



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE  
**RECEIVED**  
APR 01 2019  
BY: LCH  
TIME: 8:40

JACINTO J. BAGAPORO,  
Petitioner,

G.R. No. 211829

**Present:**

CARPIO, J., *Chairperson*,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J. JR., and  
HERNANDO, \* JJ.

- versus -

PEOPLE OF THE PHILIPPINES,  
Respondent.

**Promulgated:**

30 JAN 2019

X-----X

**DECISION**

**REYES, J. JR., J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> with application for temporary restraining order assailing the January 29, 2014 Resolution<sup>2</sup> of the Court of Appeals (CA), which denied petitioner Jacinto Bagaporo y Jabon's "Petition for Relief from Resolution or Judgment in Case Entry was Already Ordered," and its March 24, 2014 Resolution<sup>3</sup> denying reconsideration.

We briefly go over the antecedents.

Petitioner was indicted for Bigamy in an Information<sup>4</sup> dated May 31, 2006, worded as follows:

\* Additional Member per S.O. No. 2630 dated December 18, 2018.  
<sup>1</sup> *Rollo*, pp. 7-52.  
<sup>2</sup> Penned by Associate Justice Ramon M. Bato, Jr., with then Presiding Justice Andres B. Reyes, Jr. (now a member of the Court) and Associate Justice Rodil V. Zalameda, concurring; *id.* at 79-80.  
<sup>3</sup> *Id.* at 55.  
<sup>4</sup> *Id.* at 82.

Y

That on or about the 11<sup>th</sup> day of September 1991, in the Municipality of Calauag, province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the accused Jacinto Bagaporo, being then legally married to one Dennia Dumlao in a marriage ceremony solemnized on March 10, 1986 at Quezon City by Judge Perfecto Laguio, Jr., and without said marriage having been legally dissolved or annulled, did then and there willfully[,] unlawfully and feloniously contract a second and subsequent marriage with Milagros Lumas.

Contrary to law.<sup>5</sup>

Docketed as Crim. Case No. 4789-C before the Regional Trial Court (RTC) of Calauag in Quezon, Branch 63, trial ensued.

In a Decision<sup>6</sup> dated October 1, 2012, the RTC found petitioner guilty beyond reasonable doubt of the crime of Bigamy. Petitioner was sentenced to suffer the indeterminate penalty of imprisonment with a minimum term of two years, four months, and one day of *prision correccional*, to a maximum term of eight years and one day of *prision mayor*, with the accessory penalties.

Petitioner appealed his conviction. According to the petitioner, his then counsel of record, Atty. Angelo Cerdon (Atty. Cerdon), broached the idea that he might want to engage a new lawyer based near in Manila to henceforth handle the appeal. This allegedly prompted the petitioner to consult his present counsel, Atty. Berteni Cataluña Causing (Atty. Causing), in January of 2013.

Atty. Causing advised the petitioner to secure first Atty. Cerdon's formal withdrawal as counsel. Nonetheless, upon Atty. Causing's advice and assistance, ostensibly as collaborating counsel, petitioner filed a Motion to Withdraw Notice of Appeal and a Motion for Reconsideration before the RTC on January 11, 2013.<sup>7</sup> Copies of both motions were allegedly furnished to Atty. Cerdon when the petitioner visited the former's office on February 25, 2013. It was then that petitioner supposedly clarified with Atty. Cerdon's secretary that Atty. Cerdon remained to be his counsel of record to take charge of the appeal before the CA, notwithstanding Atty. Causing's engagement to pursue post-judgment remedies before the RTC.

Meanwhile, the appeal before the CA proceeded. Petitioner was, thus, required by the CA on March 18, 2013 to file an appeal brief. The notice was received by Atty. Cerdon on April 8, 2013.

---

<sup>5</sup> Id.

<sup>6</sup> Id. at 82-90.

<sup>7</sup> Id. at 91-105.

On July 31, 2013, the CA dismissed petitioner's appeal for failure to file the required appellant's brief. Entry of Judgment then followed after the **dismissal** became final on August 31, 2013.

