

## FIRST DIVISION

[ G.R. No. 125290, February 29, 2000 ]

**MARIO BASCO Y SALAO, PETITIONER, VS. COURT OF APPEALS  
AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**KAPUNAN, J.:**

This petition for review on *certiorari* seeks the reversal of the Court of Appeals' resolution dated 29 September 1995 and 7 June 1996, respectively, which denied petitioner's petition for relief from judgment under Rule 38 of the Revised Rules of Court.

The antecedents leading to the present controversy are as follows:

On 24 August 1992, petitioner was charged with Qualified Illegal Possession of Firearm and Illegal Possession of Firearm before the Regional Trial Court of Manila (Branch XLI) under the following informations:

#### INFORMATION

The undersigned accuses MARIO BASCO y SALAO of the crime of Qualified Illegal Possession of Firearm, committed as follows:

That on or about May 3, 1992, in the City of Manila, Philippines, the said accused, not being allowed or authorized by law to keep, possess and carry a firearm, did then and there willfully, unlawfully and knowingly have in his possession, control and custody a firearm, to wit:

one (1) cal. .38 revolver, Squire Bingham bearing Serial No. 183110 loaded with one (1) live ammunition and five (5) spent shells

without first obtaining the necessary license and/or permit to carry and possess the same and in connection and by reason of such possession, did then and there willfully, unlawfully and feloniously, with intent to kill, fire and shoot one Rolando Buenaventura y Manuel, thus inflicting upon the latter mortal gunshot wounds and injuries which cause the death of the latter as a consequence.

Contrary to law.<sup>[1]</sup>

#### INFORMATION

The undersigned accuses MARIO BASCO y SALAO of violation of Section

261(q), B.P. 881 in relation to Section 31, RA 7166, committed as follows:

That on or about May 3, 1992, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control a cal. 38 revolver "Squire Ringham" bearing Serial Number 183110 by then and there carrying the same along Cabangis Street, Tondo, this City, which is a public place on the aforesaid date which is covered by an Election period, *without* first securing the written authority from the COMELEC, as provided for by Section 261(q), B.P. 881 in relation to Section 31, RA 7166.

Contrary to law.<sup>[2]</sup>

On 9 September 1992, upon arraignment, petitioner pleaded not guilty and the trial on the merits ensued.

On 15 March 1993, the trial court rendered its decision finding petitioner guilty as charged and sentenced him as follows:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 92-109511, finding the accused MARIO BASCO y SALAO guilty beyond reasonable doubt for the crime of Illegal Possession of Firearm which he used to kill Rolando Buenaventura, Sr. *alias* Olay and hereby sentences him to suffer the penalty of *Reclusion Perpetua*. With costs against the accused.
2. In Criminal Case No. 92-109512, finding the accused MARIO BASCO Y SALAO guilty beyond reasonable doubt for the violation of Section 261 (q) of Batas Pambansa Blg. 881, in relation to Section 5 of Republic Act No. 7166 and hereby sentences the accused to suffer an indeterminate sentence ranging from one (1) year as minimum to three (3) years as maximum. Costs against the accused.

SO ORDERED.<sup>[3]</sup>

Petitioner received a copy of the trial court's decision on 22 March 1993. Thereafter, on 6 April 1993, petitioner's counsel filed a Motion for Reconsideration of the said decision. However, in the notice of hearing, petitioner's counsel failed to indicate the date and time of the motion's hearing as explicitly required by Sections 4 and 5, Rule 15 of the Rules of Court.

When petitioner's counsel realized his error, he submitted a Notification and Manifestation on 14 April 1993, which reads, thus:

*NOTIFICATION AND MANIFESTATION*

FISCAL ZENAIDA LAGUILLES  
Trial Prosecutor  
Manila

BRANCH CLERK OF COURT  
Branch XLI  
Manila

G R E E T I N G S :

Accused intended to submit for this Court's for consideration and approval on Friday, 23 April 1993 at 8:30 in the morning the Motion for Reconsideration dated 5 April 1993. However, due to inadvertence brought about the need to rush the finalization of this motion, which has been delayed by the spate of prolonged power outages, this setting was omitted.

Accused therefore serves notice that he is submitting the Motion for Reconsideration dated 5 April 1993 for this Court's consideration and approval on Friday, 23 April 1993 at 8:30 a.m.

Makati, for Manila, 13 April 1993.<sup>[4]</sup>

On 28 April 1993, the trial court issued the following order:

O R D E R

The record shows that the judgment in this case was promulgated last March 22, 1993. In other words, accused had up to April 6, 1993 within which to perfect an appeal.

Last April 5, 1993, the accused through a new counsel filed a Motion for Reconsideration without the notice required under Secs. 4 and 5 of Rule 15 of the Rules of Court.

Considering that a motion that does not contain a notice of hearing is but a mere scrap of paper, it presents no question which merits the attention and consideration of the Court, it is not even a motion for it does not comply with the rules and hence the Clerk has no right to receive it; the Court did not act on the motion.

Last April 14, 1993, accused through counsel filed with the Court a Notification and Manifestation whereby it prayed that the Motion for Reconsideration be set for hearing today. Considering that the motion above adverted did not suspend the running of the period to appeal; that the judgment in this case has become final and executory, the Motion for Reconsideration and the Notification and Manifestation filed by the accused are hereby denied.

