

JENNIFER S. REYES, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-41680. October 28, 1977

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition, which WE treated as a special civil action, seeks to set aside respondent Court's [a] August 1, 1975 minute resolution denying petitioner's motion for last extension of time of twenty (20) days to file appellant's brief; [b] August 26, 1975 minute resolution *motu proprio* dismissing petitioner's appeal and [c] October 1, 1975 minute resolution denying petitioner's motion for reconsideration of the August 26, 1975 resolution, all issued in CA-G.R. No. L-17712-Cr., entitled "People of the Philippines vs. Jennifer S. Reyes", petitioner herein.

Aforesaid CA-G.R. No. L-17712 was petitioner's appeal, as defendant-appellant therein, to respondent Court from the November 21, 1974 decision of the Court of First Instance of Manila, Branch VI, convicting her of the crime of estafa which was initiated upon complaint of her aunt, Adela Gerona, involving the amount of Ten Thousand Six Hundred Ninety-Five (P10,695.00) Pesos representing the value of the jewelries subject matter of the transaction between them that gave rise to the said criminal complaint. Appellant was sentenced to an indeterminate penalty ranging from four (4) months and twenty-seven (27) days of *arresto mayor*, as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional*; and to indemnify the offended party in the amount of Ten Thousand Six Hundred Ninety-Five (P10,695.00) Pesos.

On May 5, 1975, respondent Court granted petitioner an extension of ninety (90) days from even date with warning of no further extension for filing her brief.

Nevertheless, on July 29, 1975, or six days before the expiration of the aforesaid ninety-day period, petitioner's counsel, fearing that he might not be able to submit the appellant's brief on time, filed a second and last extension of twenty (20) days from August 3, 1975 within which to file the appellant's brief, invoking as grounds thereof, pressure of work and his appointment as vice-chairman of the *Comite de Festejos* of the municipality of Pandan, Catanduanes, as per Resolution No. 258 of the Pandan Municipal Council, copy of which was attached to the motion as Annex "A" thereof (p. 32, C.A. rec.).

On August 1, 1975, respondent Court denied the motion. Copy of the resolution of denial was received by petitioner's counsel on August 9, 1975.

On August 21, 1975, or two (2) days before the expiration of the twenty-day extension sought by counsel in the denied motion, petitioner filed her printed appellant's brief with the respondent Court.

On August 26, 1975 or five days after the filing of the aforesaid appellant's brief, respondent Court issued a resolution dismissing the appeal of petitioner, thus: "Docket's report: No appellant's brief filed within the extension period granted. RESOLVED: APPEAL DISMISSED." A copy thereof was received by petitioner's counsel on August 30, 1975.

On September 1, 1975, petitioner's counsel moved to reconsider the aforesaid August 26, 1975 resolution of dismissal and prayed therein for the admission of appellant's brief already filed as of August 21, 1975. Vigorously, petitioner's counsel explained that:

"1. x x x the extended period given by this Honorable Court for the submission of appellant's brief expired on August 3, 1975, a Sunday;

"2. For fear that the undersigned counsel might not be able to finish the brief on time, as he will be out of town, to proceed to Catanduanes, to fulfill a PERSONAL VOW to our Patron Saint, St. Ignatius de Loyola, undersigned counsel prepared on July 26, 1975 a motion for extension of twenty (20) days' time from August 3, 1975, within which to submit appellant's brief;

"3. Before undersigned counsel however left for the Province of Catanduanes, he, in the afternoon of July 28, 1975, entrusted to the accused-appellant the prepared draft of the brief for printing, with the instructions that the accused-appellant be the one to submit it for printing with the printer concerned, after which, the printed copies should be submitted to this Honorable Court, furnishing copies thereof to the Solicitor General;

"4. Said instructions were given by undersigned to the accused-appellant in view of the fact that undersigned counsel would not be around in Manila from July 29, 1975 to the first week of August, 1975, to supervise, proof-read the manuscript and submit the printed copies to this Honorable Court;

"5. Even if the prepared draft of the brief was finished by the undersigned counsel on July 28, 1975, and entrusting the same to the appellant for printing, undersigned counsel still caused the filing of the motion for extension of time to file brief with this Honorable Court, for fear that the printing of the same might be delayed by the printing press concerned, for one reason or another, and hence, the brief might not be submitted one time, that is, on or before August 3, 1975;

"6. That even if the prepared draft of the brief was given by undersigned counsel to the accused on July 28, 1975, the same was not immediately brought by the accused to a printing press BECAUSE OF FINANCIAL DIFFICULTIES.

