

FIRST DIVISION

[G.R. No. 141854, October 15, 2008]

**ORLANDO APOSTOL, PETITIONER, VS. COURT OF APPEALS, HON.
JESUS G. BERSAMIRA, IN HIS CAPACITY AS JUDGE OF RTC,
BRANCH 166, PASIG CITY, AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

AZCUNA, J.:

Challenged in this petition for *certiorari* under Rule 65 of the Rules on Civil Procedure is the July 20, 1998 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 45954, which affirmed the May 10, 1993 Decision^[2] of the Regional Trial Court, Branch 166, Pasig City, in Criminal Case No. 87229 convicting petitioner of Theft under Articles 308 and 309 of the Revised Penal Code (RPC).

On June 25, 1991, petitioner Orlando L. Apostol (Apostol), together with America F. Floro (Floro), was indicted for the crime of Qualified Theft. The Information reads:

The undersigned State Prosecutor accuses Orlando Apostol y Lim alias "Orlan" and America Floro y Ferma alias "Ameer" of the crime of Qualified Theft, committed as follows:

That [on] or about the period from June 7 to June 8, 1991, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, to wit: Orlando Apostol y Lim being then employed as driver and America Floro being then employed as stay-in, conspiring and confederating together with Juanito Abanto alias Juan being then employed as houseboy and Emma Oliva alias Baby, at-large, being then employed as housemaid of Avelina Floro y Cabrera, and all of them mutually helping and aiding one another, and as such being trusted persons and having trust and confidence reposed upon them by their employer, with intent to gain and without the knowledge and consent of the owner thereof, with abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away the following items:

Cash money	P 40,000.00
\$1,700.00 U.S. Dollars or its	equivalent Philippine currency
One (1) set colored stones	120,000.00
(diamonds)	
One (1) set pearly bagets	100,000.00
(diamonds)	
Two (2) pcs. Tiffany ring	50,000.00
(diamonds)	

One (1) ring emerald cut	45,000.00
(diamonds)	
One (1) set gold pendant & bracelet	45,000.00
One (1) dangling perfect earring with diamond stones	80,000.00
One (1) diamond grape earrings	70,000.00
One (1) men's ring domino princes	70,000.00
One (1) men's gold ring	15,000.00
One (1) set earrings princess cut with baget	100,000.00
One (1) solid gold bracelet for lady	35,000.00
One [1] solo [T]ifanny ring 3K	210,000.00
One (1) maquez ring 4K	250,000.00
One (1) set pearl with one green emerald	25,000.00
One (1) [cocktail] ring plenty of stones	35,000.00
One (1) small pack of loose diamond stones	400,000.00
One (1) gold chain bracelet for men	20,000.00
One (1) gold necklace with gold pendant	6,000.00
Two (2) pieces of small solid gold earrings	5,000.00
One (1) men's gold bracelet	7,000.00
Two (2) pieces earrings oreolla	5,000.00

all in the total amount of P1,780,090.00 belonging to Avelina Floro y Cabrera, to the damage and prejudice of the said owner thereof in the aforementioned amount of P1,780,090.00.

CONTRARY TO LAW.^[3]

Subsequently, Apostol and Floro posted bail and were granted provisional liberty.^[4]

During the arraignment on July 24, 1991, only Floro pleaded not guilty to the offense charged while Apostol failed to appear.^[5] As prayed for by the prosecution, the trial court ordered the confiscation of Apostol's cash bond and issued a bench warrant for his arrest.^[6]

Upon Apostol's motion, however, the warrant of arrest was lifted.^[7] On September 11, 1991, Apostol entered his "not guilty" plea.^[8]

Trial ensued after an Amended Information was filed, formally including from the title of the criminal action Juanito Abanto and Emma Oliva, who are still at-large.^[9]

The prosecution presented testimonial and documentary evidence. On the part of the defense, only Floro argued her case. Apostol attended the hearings for the presentation of prosecution evidence on November 6, 1991, January 23, 1992 and May 6, 1992 but he was nowhere to be found thereafter despite notices sent to his address on record. Worse, his counsel *de parte*, Atty. Orlando M. Salatandre, Jr.,

even began his absence in the hearings on April 23, 1992 and May 6, 1992. As a result, the trial court considered Apostol to be at-large and deemed to have waived the right to adduce evidence in his behalf.^[10]

The trial court promulgated its Decision^[11] on May 10, 1993, holding only Apostol guilty of Theft under Arts. 308 and 309 of the RPC. The decretal portion of the Decision states:

WHEREFORE, the court finds accused Orlando Apostol [y] Lim @ Orlan guilty beyond reasonable doubt, as principal, of the crime of theft and is hereby sentenced to suffer the indeterminate penalty of Twelve (12) years of Prison Mayor, as minimum[,] to Twenty (20) years of Reclusion Temporal, as maximum[,] and indemnify Avelina Floro the sum of US \$1,700.00, or its equivalent in pesos, and P34,000.00, plus the costs of suit.

On the ground of reasonable doubt, accused America Floro y Ferma is acquitted of the crime charged in the information.

SO ORDERED.^[12]

On October 26, 1997, or more than four (4) years after the trial court Decision was promulgated *in absentia*, Apostol was arrested.^[13]

On November 4, 1997, Apostol filed an Urgent Motion for Reconsideration of Judgment^[14] with Entry of Appearance^[15] of his new counsel, Atty. Gilbert M. Fabella, alleging that his conviction based on trial *in absentia* unjustifiably violated his constitutionally protected right to due process. Apostol contended that he was not duly notified of the trial dates and, consequently, failed to cross-examine the witnesses and present controverting evidence because Atty. Salatandre, aside from not appearing in any of the scheduled hearings, grossly neglected to inform the court that he (Apostol) had already transferred residence.

