

**GENEROSO CORTES, PETITIONER, VS. COURT OF APPEALS –
THIRD DIVISION, DAVID S. ODILAO, JR., AND BASILIO IGOT,
RESPONDENTS.***G.R. No. 79010, May 23, 1988*

Ponente: GANCAYCO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-79010/>**GANCAYCO, J.:**

Generoso Cortes was the owner of a fishing boat which was beached along the shore of Mactan Island. David S. Odilao, Jr. was the Collector of Customs at Mactan Island who headed a committee of the Ministry Of Youth and Sports Development and the City of Lapu-Lapu which conceived the idea of re-enacting the historic battle of Mactan on April 27, 1979. To give the battle scene an aura of realism, it was found necessary to clear the area of obstructions. One such obstruction was the boat of Cortes which happened to be within the "battle" area. A week before April 27, Odilao located Cortes and talked to his wife and brother-in-law Imigdio Llanos. He explained the need to transfer the boat to another place and Llanos suggested that Odilao wait for high-tide. Obviously Odilao was in a hurry and he said that if the owner could not transfer it, he will have it transferred. In the afternoon of April 26, a payloader was brought to the site for the purpose of lifting and transferring the boat. The payloader was operated by two (2) men under the supervision of Basilio Igot, the barrio captain of Mactan. No sooner had the boat been lifted that it broke into two crosswise in the middle. Its wreckage and debris fell into the sea and on the shore.[1] The two engines were, however, saved.

Thus, Cortes filed an action for damages against Odilao and Igot in the Court of First Instance (CFI) of Cebu City. After trial on the merits, a decision was rendered by the Regional Trial Court (which replaced the CFI) on February 16, 1983, the dispositive part of which reads as follows:

"WHEREFORE, judgment is hereby rendered ordering defendant David Odilao to pay plaintiff Generoso Cortes the sum of P10,000.00 as actual damages and the sum of P3,000.00 as attorney's fees and expenses of litigation. Defendant basilio Igot is absolved from liability. Defendants counterclaim is ordered dismissed. Costs against defendant Odilao.' (Decision, p. 5; Record, p. 147.)"

From the said decision, Odilao filed a notice of appeal on March 22, 1983 but the appeal was denied by the lower court for having been filed beyond the 15-day reglementary period. On April 11, 1983, Odilao filed a Petition for Relief of Judgment but this was dismissed on May 4, 1983. Odilao then appealed said order of dismissal to the Court of Appeals (CA).

In due time, a decision was rendered by the CA on March 19, 1987 vacating the lower court's order of May 4, 1983, denying the petition for relief from judgment and reversing the decision of the lower court of February 16, 1983 without costs.[2]

Hence this petition for review filed by Cortes predicated on the following grounds:

“I

RESPONDENT COURT RENDERED A DECISION WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

II

RESPONDENT COURT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT REVERSED THE FINDINGS OF FACT OF THE TRIAL COURT EVEN IN THE ABSENCE OF EXCEPTIONAL CIRCUMSTANCES."

The first issue relates to the petition for relief from judgment filed in the lower court. The counsel of the private respondent in the lower court was Atty. Peary Aleonar who was appointed Judge of the Regional Trial court of Dumaguete City in January 1983. As he had not withdrawn his appearance as counsel he was served on February 28, 1983 a copy of the lower court's decision dated February 16, 1983 at his given address in Cebu City. He was then at his station in Dumaguete City and he came home to Cebu City only on March 8, 1983. When he learned about the adverse decision, he lost no time in informing private respondent by telegram at his station in Zamboanga City. Said respondent, however, was then out of his office and then he left for Manila on March 10, 1983, and stayed there until March 17, 1983. It was only on March 21, 1983 when private respondent contracted the services of a new counsel who filed a notice of appeal on March 22, 1983. The lower court denied due course to the appeal as it was filed seven (7) days late. Private respondent filed the petition for relief from judgment contending that under the circumstances of the case there was excusable negligence on his part. The petition was denied by the lower court.

The respondent court correctly overturned the order of the lower court denying the petition. The foregoing facts and circumstances show excusable negligence on the part of private respondent. It was obviously an oversight on the part of counsel of private respondent not to have withdrawn his appearance as counsel when he was appointed RTC Judge. It must have been due to the excitement occasioned by his appointment to the judiciary. Nevertheless, when he learned of the decision against the cause of his former client, said counsel promptly informed his Client by telegram. Unfortunately, private respondent was out of his office on official business then and he learned of the telegram only a few days later. Hence, the delay in the appeal.

An appeal is an essential part of our judicial system and the Court should proceed with caution in depriving parties of such right.[3] The rules of procedure are not to be applied in a very rigid and technical sense. They are used to help secure, not override substantial justice. Under the circumstances peculiar to this case, a seven-day delay in the perfection of the appeal does not call for its outright dismissal.[4] More so when there is an ostensible merit in the appeal.[5]

We now come to the second issue which goes into the merit of the case. The respondent court likewise reversed and set aside the decision of the lower court finding that it does not have "any allegation or proof that defendant-appellant ordered the use of a forklift or payloador to remove or transfer the boat" of petitioner.

We find this conclusion of the respondent court to be untenable. From the findings of fact made by the lower court and reproduced in the decision of the respondent court, it clearly appears that it was private respondent who told petitioner of the need to relocate his boat at once and if it cannot be done, he would arrange for its transfer. The payloador was brought for the purpose. Unfortunately, when the boat was lifted, it was damaged beyond repair.

Indeed, in the appeal before the respondent court, while the private respondent claims that he did not order the transfer of petitioner's boat, however, he also asserted that petitioner's vessel was then a derelict, that petitioner consented to the transfer of the vessel and that the destruction of the vessel was not due to his fault or negligence.

Such defenses are predicated on the assumption that private respondent caused the removal of the vessel.

At any rate, since the private respondent was the chairman of the committee in charge of the preparations for the re-enactment of the battle of Mactan including clearing obstructions at the battle site and inasmuch as it was the private respondent who talked to petitioner about the need to remove his boat at once and asserted that he would cause it to be transferred if he could not do so, the logical conclusion is, that it was private respondent who directed that a payloader be used in lifting and removing the boat. Because of the recklessness in its lifting and removal, the boat was totally destroyed. Certainly, private respondent cannot escape liability thereby.

WHEREFORE, the petition is hereby GRANTED and the questioned decision of the respondent court dated March 19, 1987 is hereby REVERSED and set aside insofar as it reversed the decision of the trial court dated February 16, 1983. The decision of the trial court is hereby reinstated, without pronouncement as to costs.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Exhibits "F" to "I".

[2] Decision penned by Justice Felipe B. Kalalo and concurred in by Justices Rodolfo A. Nocon and Ricardo P. Tensuan, Third Division, Court of Appeals.

[3] National Waterworks & Sewerage System v. Municipality of Libmanan, 97 SCRA 138; Bersabal v. Salvador, 84 SCRA 176; Tiozon v. Court of Appeals, 70 SCRA 284.

[4] Castro v. Court of Appeals, 123 SCRA 782, 787; Gregorio v. Court of Appeals, 72 SCRA 120; Republic v. Court of Appeals, 83 SCRA 453; Ramos v. Bagasao, 96 SCRA 395.

[5] Olango v. CFI of Misamis Oriental, 121 SCRA 328.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.