

DEMOCRITO BARRIDO, ALEXANDER ALVAREZ, AND FEDERICO BARRIDO, PETITIONERS, VS. HON. COURT OF APPEALS, 7TH DIVISION AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-38945-47. September 12, 1974

Ponente: MAKALINTAL, C.J.

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MAKALINTAL, C.J.:

In his decision dated March 7, 1973, Judge Venicio Escolin of the Court of First Instance of Iloilo sentenced the following accused in Criminal Case Nos. 11280, 11281 and 11282, namely:

"DEMOCRITO BARRIDO, who is guilty beyond reasonable doubt of two homicides and of frustrated homicide, to suffer two separate indeterminate terms of imprisonment, each ranging from EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal as maximum; and to suffer another indeterminate prison term of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY of Prison Correccional as minimum, to EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as maximum; to indemnify the heirs of the deceased Elnar Baldago in the sum of P12,000.00; likewise to indemnify the heirs of the deceased Edgar Baldago, jointly and severally with the accused Alexander Alvarez, in the amount of P12,000.00; and to pay one-fifth (1/5) of the costs;

"ALEXANDER ALVAREZ, who is guilty beyond reasonable doubt of Homicide, to suffer an indeterminate term of imprisonment ranging from EIGHT (8) YEARS and ONE (1) DAY of Prison Mayor, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY of Reclusion Temporal, as maximum; to indemnify the heirs of the late Edgar Baldago, jointly and severally with the accused Democrito Barrido, in the sum of P12,000.00; and to Pay one-fifth (1/5) of the costs;

"FEDERICO BARRIDO, guilty of slight physical injuries, to suffer a prison term of THIRTY (30) DAYS and to pay one-fifth (1/5) of the costs;"

The above-named accused appealed to the Court of Appeals, where their cases were docketed as CA-G.R. Nos. 15004-Cr, 15005-Cr, and 15006-Cr and their original counsel of record was Atty. Cirilo Y. Ganzon.

It appears that the appellants, after having been granted an extension of 90 days within which to file their brief, again asked in a formal motion for another extension of 30 days. The appellate court in its resolution dated January 18, 1974 not only denied the motion but also dismissed the appeal, after "considering that the appellants have already been given a total of 135 days within which to file the brief."

On April 4, 1974 the appellants, through Atty. Amado B. Atol, "in collaboration with Atty. Ganzon," moved to reconsider, alleging among other things that "the lawyer of the accused is sickly with recurrent illness so much so that this must be the cause for his failure to file the brief on time," and praying that the resolution of January 18, 1974 be set aside and that they be given up to May 20, 1974 within which to file the brief. Without making reference to the illness of Atty. Ganzon, the Court of Appeals by resolution of April 25, 1974 denied the motion, merely pointing out that the failure to file the brief was due to "inexcusable negligence."

Through a new counsel, Atty. Antonio R. Rabago, the appellants filed a motion dated May 9, 1974, praying that the appellate court vacate its resolution dismissing the appeal, lift the entry of judgment, reinstate the appeal and admit the brief then already on file. They contended that their counsel's illness, which was the cause of his failure to file the brief on time, was within the concept of *caso fortuito* and that relaxation of the Rules was proper for the sake of justice and equity in order to give the appellants the opportunity to have their cases reviewed. They submitted a medical certificate issued by Dr. Benjamin H. Nomboy of Iloilo City, stating among other things that "Atty. Ganzon was under treatment for hypertensive heart disease with evidence of acute coronary insufficiency." Still holding that the delay in filing the brief was inexcusable, the appellate court denied the motion by resolution of May 21, 1974.

The appellants moved to reconsider the said resolution but were again turned down by the Court of Appeals in its resolution dated June 21, 1974. Their explanation regarding their former lawyer's illness was brushed aside with the observation that "no such sickness was alleged when he (Atty. Ganzon) filed a motion for extension of 60 days 'to complete the printing of the brief of the appellants.'"

The instant petition is for annulment of the appellant court's resolution of January 18, 1974, April 25, 1974, May 21, 1974, and June 21, 1974, on the ground of grave abuse of discretion.

The Solicitor General, upon direction by this Court, filed his comment on the petition, after which We resolved to consider it as his answer and the case submitted for decision.

There can be no dispute as to the fact that the failure of the petitioners' former counsel to file the brief was caused by his illness, which was diagnosed as "hypertensive heart disease with evidence of acute coronary insufficiency." In the case of *Monticines vs. Court of Appeals*,^[1] this Court held that the dismissal of an appeal for failure of the counsel to file his clients' brief due to his illness was not justified and, accordingly, ordered the respondent court to allow the appeal to take its due course. The ruling in said case fully applies here.

The fact that Atty. Ganzon did not allege his illness as a ground in his motion for extension of time to file the brief should not have been taken against the petitioners when they asked for reinstatement of their appeal. With the submission of the medical certificate attesting to such illness of counsel, that fact became a matter of record and assumed a material importance on the question of appellants' plea for reinstatement of their appeal, especially considering that they had already filed their brief at that time.

The particular circumstances obtaining here call for the relaxation of the rule that the client must bear the adverse consequence of counsel's failure to observe the procedural requirements prescribed by the Rules of Court. Two of the petitioners have been convicted of grave offenses and sentenced to long prison terms. Through no fault of their own their appeal would fail not on the merits but on a procedural lapse of counsel which was not entirely inexcusable. The ends of justice will be better served if their appeal is reinstated. The Solicitor General recommends that the petition be granted, for as he aptly states in his comment, "... in this case, there is nothing to lose, and much to be gained by way of the substantial realization of due process and the further strengthening of the common man's faith in our judicial system, in the reinstatement of petitioners' appeal and the admission of their brief, which incidentally, had been filed with the Court of Appeals."

WHEREFORE, the resolutions of the respondent Court of Appeals of January 18, 1974, April 25, 1974, May 21, 1974, and June 21, 1974 are hereby set aside, and said court is directed to reinstate and give due course to the appeal of the petitioners.

Castro, Teehankee, Esguerra, and Munoz Palma, JJ., concur.
Makasiar, J., took no part.

[1] No. L-35913, September 4, 1973 (53 SCRA 14).

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