



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**ENRIQUE ALMERO y ALCANTARA,**

**G.R. No. 188191**

Petitioner,

Present:

- versus -

**PEOPLE OF THE PHILIPPINES,  
MIRASOL BARTOLOME, CLARITA P.  
MATIAS, ROSENDO P. MATIAS, and  
ANTONIO P. MATIAS,**

SERENO, *CJ*, Chairperson,  
LEONARDO-DE CASTRO,  
BERSAMIN,  
VILLARAMA, JR., and  
REYES, *JJ*.

Promulgated:

Respondents.

**MAR 12 2014**

X -----X

**RESOLUTION**

**SERENO, *CJ*:**

We resolve the petition filed under Rule 45 of the 1997 Rules of Civil Procedure by Enrique Almero y Alcantara from the Decision of the Court of Appeals (CA) dated 26 September 2008 and Resolution dated 29 May 2009 in CA-G.R. SP. No. 103030.<sup>1</sup>

**THE MTC RULING IN CRIMINAL CASE NO. 96-6531**

Petitioner is the accused in Criminal Case No. 96-6531 for reckless imprudence resulting in homicide and multiple physical injuries. After private respondents reserved the right to institute a separate action for damages, trial ensued. On 8 January 2007, the Municipal Trial Court (MTC) of Labo, Camarines Norte found petitioner guilty and sentenced him to suffer *prision correccional* in its medium and maximum periods.

Petitioner filed an Application for Probation on 7 September 2007, reasoning that he was informed of his conviction only upon being served the warrant for his arrest.<sup>2</sup> Prosecutor Analie Velarde opposed his application on

<sup>1</sup> *Rollo*, pp. 31-46 Penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario.

<sup>2</sup> *Id.* at 33.

the ground that he was known to be uncooperative, habitually absent, and had even neglected to inform the court of his change of address. On 22 February 2007, the MTC denied his application, prompting petitioner to file a special civil action with the Regional Trial Court (RTC). While his first Petition raised the sole issue of the denial of his application for probation, he filed a Supplemental Petition,<sup>3</sup> which a) assailed the validity of the promulgation of the 8 January 2007 judgment; and b) impleaded private complainants Mirasol Bartolome, Clarita P. Matias, Rosendo P. Matias and Antonio P. Matias.

### **THE RTC RULING IN SPECIAL CIVIL ACTION NO. 07-0012**

In his supplemental Petition, petitioner stated that upon close scrutiny, he discovered that the judgment itself was premature and flawed, because the MTC never ruled upon his Formal Offer of Exhibits.<sup>4</sup> The RTC found that the MTC committed grave abuse of discretion in rendering judgment without first ruling on his Formal Offer of Exhibits since, technically, petitioner had not yet rested his case. It also ruled that the promulgation of judgment was similarly tainted with grave abuse of discretion, because petitioner was not present at the time, in violation of Section 6, Rule 120 of the Rules of Court. Without addressing the issue of probation, the dispositive portion states:

WHEREFORE, premises considered, the instant petition for Certiorari is hereby GRANTED. The judgment promulgated on 22 February, 2007 is hereby SET ASIDE AND NULLIFIED and the case is remanded to the Municipal Trial Court of Labo, Camarines Norte for further proceedings.

The Director of the Bureau of Corrections, Muntinlupa City or any person acting in his behalf to release immediately petitioner ENRIQUE ALMERO Y ALCANTARA from detention by virtue of the property bond posted by him for his provisional liberty in Criminal Case No. 96-6531, unless he is being detained for some other lawful cause or causes.

No costs.

SO ORDERED.<sup>5</sup>

### **THE CA RULING**

The CA ruled that the RTC should have confined itself to determining whether or not the MTC committed grave abuse of discretion in denying petitioner's application for probation. Since no appeal or other plain, speedy and adequate remedy in the ordinary course of law is available against the denial of probation, a Rule 65 petition is clearly the appropriate remedy. However, the trial court erred in taking cognizance of supplemental grounds assailing the judgment of conviction, because an application for probation is a waiver of the right to appeal from the judgment of conviction and

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<sup>3</sup> Id. at 67; Dated 28 December 2007.

<sup>4</sup> Id.

<sup>5</sup> Id. at 64-70; Penned by Presiding Judge Erwin Virgilio P. Ferrer and dated 28 January 2008.

effectively renders the same final. The CA ruled that even assuming petitioner failed to be present at the promulgation of judgment, he had no one but himself to blame for failing to inform the MTC of his change of address.<sup>6</sup>

On the argument that private respondents possessed no legal personality to represent the State in a criminal case, the CA held that petitioner himself impleaded them in the *certiorari* petition before the RTC. The CA also found that petitioner filed his application for probation only on 7 September 2007, or more than one month after he received notice of the judgment of conviction. Inasmuch as the grant of probation rests solely on the discretion of the court, the denial thereof cannot be considered grave abuse, *viz.*:

