

**GLEN PASCUAL Y MALUMAY ALIAS “YEYE” AND
PAULITO PASCUAL Y JUDALENA ALIAS “BOYET,”
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

G.R. No. 162286. June 05, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, in connection with Section 2, Rule 125 of the Rules of Criminal Procedure, seeking to set aside the entry of judgment in CA-G.R. CR No. 26329 and to reinstate the appeal of herein petitioners before the Court of Appeals (CA).

The instant petition is brought about by the following factual and procedural antecedents:

On July 25, 1996, Criminal Case No. 96-151438 for homicide was filed against petitioners with the Regional Trial Court (RTC) of Manila, Branch 6, the Information on which reads:

That on or about June 30, 1996, in the City of Manila, Philippines, the said accused, conspiring and confederating together with two others whose true names, real identities and present whereabouts are still unknown and helping one another, did then and there wilfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of TEOFILO CORNEL Y DACASIN, by then and there kicking, boxing the latter on the different parts of his body and, thereafter, striking him in the head with a stone, thereby inflicting upon him mortal and fatal wounds which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[1]

During their arraignment on January 31, 1997, petitioners, with the assistance of their counsel de parte, pleaded "not guilty."

At the trial, the RTC found the following facts based on the testimonies of prosecution witnesses Rodolfo C. Cortez (Cortez), an eyewitness to the mauling incident which led to the killing of the victim; Edgardo Ko (Ko), the police investigator of the case; Flora Cornel (Flora), who testified as to the civil liability of the case, she, being the mother of the victim; and the testimony of petitioner Paulito Pascual, for the defense:

On June 30, 1996, at about 12:30 in the morning, Rodolfo Cortez was on his way to buy liempo at Andok's Litson Manok (Andok's) located at the corner of Palawan and Rosalito Streets, along G. Tuazon, Sampaloc, Manila. Cortez was approaching Andok's when he saw a male person sporting long hair being kicked, mauled and ganged up on by six persons in front of the same store. Cortez recognized two of the six persons as petitioners Glen Pascual alias "Yeye" and Paulito Pascual alias "Boyet," as the former sometimes played basketball with Cortez and the latter lived in Masbate Street, the next street from Leo Street, where Cortez lived. Petitioner Glen Pascual hit the head of the victim with a knapsack, which caused the victim to fall with his face down. While the victim

was lying prostrate on the ground, petitioners Glen Pascual and Paulito Pascual continuously kicked the said victim. Cortez next saw petitioner Glen Pascual with a shiny instrument, which the latter struck on the neck area (the lower earlobe) of the victim. After that, Cortez heard somebody shout the name "Yeye," which made petitioner Glen Pascual turn around, prompting both of them to have an eye to eye contact.[2]

The following day, after the mauling incident, while Cortez was on his way home from work, he passed by the barangay hall and noticed that somebody was lying in state. Cortez entered the barangay hall and recognized the corpse inside the coffin as the same victim who was mauled the night before. Cortez informed somebody, who turned out to be the brother of the victim, about the mauling incident which led to the killing of the victim and told the latter that he was willing to testify as to the incident he witnessed.[3] Thus, on July 2, 1996, Cortez executed an Affidavit[4] stating what he witnessed during the mauling.

Edgardo Ko testified that on June 30, 1996, at 10:00 in the morning, while he was in his office at the Western Police District, Homicide Section, he received a telephone call from Senior Police Officer (SPO4) Domingo Almada of the Balic-Balic Police Station informing him that a victim of a mauling incident was admitted dead on arrival at the Ospital ng Sampaloc. Hearing said information, he and PO3 Diomedes Labarda then proceeded to the said hospital and traced the victim's body inside the emergency room. Upon seeing the victim's body, Ko examined it. It showed lacerated wounds at the back of his head, busted lips and a puncture wound on the chin. He also came to know the name of the victim as Teofilo Cornel y Dacasin (Teofilo). Afterwards, Ko and his companion proceeded to the scene of the mauling incident. They conducted an ocular inspection and found splashes of blood along the gutter of the road. They also found the bloodstained, gray and aquamarine colored knapsack containing assorted technician's tools and clothing which allegedly belonged to the victim. They recovered said bag at the Pascual compound at 1024 Rosalito Street, Sampaloc, Manila.[5]

