

## THIRD DIVISION

[ G.R. No. 161070, April 14, 2008 ]

**JOHN HILARIO Y SIBAL, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by John Hilario y Sibal (petitioner), seeking to annul and set aside the Resolutions dated August 19, 2003<sup>[1]</sup> and November 28 2003<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 75820.

The antecedents are as follows:

Petitioner, together with one Gilbert Alijid (Alijid), was charged with two counts<sup>[3]</sup> of Murder in the Regional Trial Court (RTC), Branch 76, Quezon City to which petitioner, assisted by counsel *de parte*, pleaded not guilty.

During trial, Atty. Raul Rivera of the Public Attorney's Office (PAO), counsel of Alijid, took over representing petitioner in view of the death of the latter's counsel.

On December 5, 2001, the RTC rendered its Decision<sup>[4]</sup> finding petitioner and his co-accused Alijid guilty beyond reasonable doubt of the crime of homicide and sentencing them to suffer imprisonment of eight (8) years and one (1) day of *prision mayor* to fourteen (14) years and eight (8) months of *reclusion t emporal* in each count.

On May 10, 2002, petitioner, this time unassisted by counsel, filed with the RTC a Petition for Relief<sup>[5]</sup> from the Decision dated December 5, 2001 together with an affidavit of merit. In his petition, petitioner contended that at the time of the promulgation of the judgment, he was already confined at Quezon City Jail and was directed to be committed to the National Penitentiary in Muntinlupa; that he had no way of personally filing the notice of appeal thus he instructed his lawyer to file it on his behalf; that he had no choice but to repose his full trust and confidence to his lawyer; that he had instructed his lawyer to file the necessary motion for reconsideration or notice of appeal; that on May 2, 2002, he was already incarcerated at the New Bilibid Prisons, Muntinlupa City and learned from the grapevine of his impending transfer to the Iwahig Penal Colony, Palawan; that believing that the notice of appeal filed by his counsel prevented the Decision dated December 5, 2001 from becoming final to warrant his transfer, he instructed his representative to get a copy of the notice of appeal from the RTC; that no notice of appeal was filed by his lawyer in defiance of his clear instructions; and that the RTC Decision showed that it was received by his counsel on February 1, 2002 and yet the counsel did not inform him of any action taken thereon.

Petitioner claimed that he had a meritorious defense, to wit:

1. The Decision dated December 5, 2001, on page 16 thereof states an imprisonment term of eight (8) years and one (1) day of Prison Mayor to fourteen (14) years and eight (8) months of Reclusion Temporal - a matter which ought to be rectified;
2. The undersigned is a first time offender;
3. No ruling was laid down on the stipulated facts (Decision, p. 3) relative to the (1) absence of counsel during the alleged inquest, and (2) absence of warrant in arresting the accused after ten (10) days from the commission of the crime;
4. Absence of a corroborating witness to the purported lone eyewitness, as against the corroborated testimony of accused-petitioner's alibi;
5. The Commission on Human Rights investigation on the torture of the accused-petitioner;
6. and others.<sup>[6]</sup>

Petitioner argued that he was meted a total of 16 years imprisonment or almost equal to the previous capital punishment of 20 years which was given an automatic review by the Supreme Court, thus it is of greater interest of justice that his case be reviewed by the appellate court; and that no damage will be sustained if the appeal is given due course since he continues to languish in jail while the Petition for Relief is pending.

The Assistant City Prosecutor filed his Comment on the Petition for Relief where he contended that the petition should no longer be entertained; and that perfection of appeal in the manner and within the period permitted by law was not only mandatory but jurisdictional and failure to perfect the appeal rendered the judgment final and executory.

The records do not show that the RTC required petitioner's counsel to whom petitioner attributed the act of not filing the notice of appeal to file his comment.

On September 30, 2002, petitioner's counsel filed a Withdrawal of Appearance<sup>[7]</sup> from the case with petitioner's consent. Again, the documents before us do not show the action taken by the RTC thereon.

In an Order<sup>[8]</sup> dated December 13, 2002, the RTC dismissed petitioner's petition for relief with the following disquisition:

After a careful study of the instant petition and the arguments raised by the contending parties, the Court is not persuaded by petitioner/accused's allegation that he was prevented from filing a notice of appeal due to excusable negligence of his counsel.

Accused's allegation that he indeed specifically instructed his counsel to file a notice of appeal of the Decision dated [sic] and the latter did not heed his instruction is at best self-serving and unsubstantiated and thus, unworthy of credence. At any rate, even if said omission should be considered as negligence, it is a well-settled rule that negligence of counsel is binding on the client. x x x Besides, nowhere does it appear that accused/petitioner was prevented from fairly presenting his defense nor does it appear that he was prejudiced as the merits of this case were adequately passed upon in the Decision dated December 5, 2001.

**It must also be pointed out that in his petition for relief, he stated that he instructed his counsel to file the necessary motion for reconsideration or notice of appeal of the Decision dated December 5, 2001, whereas in his affidavit of merit, he claimed to have told his counsel to simply file a notice of appeal thereof.**<sup>[9]</sup>  
(Emphasis supplied)

Petitioner, again by himself, filed a petition for *certiorari* with the CA on the ground that the RTC committed grave abuse of discretion in dismissing his petition for relief. He claims that the delay in appealing his case without his fault constitutes excusable negligence to warrant the granting of his petition for relief.

