

ACEYORK AGUILAR, PETITIONER, VS. COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 114282. November 28, 1995

Ponente: PUNO, J.

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PUNO, J.:

Before the Court for resolution is the sole issue whether the respondent Court of Appeals gravely abused its discretion when it dismissed petitioner's appeal for failure to file his brief on time.

Petitioner Aceyork Aguilar (Ace Vergel) and Ma. Lourdes Salvador (Alona Alegre) were charged with Estafa in an Information filed before the Regional Trial Court of Makati.[1] At the arraignment, they entered a plea of not guilty. The case was tried on its merits and on July 19, 1991, the trial court convicted petitioner and Salvador. It sentenced them to an indeterminate penalty of 17 years and 4 months of reclusion temporal as minimum to 20 years of reclusion temporal as maximum and to indemnify the offended party the amount of two hundred fifty thousand pesos (P250,000.00) without subsidiary imprisonment in case of insolvency.[2]

Petitioner thru his former counsel, Atty. Edgardo Arandia, timely appealed to respondent Intermediate Appellate Court (now Court of Appeals). Unfortunately, Atty. Arandia failed to file petitioner's brief on its due date. He neither communicated to petitioner nor withdrew his appearance as counsel. Petitioner's attempts to contact his counsel were futile.

On January 22, 1993, Atty. Marcelino Arias entered his appearance as new counsel for petitioner in the respondent court. As he could not immediately file petitioner's brief, he asked an extension of forty-five (45) days to submit the same.

In a Resolution dated March 15, 1993, respondent court denied the motion for having been filed out of time. On April 6, 1993, petitioner filed two (2) motions - to reconsider the denial and admit appellant's brief/memorandum. Respondent court, nevertheless, dismissed petitioner's appeal on July 30, 1993, viz:

"Admission of accused-appellant Aceyork Aguilar's brief having been denied for having been filed out of time, his appeal is hereby dismissed.

SO ORDERED."[3]

On March 10, 1994, petitioner's Motion for Reconsideration was denied for lack of merit.

Petitioner now seeks relief from the aforequoted resolution in this petition for review. He submits that:

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"[He] is just an ordinary layman, ignorant of the intricacies and procedures in the appeal of his case, unfairly abandoned by his former counsel without notifying him of the notice sent by the Court of Appeals to file brief within the reglementary period to appeal."[4]

x x x

"[He] x x x be treated alike as his co-accused Ma. Lourdes Salvador whose appeal brief was admitted by the Court of Appeals 'in the interest of substantial justice.' It only herein petitioner's appeal brief would be admitted, just as that of his co-accused, it would readily be discovered that there are valid issues raised in said appellant's brief and that herein petitioner's appeal is meritorious." [5]

We find the petition impressed with merit.

Appeal is an essential part of our judicial system. Its purpose is to bring up for review a final judgment of the lower court.[6] The courts should, thus, proceed with caution so as not to deprive a party of the right to appeal. They should exercise their discretion on the allowance or denial of motions for extension of time to file the appellant's brief wisely and prudently, and serve the demands of substantial justice. They should consider public policy and necessity - that of putting an end to litigation speedily, and yet, harmonizing such necessity with the right of litigants to an opportunity to be heard.[7]

The record indicates that petitioner appealed on time to the appellate court. Due to negligence, his former counsel did not file his (appellant's) brief. When he came to know of his counsel's failure, he tried to touch base with him. His efforts to contact his counsel were in vain for even the latter's office is unknown. As he was abandoned by his former counsel, he hired Atty. Arias on January 22, 1993, who entered his appearance before respondent court and immediately moved for an extension of forty-five (45) days to file appellant's brief. Atty. Arias cited the difficulty of gathering the records of the case. Respondent court was not persuaded and denied the motion for having been filed beyond the reglementary period.

In sharp contrast, respondent court graciously granted petitioner's co-accused an extension of time to file her brief. His co-accused's brief was filed beyond the grace period but was admitted on February 16, 1993 in the interest of justice.[8] There is no reason to treat the two (2) appellants with an uneven hand. Both allegedly conspired in committing the crime of Estafa. Their cases rest on the same facts. The better part of discretion is to admit petitioner's brief just as the late brief of Salvador was admitted. Equal protection of the law demands that we treat alike, alike and the unalikes, unlike.

More importantly, petitioner's right to appeal should not be lost through technicalities. His liberty is at stake. He faces a jail term of 17 years and 4 months to 20 years. If he has to spend this long stretch in prison, his guilt must be established beyond reasonable doubt. He cannot lose his liberty because of the gross' irresponsibility of his lawyer. Losing liberty by default of an insensitive lawyer should be frowned upon despite the fiction that a client is bound by the mistakes of his lawyer. The established jurisprudence holds:

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"The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.

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The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.

x x x x x x x x

If the incompetence, ignorance or inexperience of counsel is so great and the error committed as a result thereof is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case. In a criminal proceeding, where certain evidence was not presented because of counsel's error or incompetence, the defendant in order to secure a new trial must satisfy the court that he has a good defense and that the acquittal would in all probability have followed the introduction of the omitted evidence. What should guide judicial action is that a party be given the fullest opportunity to establish the merits of his action or defense rather than for him to lose life, liberty, honor or property on mere technicalities."^[9] (citations omitted)

Finally, respondent court should have considered the fact that the appellant's brief was filed on April 6, 1993 and is already in the records of the case. This shows the earnest efforts of the new counsel and petitioner to be heard and is indicative of a lack of intention to cause delay.

IN VIEW HEREOF, the petition is GRANTED. The assailed Resolutions of the Court of Appeals dated July 30, 1993 and March 10, 1994 are SET ASIDE. The respondent court is directed to REINSTATE the appeal of petitioner in CA G.R. No. 12992. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, Mendoza, and Francisco, JJ., concur.

[1] Branch 58, Metro Manila, National Capital Judicial Region.

[2] RTC Decision, p. 7; Rollo, p. 33.

[3] Annex "A;" Rollo, p. 20.

[4] Memorandum, p. 4; Rollo, p. 151.

[5] Motion for Reconsideration, p. 2; Rollo, p. 82.

[6] People v. Court of Appeals, G.R. No. 104709, March 7, 1995, 242 SCRA 180.

[7] Avisado v. Villafuerte, G.R. No. 84939, March 13, 1991, 195 SCRA 188 citing Gregorio v. CA, G.R. No. L-43511 July 28, 1976, 72 SCRA 120.

[8] Annex "P;" Rollo, p. 71.

[9] Agpalo, Ruben E., Legal Ethics, 1980 ed., pp. 282--284.

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