

EPIFANIO BARADI, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. L-2658. December 09, 1948

Ponente: FERIA, J.

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FERIA, J.:

This is a petition for certiorari to appeal from the order of the Court of Appeals which dismisses the petitioner's appeal from the sentence of the Court of First Instance of Manila, because of the failure of the appellant to file his brief on time.

Sec. 8, Rule 120 of the Rules of Court provides:

"Sec. 8. Dismissal of appeal of abandonment or failure to prosecute.—"The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the defendant is represented by an attorney de oficio.

The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

According to the above quoted provisions, the Court of Appeals has discretion to dismiss *motu proprio* an appeal for failure on the part of the appellant to file his brief on time, but the Court of Appeals must have a notice served upon the defendant-appellant of the action to be taken by said Court before dismissing, *motu proprio* the appeal. The purpose of such a notice is to give the appellant opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory.

In the present case, although it does not appear from the petition that the Court of Appeals had given the appellant such notice before dismissing his appeal, as the petitioner has filed a motion for reconsideration of, or to set aside, the order dismissing his appeal, in which he stated the reasons why he failed to file, brief on time, and the Court of Appeals denied the motion for considering said reasons not satisfactory, the filing of such a motion has cured any defect or failure to comply, if any, with the notice required by said Sec. 8, Rule 120, because if the notice had been given the same reasons would have been alleged by the appellant.

Therefore the petition is denied. So ordered.

Moran, C.J., Pablo, Perfecto, Bengzon, Briones, Tuason, and Montemayor, JJ., concur.

DISSENTING

PARAS, J.,

The petition alleges that Epifanio Baradi was assisted by Atty. Fidel A. Santiago at the trial of the case in the Court of First Instance of Manila. When the expediente was elevated to the Court of Appeals, the clerk did not advise the appellate court that Atty. Santiago was to continue defending the appellant on appeal. However, notice to file the brief was sent to said attorney, who did nothing until the reglementary period had elapsed and the appeal was dismissed. Within 15 days Atty. Jesus Z. Valenzuela appeared for the first time for appellant Baradi, explained that Santiago was never the attorney on appeal, and accordingly sought the reconsideration of the order of dismissal. This was denied.

In my opinion, the appeal should not have been dismissed under the circumstances of the case. The Court of Appeals cited section 2 of Rule 8 of the Rules of Court providing that "Attorneys and guardians ad litem of the Respective parties in the court below shall be considered" as the attorneys and guardians of the sane parties respectively in the Court of Appeals until others are appointed and notice thereof is served on the adverse party." As regards criminal cases, however, it is provided that "The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the defendant is represented by an attorney de oficio." (Rule of Court 120, Sec. 8.) It is here admitted that no such notice had been served on the appellant before the Court of Appeals dismissed his appeal. But the majority contends that, upon the filing of the motion for reconsideration, lack of notice had been cured. This procedure in effect requires appellants themselves to justify dismissals made in violation of said section 8. Suppose the herein petitioner (Baradi) did not file any motion for reconsideration. The majority, to be consistent, would of course set aside the dismissal complained of, regardless of the reason for appellant's failure to file a brief; and the result would be that appellants, whose appeals have been dismissed without the required previous notice, may outsmart the Court of Appeals by not filing a motion for reconsideration, and by seeking relief directly from the Supreme Court. At any rate, even admitting the correctness of the majority's position, I believe that the Court of Appeals erred in denying the petitioner's motion for reconsideration.

Petition denied.

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