



CERTIFIED TRUE COPY

*Wilfredo V. Lapitan*  
WILFREDO V. LAPITAN  
Division Clerk of Court  
Third Division

Republic of the Philippines  
Supreme Court  
Manila

JUL 11 2018

THIRD DIVISION

**KIM LIONG,**

Petitioner,

**G.R. No. 200630**

Present:

VELASCO, JR., *J.*, *Chairperson*,  
BERSAMIN,  
LEONEN,  
MARTIRES, and  
GESMUNDO, *JJ.*

-versus-

**PEOPLE OF THE PHILIPPINES,**  
Respondent.

**Promulgated:**  
June 4, 2018

*Wilfredo V. Lapitan*

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**DECISION**

**LEONEN, J.:**

The right to confront and cross-examine an adverse witness is a basic fundamental constitutional right. However, this is personal to the accused, who can waive the right.

This resolves the Petition for Review on Certiorari<sup>1</sup> assailing the October 7, 2011 Decision<sup>2</sup> and February 20, 2012 Resolution<sup>3</sup> of the Court of Appeals in CA-G.R. SP No. 113152. The Court of Appeals found no grave abuse of discretion in the issuance of the Orders dated August 27,

<sup>1</sup> *Rollo*, pp. 8–31.

<sup>2</sup> *Id.* at 33–41. The Decision was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Thirteenth Division, Court of Appeals, Manila.

<sup>3</sup> *Id.* at 43–44. The Resolution was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Fernanda Lampas Peralta and Agnes Reyes-Carpio of the Former Thirteenth Division, Court of Appeals, Manila.

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2009<sup>4</sup> and February 9, 2010<sup>5</sup> of Branch 44, Regional Trial Court, Manila declaring Kim Liong (Liong) to have waived his right to cross-examine prosecution witness Antonio Dela Rama (Dela Rama).

In an Information<sup>6</sup> dated January 28, 2002, Liong was charged with estafa for allegedly failing to return to Equitable PCI Bank, despite demand, a total of US\$50,955.70, which was erroneously deposited in his dollar account. The accusatory portion of this Information read:

That on or about March 16, 2000, and for sometime subsequent thereto, in the City of Manila, Philippines, the said accused did then and there wilfully, unlawfully and feloniously defraud the **EQUITABLE PCI BANK**, Roxas Blvd. Branch, this City, a banking institution duly organized and existing under and by virtue of the Philippine laws, with place of business located at the corner of Padre Faura and Roxas Boulevard, Ermita, this City, represented by its Branch Manager, **ERMELINDA V. CONTRERAS**, in the following manner, to wit: the said accused, being then a depositor of the said bank, with Dollar Savings Account Deposit No. 5265-00761-9, well knowing that a mistake has been inadvertently committed by the said bank in posting and crediting to his said account the following amounts in U.S. dollars, to wit:

\$ 11,989.70  
14,565.30  
8,610.40  
15,790.30

or all in the total amount of **US\$50,955.70** which amount should have been instead credited and posted to the account of **WALLEN** (sic) **MARITIME SERVICES, INC.** under Account No. 5265-00431-8, and by reason of said misposting and crediting of the said amount to the accused's account, his dollar deposit balance with the said bank had increased by US\$50,955.70 of which, accused is under obligation to inform the said bank as regards to the excess amount unduly posted and/or credited in his said account but instead of doing so, did then and there make and/or cause the series of withdrawals until the full amount of said US\$50,955.70 was withdrawn from the said bank, and once in possession of the same, in serious breach of his legal obligation to return the said amount of US\$50,955.70, failed and refused and still fails and refuses to do so despite repeated demands made upon him, and instead, with intent to defraud, with unfaithfulness and grave abuse of trust and confidence, misappropriated, misapplied and converted the said amount of US\$50,955.70 to his own personal use and benefit, to the damage and prejudice of the said **EQUITABLE PCI BANK**, Roxas Blvd. Branch, in the aforesaid amount of US\$50,955.70, or its equivalent in Philippine Currency.

Contrary to law.<sup>7</sup>

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<sup>4</sup> Id. at 54. The Order was issued by Presiding Judge Jose P. Morillos.

