

MATILDE SANCHEZ LIM, PETITIONER, VS. COURT OF APPEALS, RESPONDENT.

G.R. No. L-41979. February 29, 1988

Ponente: CORTES, J.

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CORTES, J.:

The petitioner seeks in this petition for review on certiorari to set aside the Resolution of the Court of Appeals, dated January 22, 1975, in *People of the Philippines v. Matilde Sanchez Lim*, CA-G.R. No. 16889-Cr, dismissing her appeal for failure to file her brief on time.

In *People of the Philippines v. Roberto Ocampo alias Jose Castro and Matilde Sanchez Lim*, Crim. Case No. 672, Court of First Instance of Bohol, 14th Judicial District, Branch II, petitioner was convicted as an accomplice for the crime of estafa through falsification of commercial document and sentenced to a straight penalty of one year imprisonment and a fine of One Thousand Pesos (P1,000.00) and the accessory penalties provided by law. Her co-accused, who was likewise convicted, jumped bail and could not be found.

Petitioner seasonably filed her appeal in the Court of Appeals and was directed to file her appellant's brief within thirty (30) days from notice, which notice was received on July 26, 1974.

On August 13, 1974, petitioner's counsel filed a Motion for Leave to Appeal as Pauper and Request for Extension of Time within which to file her brief.

On September 11, 1974, the Court of Appeals resolved to allow petitioner to file her brief in mimeographed form and to grant her ninety (90) days from August 25, 1974 within which to file the same, with the warning that if she failed to file her brief within the extension granted, her appeal will be dismissed. Notices of this resolution were received by petitioner herself on October 2, 1974, and by her counsel on October 1, 1974.

On January 22, 1975, the Court of Appeals resolved to dismiss petitioner's appeal for failure to file her brief within the extension granted. Notice of this resolution was received by petitioner's counsel on February 5, 1975. A Motion for Reconsideration, with an attached appellant's brief, was filed on February 26, 1975, but this was denied by the Court of Appeals. A second Motion for Reconsideration was also denied. A similar motion written by petitioner herself was also filed, but this too was denied by the Court of Appeals on September 24, 1975.

Finally, on October 27, 1975, petitioner, by herself and without aid of counsel, filed before this Court a petition, entitled "Petition for Justice", praying that the respondent Court of Appeals be instructed to accept her brief.

Petitioner's former counsel and the Solicitor General, on behalf of the People, filed their comments as directed by the Court.

On February 20, 1976, the Court resolved to give due course to the petition.

In petitioner's brief, which she again filed without aid of counsel, her prayer was clarified. She asked this Court to set aside the resolution of the Court of Appeals dismissing her appeal and to order the respondent court to

reinstate the same.

After the Solicitor General filed his brief and no reply brief was filed by petitioner, the case was submitted for decision.

As errors, petitioner assigned the following:

First Assignment of Error:

THE COURT OF APPEALS ERRED IN DISMISSING YOUR PETITIONER'S APPEAL.

Second Assignment of Error:

THE COURT OF APPEALS ERRED IN NOT REINSTATING YOUR PETITIONER'S APPEAL.

The Solicitor General in his brief argued that the Court of Appeals did not commit a reversible error when it dismissed petitioner's appeal and denied reinstatement of the same.

Considering the peculiar circumstances surrounding this case, this Court finds for petitioner.

In the normal course of things, the Solicitor General would be correct in arguing that since petitioner filed her appellant's brief out of time, the Court of Appeals did not err in dismissing her appeal. However, the circumstances surrounding this case are far from the ordinary. We have here a person whose former counsel was unable to file her brief in the Court of Appeals because of her lack of resources to have it mimeographed, so much so that said counsel eventually had to advance the necessary funds if only to belatedly file her brief, and who, desperate to prove her innocence, went to the extent of writing her own pleadings in this Court.

But perhaps what weighs heaviest in petitioner's favor is the fact that if her appeal is dismissed she might be convicted of a crime she did not commit.

In *Montecines v. Court of Appeals* [G.R. No. L-35913, September 4, 1973, 53 SCRA 14], this Court, in nullifying and setting aside the resolution of the Court of Appeals denying petitioners' motion to reconsider its earlier resolution dismissing the appeal on the ground that petitioners-appellants failed to file their brief within the period fixed by the Court of Appeals, said:

This is one instance where a failure of this particular litigation being passed upon by an appellate court may be fraught with undesirable consequences for a state policy enshrined in the fundamental law. This is of course not to affirm that such would necessarily be the result. It is only to stress that such a dire contingency could be avoided if the challenged resolution were set aside. Ordinarily the client would be bound by the failure of his counsel to comply with what is expected of him. This is a case however that should be taken out of the operation of such a rule.