The prosecution interposed no opposition to the motion but the trial court denied the same. It held:

Accused's motion is untenable. The record shows that:

1. On September 11, 1991, accused Orlando Apostol, duly assisted by counsel, pleaded not guilty to the crime charged in the Information.
2. On November 6, 1991, when Efren Hilao, first witness of the prosecution[,] testified, accused Apostol and counsel were present.
3. On January 23 and May 6, 1992, when private complainant Avelina Floro testified, Apostol was present.
4. On June 24, 1992, Apostol was considered as having waived his right to cross-examine Avelina Floro because of his failure to appear, despite due notice.

5. On July 1, 1992, when Jerome Floro testified, Apostol was absent, despite subpoena sent to him at his given address.
6. On August 20, 1992, Florante [Vera] and [Avelina] Floro testified, Apostol failed to appear, despite subpoena sent to him at his given address.
7. On October 8, 1992, when Gerardo Medina testified, Apostol failed to appear, despite subpoena sent to him at his given address.
8. On November 26, 1992, when co-accused America Floro testified, Apostol failed to appear, despite subpoena sent to him at his given address.
9. On January 14, 1993, the case was scheduled for reception of Apostol's evidence but he failed to appear, despite subpoena sent to him at his given address, so that he was considered as having waived his right to present evidence and the case was deemed submitted for decision.
10. On June 30, 1993, when the judgment was promulgated, Apostol failed to appear, despite subpoena sent to him at his given address.
11. Apostol had remained at large until he was arrested by the police on October 26, 1997, by virtue of a warrant of arrest issued by the court.
12. The court has already committed Apostol to the Bureau of Corrections, Muntinlupa City, to serve his sentence.

Clearly, [every time] there was a hearing[,] accused Apostol was either personally notified or a subpoena sent to him at his given address. Apostol's failure to appear, despite subpoena sent to him at his given address, was due to his own fault because he went into hiding and remained at large until his apprehension.^[16]

Apostol then filed a Petition for *Certiorari* and Prohibition with Prayer for the Immediate Issuance of a Preliminary Injunction and/or Restraining Order^[17] before the Court of Appeals, claiming that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction in rendering a decision that defeats his constitutional rights, to wit: (a) the right to be duly notified in case of trial *in absentia*, with the consequent rights to meet the witnesses face to face and to secure their attendance and the production of evidence in his behalf; and (b) the right to bail.

On July 20, 1998, the Court of Appeals dismissed the petition.^[18] It opined that Apostol's constitutional rights were not violated because his non-appearance in the subsequent hearings without any legal explanation was an evident manifestation of his intention to jump bail. Adopting the ruling in *People v. Valeriano*,^[19] which was cited by the Office of the Solicitor General, the Court of Appeals concluded:

It has been held that one who jumps bail can never offer a justifiable reason for his non-appearance during the trial. Accordingly, after trial *in absentia*, the court can render judgment in the case and promulgation may be made by simply recording the judgment in the criminal docket with a copy thereof served upon his counsel, provided that the notice requiring him to be present at the promulgation is served through his bondsmen or warden and counsel.^[20]

Through a new counsel, Escano and Partners Law Offices, Apostol moved for reconsideration of the Decision, hinging primarily on the alleged negligence and irresponsibility of Atty. Salatandre which violated his constitutional and statutory rights.^[21] The motion was denied.^[22]

Hence, this petition.

Incidentally, however, following this Court's resolution to give due course to the petition and to require the parties to submit their respective memoranda, which order was timely complied with, Apostol, assisted by Paralegal Officer Angelito A. Salumbides, Jr., filed a Notice of Withdrawal of Appeal on April 17, 2007.^[23] To ascertain that it had been voluntarily and duly executed, the Court resolved to require Mr. Salumbides to confer with Apostol as to the legal implications of the notice, and to hold in abeyance any action pending compliance. Subsequently, in both of his letters dated October 1, 2007 and November 19, 2007, Mr. Salumbides replied that Apostol is no longer withdrawing his appeal and, therefore, requesting for the nullification of the notice.

Before this Court, Apostol argues that:

1. The instant petition for *certiorari* is timely and proper;
2. The negligence and irresponsibility of Atty. Salatandre violated his human rights;
3. The trial court committed grave abuse of discretion when it admitted in evidence "the fruits" of his illegal arrest; and
4. His guilt was not proven beyond reasonable doubt.^[24]

Apostol expressly states that he could no longer appeal his case when the judgment of the trial court became final in 1997 and that neither does he have any plain, speedy and adequate remedy available; hence, *certiorari* is proper in the instant case.

According to him, due consideration must be given on the issue that it was the inexcusable and unjustified negligence and the irresponsible acts of Atty. Salatandre which led to the gross violation of his constitutional rights as an accused. Being a layman who is unaware of legal technicalities, he said to have relied on his counsel's constant assurance that everything would be taken care of and that there would be no need to attend the proceedings as he would just be informed of the developments of the case. It turned out, however, that despite the knowledge of his change of address, Atty. Salatandre did not relay the matter to the trial court. In addition, Apostol claims that he was totally abandoned by his counsel, who