

HONOR P. MOSLARES, PETITIONER, VS. THIRD DIVISION, COURT OF APPEALS, HON. ERIBERTO ROSARIO, JR., PRESIDING JUDGE, BR. 66, MAKATI; TOYOTA BEL-AIR, INC., RESPONDENTS.*G.R. No. 129744. June 26, 1998*

Ponente: MELO, J.

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Petitioner Honor P. Morales seeks to set aside the decision of the Court of Appeals in its CA-G.R. SP No. 40086, dismissing his petition for review and affirming the order dated September 13, 1995 of the Regional Trial Court of the National Capital Judicial Region (Makati City, Branch 66), declaring petitioner to have waived his right to present evidence, and affirming too the decision of the same regional trial court dated October 26, 1995 finding petitioner guilty of violation of Batas Pambansa Bilang 22 (Criminal Case No. 22-0099) which decision was promulgated in absentia. Likewise, petitioner seeks to nullify respondent appellate court's resolutions dated April 11, 1997 denying his petition for bail.

The antecedental facts may be chronicled in the following manner:

On February 19, 1991, petitioner purchased three units of Toyota Corolla 1600 from Toyota Bel-Air, Inc which were thereupon registered under his name, under the name of Manila Construction Development Corporation of the Philippines, and under the name of Austra-Phil Homes Inc. In payment thereof, petitioner issued Philippine Bank of Commissions Check No. 841644 dated May 24, 1991 in the amount of P1,425,780.00. When presented for payment, said check was dishonored for having been drawn against insufficient funds. Thus, petitioner was charged for violation of Batas Pambansa Blg. 22 and for Estafa.

The hearings of the case were postponed several times either at the instance of the petitioner or the prosecution, or motu proprio by the court. On September 13, 1995, the scheduled date of the presentation of evidence by petitioner, he failed to appear, but was represented by a newly retained lawyer, Atty. Dionisio Landero, who claimed that he was not ready to proceed with the trial as he was not yet familiar with the case. As a result, the trial court set the promulgation of the decision on October 30, 1995.

On October 9, 1995, petitioner filed a Motion for Reconsideration/Re Trial. However, on October 26, 1995 the trial court issued its assailed decision, portions of which read:

The record shows that accused Honor Moslares did not attend during the presentation of evidence for the prosecution nor for the defense. The Court set the presentation of evidence for the defense nineteen (19) times four (4) of which were cancelled on the ground that there was a typhoon and the public prosecutor was 'indisposed'. But the accused did not even testify and presented only one witness, a certain Sixto Avila. Subject cases were submitted for decision four (4) times for failure of the accused to present evidence but was lifted in the interest of justice upon motion of the accused. He changed his lawyer four times everytime the Court ordered the case submitted for decision for failure of the accused to present his evidenced in order to gain a delay.

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IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1) In Criminal Case No. 92-0099 finding accused Honor Moslares guilty beyond reasonable doubt of violation of Batas Pambansa Bilang 22 and the Court hereby sentences Honor Moslares to suffer an imprisonment of one year (1) year.

2) In Criminal Case No. 92-0100 finding accused Honor Moslares guilty beyond reasonable doubt of violation of Batas Bilang 22 and the Court hereby sentences Honor Moslares to suffer an imprisonment of one (1) year.

(pp. 111-112; 114, Rollo.)

On October 30, 1995, the trial court proceeded to promulgate in absentia the October 26, 1996 decision.

On November 14, 1995, petitioner filed a notice of appeal which was denied due course by the lower court in its assailed order dated February 1, 1996. The lower court, relying on the case of *People vs. Mapalao* (197 SCRA 79[1991]), considered petitioner to have waived his right to appeal.

On February 14, 1996, petitioner filed a petition for relief from judgment which was likewise denied by the trial court. On March 14, 1996, petitioner filed a petition for review with the Court of Appeals which treated the petition as one for certiorari. Petitioner also filed on October 3, 1996, a petition to post bail, later supplemented.

