

## THIRD DIVISION

[ G.R. No. 166216, March 14, 2012 ]

**ROGELIO ABERCA, RODOLFO BENOSA, NESTOR BODINO, NOEL ETABAG, DANILO DELA FUENTE, BELEN DIAZ-FLORES, MANUEL MARIO GUZMAN, ALAN JASMINEZ, EDWIN LOPEZ, ALFREDO MANSOS, ALEX MARCELINO, ELIZABETH PROTACIO-MARCELINO, JOSEPH OLAYER, CARLOS PALMA, MARCO PALO, ROLANDO SALUTIN BENJAMIN SEGUNDO, ARTURO TABARA, EDWIN TULALIAN, AND REBECCA TULALIAN, PETITIONERS, VS. MAJ. GEN. FABIAN VER, COL. FIDEL SINGSON, COL. GERARDO B. LANTORIA, COL. ROLANDO ABADILLA, COL. GALILEO KINTANAR, LT. COL. PANFILO M. LACSON, MAJ. RODOLFO AGUINALDO, CAPT. DANILO PIZARRO, 1LT. PEDRO TANGO, 1LT. ROMEO RICARDO, 1LT. RAUL BACALSO, M/SGT. BIENVENIDO BALABA AND "JOHN DOES," RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

Assailed in this petition is the July 31, 2003 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 43763 and its November 26, 2004 Resolution<sup>[2]</sup> reversing and setting aside the February 19, 1993 Decision<sup>[3]</sup> of the Regional Trial Court, Branch 107, Quezon City (RTC), in Civil Case No. 37487 entitled "*Rogelio Aberca, et al. v. Maj. Gen. Fabian Ver, et al.*" for sum of money and damages.

#### **The Facts**

The factual and procedural antecedents were succinctly recited by the CA as follows:

On 25 January 1983, several suspected subversives who were arrested and detained by the military filed a complaint for damages with the Regional Trial Court of Quezon City against Gen. Fabian Ver, then AFP Chief of Staff, and the following subordinate officers: Col. Fidel Singson, Col. Gerardo Lantoria, Col. Rolando Abadilla, Col. Guillermo Kintanar, Lt. Col. Panfilo Lacson, Maj. Rodolfo Aguinaldo, Capt. Danilo Pizarro, 1Lt. Pedro Tango, 1Lt. Romeo Ricardo, 1Lt. Raul Bacalso, M/Sgt. Bienvenido Balaba and "John Does." The case was docketed as Civil Case No. 37487 and assigned to Branch 95.

In their complaint, the plaintiff-appellees alleged that they were arrested and detained by Task Force Makabansa, a composite group of various intelligence units of the AFP, on the strength of defective search warrants; that while under detention and investigation, they were subjected to physical and psychological harm, torture and other

brutalities to extort from them confessions and other information that would incriminate them; and that by reason thereof, they suffered actual and moral damages.

Defendants-appellants, through their counsel, the then Solicitor General Estelito Mendoza, filed a motion to dismiss on the following grounds: (1) since the privilege of the writ of habeas corpus was then suspended, the trial court cannot inquire into the circumstances surrounding plaintiffs-appellees' arrests; (2) the defendants-appellants are immune from liability for the reason that they were then performing their official duties; and (3) the complaint states no cause of action.

In an order dated November 8, 1983, the trial court granted defendants-appellants' motion to dismiss and ordered the case dismissed.

Plaintiffs-appellees filed a motion to reconsider and set aside the order of dismissal. In an order dated May 11, 1984, the trial court declared the order of November 8, 1983 final.

Plaintiffs-appellees again filed a motion for reconsideration of the order dated May 11, 1984. In an order dated September 21, 1984, the trial court denied the motion for reconsideration.

On March 15, 1985, plaintiffs-appellees went to the Supreme Court on a petition for review on certiorari, seeking to annul and set aside the orders of the trial court dated November 8, 1983, May 11, 1984 and September 21, 1984. The case was docketed as G.R. No. 69866.

