



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **28 June 2021** which reads as follows:*

“**UDK-16808-09 (Randy Nacario y Chu v. People of the Philippines)**. – The Court resolves to **NOTE** and **GRANT** the Office of the Solicitor General’s Manifestation and Motion¹ for extension of thirty (30) days from March 21, 2021 within which to file comment on the petition, and to **NOTE** aforesaid Comment² dated May 10, 2021 in compliance with the Resolution³ dated February 1, 2021.

Before this Court is a Petition⁴ for Re-opening of the Case (Ad Cautelam) Motion for Bail filed by accused-appellant Randy Nacario y Chu (Nacario), through the assistance of the Integrated Bar of the Philippines (IBP), praying that his case be re-opened and, after a determination on the merits, he be acquitted of the crimes of violation of Sections 5 and 11, Article II of Republic Act No. (RA) 9165,⁵ otherwise known as the ‘Comprehensive Dangerous Drugs Act of 2002.’

The Facts

The present case stemmed from two (2) separate Informations filed before the Regional Trial Court of Morong, Rizal, Branch 80 (RTC), charging Nacario with Illegal Sale and Possession of Dangerous Drugs, as follows:

Criminal Case No. 11-9791-M
(Sale of Dangerous Drugs)

That on or about the 10th day of February 2011 in the Municipality of Morong, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law to sell or otherwise dispose of any dangerous drug, did, then and there

¹ *Rollo*, pp. 38-41.

² *Id.* at 26-35.

³ *Id.* at 24-25.

⁴ *Id.* at 3-13.

⁵ Entitled ‘AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES,’ approved on June 7, 2002.

willfully, unlawfully and knowingly sell, deliver and give away to a poseur buyer, PO2 Elvis Lontoc, 0.25 gram, 0.27 and 0.27 gram or a total of .079 gram of dried marijuana fruiting tops contained in three heat-sealed transparent plastic bags which substance was found positive to the tests for Marijuana, a dangerous drug, in consideration of Php300.00, in violation of the above-cited law.

CONTRARY TO LAW.⁶

Criminal Case No. 11-9792-M
(Possession of Dangerous Drugs)

That on or about the 10th day of February 2011 in the Municipality of Morong, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.28 gram of dried marijuana fruiting tops contained in one heat-sealed transparent plastic bag which substance was found positive to the tests for Marijuana, a dangerous [drug,] in violation of the above-cited law.

CONTRARY TO LAW.⁷

The prosecution alleged that on February 10, 2011, police officers successfully conducted a buy-bust operation against Nacario, during which three (3) sachets containing suspected *marijuana* were recovered from him. During the search incidental to Nacario's arrest, another sachet containing suspected *marijuana* was discovered to be in his possession. Thereafter, the police officers took Nacario and the seized items to the police station where the said items were marked, inventoried, and photographed in the presence of Barangay Captain Sherman Cateria. Thereafter, the police officers brought the seized items to the crime laboratory where, after qualitative examination, it tested positive for *marijuana*.⁸

In his defense, Nacario claimed that at around 7:40 in the evening of February 10, 2011, he was in front of their house in Taging Ilog, Lagundi when the police officers, who were in civilian clothes, suddenly approached him and directed him to cooperate with them. He was brought to the police station where charges were filed against him. At midnight, he was presented with some *marijuana* and made to undergo a drug test. He denied that he sold *marijuana*.⁹

In a Decision¹⁰ dated March 7, 2017, the RTC convicted Nacario as charged and sentenced him as follows: (a) for Illegal Sale of Dangerous Drugs, the penalty of life imprisonment without eligibility for parole and a fine of ₱500,000.00; and (b) for Illegal Possession of Dangerous Drugs, the penalty of imprisonment for twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and a fine of ₱300,000.00.¹¹ Essentially, the RTC found that the prosecution

⁶ *Rollo*, p. 14.

⁷ *Id.* at 15.

⁸ *Id.* at 15-17.

⁹ *Id.* at 17-18.

¹⁰ *Id.* at 14-21. Penned by Presiding Judge Sheila Marie Alaan-Ignacio.

¹¹ *Id.* at 21.

successfully established all the elements of the crimes charged, and that the police officers substantially complied with the chain of custody rule.¹²

Available records do not show whether a Notice of Appeal was filed by Nacario before the RTC.

Subsequently, in a Letter¹³ dated October 28, 2020 from the Court of Appeals (CA) Criminal Cases Section addressed to Nacario (CA Letter), it was verified from the Receiving, Special, Civil, Criminal, and Archives Sections of the Judicial Records Division as well as the CA's Case Management Information System that as of even date, no pending appeal or petition has been filed before the CA.

Hence, this petition filed by Nacario praying that the case be 're-opened' and that he be acquitted of the crimes for which he was convicted on the ground that, *inter alia*, his counsel of record abandoned him after the judgment of conviction was promulgated. Further, Nacario re-pleaded the merits of his case, insisting that the evidence against him were planted in view of the glaring irregularities in the chain of custody of the items purportedly seized from him.

In opposition, the Office of the Solicitor General (OSG) points out that petitioner was duly represented by counsel and was duly given an opportunity to defend himself and cross-examine the witnesses of the prosecution; and it was only then that the judgment of conviction was promulgated by the court *a quo*.¹⁴

The Court's Ruling

At the outset, the Court notes that Nacario captioned his petition as a 'Petition for Re-Opening of the Case (Ad Cautelam) [&] Motion for Bail.' However, a closer scrutiny of the same would reveal that for all intents and purposes, he seeks to be allowed to appeal the assailed RTC ruling in the hopes of getting an acquittal before the appellate court. As such, the Court deems it proper to treat the instant petition as a motion to set aside the finality of the assailed RTC ruling.

