

**ROMINA M. SUAREZ, PETITIONER, VS. THE COURT OF APPEALS,
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH LXI,
ANGELES CITY, RESPONDENTS.**

G.R. No. 91133. March 22, 1993

Ponente: MELO, J.

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MELO, J.:

Before us is a petition for review on certiorari seeking to set aside the decision of the Court of Appeals in CA-G.R. SP No. 17488 and to direct respondent trial court to reopen the joint trial of Criminal Cases No. 7284 to 7296, 7302-7303, and 7650.

It appears from the record that on May 7, 1985 petitioner was charged in Criminal Cases No. 7284-7296, and No. 7302-7303 before the Regional Trial Court, Branch 61, Angeles City with violation of Batas Pambansa Blg. 22, the Bouncing Check Law. On August 21, 1985, petitioner was again charged in the same court with the same offense in Criminal Case No. 7650. All these cases were consolidated for trial and decision in Branch LXI of the Regional Trial Court of the Third Judicial Region in Angeles City, at that time presided over by the Honorable Ramon C. Tuazon who has since retired. At the arraignment, petitioner pleaded "not guilty" to all the informations against her. She then posted bail in all the cases and was granted provisional liberty.

At the trial of the cases, petitioner did not appear in court despite notices sent to her residence as appearing on the record and to her bondsmen. Her counsel de parte, Atty. Vicente San Luis appeared in her behalf during the time the prosecution was presenting its evidence up to October 20, 1987 when it was the turn of the defense to present its evidence. However, the hearing on said date was postponed because of the absence of the private prosecutor and the continuation of the hearing was reset to November 19, 1987. On said date, Atty. Buen Zamar entered a special appearance for Atty. San Luis as counsel for the accused without, however, the consent of petitioner. From said date Atty. San Luis did not appear in court as he had left for the United States of America and has not returned since then, without informing petitioner or withdrawing his appearance. Atty. Zamar, together with the prosecution, asked for deferment of the hearing that day as he was not conversant with the facts of the case, and the continuation of the hearing was reset to January 6, 1988, on which date Atty. Zamar again asked for postponement and the hearing was reset to February 3, 1988. However, also on January 6, 1988, the trial court issued an order forfeiting in favor of the government the bonds posted by petitioner for her provisional liberty in view of the failure of her bondsmen to produce her at the scheduled hearings of the cases against her. It appears that sometime in June, 1987, petitioner got married and lived with her husband at their conjugal dwelling at Villa Dolores Subdivision, Angeles City.

On May 17, 1988, the trial court issued a notice in Criminal Case No. 7650 setting the promulgation of its decision on May 31, 1988, and said notice was sent by registered mail to Atty. San Luis and petitioner's bondsmen and served by personal service by the court's process server at her address of record upon her mother who informed the process server that petitioner had been out of the country for almost two years already. Her

mother did not forward the notice to petitioner.

On May 31, 1988 when Criminal Case No. 7650 was called for promulgation of judgment, the trial court appointed Atty. Augusto Panlilio as counsel de oficio to represent the absent petitioner. The judgment of conviction of petitioner was promulgated by the reading of the decision in open court by the Branch Clerk of Court and furnishing the parties through their respective counsel present in court with copies of the decision. Likewise, copies of the decision were sent by registered mail to petitioner's bondsmen, her attorney of record, and petitioner herself at her address of record, 1799 Burgos St., Angeles City.

On June 14, 1988, the trial court issued notices to all the parties setting the promulgation of its joint decision in Criminal Cases Nos. 7284-7296 and 7302-7303 for June 29, 1988. Copies of the notices were sent by registered mail to petitioner's counsel of record, Atty. Vicente San Luis, and to her bondsmen. Copy of the notice was served upon petitioner by personal service at her given address, which notice was received by her mother who again informed the process server that petitioner was out of the country.

On June 29, 1988, promulgation of the joint judgment of conviction of petitioner in the aforementioned cases was made by the Branch Clerk of Court who read the decision. Petitioner was represented by Atty. Buen Zamar at the reading of sentence.

On December 31, 1988, petitioner was arrested and detained in the local jail of Angeles City.

On February 6, 1989, petitioner, now represented by a new counsel de parte filed three motions, namely: (1) for temporary release as she was pregnant and allegedly suffering from a heart ailment; (2) to set aside promulgation of judgment (p. 44, Rollo); and (3) to re-open trial (p. 50, Rollo). The prosecution opposed the motions. The trial court then denied the motions to set aside judgment and to re-open trial, but with regard to the motion for temporary release, directed that "should a medical examination or confinement in the hospital be necessary, the court may allow the accused under guard to consult a physician or enter a hospital for medical treatment."

Thereupon, petitioner filed a petition for mandamus with this Court which was later docketed as G.R. No. 87564--79. The petition was, however, per our resolution dated April 24, 1989, referred to the Court of Appeals where the petition was docketed as CA-G.R. SP No. 17488. On September 26, 1989, the Court of Appeals promulgated its decision dismissing the petition.