In a Resolution dated August 19, 2003, the CA dismissed the petition in this wise:

It appearing that petitioner in the instant petition for certiorari failed to attach the following documents cited in his petition, namely:

1. The December 5, 2001 Decision;
2. Comment of the City Prosecutor;
3. Manifestation of petitioner's counsel *de officio* signifying his withdrawal as petitioner's counsel.

The instant petition for certiorari is hereby DISMISSED pursuant to Section 2, Rule 42 of the 1997 Rules of Civil Procedure and as prayed for by the Solicitor General.<sup>[10]</sup>

Petitioner's motion for reconsideration was denied in a Resolution dated November 28, 2003 for having been filed beyond the 15-day reglementary period, in violation of Section 1, Rule 52 of the Rules of Court and for failure to attach to the petition, the relevant and pertinent documents. The CA also stressed that procedural rules are not to be belittled simply because their non-observance may have resulted in prejudice to a party's substantive rights.

Hence, herein recourse filed by petitioner, still unassisted by counsel, raising the following issues:

Whether or not the delay in appealing the instant case due to the defiance of the petitioner's counsel *de officio* to seasonably file a Notice of Appeal, constitutes excusable negligence to entitle the undersigned detention prisoner/ petitioner to pursue his appeal?

Whether or not *pro hac vice*, the mere invocation of justice warrants the review of a final and executory judgment?

Petitioner contends that the negligence of his counsel *de officio* cannot be binding on him for the latter's defiance of his instruction to appeal automatically breaks the fiduciary relationship between counsel-client and cannot be against the client who was prejudiced; that this breach of trust cannot easily be concocted in this situation considering that it was a counsel *de officio*, a lawyer from PAO, who broke the fiduciary relationship; that the assailed CA Resolutions both harped on technicalities to uphold the dismissal by the RTC of his petition for relief; that reliance on technicalities to the prejudice of petitioner who is serving 14 years imprisonment for a crime he did not commit is an affront to the policy promulgated by this Court that dismissal purely on technical grounds is frowned upon especially if it will result to unfairness; and that it would have been for the best interest of justice for the CA to have directed the petitioner to complete the records instead of dismissing the petition outright.

In his Comment, the OSG argues that the mere invocation of justice does not warrant the review of an appeal from a final and executory judgment; that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional and failure to perfect the appeal renders the judgment sought to be reviewed final and not appealable; and that petitioner's appeal after the finality of judgment of conviction is an exercise in futility, thus the RTC properly dismissed petitioner's petition for relief from judgment. The OSG further claims that notice to counsel is notice to clients and failure of counsel to notify his client of an adverse judgment would not constitute excusable negligence and therefore binding on the client.

We grant the petition.

The CA dismissed the petition for *certiorari* filed under Rule 65 of the Rules of Court, in relation to Rule 46, on the ground that petitioner failed to attach certain documents which the CA found to be relevant and pertinent to the petition for *certiorari*.

The requirements to attach such relevant pleadings under Section 1, Rule 65 is read in relation to Section 3, Rule 46 of the Rules of Court, thus:

Section 1, Rule 65 provides:

SECTION. 1. Petition for certiorari. -

x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto x x x.

Section 3, Rule 46, provides:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. -

x x x x

[The petition] shall be x x x accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto x x x.

x x x x

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

The initial determination of what pleadings, documents or orders are relevant and pertinent to the petition rests on the petitioner. If, upon its initial review of the petition, the CA is of the view that additional pleadings, documents or order should have been submitted and appended to the petition, the following are its options: (a) dismiss the petition under the last paragraph of Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period.<sup>[11]</sup>

The RTC Decision dated December 5, 2001, finding petitioner guilty of two counts of homicide, the Comment of the City Prosecutor as well as the counsel's withdrawal of appearance were considered by the CA as relevant and pertinent to the petition for *certiorari*, thus it dismissed the petition for failure to attach the same. However, the CA failed to consider the fact that the petition before it was filed by petitioner, a detained prisoner, without the benefit of counsel. A litigant who is not a lawyer is not expected to know the rules of procedure. In fact, even the most experienced lawyers get tangled in the web of procedure.<sup>[12]</sup> We have held in a civil case that to demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights not because he has no right to the property but because he does not know how to establish such right.<sup>[13]</sup> This finds application specially if the liberty of a person is at stake. As we held in *Telan v. Court of Appeals*:

The right to counsel in civil cases exists just as forcefully as in criminal cases, specially so when as a consequence, life, liberty, or property is subjected to restraint or in danger of loss.

**In criminal cases, the right of an accused person to be assisted by a member of the bar is immutable. Otherwise, there would be a grave denial of due process. Thus, even if the judgment had become final and executory, it may still be recalled, and the accused afforded the opportunity to be heard by himself and counsel.**

x x x x

Even the most experienced lawyers get tangled in the web of procedure. The demand as much from ordinary citizens whose only *compelle intrare* is their sense of right would turn the legal system into an intimidating monstrosity where an individual may be stripped of his property rights