Again, in *Barrido v. Court of Appeals* [G.R. No. L-38945-47, September 12, 1974, 59 SCRA 168], this Court set aside the resolution of the Court of Appeals which dismissed the appeal after appellants failed to file their brief within the period granted, which by then had amounted to one hundred and thirty-five (135) days, with the observation that:

The particular circumstances obtaining here call for the relaxation of the rule that the client must bear the adverse consequences of counsel's failure to observe the procedural requirements prescribed by the Rules of Court. Two of the petitioners have been convicted of grave offenses and sentenced to long prison terms. Through no fault of their own their appeal would fail not on the merits but on a procedural lapse of counsel which was not entirely inexcusable. The ends of justice will be better served if their appeal is reinstated.

In the instant case, petitioner was convicted of the crime of estafa through falsification of commercial document

as an accomplice, on the basis of the following information:

That on or about the 26th day of September, 1972, in the City of Tagbilaran, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, and having forged and falsified a Three Hundred Fifty Dollar (\$350.00) worth of Foreign Money Order, with Serial No. 29834, which is an imitation of and similar to those money orders issued by the Security First National Bank of Los Angeles, California, U.S., whereby Jose Castro (Accused Roberto Ocampo's alias name) appearing as payee thereof, or having in their possession and under their control said forged and falsified money order, did then and there willfully, unlawfully and feloniously, with intent of gain and to defraud, use and pass said money order, and in fact said accused did use, pass and present for exchange and/or encashment said foreign money order, to Mr. Ireneo Kapirig, assistant cashier of the Bohol Provincial Treasurer's Office, who thereby gave and delivered to said accused the agreed equivalent sum in Philippine Currency of TWO THOUSAND TWO HUNDRED SEVENTY-FIVE PESOS (P2,275.00) and which amount the accused did collect and receive from said Ireneo Kapirig in exchange of the aforesaid forged and falsified money order, the said accused knowing fully well all the time that the foreign money (order) was a forged and falsified one, thereafter, said accused did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert the said amount of Two Thousand Two Hundred Seventy-Five Pesos (P2,275.00) to their personal use and benefit, to the damage of said Ireneo Kapirig in the said amount of P2,275.00, Philippine Currency. (Underscoring supplied.)

Petitioner, however, is of the view that she was convicted on the basis of her participation in the encashment of another check, which is the subject of a separate criminal case. In her petition she explained the injustice that would result if her appeal is not reinstated:

- Reason for this petition. If my brief is accepted by the Court of Appeals. I would be shown clearly to be innocent of the crime for which I was sentenced as an accessory** by the CFI in Tagbilaran City. For the brief shows the following:

In the morning of a day in September, 1972 I was asked by my cousin, Carmen Torremonia, to identify her friend, ROSITA B. CASTRO, the payee of Check No. 29832 in the amount of \$350.00 whose check had been cashed by our Asst. Provincial Cashier, Mr. IRENEO KAPIRIG. This I did. In the afternoon of the same day, however, ROSITA B. CASTRO presented to the same Cashier Check No. 29834 in the name of a payee, JOSE B. CASTRO. I never identified this JOSE B. CASTRO but the cashier cashed the check just the same. And it was for this Check No. 29834 whose payee, JOSE B. CASTRO, I did not identify for which I was made criminally held (sic) liable as an accessory** in the decision of the CFI.

All these facts are in my brief and they show clearly my innocence. Yet, because the Court of Appeals refused to accept it, my appeal has been dismissed and I am now on the verge of going to jail for something I never committed. (Underscoring supplied.)

Clearly, therefore, a pivotal factual issue has been raised which has to be resolved if only to ensure that petitioner has not been denied justice.

The Supreme Court, however, is not a trier of facts. It may be worth repeating that in petitions for the review of decisions of the Court of Appeals, the jurisdiction of the Supreme Court is confined to the review of questions of law [Chan v. Court of Appeals, G.R. No. L-27488, June 30, 1970, 33 SCRA 737, reiterating a long line of decisions], except where the findings of fact are not supported by the record or are so glaringly erroneous as to constitute a serious abuse of discretion [Sta. Ana, Jr. v. Hernandez, G.R. No. L-16394, December 17, 1966, 18 SCRA 973].

But more importantly, even if exceptional circumstances exist to warrant the review of the findings of fact, this Court is not presently in a position to effect such a review. The records of the proceedings before the trial court

have ostensibly been returned to the court of origin with the dismissal of petitioner's appeal and their whereabouts are still to be determined.

In view of the above, it is the well considered opinion of this Court that the ends of justice would be best served, and the "dire contingency" of the conviction of an innocent person avoided, if petitioner's appeal is reinstated.

WHEREFORE, in view of the foregoing, the Resolution of the Court of Appeals dated January 22, 1975 is hereby set aside and said court is directed to reinstate and give due course to petitioner's appeal. This Decision is immediately executory.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[**] Petitioner was actually convicted as an accomplice, and not as an accessory as erroneously stated in her petition.

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