Hence, the instant petition where petitioner assigns the following alleged errors of the Court of Appeals:

I. THE APPELLATE COURT ERRED IN HOLDING THAT PETITIONER IS CRIMINALLY LIABLE FOR THE CHECKS SUBJECT OF CRIMINAL CASES NOS. 7284, 7285 and 7303 EVEN IF SHE WAS NEITHER THE DRAWER NOR MAKER OF THE SAME;

II. THE APPELLATE COURT ERRED IN HOLDING THAT THERE WERE VALID PROMULGATIONS OF JUDGMENTS IN THE SAID CASES;

III. THE APPELLATE COURT ERRED IN HOLDING THAT PAYMENT OF THE OBLIGATIONS CONTAINED IN THE CHECKS SUBJECT OF THE CRIMINAL CASES WOULD (NOT) MERIT LESS SEVERE PENALTIES. IF NOT THE EXTINGUISHMENT OF THE ENTIRE CRIMINAL LIABILITY;

IV. THE APPELLATE COURT ERRED IN HOLDING THAT NO SUFFICIENT GROUNDS EXIST TO WARRANT THE REOPENING OF THE JOINT TRIAL OF THE CASES SUBJECT OF THE PETITION.

(pp. 7-8, Rollo.)

The resolution of this case hinges on the issue of whether or not petitioner was denied her day in court.

The legal difficulty petitioner finds herself in is imputable to the negligence of her de parte counsel, Atty. Vicente San Luis, in abandoning the conduct of the case without formally withdrawing or at least informing petitioner that he would be permanently staying in the U.S.A. so that petitioner could appoint another counsel.

A lawyer owes absolute fidelity to the cause of his client. He owes his client full devotion to his genuine interests, warm zeal in the maintenance and defense of his rights, and the exertion of his utmost learning and ability (Canon 17, Code of Professional Responsibility; Agpalo's Legal Ethics, p. 157). A lawyer is required to exercise ordinary diligence or that reasonable degree of care and skill having reference to the character of the business he undertakes to do (Agpalo's Legal Ethics, p. 174). Among his duties to his client is attending to the hearings of the case (People's Homesite and Housing Corp. vs. Tiongco, 12 SCRA 471 [1964]; Agpalo's Legal Ethics, p. 175).

Atty. Vicente San Luis, petitioner's counsel de parte in the afore-stated cases, was unquestionably negligent in the performance of his duties to his client, herein petitioner. His negligence consisted in his failure to attend to the hearings of the case, his failure to advise petitioner that he was going to stay abroad so that the petitioner could have secured the services of another counsel, and his failure to withdraw properly as counsel for petitioner. This is a clear case where a party was totally abandoned by her counsel. A client may reasonably expect that his counsel will make good his representations (Agpalo's Legal Ethics, p. 169) and has the right to expect that his lawyer will protect his interests during the trial of his case. For the general employment of an attorney to prosecute or defend a cause or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution or management of the suit, and in a defendant's attorney the power to take such steps as he deems necessary to defend the suit and protect the interests of the defendant (7A C.J.S. 315). Petitioner, therefore, had the right to expect that her counsel de parte, Atty. San Luis, would protect her interests during the trial of the cases. However, as aforesated, Atty. San Luis failed to discharge his duties as counsel for petitioner.

As a general rule, a client is bound by his counsel's conduct, negligence, and mistakes in handling the case during the trial (Fernandez vs. Tan Ting Tic, 1 SCRA 1138 [1961]; Rivera vs. Vda. de Cruz, 26 SCRA 58 [1968]; Don Lino Gutierrez & Sons, Inc. vs. Court of Appeals, 61 SCRA 87 [1974]). However, the rule admits of exceptions. A new trial may be granted where the incompetency of counsel is so great that the defendant is prejudiced and prevented from fairly presenting his defense (People vs. Manzanilla, 43 Phil. 167 [1922]; 16 C.J. 1145; 24 C.J.S. 68). Where a case is not tried on the merits because of the negligence of counsel rather than the plaintiff, the case may be dismissed but, in the interest of justice, without prejudice to the filing of a new action (De Los Reyes vs. Capule, 102 Phil. 464 [1957]).

Clearly, petitioner was deprived of her right to present and prove her defense due to the negligence of her counsel. The appearance of a certain Atty. Buen Zamar is of no moment as there was no client-attorney relationship between him and petitioner who did not engage his services to represent her in said cases. The fact that notices of the promulgation of judgment were sent to petitioner at her address of record produced no legal consequence because notice to a party is not effective notice in law (Elli vs. Ditan, 5 SCRA 503 [1962]; Mata vs. Rita Legarda, Inc., 7 SCRA 227 [1963]).

We rule, therefore, that under the facts of the case, petitioner was deprived of due process of law. It is the better part of judicial wisdom and prudence to accord to petitioner the opportunity to prove her defense. It is abhorrent to the judicial conscience to consign petitioner to the ordeals of imprisonment without affording her full opportunity to present her evidence including, of course, the assistance of competent counselling.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP No. 17488, the decision of the trial court in the subject criminal cases, and the order of the trial court denying petitioner's motion to set aside the promulgation

of judgment and to reopen the cases are hereby SET ASIDE. The trial court is hereby DIRECTED to reopen Criminal Cases No. 7264-7296, 7302-7303, and 7650 for the reception of evidence for the defense.
SO ORDERED.

Bidin, Davide, Jr., and Romero, JJ., concur.
Feliciano, J., (Acting Chairman), in the result.

[*] Hugo E. Gutierrez, Jr., J., On Terminal Leave.

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