

SECOND DIVISION

[G.R. No. 111682, February 06, 1997]

**ZENAIDA REYES, PETITIONER, VS. COURT OF APPEALS AND THE
PEOPLE OF THE PHILIPPINES, RESPONDENTS.
R E S O L U T I O N**

MENDOZA, J.:

This is a motion for reconsideration of the resolution, dated November 29, 1995, of the Court, denying the petition for review of the decision, dated May 28, 1993, and the resolution, dated August 30, 1993, of the Court of Appeals^[1] in CA-G.R. CR. No. 08410, affirming the conviction of petitioner Zenaida P. Reyes of falsification of public document. Petitioner's motion is based on her contention that because of her counsel's unexplained absences at the trial she was prevented from presenting evidence in her defense and therefore denied the due process of law.

The facts are as follows:

In an information filed on April 7, 1986 with the Regional Trial Court of Bulacan and later assigned to Branch 22 thereof as Criminal Case No. 9252-M, petitioner Zenaida Reyes was accused of falsifying a deed of sale of four (4) parcels of land "by feigning and signing the name of Pablo Floro, who could not affix his signature anymore due to age infirmity, on the said document as seller and causing it to appear that said Pablo Floro [had] participated in the execution of the said document when in truth and in fact, as said accused well knew, said deed of sale was not executed and signed by the said Pablo Floro, nor did he ever appear before any notary public for the purpose of acknowledging the deed above mentioned."^[2]

Upon being arraigned, petitioner pleaded not guilty. Trial on the merits then followed. After the prosecution had rested its case, the presentation of the defense evidence was scheduled on February 6, 1989, which, however, was reset "for the last time" to March 10, 1989 due to petitioner's illness.^[3] The hearing on March 10, 1989 was, however, cancelled also because of the absence of both the private prosecutor and defense counsel, Atty. Analuz Cristal-Tenorio. The new schedule was April 12, 1989.^[4] However, Atty. Tenorio was again absent on April 12, 1989. Petitioner was also absent, but her husband appeared and submitted to the court a medical certificate that she was sick. The hearing on that date was therefore postponed to May 17, 1989 "[f]or the last time."^[5]

On May 11, 1989, Atty. Tenorio moved for the postponement of the hearing from May 17, 1989 to June 5, 1989, allegedly because she had to leave for Malaybalay, Bukidnon to assist in the prosecution of her brother-in-law's killers. The trial court, while noting that the hearing on May 17, 1989 was "intransferrable in character,"

nonetheless granted Atty. Tenorio's motion and postponed the hearing to June 5, 1989 over the objection of the private prosecutor. Petitioner was warned that if she did not present her evidence on that date, she would be considered to have waived her right to do so.^[6] But the hearing on June 5, 1989 had to be rescheduled again because petitioner's counsel, Atty. Tenorio, was absent.^[7]

On July 10, 1989, the new date of hearing, both petitioner and Atty. Tenorio were absent, so that on motion of private prosecutor, the court declared petitioner to have waived the right to present her evidence.^[8] Four days later (on July 14, 1989), petitioner gave a medical certificate^[9] stating that she was suffering from hypertension and rheumatism which required bed rest for at least 5-7 days. The court merely noted the medical certificate but maintained its previous order, on the ground that "the same is not a motion and [as] counsel was also not in Court during the last hearing, the Order of the Court dated July 10, 1989 to the effect that the presentation of defense evidence is considered waived, stands."^[10]

Petitioner by herself moved for reconsideration, alleging that she failed to appear in court on July 10, 1989 because she was indisposed and had been unable to contact Atty. Tenorio. She asked for permission to present her evidence. Her motion, however, was denied by the court in its order of August 29, 1989^[11] in which it also scheduled the promulgation of judgment on September 29, 1989.

On September 29, 1989, the court rendered its decision^[12] finding petitioner guilty of falsification and sentencing her to 4 months of arresto mayor, as minimum, to 4 years and 2 months of prision correccional, as maximum, and to pay a fine of P5,000.00.

Petitioner through a new counsel, Atty. Ronolfo S. Pasamba, filed a notice of appeal.^[13] On May 9, 1990, petitioner by herself filed a motion in the Court of Appeals for extension of 30 days to file her brief as appellant.^[14] About the same time Atty. Pasamba also filed a motion for an extension of 45 days for the same purpose, but later asked to be relieved as petitioner's counsel on the ground that despite his request, petitioner did not give him the records of the case and confer with him but instead acted as her own counsel by filing her own motion for time to file brief.

The Court of Appeals granted Atty. Pasamba's motion and required petitioner to submit the name and address of her new counsel within ten (10) days from notice. Petitioner instead filed a motion for new trial in lieu of appellant's brief, claiming that because of the negligence of her counsel, she had been deprived of her right to present evidence on her behalf in the trial court.

After the Solicitor General filed his comment, the Court of Appeals in its resolution dated January 15, 1992 denied petitioner's motion for new trial and gave her 30 days within which to file her appellant's brief.^[15] The appellate court held:

All that appellant is invoking as ground for new trial is the policy of liberality in the application of the rules and the alleged negligence of her counsel.

