

ELENITA V. UNSON, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-25084 and L-25270. February 28, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appealing by certiorari from a three to two decision of the Court of Appeals convicting her of the crime of estafa, rendered in CA-G. R. No. 0351R-Cr, the accused-appellant, Elenita V. Unson, on October 11, 1965, through counsel, paid the corresponding docket fees and asked for 30 days extension within which to file the appropriate petition for review.

On October 15, 1965 this Court, acting upon her petition, adopted the following resolution:

"Considering¹ the motion of counsel for petitioner in L-25084 (Elenita V. Unson vs. Court of Appeals, et al.) for an extension of 30 days from October 21, within which to file a petition for review, the COURT RESOLVED that an extension of only 15 days from the expiration of the reglementary period will be granted, IF IT CAN BE SHOWN that the filing of the instant motion and the payment of the docket fee were made on time; petitioner is warned that NO FURTHER EXTENSION will be given."

Subsequently, informed by the Clerk of Court of the Court of Appeals that petitioner had received a copy of the decision of that Court on June 3, 1965, and a copy of the resolution denying her motion to reconsider on September 24, 1965, and that leave to file a second motion for reconsideration had been denied, this Court considered that the condition imposed by its resolution of October 15, 1965 had not been complied with; and for this reason, on November 15, 1965, the following resolution was adopted:

"It appearing that the payment of the docket fee and the filing of the motion for extension of time to file petition for review in L-25084 (Elenita V. Unson vs. Court of Appeals, et al.) was made out of time, the Court of Appeals is hereby NOTIFIED that it may now take steps towards executing- its judgment in the case."

In the meantime, the petition for certiorari had been filed as of November 4, and erroneously assigned the number G. R. No. L-25270.

On December 1, 1965, the petitioner filed a motion to suspend the effectivity of our resolution of November 15, 1965, and that she be given time to secure a correct certification from the Court of Appeals showing the correct date of petitioner's receipt of the order denying her motion for reconsideration and other pertinent orders. This Court, on December 1, gave her 15 days from notice to submit the certification. By resolution of January 5, 1966, petitioner was given 20 more days from notice for the same purpose.

Within the time thus allowed, petitioner now submits a resolution of the Court of Appeals, dated January 31,

1966, to the effect that the 15-day period for perfecting the appeal should not be counted from September 24, 1964 but from October 6, 1964, when appellant received the order denying! the leave for filing a second motion to reconsider, the Court of Appeals giving as a reason that, until receipt of the order denying such leave, appellant could not be expected to file the petition for review by certiorari in this Supreme Court because by so doing she would automatically withdraw the petition in the Court of Appeals for leave to file a second motion for reconsideration; and ordered that the previous certification of its Clerk of Court (of Appeals) be accordingly amended.

We consider the reasons advanced by the Court of Appeals in its Resolution of January 31, 1966 to be acceptable and grounded on reason. And considering that the petitioner-appellant in this case filed her motion for reconsideration in the Court of Appeals only one day after receiving notice of the decision on the merits; that she, therefore, had 14 days left from October 6, 1964, when she received notice of the denial of her leave to file a second motion to reconsider, which 14 days expired on October 20, 1964; but that on October 11 she obtained further extension from this Court, and within said extension filed her petition for certiorari; and it further appearing that the petition for certiorari, as filed in this Court, is prima facie meritorious;

Wherefore, it is hereby resolved:

- (a) To reconsider, recall, and set aside the resolution of November 15, 1965, notifying the Court of Appeals that it may proceed to take steps toward the execution of its decision;
- (b) To give due course to the petition for certiorari in G. R. No. L-25270; and
- (c) To order that cases Nos. G. R. L-25270 and L-25084 be consolidated together and treated hereafter as one single case. So ordered.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Petition granted.

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