"7. The printers which appellant approached were demanding for a down payment just to print the aforesaid brief, which down payment accused-appellant could not give, in view of her financial difficulties, appellant being only a mere employee, and THE SOLE BREADWINNER OF THE FAMILY, having her younger brothers and sisters, and even her parents, to support;

"8. It was only on the second week of August, 1975, that is, on August 7, 1975, that the accused-appellant, thru the kind help of the friends of her father, was able to get in touch with a printer, and who was willing to print the same on credit basis;

"9. The said brief was finally printed and the same was accordingly filed with this Honorable Court on August 21, 1975;

"x x x x x x x x x."

The aforesaid motion for reconsideration was verified by counsel and petitioner.

Respondent Court forthwith required on September 9, 1975 the Solicitor General to comment within ten (10) days on the aforesaid motion. On September 25, 1975, the Solicitor General filed his comment curtly submitting that "x x x simply because counsel for appellant had an out-of-town engagement is not sufficient reason for him to entrust the printing of his brief to his client who may not be aware of the importance and urgency thereof" (p. 32, rec.). Finding that opposition well-founded, respondent Court accordingly denied the aforesaid motion for reconsideration.

Hence, this instant petition, petitioner labelling the questioned resolutions of respondent Court as constitutive of grave abuse of discretion.

On December 12, 1975, WE resolved to require respondents to comment on the petition.

On January 22, 1976, the Solicitor General filed the required comment; and on February 9, 1976, the Court resolved to give due course to the petition, at the same time treated it as a special civil action and on even date declared the same submitted for decision.

WE view the circumstances narrated above as justifying the setting aside of the questioned resolutions of the respondent Court. Accordingly, WE find merit in the petition and grant the relief prayed for by the petitioner.

1. The New Rules of Court allows extension of time within which to file brief upon a showing of a "x x x good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended" (Section 15, Rule 46). Indicative of this rule is the authority of the courts to grant as many motions for extension as may be asked if good reasons are shown (Gregorio vs. Court of Appeals, et al., 72 SCRA 120, 123-124 [1976]). The allowance or denial of such motions (as well as the setting aside of orders previously issued) rests principally upon the sound discretion of the court to which it is addressed, which discretion, however, must be exercised wisely and prudently, never capriciously, with a view to substantial justice (Cucio vs. Court of Appeals, 57 SCRA 64, 68 [1974], citing Piedad vs. Batuyong, 55 SCRA 763 [1974]). Furthermore, "x x such discretion should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby" and that "it is sound judicial discretion" to allow a reasonable transfer of hearing or request for extension timely filed "when no substantial rights are affected and the intention to delay is not manifest" (ibid., quoting Limon vs. Candido, 27 SCRA, 1166, 1169 [1969]). Section 1 of Rule 50 under which respondent Court motu proprio dismissed petitioner's appeal merely confers a power and does not impose a duty; and the same is not mandatory but merely directory which thus requires a great deal of circumspection, considering all the attendant circumstances (Lopez, et al. vs. Court of Appeals, et al., 75 SCRA 402, 406 [1977], citing cases).