In support of his submission, Nacario laments that while he was assisted by a counsel *de officio* during the arraignment and trial of his case and that they have a standing agreement that if the RTC promulgates a judgment of conviction, said counsel would duly appeal any adverse ruling, the latter failed to do so. According to him, his counsel suddenly no longer contacted him and it was only later on, through the CA Letter, that he found out that no appeal was filed on his behalf. He then claims that the foregoing acts constitute abandonment, which in turn, is tantamount to gross negligence.¹⁵ Notably, while the OSG also points out that Nacario was indeed represented by counsel during trial,¹⁶ it did not refute Nacario's allegation of gross negligence pertaining to the appeal stage of the proceedings.

¹² Id. at 18-20.

¹³ Id. at 22. Signed by Officer-in-Charge Ronnie A. Inacay.

¹⁴ Id. at 30.

¹⁵ Id. at 5.

¹⁶ Id. at 30.

‘Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. Nonetheless, the immutability of final judgments is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (a) matters of life, liberty, honor, or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.’¹⁷

Relatedly, while the general rule is that the negligence of counsel binds the client, even on mistakes in the application of procedural rules, this should not apply ‘when the reckless or gross negligence of the counsel deprives the client of due process of law’¹⁸ or of his liberty or property, and where the interest of justice so requires.¹⁹ The Court’s pronouncement in *Cagayan Economic Zone Authority v. Meridien Vista Gaming Corporation*²⁰ is instructive on this matter, to wit:

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. Similarly, when an unsuccessful party has been prevented from fully and fairly presenting his case as a result of his lawyer’s professional delinquency or infidelity the litigation may be reopened to allow the party to present his side. Where counsel is guilty of gross ignorance, negligence and dereliction of duty, which resulted in the clients being held liable for damages in a damage suit, the client is deprived of his day in court and the judgment may be set aside on such ground.²¹

Furthermore, case law further instructs that ‘[t]he function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.’²² Thus, the doctrine of immutability of judgments may be relaxed if there is a finding of gross negligence on the part of a litigant’s counsel in order to avoid a miscarriage of justice.

¹⁷ See *People v. Santiago*, G.R. No. 228819, July 24, 2019, citing *People v. Layag*, 797 Phil. 386, 389 (2016).

¹⁸ *Ong Lay Hin v. CA*, 752 Phil. 15, 23-24 (2015).

¹⁹ See *Curammeng v. People*, 799 Phil. 575, 582-583 (2016), citing *City of Dagupan v. Maramba*, 738 Phil. 71, 87 (2014).

²⁰ 799 Phil. 492, 504 (2016).

²¹ *Id.*, citing *Apex Mining, Inc. v. Court of Appeals*, 377 Phil. 482, 495-496 (1999).

²² See *Latogan v. People*, G.R. No. 238298, January 22, 2020, citing *Aguilar v. Court of Appeals*, 320 Phil. 456, 461-462 (1995).

June 28, 2021

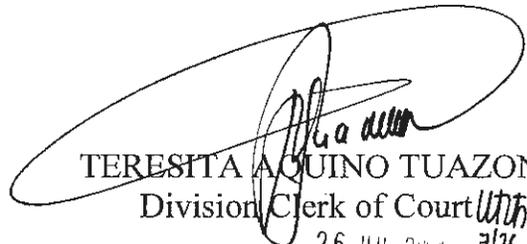
In view of the foregoing, it becomes apparent that there is a need to ascertain the veracity of Nacario's allegation that his counsel was grossly negligent in abandoning him, resulting in the failure to appeal the assailed RTC ruling on his behalf. For this purpose, and further considering that such an ascertainment requires a determination of factual findings which the Court is not institutionally equipped to do as it is not a trier of facts, the instant petition – which is treated as a motion to set aside the finality of the assailed RTC ruling – should be referred to the court *a quo* for further proceedings. Should the RTC find merit in the motion, the same should be granted and, in order to avert a miscarriage of justice, accordingly set aside the finality of the RTC ruling in accordance with prevailing rules and jurisprudence. Resultantly, Nacario should be given an opportunity to duly file his appeal.

On the other hand, if the motion lacks merit, then it ought to be denied, and accordingly, the assailed RTC ruling should remain final and executory pursuant to the doctrine of immutability of judgment.

WHEREFORE, the instant petition is **TREATED** as a motion to set aside the finality of the Decision dated March 7, 2017 of the Regional Trial Court of Morong, Rizal, Branch 80 in Criminal Case Nos. 11-9791-M and 11-9792-M, and is hereafter **REFERRED** to the court *a quo* for further proceedings in accordance with this Resolution.

SO ORDERED." (Lopez, J., J., designated additional member per Special Order No. 2822 dated April 7, 2021.)

By authority of the Court:


 TERESITA AQUINO TUAZON
 Division Clerk of Court
 26 JUL 2021 7/26

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RANDY NACARIO y CHU (reg)
 Petitioner
 c/o The Director
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THE DIRECTOR (reg)
 Bureau of Corrections
 1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
 Regional Trial Court, Branch 80
 Morong, Rizal
 (Crim. Case Nos. 11-9791-M & 11-9792-M)

JUDGMENT DIVISION (x)
 Supreme Court, Manila

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 Supreme Court, Manila

Please notify the Court of any change in your address.
 UDK-16808-09. 07/28/2021(113)URES