<sup>5</sup> Id. at 59-60.

<sup>6</sup> Id. at 45-46.

<sup>7</sup> Id.

Liong was arraigned on January 20, 2003, pleading not guilty to the charge.<sup>8</sup> The pre-trial conference was terminated on July 13, 2004.<sup>9</sup>

The initial presentation of the prosecution's evidence was set on December 19, 2005. However, on that day, private prosecutor Atty. Aceray Pacheco (Atty. Pacheco) requested a resetting, which was granted by the trial court. The December 19, 2005 hearing was reset to January 26, 2006.<sup>10</sup>

On January 26, 2006, the hearing was again reset to March 30, 2006. The March 30, 2006 hearing was likewise reset, this time, on the instance of a certain Atty. Villaflor, also one of the private prosecutors. The initial presentation of the prosecution's evidence was, thus, moved to June 8, 2006.<sup>11</sup>

The first prosecution witness, Antonio Dela Rama (Dela Rama), was finally presented as scheduled on June 8, 2006. His direct examination was terminated on January 25, 2007, and the initial date for his cross-examination was set on March 15, 2007. On March 15, 2007, Atty. Danilo Banares (Atty. Banares) appeared as collaborating counsel of Atty. Jovit Ponon (Atty. Ponon), Liong's counsel of record. Atty. Banares then moved for the resetting of the hearing to April 19, 2007.<sup>12</sup>

On April 19, 2007, the hearing was again reset on the instance of Liong because Atty. Ponon was allegedly a fraternity brother of the private prosecutor, Atty. Pacheco. Thus, Liong terminated the services of Atty. Ponon and the hearing was reset to June 28, 2007.<sup>13</sup>

On July 31, 2008, the hearing was again reset to October 16, 2008 because Dela Rama had suffered a stroke.<sup>14</sup>

On February 5, 2009, Atty. Banares failed to appear in court. Liong subsequently filed a Motion to Suspend Proceedings and, eventually, a Motion to Dismiss.<sup>15</sup> The hearing was reset to May 7, 2009, which seems to have been cancelled again.<sup>16</sup>

On August 27, 2009, Atty. Banares again failed to appear in court. Thus, private prosecutor Atty. Ma. Julpha Maningas moved that Liong be

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<sup>8</sup> Id. at 34.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 11-12. The cancelled June 28, 2007 hearing was also referred to as June 26, 2007. *See rollo*, pp. 12 and 38.

<sup>14</sup> Id. at 13, 34, and 52.

<sup>15</sup> Id. at 34.

<sup>16</sup> Id. at 13.

declared to have waived his right to cross-examine Dela Rama.<sup>17</sup> The Motion was granted by the trial court in its August 27, 2009 Order,<sup>18</sup> hereby reproduced below, thus:

ORDER

When this case was called for hearing, accused Kim Liong appeared. However, his counsel, Atty. Dan Banares, failed to appear.

Private prosecutor, Atty. Ma. Julpha Maningas, is present in court. She moved that the right of the accused to cross-examine prosecution's witness, Antonio dela Rama, be deemed waived considering that his testimony was given way back November 2006 and up to now he has not yet been cross-examined by the defense. The same is granted.

Meanwhile, set the continuation of the presentation of prosecution's evidence on October 29, 2009 at 8:30 in the morning.

Notify Atty. Banares.

SO ORDERED.<sup>19</sup>

Liong, through a new counsel, Atty. Arnold Burigsay, filed an Entry of Appearance with Motion for Reconsideration.<sup>20</sup> Liong argued that his former counsel, Atty. Banares, was grossly negligent in handling his case as he repeatedly failed to attend hearings, including the August 27, 2009 hearing where Liong was declared to have waived his right to cross-examine Dela Rama. He did not even file a motion for reconsideration of the August 27, 2009 Order. According to Liong, Dela Rama was a vital witness, and to allow his testimony to remain on record without Liong having to cross-examine him would be extremely damaging to the defense. Thus, Liong prayed that the trial court reconsider its August 27, 2009 Order and grant him another chance to cross-examine Dela Rama.<sup>21</sup>

The trial court, however, found that Liong's abuse of his right by changing his counsels repeatedly was a tactic to delay the proceedings. Thus, it denied Liong's Motion for Reconsideration in its February 9, 2010 Order,<sup>22</sup> which stated:

ORDER

Accused thru his new counsel, Atty. Arnold M. Burigsay filed on October 26, 2009 an Entry of Appearance with Motion for Reconsideration of the order of this court dated August 27, 2009 declaring

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<sup>17</sup> Id. at 13 and 34.