Aggrieved, petitioner filed in the same case a "Petition for Relief from Resolution or Judgment in Case Entry was Already Ordered" dated December 26, 2013, alleging gross negligence on the part of Atty. Cerdon. Treated as a petition for relief under Rule 38 of the Rules of Court, the petition was denied by the CA on January 29, 2014.

Undeterred, petitioner filed a Motion for Reconsideration<sup>8</sup> on February 17, 2014, which the CA denied for utter lack of merit on March 24, 2014. Hence, petitioner's present recourse.

Without necessarily giving due course to the instant petition, the Office of the Solicitor General (OSG) was required to file its Comment, which it complied with on September 18, 2014.<sup>9</sup> The OSG points out that petitioner's conviction had already attained finality and is, thus, no longer subject to review; the negligence of petitioner's counsels binds him; and that, the elements of the crime of bigamy were proven beyond reasonable doubt.

Through a Reply<sup>10</sup> filed on October 7, 2014, petitioner invokes this Court's authority to vacate null and void decisions notwithstanding their finality. Reasoning that his collaborating counsel could have only done so much, petitioner argues that he should not be bound by the negligence of his lead counsel. Finally, petitioner insists that the elements of bigamy were not proven in his case.

The present petition essentially seeks the reopening of petitioner's lost appeal and reasserts the merits of his case. Framed as one raising questions of law,<sup>11</sup> petitioner argues that Article 349 of the Revised Penal Code, particularly the last clause,<sup>12</sup> violates the equal protection clause and the due process clause. The petitioner also claims that he was convicted on facts not stated in the Information.

On procedural grounds, petitioner asserts that he could still withdraw his appeal before the CA and substitute the same with a motion for reconsideration before the RTC. Allegedly, the CA unjustly and incorrectly treated his petition as one under Rule 38 of the Rules of Court. Contending that there are compelling reasons to give due course to his appeal, petitioner

---

<sup>8</sup> Id. at 57-77.

<sup>9</sup> Id. at 122 and 143-155.

<sup>10</sup> Id. at 156-163.

<sup>11</sup> Id. at p. 13.

<sup>12</sup> **Bigamy.** – *The penalty of prision mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.* (Emphasis supplied)

claims that he was a victim of gross ignorance of the law and that there exists a “gross negligence of counsel” remedy established by jurisprudence, under which his petition for relief should have been recognized by the CA.

### The Court’s Ruling

We address first the propriety of the CA’s outright denial of the petition.

The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.<sup>13</sup> Notably, the petition for relief was filed in the same case, which resolution had already become final. An examination of petitioner’s averments and relief sought, *i.e.*, the setting aside of a final and executory resolution denying an appeal, leads to no other conclusion than that it is the mode provided under Rule 38 of the Rules of Court whether or not that was what petitioner intended. The CA cannot, thus, be faulted for treating the petition as one which sought the relief provided by Rule 38, and consequently dismissing it. It is settled that a petition for relief from judgment is not an available remedy in the CA.<sup>14</sup>

Citing *Spouses Mesina v. Meer*<sup>15</sup> in its assailed January 29, 2014 Resolution, the CA reasoned that a petition for relief is not the proper remedy from a CA Resolution dismissing an appeal. As explained in *Mesina*:

x x x While Rule 38 uses the phrase “any court,” it refers only to municipal/metropolitan and regional trial courts.

The procedure in the Court of Appeals and the Supreme Court are governed by separate provisions of the Rules of Court and may, from time to time, be supplemented by additional rules promulgated by the Supreme Court through resolutions or circulars. As it stands, neither the Rules of Court nor the Revised Internal Rules of the Court of Appeals allow the remedy of petition for relief in the Court of Appeals.<sup>16</sup> (Underscoring supplied)

Petitioner nonetheless insists that his petition for relief is different from that under Rule 38 of the Rules of Court. As his petition was based on the alleged gross negligence of his counsel, he asserts that there exists a distinct remedy provided by jurisprudence and not by the Rules of Court. There is, however, no such mode that is independent of the Rules.

<sup>13</sup> *City of Dumaguete vs. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

<sup>14</sup> *Purcon, Jr. v. MRM Philippines, Inc.*, 588 Phil. 308, 314 (2008).

