Ruiz, 179 Phil. 351, 355 (1979); Delgado v. Court of Appeals, 229 Phil. 362, 366 (1986).

[23] Lamsan Trading, Inc. v. Leogrado, Jr., 228 Phil. 542, 550 (1986).

[24] Sapad v. Court of Appeals, 401 Phil. 478, 483 (2000).

[25] 320 Phil. 456 (1995).

[26] Id. at 461-462.

[27] 208 Phil. 691, 696 (1983).

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