SO ORDERED.<sup>[5]</sup>

In response thereto, petitioner on 4 May 1993 filed a petition for relief from judgment with the Regional Trial Court pursuant to Rule 38 of the Rules of Court. He contended that his inadvertence was due to the perennial brownouts being experienced across the country during that time and should thus be considered as a mistake or excusable negligence. Technical rules of procedure, he further asserted,

should not be applied strictly when to do so would result in manifest injustice.<sup>[6]</sup>

On 12 July 1993, the trial court issued an order denying the petition for relief for lack of merit. Said order is hereunder reproduced in part:

x x x

As can be readily seen, accused had up to April 6, 1993 within which to file his Motion for Reconsideration or Appeal.

While it is true that judgments or orders may be set aside due to fraud, accident, mistake, or excusable negligence (Sec. 2, Rule 38), "a motion which does not meet the requirements of sections 4 and 5 of Rule 15 of the Revised Rules of Court is a worthless piece of paper which the clerks has no right to receive and the respondent court *a quo* no authority to act upon." (*Lucila B. Vda. de Azarias, petitioner, vs. The Honorable Manolo L. Madela, et al.*, 38 SCRA 35.)

The failure or defect in the notice of hearing in said motion cannot be cured by subsequent action of the court, for as held in *Andrada et al. vs. The Honorable Court of Appeals, et al.*, 60 SCRA 379, the Supreme Court said:

"This Court has repeatedly made it clear not only that a notice addressed to the Clerk of Court requesting him to 'set the foregoing motion for the consideration and approval of this Honorable Court immediately upon receipt hereof' does not comply with the requirements of Section 5 of Rule 15 but also that subsequent action of the court thereon does not cure the flaw, for a motion with a notice fatally defective is a 'useless piece of paper.'"

The notice of hearing in the motion for reconsideration addressed to the Branch Clerk of Court states: "Please submit the foregoing Motion to the Honorable Court for its consideration and approval immediately upon receipt hereof." The same is patently a defective and fatal notice.

The subsequent filing of the Notification and Manifestation that said Motion would be submitted for consideration and approval on Friday, 23 April 1993 at 8:30 o'clock in the morning did not cure the defect in the notice of hearing in the motion. As already stated, the last day for accused to file an appeal was April 6, 1993. As of April 7, 1993, the period to file an appeal already lapsed so that, curing the defective notice of hearing on April 14, 1993, granting that the subsequent notification cured the defect, was no longer possible.

WHEREFORE, premises considered, finding the Petition for Relief from Order of 28 April 1993 to be without merit, the same is hereby DENIED and let accused be committed to the Director of Prisoners, Muntinlupa, Metro-Manila.

SO ORDERED.<sup>[7]</sup>

Petitioner appealed the aforequoted order to the Court of Appeals on 30 July 1993. On 29 September 1995, the Court of Appeals dismissed petitioner's appeal on the ground of lack of jurisdiction through the following resolution:

## RESOLUTION

This "Appeal on *Certiorari*" purporting to be an appeal of a special action is actually an appeal from the March 15, 1993 decision of Branch 41 of the Regional Trial Court of Manila convicting accused-appellant, Mario Basco, in Criminal Cases Nos. 92-109511 and 92-109512, for Qualified Illegal Possession of Firearms and Violation of Section 261 (9) of *Batas Pambansa Blg.* 881 in relation to Section 31, and for violation of Republic Act 7166, respectively.

A perusal of the records of the case discloses that no special civil action was filed with the court *a quo* that may be made the subject of this appeal. The only incidents submitted to it for resolution were the Motion for Reconsideration of the March 15, 1993 decision and Petition for Relief from Order which were both denied.

Since accused appellant was found guilty beyond reasonable doubt of the crimes charged and was sentenced to suffer the penalty of *reclusion perpetua* in Criminal Case No. 92-109511, and imprisonment of One (1) Year to Three (3) Years in Criminal Case No. 92-109512, his appeal falls under the exclusive appellate jurisdiction of the Supreme Court (Article VIII, Section 5, par. 2[d], Constitution).

We are thus constrained to dismiss this appeal on the ground of lack of jurisdiction.

We cannot certify the appeal to the High Tribunal as it is not a case contemplated by Section 13 of Rule 124 of the Revised Rules of Court and to do so, would contravene the guidelines set forth in Supreme Court Circular No. 2-90.

(d) No transfer of appeals erroneously taken – *No transfers of appeals taken to the Supreme Court or to the Court of Appeals to whichever of these Tribunals has appropriate appellate jurisdiction will be allowed*, continued ignorance of willful disregard of the law on appeals will not be tolerated. (Paragraph [d], Sub-Head 4 of Circular No. 2-90),

which circular is based from the High Tribunal's March 1, 1990 minute resolution in the case of *Anacleto Murillo v. Rodolfo Consul*, (UDK-9748, 183 SCRA xi, xvii, xviii) where it emphatically declared that:

There is no longer any justification for allowing transfers of erroneous appeals from one court to another, much less for tolerating continued ignorance of the law on appeals. It thus behooves every attorney seeking review and reversal of a judgment or order promulgated against his client, to determine clearly the errors he believes may be ascribed to the judgment or order, whether of fact or of law, then to ascertain which court properly has appellate jurisdiction; and finally, to observe scrupulously the requisites for appeal prescribed by law, with keen awareness that any error or imprecision in compliance therewith may well be fatal to his client's cause.

WHEREFORE, the appeal is hereby DISMISSED.

SO ORDERED.<sup>[8]</sup>

Petitioner's motion for reconsideration was, likewise, denied by the Court of Appeals in its resolution dated 7 June 1996. The Court of Appeals ruled, thus: