

PEOPLE OF THE PHILIPPINES RESPONDENT-APPELLEE, VS. CATHERINE SORONIO, PETITIONER-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

For issuing an unfunded check, the petitioner herein was convicted by the Municipal Trial Court in Cities (MTCC), Branch 2, Mandaue City in the Decision[1] dated June 23, 2010. She appealed to the Regional Trial Court (RTC), Branch 56, Mandaue City. However, the RTC issued an Order[2] dated October 21, 2010 dismissing her appeal due to non-filing of the Memorandum. In the Order dated April 29, 2011, the RTC denied her Motion for Reconsideration.

ANTECEDENTS

On July 24, 2009, the following Information was filed against Catherine L. Soronio for Violation of BP BLG. 22:

“That sometime in August 2008 in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent of gain did then and there willfully, unlawfully, and feloniously makes/s, draw/s and issue/s BANK OF PI Cebu Ayala Center Branch Check No. 1213898 in the amount of FIVE HUNDRED THOUSAND (Php500,000.00) pesos dated March 9, 2009 payable to FAUSTINO P. GO and/or CYRUS M. POLLOSO to apply to amount or for value, the accused fully knowing well that at the time of the issuance of such check, she does not have sufficient funds in or credit with the drawee bank for the payment of such check, in full upon its presentment, which check when presented for encashment was dishonored by the drawee bank for the reason “ACCOUNT CLOSED” and despite notice of dishonor and demands for payment, said accused failed and refused and still fail and refuse to redeem the check or to make arrangement for the payment of such check within five (5) banking days after receiving the notice of dishonor, to the damage and prejudice of private complainant FAUSTINO P. GO and CYRUS M. POLLOSO in the amount aforestated.

CONTRARY TO LAW.”

The MTCC noted in its Decision that the accused Catherine L. Soronio was arraigned on September 1, 2009. She pleaded “not guilty”. The preliminary conference was terminated on October 12, 2009. Trial commenced on November 26, 2009 where the prosecution presented the private complainant. On the other hand, the defense presented the accused and Cyrus Polloso.

On July 15, 2010, the MTCC promulgated its Decision convicting the accused. The dispositive portion states:

WHEREFORE, foregoing considered, accused is hereby declared GUILTY beyond reasonable doubt of violation of BP Blg. 22. She is hereby sentenced to pay a fine of P200,000.00 with subsidiary imprisonment in case of insolvency.

She is ordered to pay the private complainants civil liability in the amount of P59,025.35 with interest at 12% per annum from July 24, 2009 until fully paid. She is also ordered to pay P8,484.00 for the legal fees complainants paid in filing this case.

SO ORDERED.

The next day, July 16, 2010, accused through counsel, filed a Notice of Appeal[3] before the MTCC.

The Clerk of Court V of RTC, Branch 56, Mandaue City sent a notice[4] dated August 4, 2010 to the counsel of accused, Atty. Ma. Dolores B. DeLa Cerna-Unchuan, informing the parties that the records of the case has been forwarded to the RTC on appeal. Further, the appellant was directed to submit his (her) memorandum on appeal within fifteen days from receipt thereof while the appellee may submit his memorandum within fifteen days from receipt of appellant's memorandum.

On October 21, 2010, the RTC issued the questioned Order dismissing the appeal pursuant to Rule 40, Sec. 7B of the Rules of Court, for failure of accused-appellant to file her Memorandum.

On January 27, 2011[5], the accused-appellant filed a Motion for Reconsideration[6] of the October 21, 2010 Order of the RTC, attaching thereto the Appellant's Memorandum.

On March 15, 2011, the State submitted its Opposition on the Motion for Reconsideration[7].

On April 29, 2011, the RTC issued the second assailed Order denying the Motion for Reconsideration.

Hence, this Petition for Review with the following assigned errors committed by the RTC:

"A. In Dismissing the appeal on the ground of the failure on the part of the Petitioner to file her Memorandum, when in fact, the notice to submit Memorandum was sent to the wrong address of counsel even after she had already filed her Notice of Change of Address;

B. In denying Petitioner's Motion for Reconsideration without stating sufficient legal grounds therein;

C. In affirming the Decision of the Municipal Trial Court and not taking into consideration the fact that in a business investment transaction, the so-called investor must shares(sic) in the profits and losses, as well. Hence, as petitioner Catherine Soronio, was not established to have made a profit from her businesses, she is not obligated to pay or make good the check, subject of the case, which has been admittedly issued for the Complainant's return of the investment. If there is no profit established, there is no basis for making Catherine Soronio liable to pay or make good the check she issued for Complainant's returns on their investment. For the same reason, it can be said that the Prosecution did not overcome the Accused' presumption of innocence which warrants her acquittal;

D. In affirming the conviction of the Petitioner by the Municipal Trial Court despite the fact that the check, subject of the instant case, was issued for projected returns of investment and was not issued to apply on account or for value; which is an element of the crime of Violation of BP 22. If the contrary is found- that the transaction was not an investment where investors would have to share in the losses, the high rates of the returns should then only be justly and equitably stricken for being void and exorbitant;

E. In not considering that that (sic) the agreement reached before the Mediator, which has been partially executed by a payment in kind amounting to P1,848,760.35 has terminated and settled the instant BP 22 case for a check for merely P500,000.00. For this reason, there is even no basis for adjudging civil liability tto (sic) pay P59,025.35 with interest at 12% per annum from July 24, 2009 until fully paid;

F. In failing to apply considerations of justice and equity, enunciated in the case of Griffith v. Court of Appeals so that Complainant's collection from petitioner, should be held no longer tenable nor justified by law or equitable considerations. The conviction of the petitioner would not serve the ends of fairness and justice in view of the substantial payments she has made to Complainants; part of which she even made upon having been made to believe, during mediation proceedings, that such would bring about the termination of her case;

G. In failing to consider that venue which has not even been alleged, established and proved which warrants

the dismissal of the instant case.”

The Solicitor General argues in his Comment[8] that:

“THE PETITIONER IS GUILTY OF VIOLATION OF BATAS PAMBANSA BILANG 22, or the “BOUNCING CHECKS LAW,” AS HER GUILT WAS PROVEN BEYOND REASONABLE DOUBT.”

OUR RULING

The petition for review is meritorious.

Other than appearing first on the list of the seven errors assigned by petitioner to the RTC, letter “A” necessitates Our foremost attention because it would determine if the appeal at the RTC should be given due course. According to the petitioner, the RTC committed serious error in dismissing her appeal due to her non-filing of the Memorandum. As she explained in the Motion for Reconsideration, petitioner reiterates in the Petition that she could not have filed the Memorandum as directed because the Notice was sent to the previous address of counsel. Essentially, she was denied of due process when her appeal was dismissed by the RTC.

Section 7, Rule 40 of the 1997 Rules of Civil Procedure is the repository of the procedure in the Regional Trial Court on Appeals from the Municipal Trial Courts. It provides that:

- (a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.
- (b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.
- (c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

We observe that the notice (Annex “H”) dated August 4, 2010 by the Clerk of Court V of the RTC, Branch 56, Mandaue City was sent to Atty. Ma. Dolores B. DeLa Cerna-Unchuan (petitioner's counsel) with address at Rm. 4, The Regency Crest, Banilad, Cebu City. However, We note that as early as February 25, 2010, Atty. DeLa Cerna-Unchuan filed the Notice of Change of Address (Annex “G”)[9] with the MTCC, wherein the address of counsel is indicated as #35 Villa Terrace, Casuntingan, Mandaue City. It is reasonable to infer that when the records from the MTCC were transmitted to the RTC in view of the appeal, the Notice of Change of Address was one of those that can be found therein. So, when the notice to file memorandum was sent to counsel at her previous address, it obviously did not reach her. As mentioned by Atty. DeLa Cerna-Unchuan in the Motion for Reconsideration, it was only when she received the Order dated October 21, 2010, dismissing the appeal, that she found out that there was a notice sent to her but it was erroneously sent to the old address even if she previously filed the Notice of Change of Address. Without the notice, Atty. DeLa Cerna-Unchuan would not know if the records have been transmitted to the RTC. Neither would she know of the directive to file memorandum within fifteen days. All told, petitioner was deprived of the right to due process when the RTC dismissed the appeal despite the absence of notice to her counsel to file memorandum.

Cognizant of the right of every accused to appeal in the manner prescribed by law, the Supreme Court, in *John Hilario v. People*[10], recalled what it said in *Castro v. Court of Appeals*[11] regarding the importance and real purpose of the remedy of appeal. An appeal is an essential part of our judicial system and trial courts are advised

to proceed with caution so as not to deprive a party of the right to appeal and instructed that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities. While this right is statutory, once it is granted by law, however, its suppression would be a violation of due process, a right guaranteed by the Constitution.

It appears from the Motion for Reconsideration that petitioner's counsel (Atty. DeLa Cerna-Unchuan) received the October 21, 2010 Order dismissing the appeal on January 14, 2011. The Motion for Reconsideration was filed on January 27, 2011 which was still within the fifteen day period from notice of the Order. It also appears that Appellants (sic) Memorandum on Appeal[12] is already attached to the Motion for Reconsideration. Adopting the action taken by the Supreme Court in *John Hilario v. People*[13] We find that the remand of this case to the RTC for the proper determination of the merits of the appeal is just and proper.

WHEREFORE, the petition is GRANTED. The October 21, 2010 Order and the April 29, 2011 Order of the RTC are REVERSED and SET ASIDE. The RTC is ordered to ADMIT Appellant's Memorandum on Appeal and to RULE on the merits of the appeal with reasonable dispatch.

SO ORDERED.

Delos Santos, and Lopez, JJ., concur.

[1] Rollo, pp. 33-38.

[2] Rollo, 25.

[3] Rollo, p. 39.

[4] Rollo, p. 42, Annex "H" of the Petition.

[5] The date of filing of the Motion for Reconsideration is stated in the Petition for Review, p. 4, see Rollo, p. 8. The copy of the Motion for Reconsideration does not indicate clearly the date it was filed in the RTC.

[6] Rollo, pp. 27-28. Petition for Review, p. 4.

[7] Rollo, pp. 29-31.

[8] Rollo, pp. 124-143.

[9] Rollo, p. 41.

[10] G.R. No. 161070, April 14, 2008.

[11] 208 Phil 691, 696 (1983).

[12] Rollo, pp. 43-46 although the copies are not complete.

[13] Footnote 10.

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