

**CATALINO BLAZA AND DOMINGO GERUELA, PETITIONERS, VS. THE HON. COURT OF APPEALS, RESPONDENT.***G.R. No. L-31630. June 23, 1988*

Ponente: NARVASA, J.

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The law says[1] that in a criminal action, the "appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except in case the appellant is represented by a counsel de oficio." Applying this rule, the Court of Appeals[2] dismissed the appeal taken by petitioners Blaza and Geruela from the judgment of the Court of First Instance convicting them of robbery,[3] it appearing that their counsel de parte had failed to file the brief in their behalf as appellants despite three (3) extensions.

The notice to file brief, sent by the Appellate Court's Clerk to petitioners' counsel[4] at Naga City, was received by the latter on April 2, 1969. The notice contained the usual advise that all the evidence, both oral and documentary, was already attached to the record (and was there available to the appellants), and counsel had 30 days from notice within which to file brief.[5]

On April 30, 1969, petitioners' counsel filed the first of the three (3) motions for extension that he would present, within which to file the appellants' brief. All three were granted.

The first motion for extension alleged as ground that the brief was "now being prepared but because of heavy pressure of work in the law office, \*\*\* counsel shall be unable to finish and file said brief within the period still remaining." The second motion, dated May 22, 1969, averred that (a) the brief was then "undergoing final revision but the same cannot be possibly finished and printed within the period still remaining,"[6] and, (b) moreover, counsel had to attend the convention and second advanced course for municipal judges from May 2 to 10, 1969.

The third and last motion for extension stated that counsel could not finish the brief because he did not have a copy of the transcripts of stenographic notes of the testimony of (1) Bruna Biata (the offended party), (2) Filomena Boreta (a prosecution witness), and (3) Florentino Dalaodao (a defense witness), and prayed for this reason that the Court of Appeals send down to the Trial Court a copy of said transcripts, and that he be granted 20 days from notice of receipt of said transcripts, by the Court a quo within which to file the appellants' brief. The Court of Appeals granted him a 30-day extension, but ignored his suggestion for transmission of a copy of the transcripts to the Trial Court.

The appellants' brief was never filed. The last extension expired on July 1, 1969, and then three months passed, without said brief being presented. Hence, on November 5, 1969, the Court of Appeals dismissed the petitioners' appeal. Its resolution reads as follows:

"On June 28, 1969, this Court resolved to grant (counsel of) accused-appellants an aggregate extension of 30

days from June 1, 1969, within which to file his appeal brief. Said extension expired on July 1, 1969, yet no appellants' brief has been filed with this court up to the present time.

"WHEREFORE, this appeal is hereby ordered dismissed."

The petitioners moved for reconsideration. The Court denied their motion.[7] The Court refused to consider the unavailability of the transcript of stenographic notes in the premises as a valid excuse for the failure of the appellants' counsel to file brief, pointing out that "it is the duty of counsel to come to this Court and read the transcript if he has no copies of the same."

The petitioners have come to this Court through an application for certiorari advocating the theory that the Court of Appeals gravely abused its discretion in disregarding their plea that the transcripts of stenographic notes be transmitted to the Trial Court and that thereafter they be given a 20-day extension to file their brief. According to them, the Court of Appeals thereby ignored the provisions of Section 8, Rule 122 — which requires that a copy of the transcripts be made available in the Lower Court, and ignored, too, the petitioners' sad plight who, being too poor to buy a copy of the transcripts or to send their counsel to Manila to read the same, had been thus deprived of the opportunity to ventilate their meritorious defense before the Appellate Court. They pray for annulment of the resolution dismissing their appeal, and that denying reconsideration of that dismissal.

The petitioners are not entitled to relief. They are bound by their counsel's acts[8] and, unfortunately for them, the record adequately establishes that the failure of their counsel de parte to file brief in their behalf is inexcusable. He did not adopt "the norm of practice expected of men of good intentions." [9]

In the first place, Section 8, Rule 122 of the 1964 Rules, invoked by the petitioners, does not justify their counsel's request that a copy of the transcript be sent down to the lower court. The section states[10] among other things that —

\*\*\*\* The original and three copies of the transcript of stenographic notes shall \*\*\* be transmitted to the clerk of the appellate court together with the record \*\*\*. The other copy of the transcript shall remain in the lower court."

There is no satisfactory showing that no such copy of the transcript had in truth been retained in the lower court, as thus required by the Rules. The presumption of course is that "official duty has been regularly performed." [11] and nothing in the record appears to warrant its overthrow or negation.

The fact is that petitioners' counsel had been given more than sufficient time within which to file brief. He had been accorded no less than ninety (90) days for this purpose: the original thirty (30) days provided by Section 3 of Rule 124, and the sixty (60) days' extension prayed for in their three (3) motions. The last resolution of the Court should have put him on notice. The resolution disregarded his proposal that a copy of the transcript of the stenographic notes of the testimony of the named witnesses be transmitted to the Trial Court for his perusal; it merely granted him an extension of 30 days. He did nothing. He neither moved for reconsideration nor invited attention to his clients' supposedly sad plight, as he now does before this Court.

