

DANIEL CUCIO, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. NO. L-38020. May 24, 1974

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court finds that the appellate court acted with grave abuse of discretion in denying petitioner's (as accused-appellant) reasonable request based upon good and sufficient cause for a last 30-day extension (or a total of 90 days) to file his printed appellant's brief (which was in fact filed on the 79th day of the total extension sought) and in dismissing petitioner's appeal and refusing reinstatement thereof notwithstanding the favorable endorsement of the respondent People.

Petitioner, as accused, filed a timely appeal to the Court of Appeals from the May 16, 1972 judgment of the Nueva Ecija court of first instance convicting him of the crime of acts of lasciviousness.[1]

His counsel, Lauro O. Sansano of Guimba, Nueva Ecija received on June 15, 1973 the appellate court's notice to file appellant's brief within the 30-day reglementary period. Upon said counsel's timely motions advancing his physical indisposition and pressure of previous professional and personal work, the appellate court (third division)[2] granted petitioner two thirty-day extensions of time to file his appellant's brief. The second extension as per the appellate court's resolution of August 29, 1973 granted such second extension up to September 12, 1973 "as a last chance or appeal will be dismissed."

Two days earlier than the issuance of said August 29, 1973 resolution, i.e. on August 27, 1973 and long before petitioner's counsel actually received notice thereof by ordinary mail on September 13, 1973, counsel had filed an "urgent last motion for extension of time up to October 12, 1973 to submit printed brief for the defendant-appellant." Counsel cited in support of his petition for a last extension up to October 12, 1973 (or a total of 90 days including the first two extensions) his advanced age (67 years) and recurrent attacks of arthritis, the distance of 150 kilometers required to be travelled from his office in Guimba to Manila for the preparation of the brief requiring much more than the normal three hours because of circuitous and- muddy roads due to their being under construction in addition to the pressure of other professional work.

Upon noticing from the August 29, 1973 resolution that the second extension was "granted as a last chance," counsel filed on September 21, 1973 a motion to reconsider the same and apprised the appellate court of his having filed earlier an urgent last motion for extension up to October 12, 1973 which he prayed of said court to give due course and to grant, citing in addition the demands upon his time of his clients who had up to September 30, 1973 to comply with the presidential decree on declaration of properties and that such last extension was not at all prompted by any intention of delaying the case.

Under the appellate court's resolution of September 17, 1973 (received by counsel on September 26, 1973)[3] it denied petitioner's urgent motion for a third and last extension to October 12, 1973 (or for a total of 90 days.) as well as denied in effect petitioner's follow-up motion of September 21, 1973 "for lack of sufficient merit and not

having taken advantage of the last chance" and ordered dismissal of the appeal.

Petitioner's printed brief was actually filed with the appellate court on October 1, 1973 (well within the third and last extension timely sought by him).

Petitioner through counsel then filed on October 8, 1973 a verified motion to reconsider the appellate court's September 17, 1973 resolution denying the third and last extension and prayed that it admit his printed appellant's brief and give due course to his appeal, accompanied by affidavits of merit executed by petitioner himself and by his counsel. In petitioner's affidavit, he cited that his lack of financial means as well as his counsel's recurrent arthritis somewhat delayed the printing of the brief adding that "I was about to get another lawyer to prepare my brief, but I would have done that (sic), my new lawyer may need more time to make the brief, whereas Atty. Sansano may be able to do it (in) shorter time, because he was the lawyer who handled the case." [4]

Required to comment on petitioner's motion for reconsideration, [5] the Solicitor General offered no objection to the admission of appellant's brief "as a mere memorandum" after specifically citing "the expenses incurred by the appellant in the printing of his brief (and) the efforts exerted by the lawyer in the preparation thereof." [6]

Notwithstanding the People's favorable stand, however, the appellate court per its resolution of December 6, 1973 denied reconsideration on the ground that "appellant had been given all the chances and he was even permitted to file mimeographed; to grant his motion would be a bad precedents (sic)." [7]

Hence, the present petition for the setting aside of the appellate court's two resolutions of September 17, 1973 (denying a third and last 30-day extension to total 90 days) and of December 6, 1973 (denying reconsideration). The Court upon receipt of respondent's comments (considered as answer) resolved to treat the petition as a special civil action for immediate decision.