In the instant case, petitioner's motion for extension of time to file her brief was seasonably filed as the same was undisputedly filed six (6) days before the expiration of the existing period. With respect to the grounds invoked by petitioner in her said motion as amplified in her motion for reconsideration with prayer for the admission of her printed brief earlier filed, their sufficiency and validity have not been seriously questioned or disputed. The comment of the Solicitor General failed to grasp the full import of the grounds therein invoked when it casually stated that "x x x simply because counsel for appellant had an out-of-town engagement is not sufficient reason for him to entrust the printing of the brief to his client who may not be aware of the importance and urgency thereof." For as stated in the July 28 and September 1, 1977 motions of herein petitioner, what impelled her counsel to prepare the said motion for extension of time was counsel's fear that he might not be able to finish the brief on time because of pressure of work and furthermore because he was to be out of town the succeeding days to fulfill a personal vow to his town's patron saint, the feast days of which were to be celebrated on July 30-31, 1975 that necessitated his presence thereat during said days, for the further reason that he was earlier appointed as Vice-Chairman of the Komite de Festejos which was in charge of the fiesta celebration in honor of said patron saint. And that although counsel was able to finish his draft of appellant's brief on July 28, 1975, counsel, before leaving for his hometown, still caused the filing on said date of the aforesaid motion for extension prepared on and dated July 26, 1975, in order to obtain and insure additional and sufficient time within which to timely file the appellant's brief as he feared then that the printing thereof might be delayed for one reason or another like the fact that as aforesaid, he will be out of town and therefore will be unable to supervise and proofread the manuscript of the brief. But as it turned out, not only the foregoing factors contributed to the delay in the filing of the said

brief but also (and mainly) the financial difficulties of petitioner herself, by reason of which the printing of the brief could not be commenced as the printer demanded a down payment which the petitioner could not then produce.

It would thus appear that the main cause of the delay in the filing of the appellant's brief was petitioner's inability, by reason of financial difficulties, to obtain the necessary amount for the printing of the said brief. In this connection, WE have recognized as sufficient ground for extending the existing period within which to file brief the appellant's inability, because of poverty, to obtain the money necessary to pay the expenses of the appeal (Gregorio vs. C.A., et al, 72 SCRA 121, 126 [1976], citing 5 CJS 387 and case cited therein). Because the right to appeal in this case is granted by the statute, it is part of due process of law, denial of which violates the due process clause of the Constitution. Moreover, the Constitution likewise guarantees the individual access to all courts, including appellate tribunals, which right cannot be denied him by reason of poverty.

2. There are likewise circumstances in the records indicative of respondent People's lack of serious objection to the motions of petitioner and to the admission of her brief. Thus, respondent People did not file an opposition to petitioner's motion for extension; it did not file a motion to dismiss the appeal even after respondent Court denied the aforesaid motion for extension of time; and finally, upon receipt of petitioner's brief, respondent people filed on September 18, 1975 a motion for extension of time of ninety (90) days within which to file appellee's brief (p. 41, C.A. rec.).

In fine, WE are convinced that the ends of justice would be better served by allowing petitioner's appeal to take its due course and thus afford her an untrammelled review of her criminal conviction.

WE previously emphasized in Gregorio vs. Court of Appeals (id., p. 125) that "xx That is commanded by the 'higher interest of justice dictated by a sense of fairness with which procedural due process is identified.' Nothing would be lost and the right to a hearing on appeal would be accorded full respect if under the circumstances the motion were granted. More so, when it is considered that the failure of the appellant to file his brief within the allotted time does not ipso facto result in the dismissal of the appeal. The appellate Court has still that inherent power and discretion to amend whatever order it had made before in order to render substantial justice." And that furthermore "[t]he expiration of the time to file brief, unlike lateness in filing the notice on appeal is not a jurisdictional matter and may be waived by the parties. Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee's cause was prejudiced x x " (ibid.).

WHEREFORE, THE RESPONDENT COURT OF APPEALS' RESOLUTIONS HEREINABOVE ENUMERATED ARE HEREBY ALL SET ASIDE AND THE SAID APPELLATE COURT IS HEREBY DIRECTED TO ADMIT PETITIONER'S BRIEF AS ACCUSED-APPELLANT AND DECIDE THE SAME ON THE MERITS. NO COSTS.

Teehankee, (Chairman), Muñoz Palma, Martin, Fernandez, and Guerrero, JJ., concur.

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