<sup>18</sup> Id. at 54.

<sup>19</sup> Id.

<sup>20</sup> Id. at 55-58.

<sup>21</sup> Id. at 57.

<sup>22</sup> Id. at 59-60.

the accused to have waived his right to cross examine prosecution witness, Antonio dela Rama.

Accused admitted that the failure to cross examine prosecution witness was due to the negligence of his counsel who failed to appear and perform his task as counsel for the accused. Accused should not be punished for the negligence of his counsel.

In opposition to the motion, the private prosecutor thru Atty. Ma. Julpha P. Maningas averred that the cross examination of witness Antonio dela Rama had been reset a number of times due to the fault of the accused who kept on changing his counsel; that accused was given more than sufficient opportunities to cross examine the said witness but simply delayed the proceedings of this case until it lapsed two (2) years.

The records will show that this case has been filed on February 12, 2002. Accused was arraigned on January 20, 2003. Pre-trial was terminated on July 13, 2004. The first witness for the prosecution in the person of Antonio dela Rama was presented on June 8, 2006, August 3, 2006, November 9, 2006 and January 25, 2007. Because of the lengthy testimony of the witness on direct examination, the cross examination was deferred and reset to March 15, 2007. The cross examination was reset several times upon motion of the accused who engaged the services of the new counsel (March 15, 2007 and April 19, 2007).

On January 31, 2008[,] witness Antonio dela Rama was hospitalized. Accused also got sick on April 17, 2008. On February 5, 2009[,] accused[']s counsel, Atty. Banares[,] failed to appear. Accused likewise filed several motions, Motion to Suspend Proceedings on February 5, 2009 and Motion to Dismiss on July 30, 2009. Again[,] on August 27, 2009[,] counsel for the accused failed to appear. No motion has been filed for his non-appearance, hence, the court upon motion of private prosecutor, Atty. Maningas[,] in conformity of Prosecutor Meneses, declared accused to have waived his right to cross examine the witness Antonio dela Rama.

The direct examination of said witness was concluded on January 25, 2007. The delay in the cross examination of the witness was due to the fault of the accused and counsel. The court has noted the ploy employed by the accused like the filing of baseless motions and the changing of his counsel to delay the proceedings of this case. More than two (2) years has lapsed and still accused has not started his cross examination. Witness has been coming to court despite his condition (after his hospitalization) only to be reset due to the unpreparedness of accused[']s counsel or his non-appearance. The court has to put end to this unreasonable delay.

WHEREFORE, in view of the foregoing considerations, the Motion for Reconsideration is hereby denied due course.

SO ORDERED.<sup>23</sup>

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<sup>23</sup> Id.



Alleging grave abuse of discretion on the part of Presiding Judge Jose P. Morillos (Presiding Judge Morillos) in declaring him to have waived his right to cross-examine Dela Rama, Liong filed a Petition for Certiorari before the Court of Appeals.<sup>24</sup>

The Court of Appeals agreed with the trial court judge and denied Liong's Petition. It held that what is essential is for an accused to be granted the *opportunity* to confront and cross-examine the witnesses against him, not to actually cross-examine them. In other words, when an accused fails to avail himself or herself of this right, he or she is deemed to have waived it.<sup>25</sup>

The Court of Appeals found that Liong repeatedly delayed his cross-examination of Dela Rama specifically on March 15, 2007, April 19, 2007, February 5, 2009, and August 27, 2009. On those dates, Liong's counsel was either unprepared or absent. While there were hearings that were reset on the instance of witness Dela Rama, those were caused by his then hospitalization due to stroke. The Court of Appeals likewise said that Liong could not use in his favor the cancelled hearings on June 28, 2007, September 30, 2007, November 22, 2007, and October 16, 2008. The allegations that the hearings on these dates were cancelled due to the absence of the public prosecutor or the trial court judge were not substantiated.<sup>26</sup>

