

FELIX A. SAJOT, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 109721. March 11, 1999

Ponente: PARDO, J.

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PARDO, J.:

What is before the Court is a petition to set aside a resolution of the Court of Appeals,[1] denying petitioner's "Urgent Motion for Reconsideration" of the dismissal of his appeal for having been filed out of time, and another resolution denying petitioner's "Motion for Reconsideration"[2] for being a prohibited pleading.

On April 23, 1991, the Regional Trial Court, Branch 118, Pasay City, convicted petitioner and Antonio Tobias in Criminal Case NO. 97-12635, of estafa. The court sentenced each of them to suffer an indeterminate penalty of four (4) years of prision correctional to thirteen (13) years of prision mayor, and to reimburse Father Modesto Teston in the amount of P75,000.00, as actual damages, P50,000.00, as moral damages, P10,000.00, as attorney's fees and to pay the costs of the suit.[3]

Antonio Tobias appealed the decision to the Court of Appeals,[4] and, thereafter, filed an appellant's brief, which appeal is now pending therein.

On the other hand, on June 24, 1991, petitioner filed with the trial court a notice of appeal through Attorney Mariano Cervo. Subsequently, the trial court elevated the records to the Court of Appeals. Per notice dated January 14, 1992, the Court of Appeals required petitioner to file an appellant's brief within thirty (30) days from receipt of notice.[5]

On February 21, 1992, petitioner filed with the Court of Appeals a "Petition for Extension of Time to File Brief," asking for an additional thirty-day period to file appellant's brief, which the court granted.[6] On March 20, 1992, petitioner filed a "Petition for Second Extension of Time to File Brief", which the court likewise granted.[7] Again, on May 14, 1992, he filed a "petition for Third Extension of Time to File Brief." The court granted the motion.[8]

On November 27, 1992, the Court of Appeals resolved to dismiss petitioner's appeal for failure to file his brief within the third extension granted by the court. Petitioner contended that he only learned about the dismissal through a friend. When confronted, his counsel could not give any plausible explanation for his failure to file brief. On February 4, 1993, petitioner, "for and by himself,"[9] filed with the Court of Appeals an Urgent Motion for Reconsideration. The court denied the motion.[10]

On March 12, 1993, petitioner, by a new counsel, filed a motion for reconsideration alleging the following grounds:

"I. Substantial justice/Ends of justice can be fully served

"II. Excusable negligence on the part of the moving appellant

"III. Exercise of equity jurisdiction by this Honorable Court of Appeals"[11]

Petitioner alleged further that his counsel, Attorney Mariano H. G. Cervo, never submitted the brief because of "utter and gross ignorance of procedure and/or negligence or omission, intentional or otherwise, in the performance of his avowed professional duty." [12]

On March 30, 1993, the Court of Appeals resolved to deny the motion for being a prohibited pleading. Petitioner received a copy of the resolution on April 12, 1993.

Hence, this petition.

The issue boils down to whether or not the Court of Appeals gravely abused its discretion in dismissing petitioner's appeal for failure to file appellant's brief.

Rule 50, Section 1 (e) of the Revised Rules of Court provides -

"Section 1. Grounds for dismissal of appeal - An Appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x

(e) Failure of appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;"

In a minute resolution,[13] we said:

"True, appeal is an essential part of our judicial system. As such, courts should proceed with caution so as not to deprive a party of the right to appeal, particularly if the appeal is meritorious. Respect for the appellant's right, however, carries with it the correspondent respect for the appellee's similar rights to fair play and justice. The appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court."

In *Garbo vs. Court of Appeals*,[14] we ruled that:

"Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances."

While litigation is not a game of technicalities, it is a truism that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice.

Petitioner contends that the Court of Appeals denied him the right to due process when it dismissed his appeal because of his counsel's negligence.

We do not agree. Petitioner was himself guilty of neglect. He was aware of his conviction and of the requirement of filing an appellant's brief. His excuse that he relied on the services of his counsel and that he was busy is "flimsy".[15] "Equally busy people have in one way or the other learned how to cope with the same problem he had. Were we to accept his excuse, this Court would have to open cases dismissed many years ago on the ground of counsel's neglect. In many cases, the fact is that counsel's negligence is matched by his client's own negligence." [16]

We note that even during the trial of the estafa case before the lower court, petitioner never appeared in court except during the arraignment. Thus, the court issued a warrant for his arrest and interpreted his non-appearance

as "flight." [17] Petitioner's lack of vigilance as found by the trial court in its decision is emphasized when his counsel in the instant petition filed a motion to withdraw primarily on the ground of irreconcilable professional relationship between Attorney Florentino Temporal and petitioner. Despite petitioner's repeated assurances relayed by phone, letters and telegrams that he will meet with Atty. Temporal to formulate the appellant's brief, he never did so. Moreover, petitioner paid Atty. Temporal's professional fees with checks drawn against closed accounts.

Indeed, petitioner does not claim innocence of the crime charged. He invokes partial restitution as a defense contending that long before the lower court's decision, complainant had been practically restituted the amount of P65,000.00. [18] The "reimbursement or restitution to the offended party of the money or property swindled does not extinguish criminal liability. It only extinguishes civil liability." [19]

We do not see that the Court of Appeals committed any grave abuse of discretion in dismissing the appeal for petitioner's failure to file appellant's brief.

WHEREFORE, the Court hereby DISMISSES the petition for certiorari to annul the resolutions dated February 11, 1993 and March 30, 1993, of the Court of Appeals in CA- G.R. CR No. 11912, entitled People of the Philippines vs. Felix A. Sajot, et al.

With costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Melo, and Kapunan, JJ., concur.

[1] In CA-G.R. CR No. 11912, Resolution adopted on February 11, 1993.

[2] Adopted on March 30, 1993.

[3] Rollo, pp. 15-19.

[4] Docketed as CA-G.R. CR No. 11912.

[5] Rollo, p. 57.

[6] By resolution dated March 3, 1992.

[7] By resolution dated March 30, 1992.

[8] By resolution dated June 1, 1992.

[9] Rollo, p. 4.

[10] By resolution dated February 11, 1993.

[11] Rollo, p. 32.

[12] Ibid.

[13] Sps. Lawa vs. Court of Appeals, G.R. No. 88983, February 28, 1996, cited in Summary of 1996 Supreme Court Rulings, January to June 1996, by Daniel T. Martinez, p. 902.

[14] 258 SCRA 159, 163, citing Sps. Ilasco, Jr. vs. Court of Appeals, G.R. No. 88983, December 14, 1993.

[15] Macapagal vs. Court of Appeals, 271 SCRA 491, 502.

[16]Macapagal vs. Court of Appeals, *supra*.

[17] Petition, Rollo, p. 17.

[18] *Ibid.*, p. 6.

[19] The Revised Penal Code, by Chief Justice Ramon C. Aquino, 1988 Edition, Vol. Three, p. 243.

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