Appellant, who has, in fact, prepared the motion herself, without the assistance of counsel, is probably a member of the Bar. If she is not, she must have gone through

law school as her handiwork is written in forensic style and is even better than the pleadings of some licensed advocates who are handling appealed cases or original special civil actions before this Court.

Under the Rules the grounds for new trial are

(a) That errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused; and

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment. (Rule 121, Section 2)

There is not even a wee bit of a hint about the second ground.

So, in effect, what the accused would want of Us is to bend over backwards and in a gesture of liberality consider as an error of law or as an irregularity the trial court's conclusion that she was deemed to have waived her right to present evidence in her defense. In connection with this course of action she already filed before the trial court a motion for reconsideration: this was denied, whereupon the trial court proceeded to rendition of the judgment appealed from by the accused to this court.

We have meticulously gone over the entire record, and We find that accused appellant was not at all deprived of her day in court or denied due process. She was afforded ample opportunity to present evidence in her defense.

Regardless of the nature of the offense charged, a criminal case, even if it involves only a light offense, the penalty for which might be mere censure, is a serious matter that deserves equally serious attention by the one accused. The appellant, it seems never gave to this case while it was still at the lower court the serious attention that it deserves. For good reason -- repeated absences of the accused and her counsel -- the trial court was eventually constrained to consider the accused to have waived the presentation of evidence in her defense. As pointed out by the Solicitor General, it is settled in our jurisprudence that dilatory moves by the accused that tend to defeat the expeditious termination of a criminal case is tantamount to trifling with the administration of justice that certainly can not and should not be condoned. (PP vs. Angco, 103 Phil. 33; PP vs. Dichoso, 96 SCRA 957)

Petitioner filed a "very urgent motion" for 90 days from February 22, 1992 to secure services of counsel to file her appellant's brief. The Court of Appeals gave petitioner 15 days from February 22, 1992, the last day of the extension previously granted her. The Court of Appeals stated that it had given petitioner notice to file brief as early as March 27, 1990, but "petitioner has been trifling with our judicial processes long enough."

On March 6, 1992, without the assistance of counsel, accused-appellant filed an appellant's brief. Thereafter the Solicitor General filed the appellee's brief to which petitioner filed a reply brief. On May 28, 1993, the Court of Appeals rendered its decision, affirming the trial court's ruling. On August 30, 1993 it denied reconsideration.

Petitioner filed this case for review on certiorari, claiming that her conviction by the trial court was void because she was denied due process, since she was denied the opportunity to present evidence in her behalf. The Solicitor General filed his comment to which petitioner filed a reply. On November 29, 1995 this Court denied the petition for lack of merit. Hence this motion for reconsideration.

After due consideration of the motion and its supplement and the separate comments thereto by the respondents as well as petitioner's replies and private respondent's consolidated rejoinder, the Court now resolves to grant petitioner's motion for reconsideration.

First. The issue in this case is whether the trial court properly held petitioner to have waived the right to present evidence because of her failure to proceed despite several postponements granted to her. To be sure, the postponement of the trial of a case to allow the presentation of evidence of a party is a matter which lies in the discretion of the trial court, but it is a discretion which must be exercised wisely, considering the peculiar circumstances obtaining in each case and with a view to doing substantial justice.^[16] In the case at bar, hearings were scheduled for the presentation of petitioner's evidence on six different dates, to wit: (1) February 6, 1989; (2) March 10, 1989; (3) April 12, 1989; (4) May 17, 1989; (5) June 5, 1989; and (6) July 10, 1989. Petitioner was absent thrice, i.e., on February 6, 1989, April 12, 1989, and July 10, 1989. On the first date, petitioner could not come because she was sick and her counsel so informed the court. She was absent also on June 5, 1989 and July 10, 1989 because of illness (hypertension and rheumatism). Thus, while petitioner's absences were explained, those of her counsel were not. Atty. Tenorio simply disappeared without a trace, despite warning to counsel that her failure to present evidence for her client on June 5, 1989 would be considered a waiver of the latter's right to present her evidence. But counsel failed to heed the warning. Petitioner had to soldier on and, by herself, had to plead with the court for a chance to present her evidence. Contrary to what the appellate court thought in affirming petitioner's conviction, this was not the case of a woman who treated the criminal proceedings against her with cavalier disdain. Indeed, we do not think that petitioner's absences were so many, capricious, or egregious as to indubitably indicate an attempt to stall the proceedings of the criminal case as was the case in *People v. Angco*^[17] and *People v. Dichoso*.^[18] Petitioner might have tried to delay the filing of her appellant's brief, but her effort can be attributed to an understandable desire to be allowed to present her evidence. Hence, the filing of a motion for new trial. Even in her present petition before this Court petitioner's prayer is not that she be exonerated but only that she be given the chance to prove her innocence by being allowed to present her evidence.

Respondent People and the counsel for the private respondent oppose petitioner's motion. They point out that, unlike the cases^[19] which petitioner cites in support of her motion, petitioner herself was negligent. They contend that she could not have been unaware of the absences of her lawyer but despite that she did nothing to protect her interests. Private respondent argues that "if granted a second chance to present her side, nothing will stop the petitioner from once again engaging the services of her erstwhile absentee counsel. Anyway, after another 10 years of litigation, she can easily sound her reliable refrain: 'I was denied due process! I was ready to present my evidence, but my lawyer was absent for five consecutive times'. . . ."