

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANDREW SALVA FACUNDO, ACCUSED-APPELLANT.

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

In a Minute Resolution[1] dated October 28, 2014, this Court noted and granted plaintiff-appellee's Motion to Suspend Period to File Appellee's Brief,[2] considering that the Office of the Solicitor General (OSG) has not received copies of the Orders, Transcripts of Stenographic Notes (TSN), and the Decision pertinent to the instant appeal. Hence, in the same Minute Resolution, the Court directed the Judicial Records Division (JRD) to furnish the OSG with copies of the the Orders, TSNs and RTC Decision per request of the OSG in a letter[3] dated June 13, 2014.

Even before the OSG could file its appellee's brief, however, herein accused-appellant, through the Public Attorney's Office (PAO) filed a Motion to Withdraw Appeal.[4]

The PAO manifested in the said Motion that accused-appellant himself executed an Affidavit[5] signifying his intention to withdraw his appeal. Attached with the said Motion also was accused-appellant's handwritten Letter[6] of the same tenor.

It is evident from accused-appellant's Affidavit and Letter that his withdrawal of his own appeal is voluntary and that the effect of such withdrawal was explained to him. He signified therein that he is ready and willing to serve his sentence.

Section 18, Rule 124[7] of the Revised Rules of Criminal Procedure allows the application of certain rules of civil procedure to criminal cases. One certain rule that is applicable pertinent to the withdrawal of appeals in criminal cases is Section 3, Rule 50 of the Rules of Civil Procedure, which states:

“SEC. 3. Withdrawal of appeal. - An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court.”

Applying the above rule, accused-appellant's withdrawal of his appeal is a matter of right considering that the OSG has yet to file its appellee's brief.

Finding the Motion to Withdraw Appeal filed by herein accused-appellant in order, We hereby grant the same.

WHEREFORE, the instant appeal is DECLARED withdrawn from the docket of this Court, and this case is considered CLOSED and TERMINATED.

The September 19, 2013 Order of the Regional Trial Court, Branch 24, Maasin City, Southern Leyte in Criminal Case No. 10-07-3403, convicting accused-appellant Andrew Salva Facundo of the crime of frustrated homicide and sentencing him to suffer imprisonment of six (6) years of Prison Correccional as minimum to eight (8) years of Prison Mayor as maximum, is now FINAL.

SO ORDERED.

Hernando, J., Chairperson, and Azcarraga-Jacob, J., concur.

[1] Rollo, p. 56.

[2] Rollo, pp. 50-53.

[3] Rollo, p. 54.

[4] Rollo, pp. 57-58.

[5] Rollo, p. 60.

[6] Rollo, p. 61.

[7] Rule 124, Sec. 18. Application of certain rules in civil procedure to criminal cases – The provisions of Rules 42, 44 to 46 and 48 to 56 relating to procedure in the Court of Appeals and in the Supreme Court in original and appealed civil cases shall be applied to criminal cases insofar as they are applicable and not inconsistent with the provisions of this Rule.

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