The autopsy conducted by Dr. Antonio S. Vertido, Medico-Legal Officer of the National Bureau of Investigation (NBI), upon a letter-request of the victim's brother, indicated the following: (1) the victim suffered fractures, linear, on the right and left fronto-temporo-parietal bones; (2) as a result of the said injuries, the victim suffered hematoma on the scalp, generalized, and hemorrhages, subdural, on the right and left cerebral- hemisphere; (3) the injuries could have been caused by a blunt instrument like a lead pipe or a 2x2 piece of wood; (4) considering that the victim suffered fractures on both sides of his head, the blunt instrument could have been used twice in inflicting the wounds; (5) that the person who inflicted the blunt instrument could have been one arm's length from the victim, and that if the blunt instrument was placed inside a bag and that bag was used to hit the head of the victim, the same would still be a blunt instrument and could have produced the same injuries; (6) that the external injuries like lacerated wounds, hematoma, and contusions were also caused by a blunt instrument; (7) that these wounds could have been sustained also if the victim was boxed and kicked, because a closed fist is a blunt object; and (8) that in view of the location of the external injuries in the anterior position of the body of the victim, the assailant and the victim could have been facing each other about an arm's length from each other.[6]

On the other hand, petitioner Paulito Pascual, in his testimony, narrated that on June 30, 1996, he went to sleep at around 11:30 in the evening and woke up at about 12:30 to 1:00 in the morning because his housemaid arrived and informed him that there was a commotion outside his house. He went outside the house but did not see any commotion; instead, he saw a lone person lying prostrate along G. Tuazon Street. He returned to the house and asked the housemaid as to the identity of the person lying prostrate on the ground. While he was inside his house, three policemen entered and invited him for investigation while four other policemen remained outside the compound where the house was located and held his relatives, i.e., Balam Pascual, Eddie Mamaril and Tiyo Van Pascual for questioning. They all boarded an owner-type jeepney and the policemen brought them to the police headquarters at Police Station 5. The policemen did not show him any warrant for his arrest or for the arrest of his

other relatives. They were detained at the police station for one week. Thereafter, he was transferred to the Manila City Jail. He did not know the victim or the name and identity of the person he saw lying prostrate outside his house.[7]

After trial, the RTC found petitioners guilty beyond reasonable doubt of the crime charged. The dispositive portion of the Decision[8] dated September 7, 2001 reads as follows:

WHEREFORE, in view of the afore-going, the Court finds accused GLEN PASCUAL Y MALUMAY alias "YEYE" and PAULITO PASCUAL Y JUDALENA alias "BOYET" GUILTY beyond reasonable doubt of the crime of HOMICIDE. The Court hereby sentences them to suffer an indeterminate sentence of SIX (6) YEARS AND ONE (1) DAY TO TWELVE (12) YEARS and to jointly and severally pay the mother of the victim, Mrs. Flora Cornel the following amounts:

- P50,000.00 for the death of Teofilo Cornel y Dacasin;
- P50,000.00 as reimbursement of burial expenses; and
- P50,000.00 as moral damages.

SO ORDERED.[9]

Due to the conviction, petitioners filed an Urgent Motion for Reconsideration[10] dated September 25, 2001, which was denied by the trial court.[11]

Consequently, petitioners filed an Urgent Notice of Appeal[12] on October 17, 2001 and, on July 9, 2002, the CA issued a notice[13] to petitioner's former counsel, Atty. Edilberto R. Balce, requiring petitioners to file their brief within thirty (30) days from receipt of the said notice. On August 13, 2002, petitioners filed through their new counsel, Atty. Humberto B. Basco, an Urgent Ex-Parte Motion for Extension of Time to Submit Appeal Brief,[14] which was granted by the CA in a Resolution[15] dated October 15, 2002. However, no brief was filed by petitioners.