WHEREFORE, premises considered, the trial court's appealed January 28, 2008 Decision is *REVERSED* and *SET ASIDE*. In lieu thereof, another is entered ordering the **DISMISSAL** of appellee's petition for certiorari.<sup>7</sup>

Petitioner comes before this Court, assigning the following errors:

- I. The Court of Appeals committed an error of law in ruling that private complainants have personality to appeal the 28 January 2008 Decision of the RTC.
- II. The Court of Appeals committed an error of law in ruling that the RTC reversibly erred in nullifying petitioner's judgment of conviction.
- III. The Court of Appeals committed an error of law in ruling that petitioner is not entitled to probation.<sup>8</sup>

### OUR RULING

#### *The Petition lacks merit.*

Anent the first issue, petitioner argues that in criminal cases, the offended party is the State, and that private complainants' interest is limited to the civil liability arising therefrom. Petitioner's application for probation purportedly did not involve the civil aspect of the case. *Heirs of the Late Francisco Abueg v. Court of Appeals* cited by the CA allegedly cannot apply, since it does not even discuss the right of private complainants to interpose an appeal.

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<sup>6</sup> Rule 120 of the Rules of Court, sec. 6, par. 3 and 4 states: "The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

"In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or through his counsel."

<sup>7</sup> *Rollo*, p. 45.

<sup>8</sup> *Id.* at 17.

In the Comment<sup>9</sup> it filed, the Office of the Solicitor General (OSG) reiterated that what petitioner filed with the RTC was a petition for *certiorari*, which is a special civil action. It cannot be considered an appeal in a criminal case over which only the State has an interest, but an appeal in a civil action from which private persons can appeal in the event of an adverse outcome. Private respondents, in their Comment,<sup>10</sup> argued that the CA correctly applied *Abueg*, which is on all fours with the present case. In *Abueg*, the accused was convicted of reckless imprudence resulting in homicide and damage to property for crashing against and killing Francisco Abueg. Instead of filing an appeal, the accused applied for probation. After the CA affirmed the grant of probation, the Supreme Court entertained and acted upon the petition for *certiorari* filed by the victims' heirs.<sup>11</sup>

We agree with the submission of the respondents. While the present petition originated from a criminal proceeding, what petitioner filed with the RTC was a special civil action, in which he himself impleaded private respondents. He cannot now belatedly change his stance to the prejudice of private respondents, who would otherwise be deprived of recourse in a civil action they did not initiate. In any case, this Court has consistently ruled that private parties may be clothed with sufficient personality if the facts show that the ends of substantial justice would be better served, and if the issues in the action could be determined in a more just, speedy and inexpensive manner.

In *Narciso vs. Sta. Romana-Cruz*,<sup>12</sup> citing *People v. Calo, Jr.*,<sup>13</sup> the Supreme Court ruled:

While the rule is, as held by the Court of Appeals, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or the State in criminal proceeding pending in this Court and the Court of Appeals, the ends of substantial justice would be better served, and the issues in this action could be determined in a more just, speedy and inexpensive manner, by entertaining the petition at bar. As an offended party in a criminal case, private petitioner has sufficient personality and a valid grievance against Judge Adao's order granting bail to the alleged murderers of his (private petitioner's) father.<sup>14</sup> (Citations omitted.)

Furthermore, in *Paredes v. Gopengco*, it was held that parties in criminal cases have sufficient personality as "person(s) aggrieved" to file the special civil action of prohibition and *certiorari* under Sections 1 and 2 of Rule 65 in line with the underlying spirit of the liberal construction of the rules, to wit:

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<sup>9</sup> Id. at 118-131.

<sup>10</sup> Id. at 104-117.

<sup>11</sup> G.R. No. 96803, 17 February 1993, 219 SCRA 78.

<sup>12</sup> 385 Phil. 208 (2000).

<sup>13</sup> 264 Phil. 1007 (1990).

<sup>14</sup> Supra note 12 at 222.

Furthermore, as offended parties in the pending criminal case before petitioner judge, it cannot be gainsaid that respondents have sufficient interest and personality as ‘person(s) aggrieved’ by petitioner judge’s ruling on his non-disqualification to file the special civil action under sections 1 and 2 of Rule 65. Recently in line with the underlying spirit of a liberal construction of the Rules of Court in order to promote their object, as against the literal application of Rule 110, section 2, we held, overruling the implication of an earlier case, that a widow possesses the right as an offended party to file a criminal complaint for the murder of her deceased husband.<sup>15</sup>

Petitioner’s second and third arguments are brought by an erroneous understanding of the nature of probation and shall be discussed jointly.