Under the facts as narrated above, the Court finds merit in the petition and grants the relief prayed for. Petitioner's motions for extension of time to file his appellant's brief were all timely filed and based upon good and sufficient cause. The sufficiency and validity of the factual grounds stated by him in seeking a third and last 30-day extension (for a total of 90 days) are undisputed. The period asked for was reasonable and the Court has noted that while the third division of the appellate court granted petitioner only two extensions totalling 60 days "as a last chance," the fixing of such maximum 60-day extension appears to be unduly rigid when compared with the fact cited by petitioner that most other divisions of the appellate court generally grant peremptorily a maximum 90-day extension for the filing of briefs.

Petitioner-appellant's printed brief was in fact filed on October 1, 1973 (or 11 days before the expiration of the third 30-day extension sought). There is no showing or assertion whatsoever of any intent to delay or prejudice that could be caused to the State or the complainant by the granting of such extension and the admission of the brief -- so much so that the Solicitor General on behalf of the People expressly interposed no objection to the reconsideration of the dismissal order and to the giving of due course to the appeal.

The Court accordingly holds that the appellate court acted with grave abuse of discretion in issuing the appealed orders denying petitioner's reasonable request for a last 30-day extension (for a total of 90 days) for the filing of his printed brief (which was in fact filed on the 79th day of the total extension sought) and in dismissing petitioner's appeal and refusing reinstatement thereof notwithstanding the favorable endorsement of the respondent People.

While it is true that the allowance or denial of motions for postponement or for extensions of time and the setting aside of orders previously issued rest principally upon the sound discretion of the court to which they are addressed, the now Chief Justice's admonition in *Limon vs. Candido* [8] that "such discretion should always be

predicated on the consideration that more than the mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby" and that "it is sound judicial discretion" to allow a reasonable transfer of hearing or request for extension timely filed "when no substantial rights are affected and the intention to delay is not manifest." In the recent case of *Piedad vs. Batuyong*,^[9] we reiterated the established rule that the discretion of trial courts (and of all courts for that matter) "must be exercised wisely and prudently, never capriciously with a view to substantial justice."

In the latest case of *Padasas vs. Court of Appeal*^[10] the Court thus held that "the higher interest of justice dictated by a sense of fairness with which procedural due process is identified" justifies the setting aside of the appellate court's peremptory order of dismissal of an appeal for failure of the appellant to file his brief within the period fixed in a previous resolution due to delays beyond appellant's control or not attributable to his fault and warrants the reinstatement of the appeal.

A more receptive attitude and circumspect consideration by the appellate court of the merits of petitioner's motion for reconsideration and for reinstatement of his appeal, particularly in the light of the Solicitor General's favorable endorsement thereof, rather than the arbitrary and inflexible denial thereof would have meant one case less in the Court's full docket and served to save its time and attention from unproductive matters such as this and leave it for the study and determination of meritorious and truly controversial cases.^[11]

ACCORDINGLY, the appellate court's resolutions of September 17, 1973 and December 6, 1973 are hereby annulled and set aside. The case is remanded to the appellate court which is directed to admit petitioner's brief as accused-appellant and to give due course to his appeal and decide the same on the merits. No costs.

Makalintal, C.J., Castro, Makasiar, Esguerra, and Munoz Palma, JJ., concur.

[1] Crim. Case No. 551-G of the Nueva Ecija court of first instance with the appeal docketed as CA-G. R. No.14056.

[2] Composed of Gatmaitan, chairman, Leuterio and Reyes, L.B., JJ. up to resolution of Sept 17, 1973; thereafter, composed of Gatmaitan chairman, Santos and Puno, JJ. as per resolutions issued on Nov 2. 1973 and thereafter.

[3] Rollo, p. 26.

[4] Rollo, p.29

[5] As per resolution on Nov. 2, 1973, Annex "I".

[6] Rollo, page 33.

[7] *Idem*, page 16.

[8] 27 SCRA 1166,1169 (1969); italics supplied.

[9] L-38024, February 28, 1974

[10] L-38071, Apr. 25. 1974, per Fernando, J. citing *Monticines vs. CA*, 53 SCRA 14 (1973).

[11] See *Mintu vs. CA*, 53 SCRA 1141(1973), cited in *Mun. of Tiwi vs. Cirujates*, L-37520, Dec. 26, 1973.

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