On Liong's claim that his former counsel was grossly negligent, the Court of Appeals nevertheless said that the negligence of counsel binds the client and, in this case, Liong was not blameless. The Court of Appeals cited an Order dated October 8, 2003 of the former presiding judge trying the case, Presiding Judge Edelwina Catubig Pastoral (Judge Pastoral), where Liong was admonished because he frequently changed counsels.<sup>27</sup>

The dispositive portion of the Court of Appeals October 7, 2011 Decision<sup>28</sup> read:

**WHEREFORE**, premises considered, the present petition is **DENIED**. Accordingly, the assailed Orders of the Regional Trial Court dated August 27, 2009 and February 9, 2010 are hereby **AFFIRMED**.

**SO ORDERED.**<sup>29</sup>

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<sup>24</sup> Id. at 35.

<sup>25</sup> Id. at 37-38.

<sup>26</sup> Id. at 38-39.

<sup>27</sup> Id. at 39-40.

<sup>28</sup> Id. at 33-41.

<sup>29</sup> Id. at 40.

Liong filed a Motion for Reconsideration, which the Court of Appeals denied in its February 20, 2012 Resolution,<sup>30</sup> thus:

An assiduous evaluation of the said Motion for Reconsideration led US to conclude that there exists no compelling and justifiable reason for US to veer away from OUR earlier pronouncement. The arguments presented by petitioner had already been traversed and ruled upon by US. There is no need to belabor the issues one more time.

WHEREFORE, on account of the foregoing, WE deny the said Motion for Reconsideration.

SO ORDERED.<sup>31</sup>

On March 26, 2012, Liong filed his Petition for Review on Certiorari<sup>32</sup> before this Court. The Office of the Solicitor General, on behalf of the People of the Philippines, filed a Comment<sup>33</sup> to which petitioner filed his Reply.<sup>34</sup>

Petitioner alleges that the cross-examination of Dela Rama was reset 13 times. However, out of those 13 resettings, only four (4) are attributable to him while the rest are due to reasons beyond his control, such as witness Dela Rama's stroke and the absence of the public prosecutor.<sup>35</sup> He adds that the order of waiver was made in open court and at a time when his counsel was absent; thus, he was not able to oppose the declaration.<sup>36</sup> Therefore, he argues that the trial court judge, Presiding Judge Morillos, gravely abused his discretion in depriving him of the rights to confront and cross-examine prosecution witness Dela Rama.<sup>37</sup>

Respondent People of the Philippines counters that petitioner raises a question of fact, specifically on which of the resettings are not attributable to him. It contends that questions of facts are not allowed in a Rule 45 Petition, and therefore, this Court is "not duty-bound to analyze again and weigh the evidence introduced in and considered by the [trial court and the Court of Appeals]."<sup>38</sup>

On the supposed negligence of petitioner's former counsel, respondent argues that this was not gross so as to discharge petitioner from any liability. Respondent alleges that petitioner benefited from the absences

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<sup>30</sup> Id. at 43-44.

<sup>31</sup> Id.

<sup>32</sup> Id. at 8-31.

<sup>33</sup> Id. at 73-82.

<sup>34</sup> Id. at 87-90.

<sup>35</sup> Id. at 21.

<sup>36</sup> Id. at 22.

<sup>37</sup> Id. at 23-24.

<sup>38</sup> Id. at 76.

of his former counsel and his other dilatory tactics such as frequently changing counsels.<sup>39</sup> For these reasons, the trial court judge, Presiding Judge Morillos, correctly deemed petitioner's right to cross-examine Dela Rama as waived.

The issues for this Court's resolution are:

First, whether or not this Petition for Review on Certiorari should be denied for raising factual issues; and

Second, whether or not the trial court gravely abused its discretion in declaring as waived petitioner Kim Liong's right to cross-examine prosecution witness Antonio Dela Rama.

This Petition must be denied.