For failure of petitioners to file the required brief, their appeal was deemed abandoned and dismissed, pursuant to Section 8, Rule 124 of the Revised Rules of Criminal Procedure, by the CA on February 13, 2003.[16] And, as a consequence thereof, an Entry of Judgment was made on March 8, 2003.

Subsequently, petitioners filed an Urgent Omnibus Motion[17] dated September 10, 2003 with the CA alleging that the dismissal of the appeal amounted to punishing them for something which they did not do or in which they had no participation whatsoever. They also argued that the dismissal of the appeal and the entry of judgment did not preclude the CA from reinstating the appeal, as there were instances when the same court had set aside entries of judgments and reinstated appeals due to the failure of counsels to file appellants' briefs.

The Office of the Solicitor General (OSG), in its Comment[18] dated January 28, 2004, argued that the claim of the petitioners that they were not informed by their counsel of the filing of the motion for extension of the period for the filing of their brief and the dismissal of the appeal on account of the non-filing of the said required pleading, was devoid of any merit. The OSG pointed out that the petitioners were aware of the notice to file brief, since what they disclaimed knowledge of were merely the motion for extension filed by their counsel and the resolution dismissing the appeal. It was also observed by the OSG that the lack of coordination by the petitioners with their counsel respecting the appeal may be attributed to the possibility that petitioners were confused as to who their counsel was, as shown in their Omnibus Motion, wherein they referred to their counsel as Atty. Humberto Basco on page 1 and as Atty. Edilberto R. Balce on page 3, which indicate that the petitioners did not even bother to know who their counsel was. It was also claimed by the OSG that petitioners omitted to state in

their Motion the date when they discovered the dismissal of their appeal and, thereby, hiding the unreasonable delay or laches on their part with regard to their Urgent Motion, which was filed more than 11 months since the Resolution dismissing the appeal was promulgated. In sum, the OSG, citing jurisprudence,[19] contended that a client is bound by the actions of his counsel, as well as by his mistake or negligence, and that a party cannot blame his counsel for negligence when he himself is guilty of neglect.

In their Reply (to Comment)[20] dated February 10, 2004, petitioners argued that they relied on the supposed professionalism of every member of the Bar. They also claimed that no amount of prodding would guarantee that the brief would be prepared and filed on time, as the lawyer concerned was negligent. According to them, if they made any mistake, it was their act of trusting their lawyer and not their failure to follow up the status of the case. It was also their contention that they should not be blamed for the fact that they had not secured the services of a counsel because they tried hard to convince lawyers to handle their case, but they seemed to believe that their case was hopeless. Finally, citing jurisprudence,[21] they state that procedural rules should be liberally construed in order to promote their object and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.

In its Resolution[22] dated February 18, 2004, the CA denied the Urgent Omnibus Motion dated September 10, 2003 of petitioners by agreeing with the OSG that petitioners were aware of the notice to file brief, and that they themselves were guilty of neglect for failing to monitor the status of their appeal. The CA also ruled that petitioners did not state when they discovered the dismissal of their appeal, the omission of which appears to hide their own delay in filing the motion, which was one for reconsideration of a final resolution and, hence, subject to a reglementary period.

On March 11, 2004, petitioners filed a Motion for Extension of Time to File Petition for Review on Certiorari,[23] which was denied by this Court in a Resolution[24] dated April 12, 2004 for petitioners' failure to show that they had not lost the fifteen (15)-day reglementary period within which to appeal pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of the lack of statement of the date of receipt of the assailed judgment of the CA.

The present petition was filed on April 6, 2004.

On May 18, 2004, petitioners filed a Motion for Reconsideration of this Court's Resolution dated April 12, 2004 on the ground of negligence of their counsel. They claimed that they could not comply with the requirement to indicate in their petition the date when they received the Resolution of the CA dismissing their appeal, because they never received a copy of the Resolution of the CA; and that their counsel was so grossly negligent that he did not even bother to inform petitioners of the developments in their appeal. In its Resolution dated May 24, 2004, this Court required the OSG to file a comment on the petition and on the motion for reconsideration.

