

MARIA LUISA ESTOESTA, PETITIONER. VS. THE COURT OF APPEALS, PEOPLE OF THE PHILIPPINES AND GERRY R. GONZALES, PRESIDING JUDGE, MTC, BR. 76, MARIKINA, RESPONDENTS.

G.R. No. 92349, November 09, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The legal effect of the appearance a litigant in his own behalf is the focus of controversy in this petition.

Petitioner was charged with the crime of slight physical injuries committed against Perla Y. Corpuz in an information filed with the Metropolitan Trial Court of Marikina, Metro Manila. By the same token, on a countercharge of petitioner, Perla Y. Corpuz was charged in an information for the same offense before the same court.

The cases were consolidated and after a joint trial on the merits where both parties were duly represented by counsel, the trial court rendered a decision dated January 12, 1989 convicting the petitioner of the crime charged and sentencing her to suffer imprisonment of *arresto menor* in its medium period of eleven (11) days to twenty (20) days but acquitting Perla Y. Corpuz with costs *de oficio* in both cases.

Not satisfied therewith petitioner through counsel filed a notice of appeal within the reglementary period to the Regional Trial Court of Pasig wherein in due course the judgment appealed from was modified as to the penalty by imposing a straight penalty of eleven (11) days imprisonment.

A motion for reconsideration filed by counsel for petitioner was denied by the Regional Trial Court on August 30, 1989.

On September 20, 1989, petitioner, without the assistance of counsel, filed with the Court of Appeals a motion for extension of time of thirty (30) days from September 30, 1989 or up to October 19, 1989 within which to file a petition for review on the ground that she has to look for another lawyer to represent her and prepare the necessary petition. The motion was granted by the appellate court in a resolution dated October 16, 1989.

However, instead of filing the petition for review, petitioner in her own behalf filed on October 9, 1989 a written manifestation and motion to withdraw petition for review for the purpose of applying for probation in the court of origin, "she being a first offender and possesses (sic) all the qualifications and none of the disqualifications provided for under the said probation law." [1] The motion was granted by the appellate court in a resolution dated October 24, 1989, copy of which was received by petitioner on October 30, 1989.

The division clerk of court of the Court of Appeals made the entry of judgment on October 25, 1989.

On November 17, 1989, the petitioner filed a joint or alternative motion for reconsideration and reinstatement of petition for review and petition for relief from judgment with prayer for a temporary restraining order based on the ground that the motion to withdraw the petition for review was filed without the advice of her lawyer and

under the honest impression that her application for probation pending with the lower court will be granted.

In a resolution dated February 20, 1990, the Court of Appeals denied the said motion for lack of merit.

Hence this petition for review on certiorari with prayer for restraining order dated March 10, 1990 predicated on the following grounds:

"I. THE HON. COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DENYING YOUR PETITIONER'S MOTION TO REINSTATE PETITION FOR REVIEW IN TOTAL DISREGARD OF THE DOCTRINES ENUNCIATED IN THE CASES OF DELGADO VS. COURT OF APPEALS, 145 SCRA 357; REPUBLIC VS. ARRO, 150 SCRA 626 AND SILVESTRE VS. MILITARY COMMISSION NO. 21, NO. L-46366, MARCH 8, 1978.

II. THE DENIAL OF YOUR PETITIONER'S MOTION TO REINSTATE HER PETITION FOR REVIEW WOULD PERPETUATE THE SERIOUS AND PATENT ERRORS COMMITTED BY THE LOWER COURT ESPECIALLY AS TO THE ALLEGED OPPORTUNITY TO OBSERVE WITNESSES' Demeanor WHEN THE JUDGE WHO PENNED THE DECISION WAS NOT THE SAME JUDGE WHO HEARD THE WITNESSES (WHO) TESTIFIED."[2]

The petition is devoid of merit.

Section 34, Rule 138 of the Rules of Court provides as follows:

"SEC. 34. By whom litigation conducted. - In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for that purpose, or with the aid of an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar."

From the foregoing provision of the rule, it is clear that a party in a case may conduct a litigation either personally or by an attorney in the courts. He may also be assisted by an agent or friend for the purpose in the inferior courts. And even if a party may have chosen to appear through counsel, he may at any time dispense with the services of his/her lawyer and prosecute or defend his/her case personally.

In this case the Court notes that before the Metropolitan Trial Court and the Regional Trial Court, the petitioner was duly represented by counsel. However, when she decided to elevate her case to the Court of Appeals she chose to handle her case personally, first, by asking for an extension of time within which to file a petition for review and second, by filing thereafter a petition to withdraw the petition for review to enable her to apply for probation. Unfortunately, under Section 4 of Presidential Decree No 1257 as amended by Presidential Decree No. 1990 dated October 5, 1985, it is specifically provided that "no application for probation shall be entertained or granted when the defendant has perfected the appeal from the judgment of conviction."

Thus, as petitioner failed to secure favorable action on her application for probation, she filed a motion for reconsideration of the resolution of the appellate court - granting her motion to withdraw - or in the alternative, a petition for relief from judgment alleging that she was not duly assisted by counsel then and that she was under the honest impression that she could apply for probation, and that if the motion is granted, petitioner could very well demonstrate that the assessment of the credibility of the witnesses by the lower court which was relied upon by the Regional Trial Court is misplaced as the one who decided the case is different from the judge who heard the case.

The said alternative motion for reconsideration or petition for relief from judgment, however, was filed only on November 17, 1989, beyond the reglementary period. Petitioner received a copy of the questioned resolution dated October 24, 1989 on October 30, 1989. Hence, said resolution had become final by the time petitioner filed

her motion. Besides, the alternative petition for relief from judgment is not accompanied by an affidavit of merit as required by the rules.[3]

The Court emphasizes the fact that it is always better for a party to be represented by counsel in a litigation. Nevertheless, it is the right of such party to appear in his or her own behalf to prosecute or defend cause in court. If in the process petitioner suffered reverses, she has only herself to blame. She is bound by the consequences of her own voluntary act.

The judgment of conviction of the petitioner for slight physical injuries inflicted by the petitioner upon the offended party was arrived at by the Regional Trial Court based on the testimony of the offended party corroborated by her witnesses and proof of the injury. Such judgment has become final and petitioner must now face the reality of submitting herself for its execution.

WHEREFORE, the petition is DENIED without pronouncement as to costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 28, Rollo.

[2] Page 30, Rollo.

[3] Section 3, Rule 38, Rules of Court.

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