

SECOND DIVISION

[G.R. No. 132852, May 31, 2000]

TEOFILO MARTINEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

BELLOSILLO, J.:

This is a petition for certiorari under Rule 65, erroneously filed as a petition for review on certiorari under Rule 45. But this procedural infirmity notwithstanding, we have decided to give it due course to resolve the question whether the Court of Appeals gravely abused its discretion in denying petitioner's motion to appeal as a pauper litigant.^[1]

The antecedents: Petitioner was accused of homicide in Crim. Case No. 5753 before the Regional Trial Court of Butuan City.^[2] During the hearing on 23 June 1994 petitioner represented by Atty. Jesus G. Chavez of the Public Attorney's Office of Butuan City objected to petitioner's motion to be allowed to litigate as pauper and moved instead to strike out the entire testimony of the first witness for the prosecution on the ground that it was inadmissible for being violative of the testimonial privilege afforded to children in cases involving their parents. The Presiding Judge^[3] deferred his ruling on the objection and allowed the testimony to be continued.^[4] On 21 July 1994 the trial court issued an order overruling the objection. On 8 August 1994 the court denied the motion for reconsideration.^[5] This prompted petitioner to go to the Court of Appeals by way of a petition for certiorari alleging that the trial court acted with grave abuse of discretion amounting to lack of jurisdiction when it issued the assailed orders.^[6]

On 23 August 1994 petitioner filed before the Court of Appeals a *Motion to Litigate as Pauper* attaching thereto supporting affidavits executed by petitioner himself and by two (2) ostensibly disinterested persons attesting to petitioner's eligibility to avail himself of this privilege.^[7] The appellate court subsequently issued its resolution dated 21 March 1997 denying the motion and directing petitioner to remit the docketing fees in the total amount of P420.00 within five (5) days from notice.^[8] On 7 April 1997 petitioner filed a *Motion for Reconsideration* of the order denying his motion to litigate as a pauper, but this was similarly denied in the resolution of 8 October 1997.^[9] Petitioner then filed a Manifestation on 28 October 1997 wherein he stated through counsel that he was transmitting the docket fees required of his client "under protest" and that the money remitted was advanced by his counsel, Atty. Jesus G. Chavez himself.^[10] The transmittal of the amount was evidenced by two (2) postal money orders attached to the *Motion to Litigate as Pauper*.^[11]

In the assailed Resolution of 10 November 1997 the Court of Appeals dismissed the

petition, citing petitioner's failure to pay the required docket fee.^[12] Petitioner moved for reconsideration citing his compliance with the docket fee requirement as alleged in his *Manifestation* adverted to above.^[13] However, the Court of Appeals in the second assailed Resolution of 21 January 1998 denied this latest motion on the ground that, per verification by the Judicial Records Division, the amount remitted by petitioner as docket fee was short of 150.00.^[14]

The only issue expressly raised by petitioner is whether a motion to litigate as pauper can be entertained by an appellate court. When petitioner filed on 23 August 1994 his original motion to appeal as pauper before the appellate court the applicable rule was the second paragraph of Sec. 16, rule 41, of the 1964 Revised Rules of Court, which provides-

Sec. 16. *Appeal by pauper* "Where a party desiring to appeal shall establish to the satisfaction of the trial court that he is a pauper and unable to pay the expenses of prosecuting the appeal, and that the case is of such importance, by reason of the amount involved, or the nature of the question raised, that it ought to be reviewed by the appellate court, the trial judge may enter an order entitling the party to appeal as pauper. The clerk shall transmit to the appellate court the entire record of the case, including the evidence taken on trial and the record on appeal, and the case shall be heard in the appellate court upon the original record so transmitted without printing the same.

A petition to be allowed to appeal as pauper shall not be entertained by the appellate court.

Even prior to the adoption of the 1964 Revised Rules of Court, the Court had uniformly frowned upon appellate courts entertaining petitions to litigate as pauper, holding that the question of whether a party-litigant is so poor as to qualify him to litigate as pauper is a question of fact which is best determined by the trial court. The trial court is the court which may properly decide or pass upon the question of fact which may require presentation of evidence whether the appellant is an indigent and may appeal as such, and whether the case is of such importance that, by reason not only of the amount involved but of the nature of the question raised in the court below, it ought to be reviewed by the appellate court.^[15]

When the 1997 *Rules of Civil Procedure* came into effect on 1 July 1997 the provision abovequoted was not reenacted. Section 21 of Rule 3, as now worded, outlines the procedure for, as well as the effects of, the grant of a motion to litigate as pauper -

Sec. 21. *Indigent party.* - A party may be authorized to litigate his action, claim or defense as an indigent if the court, upon an ex parte application and hearing, is satisfied that the party is one who has no money or property sufficient and available for food, shelter and basic necessities for himself and his family.

Such authority shall include an exemption from payment of docket and other lawful fees, and of transcripts of stenographic notes which the court may order to be furnished him. The amount of the docket and other lawful fees which the indigent was exempted from paying shall be a lien