## I

The fundamental rights of the accused are provided in Article III, Section 14 of the Constitution:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (Underscoring supplied)

"To meet the witnesses face to face" is the right of confrontation. Subsumed in this right to confront is the right of an accused to cross-examine the witnesses against him or her, i.e., to propound questions on matters stated during direct examination, or connected with it.<sup>40</sup> The cross-examination may be done "with sufficient fullness and freedom to test [the witness'] accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue."<sup>41</sup>

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<sup>39</sup> Id. at 78-79

<sup>40</sup> RULES OF COURT, Rule 132, sec. 6.

<sup>41</sup> RULES OF COURT, Rule 132, sec. 6



Rule 115 of the Rules of Court with its lone section is devoted entirely to the rights of the accused during trial. Rule 115, Section 1(f) on the right to cross-examine provides:

Section 1. *Rights of accused at the trial.* — In all criminal prosecutions, the accused shall be entitled to the following rights:

- .....
- (f) To confront and cross-examine the witnesses against him at the trial. Either party may utilize as part of its evidence the testimony of a witness who is deceased, out of or can not with due diligence be found in the Philippines, unavailable, or otherwise unable to testify, given in another case or proceeding, judicial or administrative, involving the same parties and subject matter, the adverse party having the opportunity to cross-examine him.

Denying an accused the right to cross-examine will render the testimony of the witness incomplete and inadmissible in evidence. “[W]hen cross-examination is not and cannot be done or completed due to causes attributable to the party offering the witness, the uncompleted testimony is thereby rendered incompetent.”<sup>42</sup>

However, like any right, the right to cross-examine may be waived.<sup>43</sup> It “is a personal one which may be waived expressly or impliedly by conduct amounting to a renunciation of the right of cross-examination.”<sup>44</sup> When an accused is given the opportunity to cross-examine a witness but fails to avail of it, the accused shall be deemed to have waived this right.<sup>45</sup> The witness’ testimony given during direct examination will remain on record.<sup>46</sup> If this testimony is used against the accused, there will be no violation of the right of confrontation.

In *People v. Narca*,<sup>47</sup> the trial court deferred to another date the cross-examination of the prosecution witness on the instance of the accused. However, in the interim, the prosecution witness was murdered. Thus, the accused moved that the testimony of the prosecution witness be stricken off the record for lack of cross-examination. This Court rejected the argument, finding that the accused waived their right to cross-examine the prosecution witness when they moved for postponement. It said that “mere *opportunity*

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<sup>42</sup> *People v. Givera*, 402 Phil. 547, 571 (2001) [Per J. Mendoza, Second Division] citing *Bachrach Motor Co., Inc. v. CIR*, 175 Phil. 225 (1978) [Per J. Muñoz Palma, First Division] and *Ortigas, Jr. v. Lufthansa German Airlines*, 159-A Phil. 863 (1975) [Per J. Barredo, Second Division].

<sup>43</sup> See *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.*, 159 Phil. 310, 315–316 (1975) [Per J. Muñoz-Palma, First Division].

<sup>44</sup> See *People v. Narca*, 341 Phil. 696, 706 (1997) [Per J. Francisco, Third Division] citing *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 159 Phil. 310 (1975) [Per J. Muñoz Palma, First Division].

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> 341 Phil. 696 (1997) [Per J. Francisco, Third Division].

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and not actual cross-examination is the essence of the right to cross-examine.”<sup>48</sup>

In *Gimenez v. Nazareno*,<sup>49</sup> the accused, after arraignment but before trial, escaped from his detention center. Trial ensued despite his absence and the accused was subsequently convicted of murder. On appeal, the accused contended that the testimonies against him should be stricken off the record because he failed to exercise his right to cross-examine the witnesses against him. Rejecting this contention, this Court held that an escapee who has been tried *in absentia* does not retain the rights to confront and cross-examine the witnesses against him. These rights are personal and “by his failure to appear during the trial of which he had notice,” this Court said that the accused “virtually waived these rights.”<sup>50</sup>

## II

Petitioner maintains that he did not waive his right to cross-examine witness Dela Rama, attributing the successive cancellation of hearings on the absence either of the witness, the public prosecutor, or the trial court judge. He adds that his counsel was grossly negligent in handling the case.