In its Comment on the petition dated September 2, 2004, the OSG argued that the petitioners were likewise at fault for the dismissal of their appeal because they failed to diligently monitor the status of their appeal. The OSG reiterated the arguments it raised in its Comment dated January 28, 2004. Anent the petitioners' motion for reconsideration, the OSG countered that despite the provisions of Section 6, Rule 1 of the Rules of Court, which provides that the said procedural rules, as a general rule, are liberally construed, periods for filing an appeal or a motion for reconsideration are strictly enforced. Thus, according to the OSG, having had actual notice of the issuance of the Resolution of the CA dismissing their appeal, petitioners should have indicated the date of such notice in their petition with this Court, which inclusion is necessary to establish compliance with Section 2, Rule 45 of the Rules of Court.

On October 13, 2004, the Court granted petitioners' Motion for Reconsideration of its Resolution dated April 12,

2004 denying petitioners' Motion for Extension to File Petition dated March 11, 2004. In the same Resolution, this Court gave due course to the instant petition and required the parties to submit their respective memoranda within thirty (30) days from notice.

On November 30, 2004, petitioners submitted their Memorandum, and on February 4, 2005, the OSG filed a Manifestation and Motion praying that it be allowed to adopt its Comment dated September 2, 2004 as its Memorandum, which the Court granted on March 16, 2005.

The issues raised in this petition are:

A

THE DISMISSAL OF PETITIONERS' APPEAL AMOUNTED TO PENALIZING THEM FOR SOMETHING OVER WHICH THEY HAD NO CONTROL WHATSOEVER.

B

THE HONORABLE COURT OF APPEALS ERRED IN RIGIDLY APPLYING THE RULES RATHER THAN THE SPIRIT BEHIND THEM.

The petition has no merit.

Petitioners insist that they relied on the supposed professionalism of their counsel. According to them, having received the notice from the Court of Appeals to file a brief, their counsel was supposed to know his duty, not only as their counsel but also as an officer of the court; and they conclude that they should not be blamed and penalized if the conduct of their counsel fell way short of what was expected of him. This reasoning of petitioners merits no consideration.

It is a well-settled rule that the client is bound by the counsel's conduct, negligence, and mistakes in handling the case; and the client cannot be heard to complain that the result might have been different had his lawyer proceeded differently.[25]

In *People of the Philippines and Bricio Ygana v. Rafael Bitanga*,[26] an exception to the foregoing rule is enunciated, 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. For this exception to apply, however, the gross negligence of counsel should not be accompanied by his client's own negligence or malice.[27] Clients have the duty to be vigilant of their interests by keeping themselves up to date on the status of their case.[28] Failing in this duty, they suffer whatever adverse judgment is rendered against them.

The CA is correct in its finding that petitioners were aware of the notice to file brief, since what the petitioners disclaimed knowledge of was only their counsel's motion for extension to file the brief. The previous pleadings, as well as the petition itself, are without any claim by petitioners that they had no knowledge of the notice to file brief with the CA. No allegation was even made that after the discovery of the dismissal of their case by the CA, petitioners asked or confronted their lawyer for the latter's failure to file the brief. It is the duty of a party-litigant to be in contact with his counsel from time to time in order to be informed of the progress of his case.[29]

All of the above would lead anyone to conclude that petitioners were not vigilant. Although there is no doubt that petitioners' counsel was negligent, such negligence was not so gross because it still afforded petitioners the necessary remedy, provided that they themselves were not negligent. Hence, the negligence of their counsel binds them. A contrary view would be inimical to the greater interest of dispensing justice. For all that a losing party would need to do is invoke the mistake or negligence of his counsel as a ground for reversing or setting aside a judgment adverse to him, thereby putting no end to litigation. To allow this obnoxious practice would be to put a

premium on the willful and intentional commission of errors by accused persons and their counsel, with a view to securing favorable rulings in cases of conviction.[30]