<sup>15</sup> 433 Phil. 124 (2002).

<sup>16</sup> *Id.* at 135-136.

While the Court indeed provides relief to litigants when gross negligence of counsel is manifest, in such cases, petitioners go to court through modes specifically provided by law and the Rules. In both *APEX Mining, Inc. v. Court of Appeals*,<sup>17</sup> and *Legarda v. Court of Appeals*,<sup>18</sup> cited by petitioner, the remedy availed of before the CA was a petition for annulment of judgment under Rule 47 of the Rules of Court. In *Callangan v. People of the Philippines*,<sup>19</sup> the petitioner resorted to a Rule 45 petition on a pure question of law before this Court, which assailed the RTC's dismissal of a Rule 65 petition questioning the MTC's denial of a motion for new trial in a criminal case. We are, thus, confounded by what mode of relief petitioner is referring to in his contention that the CA erred in treating his petition before it as one filed under Rule 38 of the Rules of Court.

As to petitioner's vain attempt to withdraw his notice of appeal to give way to a motion for reconsideration before the RTC, without manifesting such fact before the CA, the same smacks of forum shopping. The allegation that Atty. Causing was consulted so that the handling lawyer at the appeal stage would be based near in Manila contradicts petitioner's feigned expectation that Atty. Cerdon would continue to represent him before the CA. It puts into doubt the claim that petitioner left word with Atty. Cerdon's secretary that Atty. Cerdon shall continue to be his counsel of record to take charge of the appeal. While Atty. Causing ostensibly signed on as collaborating counsel, as Atty. Cerdon has not formally withdrawn from the case, there was in fact no collaboration between the two counsels. At any rate, it remains incumbent upon the petitioner to manifest before the CA the engagement of present counsel, the filing of motions before the RTC, and to follow-up the status of the case at the appellate stage.

Even if we were to presume good faith, petitioner cannot avoid responsibility for any confusion caused by his engagement of a new lawyer without securing the written withdrawal or conformer of the lawyer who handled his case during the trial stage. Furthermore, on petitioner's averments alone, this Court does not have sufficient basis to conclude that Atty. Cerdon was grossly negligent, especially without having heard Atty. Cerdon's side on the matter. Petitioner must, therefore, bear the loss of his appeal.

To emphasize:

x x x The doctrinal rule is that negligence of the counsel binds the client because, otherwise, there would never be an end to a suit so long as new counsel could be employed who could allege and [prove] that prior counsel had not been sufficiently diligent, or experienced, or learned.

---

<sup>17</sup> 377 Phil. 482 (1999).

<sup>18</sup> 272-A Phil. 394 (1991).

<sup>19</sup> 526 Phil. 239 (2006).

X X X X

X X X Jurisprudence is replete with pronouncements that clients are bound by the actions of their counsel in the conduct of their case. If it were otherwise, and a lawyer's mistake or negligence was admitted as a reason for the opening of the case, there would be no end to litigation so long as counsel had not been sufficiently diligent or experienced or learned. The only exception to the general rule is when the counsel's actuations are gross or palpable, resulting in serious injustice to client, that courts should accord relief to the party. Indeed, if the error or negligence of the counsel did not result in the deprivation of due process to the client, nullification of the decision grounded on grave abuse of discretion is not warranted. The instant case does not fall within the exception since petitioners were duly given their day in court.

X X X To rule otherwise would result to a situation that every defeated party, in order to salvage his case, would just have to claim neglect or mistake on the part of his counsel as a ground for reversing an adverse judgment. There would be no end to litigation if this were allowed as every shortcoming of counsel could be the subject of challenge of his client through another counsel who, if he is also found wanting, would likewise be disowned by the same client through another counsel, and so on *ad infinitum*. X X X

X X X X

Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurance of his lawyer that everything is being taken care of is not enough.<sup>20</sup>

The right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law.<sup>21</sup> Indeed, any liberality in the application of the rules of procedure may be properly invoked only in cases of some excusable formal deficiency or error in a pleading, but definitely not in cases like now where a liberal application would directly subvert the essence of the proceedings or results in the utter disregard of the Rules of Court.<sup>22</sup>

Although the petitioner cannot successfully invoke gross negligence of counsel to reinstate his lost appeal, it cannot be said that he was deprived of due process. It is beyond question that the petitioner had his day in court. His case was tried on the merits and he was ably represented during the trial stage. Furthermore, the merits of the petitioner's case deserve scant consideration.