However, as pointed out by respondent, the matters raised in this Petition are questions of fact not proper in a Rule 45 petition. This Court is not a trier of facts,<sup>51</sup> and rightfully so. This Court, as the court of last resort, should focus more on performing “the functions assigned to it by the fundamental charter and immemorial tradition.”<sup>52</sup> The rule, therefore, is that petitions for review on certiorari may only raise questions of law. Rule 45, Section 1 of the Rules of Court provides:

Section 1. *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

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<sup>48</sup> Id. at 706.

<sup>49</sup> 243 Phil. 274 (1988) [Per J. Gancayco, En Banc].

<sup>50</sup> Id. at 280.

<sup>51</sup> See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015) [Per J. Carpio, Second Division] citing *Spouses Bimua v. Ong*, 736 Phil. 698 (2014) [Per J. Reyes, First Division]; *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374 (2014) [Per J. Perlas-Bernabe, Second Division]; *Sandoval Shipyards, Inc. v. Philippine Merchant Marine Academy (PMMMA)*, 708 Phil. 535 (2013) [Per C.J. Sereno, First Division].

<sup>52</sup> See *Vergara v. Sueito*, 240 Phil. 719, 732 (1987) [Per J. Narvasa, First Division].

It is true that this rule is subject to exceptions. This Court may review factual issues if any of the following is present:

(1) [W]hen the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>53</sup>

Nevertheless, this Court finds that none of the exceptions applies in this case. Even if this Court considers the facts as alleged by petitioner, it will still arrive at the conclusion that the trial court judge did not gravely abuse his discretion in deeming petitioner's right to cross-examination as waived. Therefore, the Court of Appeals did not err in denying petitioner's Petition for Certiorari.

The table below is a summary of the hearing dates set for the cross-examination of Dela Rama and the reasons for their cancellation. It is based on the dates as alleged in the Petition.<sup>54</sup>

Hearing Dates	Reasons for Cancellation
March 15, 2007	Atty. Banares appeared as collaborating counsel for accused's counsel of record, Atty. Ponon.
April 19, 2007	Petitioner terminated the services of Atty. Ponon, who was allegedly a fraternity brother of private prosecutor, Atty. Pacheco.
June 28, 2007	No reason indicated.
September 30, 2007	No reason indicated.
November 22, 2007	Public prosecutor was absent.

<sup>53</sup> See *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, 472 Phil. 11, 22–23 (2004) [Per J. Austria-Martinez, Second Division] citing *Lungkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349 (2000) [Per J. Gonzaga-Reyes, Third Division]; *Nokom v. National Labor Relations Commission*, 390 Phil. 1228 (2000) [Per J. De Leon, Jr., Second Division]; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541 (1999) [Per J. Pardo, First Division]; *Sta. Maria v. Court of Appeals*, 349 Phil. 275 (1998) [Per J. Davide, Jr., First Division].

<sup>54</sup> *Rollo*, pp. 11–13.

January 31, 2008	Witness Dela Rama was absent.
April 17, 2008	Petitioner was indisposed, and therefore, absent.
June 26, 2008	Witness Dela Rama was absent.
July 31, 2008	Witness Dela Rama was absent because he suffered a stroke.
October 16, 2008	Presiding Judge Morillos was on leave.
February 5, 2009	Petitioner's counsel was absent.
May 7, 2009	No reason indicated.
August 27, 2009	Petitioner's counsel was absent and, on motion by the private prosecutor, Presiding Judge Morillos deemed petitioner's right to cross-examine witness Dela Rama as waived.

The table shows that petitioner was given more than enough opportunity to cross-examine witness Dela Rama. Contrary to his allegation, five (5) of the cancellations are attributable to him. For instance, the March 15, 2007 hearing was cancelled on petitioner's motion because Atty. Banares appeared as collaborating counsel for his counsel of record, Atty. Ponon. The next hearing set on April 19, 2007 was again cancelled because petitioner terminated the services of Atty. Ponon who was allegedly a fraternity brother of one of the private prosecutors, Atty. Pacheco. On April 17, 2008, petitioner was allegedly indisposed and did not attend the hearing. On February 5, 2009, petitioner had no counsel. Finally, on August 27, 2009, petitioner again had no counsel and Presiding Judge Morillos deemed petitioner's right to cross-examine Dela Rama as waived.

