

HEIRS OF THE DECEASED TELESFORO SORIANO THRU THEIR ATTORNEYS-IN-FACT: MAMERTO SORIANO, FRANCISCO PIRANTE AND VICENTE SORIANO, PETITIONERS, VS. REPUBLIC OF THE PHILIPPINES AND T...

G.R. NO. L-35729. May 31, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

The plea in this motion for the reconsideration to set aside our resolution denying due course to a petition to set aside an order of dismissal by respondent Court of Appeals is grounded on the principle that technicality as such should not prevail over substantial justice, with emphasis added by picturing the sad plight of petitioners contending against the mighty power of respondent Republic. While this Court does not lack sympathy for such an approach, enough has not been shown for the motion to merit favorable action. In the aforesaid resolution, moreover, counsel for petitioner, Francisco A. Astilla, Sr., was asked to explain a contradiction between a statement in his petition to this Court to the effect that no notice of his period to submit his brief was ever received previous to the filing thereof and the admission in a petition for first extension filed with respondent Court of Appeals to the effect that he did receive such notice on his visit to Tacloban City the week before October 16, 1971. In the motion for reconsideration, respondent counsel offered what he undoubtedly believed was an explanation. To give petitioners and counsel further opportunity to demonstrate that their stand has support in law, the matter was set for oral argument. The parties were duly heard. Unfortunately for petitioners, they were unable to lend plausibility to their motion for reconsideration. As for respondent Francisco A. Astilla, Sr., his efforts to exculpate himself fully from responsibility were equally unavailing.

1. The object of the petition, to repeat, was to set aside a resolution of the Court of Appeals of March 21, 1972 dismissing an appeal on the part of petitioners, as plaintiffs-appellants, for their failure to file their brief. The error imputed to the Court was that no such notice to file such brief had ever been served on counsel, the fact being that the party who received it, one Teresita Acuin, took the letter back to the post office of Tacloban City with the request that it be forwarded to the "present address of Atty. Francisco Astilla at 5441 M. Curie, Makati, Rizal." [1] As the petition would put it, such registered letter was never sent to such counsel. Respondent Republic of the Philippines was made to comment. It did so. In its first paragraph, the admission of counsel Astilla as to the fact of receipt was emphasized: "This extension is made necessary by the fact that the notice to the undersigned counsel which he actually received in Tacloban City when he went there last week was delayed, leaving a very limited time for the preparation of a brief for a case of voluminous records (*Italics supplied*). [2] Reference was likewise made to *Enrique V. Bautista*, [3] where this Court ruled that an attorney not staying in one place permanently "owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record x x x." [4] Then, after maintaining that the decision, the object of the second motion for reconsideration with respondent Court of Appeals, had already become final, the comment of the Solicitor-General likewise alleged that the petition before

us was not sufficient in form and substance.

In the motion for reconsideration, the points of law raised were not even refuted. What was stressed was that our resolution might be considered as being a manifestation of "compartmentalized justice" which was identified with "taking undue advantage of helpless litigants fighting against the powerful x x x." [5] That was all; there was no discussion why it was as alleged. Then came the portion dealing with the liberality which prevails in the disposition of certiorari cases. The statement on its face is inaccurate. The certiorari jurisdiction precisely lends itself to avoidance of cases unless clearly of merit. Not that this Court is not unresponsive to the plea that parties are not to be deprived of their substantial rights and left without a remedy. It would appear, however, from the way the motion for reconsideration was prepared as well as from a reading of the original petition, that outside of the allegation of the Court of Appeals being "unjust" as well as "arbitrary or despotic", [6] no reference whatsoever was made to indicate in what way petitioners had been unjustly or oppressively dealt with. Considering therefore the unsatisfactory character of the motion for reconsideration, confined as it is to pejorative expressions against the actuation of respondent Court, it cannot be said that it is possessed of merit and that it suffices for the reversal of our resolution.

2. Now as to the explanation of respondent Francisco A. Astilla, Sr. as to why he should not be administratively dealt with for the contradiction between his statement in the petition filed with this Court that "no such notice has ever been served on their counsel until this date", October 27, 1972, and his statement in his petition for first extension filed with respondent Court of Appeals "that the notice to the undersigned counsel [was actually received in Tacloban City when respondent Astilla] went there last week." [7] In his seven-page motion for reconsideration, no serious attempt was made to explain the contradiction. Two statements, both of which cannot be true, came from him. He was called upon then to explain how such a thing occurred. Instead, the first paragraph of his motion merely reads: "The resolution of Jan. 18, 1973 (a) denying the petition herein for certiorari and mandamus; and (b) requiring counsel (Atty. Francisco A. Astilla, Sr.) 'to explain' within 15 days 'the contradiction between his statement in the petition x x x filed with this Court that 'no such notice has ever been served on their counsel until this date' (meaning October 27, 1972)' and 'to show cause why he should not be subjected to disciplinary action for' allegedly 'foisting upon this Court the impression that up to October 27, 1972 x x x he had not received the notice sent to him by the Court of Appeals dated September 3, 1971,' is, to state in all candor, brazenly unjust, x x x 'a denial of due process which may be considered as a grave abuse of discretion' x x x." [8] Then came in the second paragraph the characterization that there was a miscarriage of justice. Afterwards, he alleged: "Whoever made it appear that the undersigned 'received the notice sent to him by the Court of Appeals dated September 3, 1971' stated an absolute falsehood, pure and simple, and violated the express mandate of the Civil Code of the Philippines in its provisions on Human Relations which ordain that 'Every person must, x x x in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith' (Art. 19, C.C.)." [9] Respondent Astilla apparently is unaware that he was called upon to demonstrate his good faith, considering that from him issued two conflicting declarations. Instead, he merely sought to show the falsity of the receipt by a certain Teresita Acuin of the registered letter containing the notice of the filing of the brief. He entirely ignored that what this Court required of him was an explanation of his admission "that the notice to [him was] actually received in Tacloban City when he went there last week", a statement made in his petition for first extension filed with respondent Court of Appeals and thereafter denied in his petition to this Tribunal. Under the circumstances, even on the assumption that his present version is the correct one, it cannot be said that he had fully exculpated himself from responsibility. Considering, however, the age of respondent Francisco A. Astilla, Sr., as well as the fact that he had behind him a background of long membership in the bar as well as of public service, this Court believes that an admonition would suffice.

WHEREFORE, the motion for reconsideration is denied and respondent Francisco A. Astilla, Sr. is admonished

to be more careful in the preparation of his pleadings, to the end that contradictions are avoided and consistency maintained, with due respect for the truth, it goes without saying.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., took no part.

[1] Petition, paragraph (4).

[2] Comment, paragraph 1.

[3] 79 Phil. 220 (1947).

[4] Comment, paragraph 1.

[5] Motion for Reconsideration, paragraph (5).

[6] Ibid, paragraph, 1.

[7] Resolution of January 18, 1973.

[8] Motion for Reconsideration, paragraph 1.

[9] Ibid, paragraph 3.

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