

FRANCISCO EVARISTO, PEDRO CARDEÑO AND AGUSTIN MIANO, PETITIONERS VS. HON. OLEGARIO LASTRILLA, JUDGE OF THE COURT OF FIRST INSTANCE OF SAMAR, BRANCH IV, AND THE PROVINCIAL FISCAL ...

G.R. No. L-14682. November 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition under Rule 67 for writs of certiorari and mandamus to annul the respondent court's order dated 7 August 1958 declining to act on the petitioners' amended motion for new trial in criminal case No. 1246 of the Court of First Instance of Samar and to compel the respondent court to grant a new trial to the petitioners, defendants in the respondent court.

In an amended information filed in the Court of First Instance of Samar, the petitioners together with six others were charged with murder for the death of Pastor Muyot (Annex C). After trial, on 29 March 1958 the Court rendered judgment dated 11 March 1958, finding the petitioners guilty as charged in the information and sentencing them to suffer the penalty of reclusion perpetua, the accessories of the law, to indemnify jointly and severally the heirs of the victim in the sum of P6,000, and to pay the proportionate costs. Their six co-defendants were acquitted for insufficiency of evidence (Annex D). Upon being notified of the judgment, on the same day, 29 March 1958, the petitioners filed a notice of appeal and served a copy thereof upon the Provincial Fiscal (Annex E). On 10 April 1958 the petitioners moved for new trial upon the ground of newly discovered evidence (Annex F). On 28 July 1958, the petitioners asked leave to amend their motion previously filed, attaching thereto an amended motion for new trial of even date (Annexes G and H). After hearing, on 7 August 1958, the Court entered an order declining to take "cognizance of defendants' (petitioners') motion for new trial for lack of jurisdiction," because the petitioners already had perfected their appeal from the judgment of conviction theretofore rendered in the case (Annex I).

In criminal proceedings, an appeal is taken by filing a notice of appeal with the court in which the judgment or order was rendered, and by serving a copy thereof upon the adverse party or his attorney, within fifteen days from the rendition of the judgment or order appealed from.[1] And within five days after the filing of the notice of appeal, the clerk or judge of the court with whom it is filed must transmit to the clerk of the court to which the appeal is taken, the complete record of the case together with the notice of appeal.[2] In *Director of Prisons vs. Teodoro, Sr.*, 97 Phil., 397; 51 Off. Gaz., 4038 and *People vs. Aranda*, 106 Phil., 1008; 57 Off. Gaz., (18) 3308, this Court held that after perfection of an appeal, the trial court loses jurisdiction of the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal. The filing of a notice of appeal in the respondent court on 29 March 1958 (Annex E) and serving a copy thereof upon the Provincial Fiscal, perfected the petitioners' appeal. Upon perfection of the appeal, the respondent court lost jurisdiction of the case to pass upon their motion for new trial on 10 April 1958. Needless to say, however, the petitioners have not lost their right to file their motion for new trial in this Court where the record of

the case was transmitted and received on 7 October 1958.[3]

The rule laid down in the cases of *People vs. Bocar*, 97 Phil., 398; 51 Off. Gaz., 4043 and *People vs. Agasang*, 99 Phil., 11; 52 Off. Gaz. 3023, invoked by the petitioners, does not apply to the case. In the first case, the respondent Castelo, who was convicted of murder and sentenced by the Court of First Instance to death, filed a motion for new trial in the same Court eleven days after promulgation of the judgment. This Court resolving in the affirmative the question whether the Court of First Instance has jurisdiction to entertain a motion for new trial in a case where appeal to this Court is automatic, in view of the penalty of death imposed, held:

The 20 days mentioned in Rule 118, section 9, within which the records of a case involving a death sentence should be forwarded to the Supreme Court is not rigid or absolute, much less jurisdictional. It may be shortened or it may be extended. That period of 20 days was intended for a case wherein the accused sentenced to death says nothing and does nothing within the period of 15 days within which the case remains within the jurisdiction of the trial court, as for instance, he does not waive his right to appeal. But should he say, on the same day the death sentence is promulgated file his notice of appeal, then there would be no need to wait for the 20 days to expire; the Clerk of Court will immediately or at the latest within five days thereafter transmit the record to the Supreme Court. Should the defendant sentenced to death penalty within the period of 15 days file a motion for new trial, then the trial court may entertain said motion, grant or deny it, and if the consideration of the motion for new trial or the new trial itself take many days or even weeks, including the rendering of the new decision, then the 20 days mentioned in the Rules of Court must necessarily be extended.

So even in cases involving automatic review by this Court, if the defendant perfects an appeal, although he is not in duty bound to do so, the Court of First Instance loses jurisdiction of the case and can no longer pass upon or resolve a motion for new trial after the taking of appeal by the defendant.

In the second case, the defendant who was convicted of serious physical injuries with damage to property through reckless imprudence and sentenced to suffer 1 year and 1 day of prision correccional, on the day of the promulgation of the judgment, announced in open court and in the presence of the provincial Fiscal his intention to appeal from the judgment and right away filed an appeal bond where he stated that he was appealing from the judgment. In due course, the appeal bond was approved by the Court. Thirty days thereafter, he filed a motion for new trial. The Provincial Fiscal filed an opposition to the motion for new trial claiming that the judgment of conviction already had become final for failure to file a written notice of appeal within the reglementary period of fifteen days. Resolving the issue, this Court said:

* * * we hold that in cases like the one at bar, when an accused manifests or gives notice of his intention to appeal in open court and files a bond for his provisional release, within 15 days from the promulgation of the decision against him, he may be considered as having perfected his appeal notwithstanding his failure to file a written notice and to serve a copy thereof to the adverse party as required of section 3 of Rule 118 of the Rules of Court.

Consequently, we hold that the disputed order denying the motion for new trial filed by the appellant should be reversed in so far as it declared that the decision in the case at bar has become final and therefore the motion for new trial was filed out of time, for there has been substantial compliance of the law by the appellant regarding the perfection of appeal and consequently the decision in this case has not yet become final.

The writs prayed for are denied, with costs against the petitioners.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Writs denied.

[1] Sections 3 and 6, Rule 118.

[2] Section 8, Rule 118.

[3]G.R. No. L-14520.

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