---

<sup>20</sup> *Mendoza v. Court of Appeals*, 764 Phil. 53, 63-65 (2015).

<sup>21</sup> *Boardwalk Business Ventures, Inc. v. Villareal*, 708 Phil. 443, 452 (2013).

<sup>22</sup> *Heirs of Arturo Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 416-417 (2015).

There can be no quibbling over whether or not the elements of bigamy were successfully proven by the prosecution. Petitioner does not deny that he contracted a second marriage without a judicial declaration that his absent spouse from a prior marriage may be legally presumed dead. The gist of petitioner's claim is alleged good faith and that there is no need for a judicial declaration of a disputable presumption (of death of the absent spouse) that has already been provided by law.

According to petitioner, it was the prosecution's burden to prove that his absent wife was still alive when he contracted his second marriage. Petitioner essentially asks, what if his absent spouse was in fact already dead, which is undeniably possible? It is argued that there is no substantial distinction between such a situation and that of a present spouse who contracts a subsequent marriage with the knowledge that the absent spouse is already dead.

The legal questions raised are not novel. As discussed in *Manuel v. People of the Philippines*:<sup>23</sup>

x x x Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden.

The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.

The requirement of judicial declaration is also for the benefit of the State. Under Article II, Section 12 of the Constitution, "the State shall protect and strengthen the family as a basic autonomous social institution." Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law. The laws regulating civil marriages are necessary to serve the interest, safety, good order, comfort or general welfare of the community and the parties can waive nothing essential to the validity of the proceedings.

A civil marriage anchors an ordered society by encouraging stable relationships over transient ones; it enhances the welfare of the community.

---

<sup>23</sup> 512 Phil. 818, 836-838 (2005).

In a real sense, there are three parties to every civil marriage; two willing spouses and an approving State. On marriage, the parties assume new relations to each other and the State touching nearly on every aspect of life and death. The consequences of an invalid marriage to the parties, to innocent parties and to society, are so serious that the law may well take means calculated to ensure the procurement of the most positive evidence of death of the first spouse or of the presumptive death of the absent spouse after the lapse of the period provided for under the law. One such means is the requirement of the declaration by a competent court of the presumptive death of an absent spouse as proof that the present spouse contracts a subsequent marriage on a well-grounded belief of the death of the first spouse. Indeed, "men readily believe what they wish to be true," is a maxim of the old jurists. To sustain a second marriage and to vacate a first because one of the parties believed the other to be dead would make the existence of the marital relation determinable, not by certain extrinsic facts, easily capable of forensic ascertainment and proof, but by the subjective condition of individuals. Only with such proof can marriage be treated as so dissolved as to permit second marriages. Thus, Article 349 of the Revised Penal Code has made the dissolution of marriage dependent not only upon the personal belief of parties, but upon certain objective facts easily capable of accurate judicial cognizance, namely, a judgment of the presumptive death of the absent spouse.


All told, the assailed Resolutions of the CA must be upheld.

**WHEREFORE**, the petition is **DENIED** for lack of merit.

**SO ORDERED.**

  
**JOSE C. REYES, JR.**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson*




  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

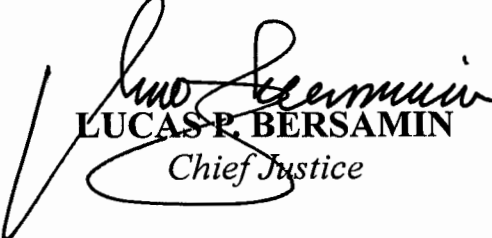
**ATTESTATION**

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**ANTONIO T. CARPIO**  
*Senior Associate Justice*  
*Chairperson, Second Division*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

f