Probation is not a right but a mere privilege, an act of grace and clemency conferred by the State, and may be granted by the court to a deserving defendant. Accordingly, the grant of probation rests solely upon the discretion of the court. It is to be exercised primarily for the benefit of organized society, and only incidentally for the benefit of the accused.<sup>16</sup>

In *Francisco v. Court of Appeals*, the Court explained:

Probation is a special privilege granted by the state to a penitent qualified offender. It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state of time, effort and expenses to jettison an appeal. The law expressly requires that an accused must not have appealed his conviction before he can avail of probation. This outlaws the element of speculation on the part of the accused — to wager on the result of his appeal — that when his conviction is finally affirmed on appeal... he now applies for probation as an “escape hatch” thus rendering nugatory the appellate court’s affirmance of his conviction.<sup>17</sup>

Aside from the goals of according expediency and liberality to the accused, the rationale for the treatment of appeal and probation as mutually exclusive remedies is that they rest on diametrically opposed legal positions. An accused applying for probation is deemed to have accepted the judgment. The application for probation is an admission of guilt on the part of an accused for the crime which led to the judgment of conviction.<sup>18</sup> This was the reason why the Probation Law was amended: precisely to put a stop to the practice of appealing from judgments of conviction — even if the sentence is probationable — for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid.<sup>19</sup>

Similarly, in the present case, petitioner cannot make up his mind whether to question the judgment, or apply for probation, which is

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<sup>15</sup> *Paredes v. Gopengco*, 140 Phil. 81 (1969).

<sup>16</sup> *Bala v. Martinez*, 260 Phil. 488 (1990).

<sup>17</sup> *Francisco v. Court of Appeals*, 313 Phil. 241, 254-255 (1995).

<sup>18</sup> *Cal v. Court of Appeals*, 321 Phil. 914 (1995).

<sup>19</sup> *People v. Judge Evangelista*, 324 Phil. 80, 86-87 (1996).

necessarily deemed a waiver of his right to appeal.<sup>20</sup> While he did not file an appeal before applying for probation, he assailed the validity of the conviction in the guise of a petition supposedly assailing the denial of probation. In so doing, he attempted to circumvent P.D. No. 968, as amended by P.D. 1990, which seeks to make appeal and probation mutually exclusive remedies.

The assignment of errors in the Petition before us reflects the diametrically opposed positions taken by accused petitioner. On the one hand, he bewails the defects committed by the trial court during the promulgation of the judgment, thus casting doubt on the judgment itself. Yet in the same breath, he persists in his application for probation, despite the waiver and admission of guilt implicit in any procedure for probation – precisely the unhealthy wager the law seeks to prevent.

Petitioner applied for probation beyond the reglementary period, yet the trial court still allowed the filing before ultimately denying it for lack of merit. Regarding this delay and the other defects imputed by petitioner to the RTC, we concur with the findings of the CA:

(W)e find that public respondent committed no grave abuse of discretion in denying appellee's application for probation. Granted that appellee had not received the notice of the January 8, 2007 decision rendered in Criminal Case No. 06-6531, it appears from the record that appellee had no one but himself to blame for the procedural quagmire he subsequently found himself in. In denying appellee's motion for reconsideration of the September 18, 2007 denial of the application for probation, public respondent distinctly ruled as follows:

x x x. (T)he application has been filed out of time as accused himself admitted in the motion. He blames Atty. Evan D. Dizon, his former counsel, for not notifying the court of his change of address but Atty. Dizon himself had been trying to contact accused since 2001 even before he filed his formal offer of evidence since all notices sent to the accused's given address have been returned to this court since 2001. If it is true that he moved to Cavite only in 2003, why were said notices returned with notations 'unknown,' 'unclaimed,' or 'moved'?<sup>21</sup>

This Court will not countenance pleas for liberality in adverse outcomes caused by the negligence and evasiveness of the parties themselves.

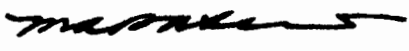
**WHEREFORE**, in view of the foregoing, we deny the instant Petition for lack of merit. The Court of Appeals Decision and Resolution in CA-G.R. SP No. 103030 dated 26 September 2008 and 29 May 2009 are hereby **AFFIRMED**, respectively.

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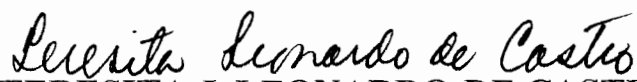
<sup>20</sup> Presidential Decree No. 968, Sec. 4, as amended by P.D. 1990 in order to make appeal and probation mutually exclusive remedies.

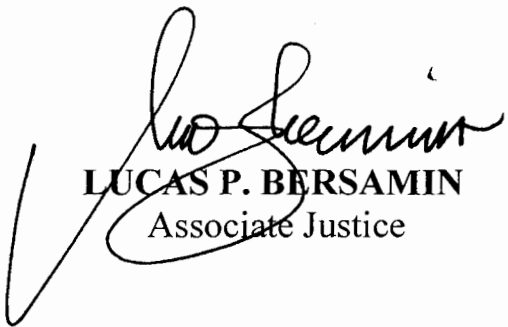
<sup>21</sup> *Rollo*, p. 43.

**SO ORDERED.**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice, Chairperson

WE CONCUR:

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

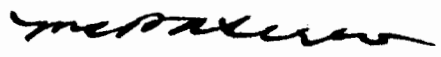
  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

**CERTIFICATION**

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

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice