

DIONISIO SORIA, PETITIONER-APPELLANT, VS. THE HONORABLE COURT OF APPEALS, RESPONDENT-APPELLEE.*G.R. No. L-36373. April 07, 1976*

Ponente: BARREDO, J.

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Petition for certiorari and mandamus to set aside the resolutions of the Court of Appeals in CA-G.R. No. 08583-CR, People of the Philippines vs. Dionisio Soria declaring as deemed withdrawn the motion for reconsideration filed by petitioner, the accused-appellant in that case, of the decision of said court affirming with modification the judgment of the trial court and finding him guilty of the crime of homicide and sentencing him to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal, to indemnify the heirs of the deceased in the amount of P12,000 and to pay the costs, which motion and all copies thereof filed with the court were lost together with the whole rollo of the case and the copy furnished the Solicitor General, and to command said court to proceed to the reconstitution and resolution on the merits of said motion.

The condemnatory decision referred to was promulgated on September 6, 1969 and in due time, petitioner filed a motion for reconsideration thereof, through Attys. De Grano and Tobia. It is not disputed that said motion was filed on time. Subsequently, however, after the court had required the Solicitor General by resolution of October 16, 1969 to comment on the motion and before the court could act on the merits thereof, the Solicitor General having failed to file any comment within the period given him, it was discovered that the whole rollo of the case was lost. So also the copy of the motion furnished the Solicitor General. From what is extant in the record, no investigation has ever been conducted to determine the circumstances of such loss. All that appears is that on November 24, 1972, the Court of Appeals resolved to give "the accused-appellant ten (10) days from receipt of copy of this Resolution, within which to submit to this Court six (6) copies of his Motion for Reconsideration" and sent said resolution to Atty. Arnulfo F. Soller, the original counsel of record of petitioner, by registered mail. As there was no compliance with said resolution up to January 15, 1973, on said date, the court resolved as follows:

"For the failure of the accused-appellant to comply with the Resolution of this Court of November 24, 1972, said accused-appellant is deemed to have withdrawn his motion for reconsideration." (Page 28, Record.)

Again, this resolution was sent to Atty. Soller. Upon learning of said resolution, on January 30, 1973, Attys. De Grano and Tobia, the lawyers who filed the motion for reconsideration that was subsequently lost, filed an urgent motion praying that the foregoing resolution be reconsidered and that, inasmuch as their own copy of their motion could not be found, they be allowed a period of thirty (30) days from notice within which to file another motion for reconsideration. Acting on this motion, the court resolved thus:

"The Motion filed on January 30, 1973 by Attys. De Grano & Tobia praying for the reconsideration of the Resolution of this Court of January 15, 1973 and for a period of 30 days within which to file another motion for reconsideration, is DENIED; Atty. Arnulfo F. Soller is the counsel of record of the appellant and there is no

showing that he was duly substituted as such counsel for the appellant by Attys. De Grano & Tobia." (Page 36, Record.)

The motion for reconsideration of this resolution was denied on February 16, 1973, and so, on February 28, 1973, the instant petition was filed. In his answer, the Solicitor General sustains the view adopted by the appellate court in the above-quoted resolutions.

Hence, the crucial issue to resolve here revolves around the legal import of the position taken by the Court of Appeals that since it does not appear that Attys. De Grano and Tobia had complied with the reglementary procedure for the substitution of counsel, Atty. Soller remained as the sole counsel for petitioner and service upon him was sufficient, and since Atty. Soller has so far not been heard from, there was no alternative but to consider the motion for reconsideration as withdrawn, for which reason the above-mentioned condemnatory judgment against petitioner has already become final.

It is quite evident that the appellate court's posture is highly technical, even as it immediately gives the impression that realistic and practical considerations were entirely ignored. Moreover, it is as if the fate of petitioner as accused-appellant has been made to depend entirely on strictly technical omissions of his lawyers.

In any event, We find that the above-disposition made by the Court of Appeals does not square with more sound rulings of this Court. We have held that a showing that mail matter has been "sent" to counsel is no proof that he has received the same. (*Hernandez vs. Navarro*, L-28296, November 24, 1972, 48 SCRA 44-67.) In the case at bar, the only indication of the mode of service of the resolution of November 24, 1972 upon Atty. Soller is the following annotation on the copy of said resolution: "Atty. Arnulfo F. Soller - reg.", (Annex C of the petition) which, We take it, means that according to the Clerk of Court he sent the copy of the resolution to Atty. Soller by registered mail. This is certainly not enough proof that it was actually received by Atty. Soller, even if it were granted, for the sake of argument, that really it was sent by registered mail.

Besides, it is undisputed that the last corresponding entry in docket of the Court of Appeals is as follows: "October 14, 1969 - Motion for Reconsideration - Tobia" (Annex C of Petition). And in the report of the Clerk of Court to the Presiding Justice dated November 1972, Annex B of the petition, it is stated that "on October 16, 1969, the Court issued a resolution requiring the Solicitor General to Comment on the above-mentioned Motion for Reconsideration." In other words, the Court then had already recognized the appearance of Attys. De Grano and Tobia and had correspondingly acted on their motion. For that court to later on deny further hearing to petitioner on the technical ground that there has been no proper substitution of counsel, taking all extant circumstances into account, is short of being fair. Indeed, We cannot perceive how any prejudice could have been caused by granting the motion of Attys. De Grano and Tobia asking for an opportunity to reconstruct their motion for reconsideration. But, of course, this is not to entirely condone the failure of said lawyers to observe the rules on substitution of counsel and much less their apparent negligence in losing their own copy of their motion in question. They must be warned, as they are hereby warned, that a repetition of such conduct will have graver consequences and will warrant disciplinary action against them as members of the Bar.

In the above premises, We are of the considered opinion that proper reconstitution of the records should have been ordered, and in accordance with Sec. 62 of Act 3110, which may be applied by analogy, the proposal of Attys. De Grano and Tobia to file a new motion for reconsideration was in order. The provision just mentioned reads thus:

"If it is not possible to obtain authentic copies of the briefs already filed and the case was pending decision at the time of the calamity, or if it is necessary to decide it anew, the Supreme Court shall order new briefs to be submitted and may grant reasonable time therefor."

IN VIEW OF ALL THE FOREGOING, the petition is granted. The resolutions of the Court of Appeals in afore-mentioned CA-G.R. No. 08583-CR of January 15, 1973, February 3, 1973 and February 16, 1973 are set aside and that court is hereby ordered to allow petitioner to file a new motion for reconsideration which should be acted upon by the court on the merits. The restraining order heretofore issued is correspondingly made final. No costs.

Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Fernando J., on official leave.

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