Petitioners likewise argue that the CA rigidly applied the rules rather than the spirit behind them. They proceeded to cite a case wherein the rules were relaxed and the relief sought, which was the cancellation of the entry of judgment by the CA, was ordered upon the finding of negligence on the part of the counsel. However, the cited case bears scant resemblance to the instant case. As discussed earlier, petitioners' counsel may have committed negligence, but such was not so gross as to deprive them of their right to due process. On the contrary, *Mario S. Mariveles v. Court of Appeals*,[31] which petitioners cited, the negligence committed by the counsel was so great that the rights of the accused were prejudiced. Thus:

It is true that the failure of counsel to file brief for the appellant which led to the dismissal of the appeal does not necessarily warrant the reinstatement thereof. However, where the negligence of the counsel is so great that the rights of the accused are prejudiced and he is prevented from presenting his defense, especially where appellant raises issues which place in serious doubt the correctness of the trial court's judgment of conviction, the aforesaid rule must not be rigidly applied to avoid a miscarriage of justice. These teachings of jurisprudence are present in the case at bar.

Hence, the above case is inapplicable to the instant case.

WHEREFORE, the petition is DENIED, and the Resolution dated February 18, 2004 of the Court of Appeals in CA-G.R. CR No. 26329 is AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Carpio[*], Corona[**], and Nachura, JJ., concur.

[*] Designated to sit as an additional member, per Special Order No. 646 dated May 15, 2009.

[**] Designated to sit as an additional member, per Special Order No. 631 dated April 29, 2009.

[1] Records, p. 1.

[2] Rollo, p. 21.

[3] Id. at 15-16.

[4] Id. at 21-22.

[5] Id. at 22-23.

[6] Id. at 23.

[7] Id. at 25.

[8] Penned by Presiding Judge Lolita C. Dumlao; id. at 20-28.

[9] Rollo, p. 28.

[10] Records, pp. 270-274.

[11] Order dated October 4, 2001; id. at 277.

[12] Id. at 279.

[13] CA rollo, p. 31.

[14] Id. at 32.

[15] Id. at 36.

[16] Resolution of the Court of Appeals, Fourth Division, penned by Associate Justice Mario L. Guariña III, with Associate Justices Godardo A. Jacinto and Martin S. Villarama, Jr., concurring; id. at 38.

[17] CA rollo, pp. 42-52.

[18] Id. at 73-79.

[19] Barangay 24 of Legazpi City v. Imperial, G.R. No. 140321, August 24, 2000, 338 SCRA 694; Gacutana-Fraile v. Domingo, G.R. No. 138518, December 15, 2000, 348 SCRA 414; Sapad v. Court of Appeals, G.R. No. 132153, December 15, 2000, 348 SCRA 304; Macapagal v. Court of Appeals, G.R. No. 110610, April 18, 2000, 271 SCRA 491; and Villanueva v. People, G.R. No. 135098, April 12, 2000, 330 SCRA 695.

[20] CA rollo, pp. 81-85.

[21] Nepomuceno v. Court of Appeals, G.R. No. 126405, February 25, 1999, 303 SCRA 679, 682; Nerves v. Civil Service Commission, G.R. No. 123561, July 31, 1997, 276 SCRA 610, 617; and A-One Feeds, Inc. v. Court of Appeals, G.R. No. L-35560, October 30, 1980, 100 SCRA 590, 594.

[22] CA rollo, p. 87.

[23] Rollo, pp. 3-4.

[24] Id. at 7.

[25] People v. Salido, G.R. No. 116208, July 5, 1996, 256 SCRA 291, 295, citing Tupas v. Court of Appeals, 193 SCRA 597 (1991).

[26] G.R. No. 159222, June 26, 2007, 525 SCRA 623, 632-633, citing Apex Mining, Inc. v. Court of Appeals, 377 Phil. 482, 493 (1999); 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.

[27] Tan v. Court of Appeals, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 462.

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

[29] Bernardo v. Court of Appeals, G.R. No. 106153, July 14, 1997, 275 SCRA 413, 430.

[30] Aurora Tamayo v. People, G.R. No. 174698, July 28, 2008, 560 SCRA 312, 326-327, citing Ceniza-Manantan v. People, 531 SCRA 364, 379-380 (2007).

[31] G.R. No. 85964, Minute Resolution dated March 13, 1989.

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