He would have this Court think that the reason for his inaction was that he was awaiting the Appellate Court's resolution on his application for extension and for the sending down to the Trial Court of a copy of the transcripts. This is a false assertion. The record shows that his office received the resolution on July 15, 1969, by registered mail, this being evidenced by Registry Return Receipt No. 938. Despite this, he did not bestir himself to attempt to remedy the situation in some way. For three (3) months, he did nothing.

He could have presented his brief, such as it was. According to him, the brief was already "undergoing final revision" and would be "finished and printed" within the second extension sought by him. He could have

completed the brief and submitted it albeit somewhat tardily; and as regards the discussion therein of the testimonial evidence of the three (3) witnesses whose transcripts he desired the Appellate Court to make available to him, he could have relied on his notes and recollection of their declarations: he had after all heard the evidence given by prosecution witnesses Bruna Biata and Filomena, and cross-examined them, as the record reveals; and it was he who had conducted the direct examination of defense witness Florentino Dalaodao and heard his cross-examination.[12] He did not. He did nothing at all, until his clients' appeal was dismissed.

The filing of a brief by an attorney within the period set therefor by law is a duty not only to his client but also to the court; the law declares that extension of time to do so are not granted except for good and sufficient cause; and courts have broad discretion in the determination of the sufficiency of the cause given as well as the length of time for the extension.[13] These familiar principles and the relevant facts make abundantly clear that the petitioners' counsel has been fairly, and correctly, dealt with by the Court of Appeals, in the matter of extensions for him to file appellant's brief. His failure to file brief under the circumstances is, to repeat, simply inexcusable.

The Court has nevertheless gone over the record in an effort to discover whether there is some tenability to the petitioners' substantive claim of a meritorious defense. They say that their identity as the robbers had not been sufficiently established because, "While the complaining witness herself asserted during the trial that she supposedly recognized the accused-appellants on the occasion when they allegedly robbed her, yet it is admitted that when she reported the incident to the barrio lieutenant the following morning, she could not then tell the barrio official as to who the culprits were." [14] Arguments of this sort can scarcely be deemed persuasive. Victims of a robbery can not ordinarily and in the absence of special circumstances, be expected to know the names of those who have robbed them. What is important is that the victims recognize and identify them on the witness stand; [15] for obviously, identification of the offenders' persons in Court is far more significant than naming them. [16]

WHEREFORE, the petition is DISMISSED, and the resolutions of the Court of Appeals sought to be nullified and set aside are AFFIRMED, with costs against the petitioners.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

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[1] Sec. 8, Rule 120, Rules of 1940; Sec. 8, Rule 120, Rules of 1964; Sec. 8, Rule 124, 1985 Rules on Criminal Procedure, the rule being substantially the same in civil cases (Sec. 1 [f], Rule 50).

[2] By resolution dated November 5, 1969 in CA G.R. No. 06643-CR: Mendoza, J., ponente, with Rodriguez and Yatco, JJ., concurring

[3] They were charged, in Crim. Case No. 4317 of the CFI of Camarines Sur [Hon. P. R. Palacio, presiding], with breaking into the house of Bruna Biato and forcibly taking P-1 12.00 in cash, pieces of jewelry worth P55.00, and some chickens, found guilty of the offense and each sentenced to an indeterminate prison term of 2 years, 10 months and 27 days of prison correccional, as minimum, to 8 years and 21 days of prison mayor, as maximum, and to pay civil indemnity.

[4] Atty. Augusto A. Pardalis.

[5] 2 Sec. 3, Rule 124, Rules of 1964.

[6] Italics supplied.

[7] By Resolution dated January 6, 1970.

[8] SEE, e.g., *Peo. v. Manzanilla*, 43 Phil. 167, 169, citing 16C.J. 1145; *Vivero v. Sanios, et al.*, 98 Phil. 500, 503-504 (holding that if mistakes of counsel were held to be proper ground for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned, citing *De Florez v. Raynolds*, Fed. Cas. No. 3742. 16 Blatch, [U.S.] 397. and *U.S. v. Umali*, 15 Phil. 33, *Monies v. CF1 of Tayabas*, 48 Phil. 640 and *Isaac v. Mendoza*, 89 Phil. 279); *Palanca v. American Food Mfg. Co.*, 24 SCRA 819, 828;

[9] *Case, et al. v. Jugo, et al.*, 77 Phil. 517.

[10] Italics supplied.

[11] Sec. 5(m). Rule 13

[12] Minutes of the Trial, pp. 9-12: CA Record.

[13] SEE Sec. 15, Rule 46, Rules of Court; *Daisug v. CA*, 40 SCRA 474; *Roxas, et al. v. CA*, G.R. No. 76549, Dec 10, 1987, citing *De Guzman v. Cuevas, Sr.*, 114 SCRA 650.

[14] Rollo, pp. 17, 18.

[15] *People v. Mendoza*, 105 SCRA 459

[16] *People v. Catipon*, 139 SCRA 192.

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