While the case was pending in the Supreme Court, the so-called EDSA revolution took place. As a result, the defendants-appellants lost their official positions and were no longer in their respective office addresses as appearing in the record. Also, in the meantime, the case was re-raffled to Branch 107.

On April 15, 1988, the Supreme Court rendered a decision annulling and setting aside the assailed orders and remanded the case to the trial court for further proceedings.

However, trial could not proceed immediately because on June 11, 1988, the record of the case was destroyed when fire razed the City Hall of Quezon City. It was only on October 9, 1989 when plaintiffs-appellees sought a reconstitution of the record of the case. The record shows that the petition for reconstitution was set for hearing on October 27, 1989. However, there is nothing in the record to show that defendants-appellants or their counsel were notified. For lack of an opposition, the petition for reconstitution was granted in an order dated March 12, 1990.

On August 15, 1990, plaintiffs-appellees filed a motion praying that defendants-appellants be required to file their answer. However, the record as reconstituted did not show who are the lawyers of the defendants-appellants considering that Estelito Mendoza, who had represented them in his capacity as Solicitor General, was no longer

holding that position. Furthermore, defendants-appellants were also no longer occupying the positions they held at the time the complaint was filed. Thus, in an order dated August 17, 1990, plaintiffs-appellees were directed to report to the trial court the addresses and whereabouts of defendants-appellants so that they could be properly notified.

Instead of complying with the order of August 17, 1990, plaintiffs-appellees filed a motion to declare defendants-appellants in default. The trial court deferred resolution of this motion and instead, it issued an order on September 10, 1990 directing that a copy of the order dated August 17, 1990 be furnished to new Solicitor General Francisco Chavez to enable him to take action pursuant to Section 18, Rule 3 of the Rules of Court, and to former Solicitor General Estelito Mendoza to enable him to give notice as to whether he [would] continue to represent the defendants-appellants in his private capacity. As it said in its order, the trial court took this action "in view of the change in government and corresponding change in the addresses and circumstances of the defendants-appellants who may not even be aware of the decision of the Supreme Court in case G.R. No. L-69866 and of the reconstitution of records in this case xxx."

On October 1, 1990, former Solicitor General Mendoza filed a manifestation informing the trial court that his appearance as defendants-appellants' counsel terminated when he ceased to be Solicitor General and that he was not representing them in his private capacity. On his part, Solicitor General Chavez finally filed on December 11, 1990 a notice of withdrawal of appearance, citing *Urbano v. Go*, where the Supreme Court said that "the Office of the Solicitor General (OSG) is not authorized to represent a public official at any stage of a criminal case or in a civil suit for damages arising from a felony." The record does not show that defendants-appellants were furnished a copy of this notice of withdrawal or that they gave their conformity thereto.

In an order dated December 27, 1990, the trial court denied plaintiffs-appellees' motion to declare defendants-appellants in default, emphatically pointing out that defendants-appellants were not duly notified of the decision of the Supreme Court. In the same order, the trial court directed plaintiffs-appellees to comply with the order of August 17, 1990 within ten (10) days from notice, with a warning that the case [would] be archived and eventually dismissed if plaintiffs-appellees failed to furnish to the court the addresses of defendants-appellants. Plaintiffs-appellees moved to reconsider the order dated December 27, 1990 but in an order dated February 1, 1991, the trial court denied the motion, stating that "without actual notice of the judgment of the Supreme Court xxx the defendants-appellants herein would not be aware that they should file a responsive pleading" and that, therefore, "to consider the defendants-appellants in default would be tantamount to lack of due process xxx."

For failure of the plaintiffs-appellees to comply with the orders dated August 17, 1990 and December 27, 1990, the trial court dismissed the case without prejudice in its order dated March 7, 1991. Subsequently,

however, in an order dated June 4, 1991, the trial court set aside the order of dismissal and reinstated the case. It also approved plaintiffs-appellees' request to serve the notice to file answer or responsive pleading by publication.

