

THIRD DIVISION

[G.R. No. 140690, June 19, 2001]

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HON. NAZAR U. CHAVEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 18 OF THE REGIONAL TRIAL COURT OF CAGAYAN DE ORO CITY, AND SPO1 REYNALDO LIM DE LA VICTORIA, RESPONDENTS.

DECISION

GONZAGA-REYES, J.:

Before us is a petition for review under Rule 45 of the 1997 Rules of Court brought against the Decision^[1] of the Court of Appeals dated July 2, 1998 dismissing the petition for certiorari filed by the Office of the Solicitor General (hereafter petitioner), the subsequent Resolution dated October 20, 1998 denying petitioner's motion for reconsideration and the Resolution dated November 5, 1999 denying petitioner's motion to recall entry of judgment.

The facts of this case are as follows:

For the shooting of Jeffrey G. Wabe on September 21, 1996 at Cogon Market, Cagayan De Oro City, respondent SPO1 Reynaldo Lim de la Victoria (hereafter respondent SPO1 de la Victoria) was charged with murder, docketed as Criminal Case No. 96-822 with Branch 18 of the Regional Trial Court, Cagayan de Oro City, presided by respondent Judge Nazar U. Chavez (hereafter respondent judge).

On September 8, 1997, respondent SPO1 de la Victoria filed an application for bail with respondent judge.

The prosecution opposed the application for bail and in the hearing conducted by respondent judge, the prosecution presented two witnesses in the persons of Marcos Dabodado who allegedly witnessed the shooting of the victim and Diosdado Wabe who allegedly saw respondent SPO1 de la Victoria fleeing from the scene of the crime immediately after the shooting.

On October 9, 1997, respondent judge granted the application for bail of respondent SPO1 de la Victoria on the ground that the evidence of guilt is not strong.

On December 2, 1997, the Office of the Solicitor General, herein petitioner, received the letter-request of the Chief State Prosecutor for the filing of a petition for certiorari of the October 9, 1997 Resolution of the trial court.

On January 30, 1998, the People through petitioner filed a petition for certiorari assailing the October 9, 1997 Resolution granting the application for bail of respondent SPO1 de la Victoria. The petition was docketed as CA-G.R. SP No. 46678 with the Court of Appeals.

Respondent SPO1 de la Victoria filed his comment on the petition.

On July 2, 1998, the Court of Appeals dismissed the petition on these grounds: (i) certiorari is available only to correct defects on jurisdiction and not errors of judgment; and (ii) petitioner did not file a motion for reconsideration to afford the trial judge the opportunity to correct his mistake.

On July 24, 1998, petitioner moved for the reconsideration of said decision of the Court of Appeals.

In a Resolution dated August 3, 1998, the Court of Appeals required respondents therein to comment on petitioner's motion for reconsideration. Petitioner allegedly did not receive the comment of respondent.

On June 4, 1999, petitioner received an Entry of Judgment that states that:

"This is to certify that on July 2, 1998, a decision/resolution rendered in the above-entitled case was filed in this Office, the dispositive part of which reads as follows:

` WHEREFORE, the petition is DISMISSED.'

and that the same has, on November 13, 1998 become final and executory and is hereby recorded in the Book of Entries of Judgments."

[2]

On July 15, 1999, petitioner filed a Motion to Recall Entry of Judgment on the ground that the entry of judgment was premature since petitioner had not yet received any resolution from the Court of Appeals resolving petitioner's motion for reconsideration.

In a Resolution dated November 5, 1999, the Court of Appeals denied petitioner's Motion to Recall Entry of Judgment, thus:

"Petitioner through the Office of the Solicitor General (OSG), filed a motion (to recall entry of judgment), alleging that `OSG has not as yet received any resolution relative to its Motion for Reconsideration dated July 23, 1998.'

The motion is without merit. The Division Clerk has submitted the following report, dated October 27, 1999:

`The record shows that the Resolution dated October 20, 1998 denying petitioner's Motion for Reconsideration was received by the Office of the Solicitor General on October 28, 1998. Furthermore, the Resolution dated May 5, 1999 authorizing the issuance of the entry of judgment was received by the OSG on May 13, 1999.'

WHEREFORE, the motion (to recall entry of judgment) is DENIED."^[3]

Hence this petition wherein petitioner insists that the Court of Appeals decided a question of substance in a way which is not in accord with law and the applicable decisions of this Court by-

"I

Depriving petitioner of its right to due process in denying the Motion (to Recall Entry of Judgment) without giving petitioner any chance to prove that it did not indeed receive any Court of Appeals' resolution resolving the pending Motion for Reconsideration dated July 23, 1998.

II

Dismissing the petition for certiorari thereby allowing respondent de la Victoria to post bail in a capital offense (murder) despite the fact that the evidence of guilt against the latter is strong.

III

Dismissing the petition for certiorari for failure of petitioner to file a motion for reconsideration with the court a quo, notwithstanding the doctrine that such motion for reconsideration is no longer necessary when urgent relief is sought and there is no plain, speedy and adequate remedy in the ordinary course of law."^[4]

In the instant petition, petitioner objects to the entry of judgment made by the Court of Appeals which in effect dismissed petitioner's petition for certiorari with finality. Petitioner claims that the entry of judgment is premature considering that petitioner allegedly did not receive the October 20, 1998 Resolution of the Court of Appeals denying its motion for reconsideration. It is the theory of petitioner that since it did not actually receive said resolution, the Decision of the Court of Appeals dated July 2, 1998 dismissing its petition for certiorari, did not attain finality. The entry of judgment, petitioner opines, should then have been recalled based on these pertinent portions of Section 2, Rule 36 and Section 8, Rule 120 of the 1997 Rules of Civil Procedure that respectively state that:

"Sec. 2. Entry of judgments and final orders. -If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments." (emphasis supplied)

"Sec. 8. Entry of Judgment.- After a judgment has become final, it shall be entered in accordance with Rule 36."^[5] (emphasis supplied)

Petitioner explains why it did not receive the Resolution of the Court of Appeals