Of course, there were cancellations due to the absence of either the prosecutor or witness Dela Rama himself. There was even one hearing, which was cancelled because Presiding Judge Morillos was on leave. However, even after Dela Rama suffered a stroke, he attended the hearings on February 5, 2009 and August 27, 2009, with the hearings only to be cancelled because petitioner did not have his counsel with him. These show that petitioner failed to aggressively exercise his rights to confront and cross-examine witness Dela Rama. The absence of counsel during the February 5, 2009 and August 27, 2009 hearings was never explained.

Petitioner had the habit of frequently changing counsels. In an Order issued as early as October 8, 2003, former Presiding Judge Pastoral admonished petitioner for "again" changing his counsel during pre-trial, thus, delaying the proceedings:

The accused again has engaged another lawyer and he asked for a resetting.

Atty. Ponon is the new counsel for the accused and he asked for a last resetting.

The court warned the accused not to hire another lawyer only for the purpose of delaying this case.

For the last time[,] reset the pre-trial to December 11[,] 2003, at 8:30 o'clock in the morning.

Notify the bonding company and the accused is duly notified in open court of the resetting.

SO ORDERED.<sup>55</sup>

No gross negligence is attributable to petitioner's counsel. Ordinary diligence and prudence could have prevented the cancellation of the hearings. If there is any negligence in this case, it is that of petitioner himself. For failure to avail himself of the several opportunities given to him, he is deemed to have waived his right to confront and cross-examine witness Dela Rama.

The right to confront and cross-examine witnesses is a basic, fundamental human right vested inalienably to an accused. This right ensures that courts can confidently ferret out the facts on the basis of which they can determine whether a crime occurred and the level of culpability of the accused. It is a basic requirement of criminal justice.

However, this right does not exist in isolation. The State, representing the people that may have been wronged by a crime, also has the right to due process. This means that the prosecution must not be denied unreasonably of its ability to be able to prove its case through machinations by the accused.

When the accused abuses its option to choose his counsel as in this case, he can be deemed to have waived his right to confrontation and cross-examination. The pattern of postponements and changes of counsel in this case is so obvious and patent. Petitioner should have been dissuaded by any of the lawyers, unless they, too, connived in such an amateurish strategy, which wastes the time and resources of our judicial system.

All told, Presiding Judge Morillos did not gravely abuse his discretion in deeming as waived petitioner's right to cross-examine prosecution witness Dela Rama. The Court of Appeals correctly denied petitioner's Petition for Certiorari. Dela Rama's testimony given during direct examination shall remain on record. We sustain both courts.

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<sup>55</sup> Id. at 40.




**WHEREFORE**, the Petition for Review on Certiorari is **DENIED**.  
The October 7, 2011 Decision and February 20, 2012 Resolutions of the  
Court of Appeals in CA-G.R. SP No. 113152 are **AFFIRMED**.

**SO ORDERED.**

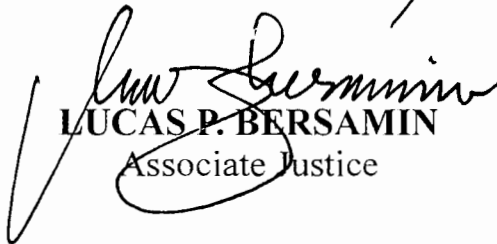


**MARVIC M.V.F. LEONEN**  
Associate Justice

WE CONCUR:



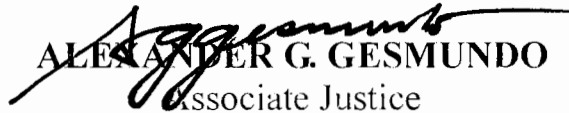
**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson



**LUCAS P. BERSAMIN**  
Associate Justice




**SAMUEL R. MARTIRES**  
Associate Justice



**ALEXANDER G. GESMUNDO**  
Associate Justice

**ATTESTATION**


I attest that the conclusions in the above Decision had been reached in  
consultation before the case was assigned to the writer of the opinion of the  
Court's Division.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division


**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Acting Chief Justice

**CERTIFIED TRUE COPY**



**WILFREDO V. LABITAN**  
Division Clerk of Court  
Third Division

JUL 11 2018