In a compliance dated September 12, 1991, plaintiffs-appellees informed the trial court that the following notice was published in the Tagalog newspaper BALITA in its issues of August 29, 1991 and September 5, 1991:

XXXX

No answer was filed by defendants-appellants within the period stated in the notice. On motion of plaintiffs-appellees, the trial court in its order dated December 5, 1991 declared defendants-appellants in default and directed plaintiffs-appellees to present their evidence ex-parte.<sup>[4]</sup>

### **Ruling of the RTC**

On February 19, 1993, the RTC handed down a decision in favor of the petitioners, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering the following defendants:

- 1) Maj. General Fabian Ver
- 2) Col. Fidel Singson
- 3) Col. Rolando Abadilla
- 4) Col. Gerardo Lantoria
- 5) Col. Galileo Kintanar
- 6) Lt. Col. Panfilo Lacson
- 7) Maj. Rodolfo Aguinaldo
- 8) 1Lt. Pedro Tango
- 9) M/Sgt. Bienvenido Balaba

to pay jointly and severally to EACH of the following plaintiffs:

- a) Rodolfo Benosa
- b) Manuel Mario Guzman
- c) Joseph Olayer
- d) Marco Palo
- e) Rolando Salutin

the amounts of FIFTY THOUSAND PESOS (P50,000.00) as temperate or moderate damages; ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as moral damages; and ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00) as exemplary damages. Likewise, they are ordered to pay jointly and severally the sum of TWO HUNDRED THOUSAND PESOS to the plaintiffs' counsel.

The claims of the rest of the plaintiffs are denied and thereby dismissed. Likewise, the case against the following defendants: Capt. Danilo Pizarro, 1Lt. Romeo Ricardo and 1Lt. Raul Bacalso is DISMISSED, and the said defendants are exonerated from any liability.<sup>[5]</sup>

Subsequently, respondents Col. Fidel Singson (*Col. Singson*), Lt. Col. Panfilo M. Lacson (*Lt. Col. Lacson*), and Col. Rolando Abadilla (*Col. Abadilla*) filed their Omnibus Motion praying as follows: 1) that the order of default dated December 5, 1991 be reversed and set aside; 2) that the decision dated February 19, 1993 be reversed and set aside; 3) that the entire proceedings be declared null and void; and 4) that they be given fifteen (15) days from notice to file answer to the complaint and present their evidence. Col. Gerardo B. Lantoria (*Col. Lantoria*) filed his own Motion for Reconsideration.

On his part, respondent Maj. Rodolfo Aguinaldo (*Maj. Aguinaldo*) failed to file a timely notice of appeal so he filed a Petition for Relief from Judgment praying that the RTC set aside its decision and proceed to try the case based on the following grounds: 1) the decision was rendered without the benefit of notice in gross violation of his right to due process; 2) the reconstitution of the records of the case and further proceedings taken thereon were effected through fraud; and 3) his failure to move for a new trial or to appeal was due to mistake or excusable negligence.

The Omnibus Motion of Col. Singson, Lt. Col. Lacson and Col. Abadilla; the Motion for Reconsideration of Col. Gerardo Lantoria; and the Petition for Relief from Judgment of Maj. Aguinaldo were denied by the RTC.<sup>[6]</sup> Aggrieved, the said respondents elevated their case to the CA.

Maj. Aguinaldo argued that he was deliberately deprived of the opportunity to be heard and put up his defense, while Col. Singson, Lt. Col. Lacson and Col. Abadilla presented the following assignment of errors:

#### I

THE TRIAL COURT ERRED IN ALLOWING THE OFFICE OF THE SOLICITOR GENERAL (OSG) TO WITHDRAW AS COUNSEL WITHOUT THE REQUIRED NOTICE TO, AND/OR CONSENT/CONFORMITY OF APPELLANTS.

#### II

THE TRIAL COURT ERRED IN NOT SETTING ASIDE THE ORDER OF DEFAULT AND/OR THE JUDGMENT BY DEFAULT AND GRANTING NEW TRIAL.

#### III

THE TRIAL COURT ERRED IN HOLDING THAT THE OSG'S MISTAKES AND NEGLIGENCE ARE BINDING ON THE DEFENDANTS-APPELLANTS.

#### IV