

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, JESUS AGASANG, DEFENDANT AND APPELLANT.

G.R. No. L-7155. May 04, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

This is an appeal from an order of the Court of First Instance of Nueva Ecija denying a motion for new trial on the principal ground that the same has been filed out of time and for lack of merit.

Briefly stated, the facts of the case are as follows: On April 24, 1953, the appellant was convicted for the crime of serious physical injuries with damage to property through reckless imprudence and sentenced to suffer one (1) year and one (1) day of prison correccional, to pay a fine of P3,000 and to indemnify the offended party, Marcelino Veneracion, in the same amount, with subsidiary imprisonment in case of insolvency in both cases, and to pay the costs. On June 16, 1953, the decision was promulgated and immediately thereafter, in open court and in the presence of the acting provincial fiscal of Nueva Ecija, appellant announced his intention to appeal and right away filed a bond wherein he stated that he has appealed from the decision. The bond was on that very day approved by the court and thus the appellant was not committed to prison. The record of the case, however, was not transmitted immediately to the corresponding appellate court, presumably because the appellant failed to file a written notice of appeal as required by section 3 of Rule 118. On July 16, 1953, appellant filed a motion for new trial on the ground that the offended party, Marcelino Veneracion, has, in an affidavit, retracted from his testimony given during the trial of the case, assumed the blame and exonerated the appellant from the charges brought against him in this case. This motion was opposed by the provincial fiscal on the ground that it has no merit; that the decision rendered in this case and duly promulgated has already become final and executory because appellant has not filed the written notice within the reglementary period of 15 days as required by section 3 of Rule 118 of the Rules of Court and therefore said motion was filed out of time. After due hearing, the trial court denied it, hence this appeal.

It is contended by the Solicitor General that the appeal should be dismissed because the decision against the appellant became final 15 days after its promulgation on June 16, 1953, the appellant having not filed his written notice of appeal. It is alleged that:

" * * * The settled rule is that the appeal in a criminal case must be perfected in the manner and form prescribed by law (section 3, Rule 118, Rules of Court), to wit, by filing with the court in which the judgment or order was rendered a notice stating the appeal and by serving a copy thereof upon the adverse party or his attorney (U.S. vs. Recano, 4 Phil. Rep., 91; U.S. vs. Torres, 8 Phil. Rep., 88; U.S. vs. Rota, 9 Phil. Rep., 426; U.S. vs. Court of First Instance of Manila, 23 Phil. Rep., 321; U.S. vs. Enriquez, 36 Phil. Rep., 725). The word 'filing' as used in the foregoing provision of law means the delivering to the corresponding Clerk of Court a written notice of the accused's intention to appeal (U.S. vs. Tenorio, 37 Phil., 7; Recano and Glory vs. Warden of Tayabas, 54 Phil., 821; Elegado vs. Tavora, 59 Phil., 140; People vs. Patriarca, G. R. No. 45090, March 30, 1937, unpub., 64 Phil., 1055; People vs. Natividad, 63 Phil., 336). Hence, assuming for the sake of argument to be true the claim made herein that the accused orally manifested his intention to appeal the case at bar, his

verbal notice did not operate to perfect his appeal. Where a statute prescribes a particular mode of taking an appeal, that mode must be strictly adhered to in order to confer jurisdiction on the appellate court (U.S. vs. Tenorio, 37 Phil., p. 7). Appeals in criminal cases do not take place and are not considered perfected until after the accused has personally or through counsel filed with the clerk of court a written notice expressly stating the appeal (People vs. Natividad, 63 Phil., 336).

"The motion for new trial in the case at bar was filed one month after the judgment of conviction was promulgated, and judgment having become already final. The failure, therefore, to comply with the law (section 1, Rule 117, Rules of Court) that a motion for new trial can only be filed before the judgment has become final, that is within 15 days from the date of promulgation, is fatal to the motion for new trial in question."

Appellant, in turn, claims that he has perfected his appeal in this case arguing that although he failed to file the written notice required by section 3 of Rule 113 i6f the Rules of Court, he has however announced in open court his intention to appeal and filed a bond on the very day the decision was promulgated, where he has clearly stated that he has appealed from the decision rendered against him, and that the verbal notice of appeal, together with the tiling of the bond, do constitute substantial compliance with the requirements of said section 3 of Rule 118.

Obviously, if there has been a perfected appeal, as the appellant so Claims, the decision in this case could not have become final and therefore a motion for new trial might be filed with the proper court. Conversely, if the decision in this case has become final because the appeal taken by the appellant was not perfected, the motion for new trial in question should be outright dismissed. Were we to follow strictly section 3 of Rule 118, as it has been interpreted by this Court in the decision invoked by the Solicitor General, there is no alternative but to hold that in the present case the appellant has not perfected his appeal because he has not filed the corresponding written notice of appeal as required thereby and by not serving a copy thereof upon the provincial fiscal of Nueva Ecija. But it is undisputed that the herein appellant gave a verbal notice of appeal in open court and in the presence of th6 provincial fiscal of Nueva Ecija and filed a bond wherein he stated that he has appealed from the decision and that the bond was duly approved by the court and thus he was not committed to prison. Having these facts in mind, we believe that appellant's contention that he has substantially complied with the requirements of section 3 of Rule 118 should be given full consideration, otherwise, the herein appellant who has been solicitous in the protection of his rights may be deprived thereof. In the case at bar, therefore, section 3 of Rule 118 should be liberally applied, for its strict application may cause irreparable damage.

In reaching this conclusion, we are not unmindful of our previous decisions cited by the Solicitor General in his brief, but the facts and circumstances proven in those cases are not similar to the facts and circumstances obtaining in the present case. The herein appellant never lost interest in his appeal and he should not be deprived of his right to appeal only because he has not filed a written notice of appeal, for he has given verbal notice thereof in open court and in the presence of the adverse party and immediately posted a bond for his provisional release which was duly approved by the court on the very day the decision was promulgated.

In conclusion, we hold that in cases like the one at bar, when an accused manifests or gives notice of his intention to appeal in open court and files a bond for his provisional release, within 15 days from the promulgation of the decision against him, he may be considered as having perfected his appeal notwithstanding his failure to file a written notice of appeal and to serve a copy thereof to the adverse party as required of section 3 of Rule 118 of the Rules of Court.

Consequently, we hold that the disputed order denying the motion for new trial filed by the appellant should be reversed in so far as it declared that the decision in the case at bar has become final and therefore the motion for new trial was filed out of time, for there has been substantial compliance of the law by the appellant regarding the

perfection of appeal and consequently the decision in this case has not yet become final.

Wherefore, the disputed order of the lower court is hereby set aside in so far as it declared that the decision of this case has become final for lack of a perfected appeal taken by the appellant and that therefore the motion for new trial was filed out of time, and the record of the case is hereby remanded to the lower court for further proceedings in accordance with the provisions of Rule 118 of the Rules of Court.

Bengzon, Padilla, Bautista Angelo, Montemayor, Reyes, A., Jugo, and Labrador, JJ., concur.

CONCURRING:

REYES, J. B. L.,

I concur in view of the fact that the appeal bond that was filed before the fifteenth day from the promulgation of the judgment, expressly recites that the accused has appealed from the trial Court's decision, and hence it may be regarded as a timely written notice of appeal that satisfies the requirements of the rule.

Concepcion, J., concurs.

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