On November 29, 1996, the Court of Appeals rendered a decision dismissing the petition for review and denying the petition to post bail. Motions for reconsideration subsequently filed by petitioner were denied.

Hence, the instant recourse, with petitioner contending that the Court of Appeals erred:

I. IN AFFIRMING THE DECISION OF THE LOWER COURT DECLARING THAT THE PETITIONER HAD WAIVED HIS RIGHT TO PRESENT EVIDENCE BY NUMEROUS POSTPONEMENTS THEREBY DEPRIVING PETITIONER HIS RIGHT TO DUE PROCESS.

II. IN AFFIRMING THE DECISION OF THE LOWER COURT WHICH WAS PROMULGATED IN ABSENTIA WITHOUT GIVING PETITIONER AN OPPURTUNITY TO PRESENT EVIDENCE IN SUPPORT OF HIS DEFENSE.

III. IN RULING THAT PETITIONER HAS NO VALID DEFENSE.

IV. IN SUSTAINING ACTION OF LOWER COURT DISMISSING APPEAL THEREBY DENYING HIS RIGHT TO DUE PROCESS.

V. IN DENYING PETITIONER'S APLPLICATION FOR BAIL.

(p. 10, Rollo)

Anent the first and second which are related, the Court of Appeals agreed with the trial court that petitioner should be considered to have waived his right to present further evidence because of his repeated failure to attend scheduled hearings.

While it is true that the right to present evidence may be waived expressly or impliedly, it cannot be said that petitioner had waived said right in this case. The postponement sought by petitioner and counsel appear to be justified and were not vexatious and oppressive as borne by the record of the case. The intention and the

willingness of petitioner to present evidence can be gleaned from the fact that he had already presented one witness and has other witnesses ready for presentation, although this was delayed, but for meritorious reasons, such as illness of the petitioner and his counsel, petitioner's confinement at a hospital, ongoing negotiations between the parties, and substitution of counsel.

The rights of an accused during trial are given paramount importance in our laws and rules on criminal procedure. Among the fundamental rights of the accused is the right to be heard by himself and counsel. Verily, this right is even guaranteed by the Constitution itself. This right has been recognized and established in order to make sure that justice is done to the accused.

Further, the constitution right of the accused to be heard in his defense is inviolate. No court of justice under our system of government has the power to deprive him of that right (*People vs. Lumague, Jr.*, 111 SCRA 515 [1982]).

It would have thus been more befitting and seemly of the Court of Appeals had it ordered the trial court to reopen the case for the reception of petitioner's evidence. Granting that petitioner had sought a number of postponements, the requirements of substantial justice mandate that he should have been given his day in court. The grant of a reasonable continuance would have been sounder judicial discretion to ferret out the truth, than to have a speedy disposition of the case, but at the expense of a fundamental right.

Hence, it was error for the trial court to have proceeded with the promulgation of decision on the premise that petitioner had waived his right to appear in court to present his evidence. Likewise, the Court of Appeals, in affirming said decision, gravely abused its discretion as it sustained a decision of the lower court rendered in violation of the right of petitioner to due process. As enunciated in the case of *Alliance of Democratic Free Labor Organization vs. Laguesma* (254 SCRA 565 [1996]), the most basic tenet of due process is the right to heard.

As regards the third assigned error, the Court of Appeals held that the defense sought to be established by petitioner would not, even if considered by the court, exonerate him from his criminal liability under *Batas Pambansa Blg. 22*. This discloration seems to be no less than, and is tantamount to, prejudging the nature of the testimony of petitioner and his witnesses.

It is worthy to note that the alleged criminal liability of petitioner stems from his being the signatory of the questioned check and his being an officer of the corporation, the actual purchaser of the cars. As mentioned by the Solicitor General in his Manifestation, and citing the case of *Lina Lim Lao vs. Court of Appeals* (274 SCRA 572 [1997]), an officer of a corporation is not to be held criminally liable for violation of *Batas Pambansa Blg. 22* for signing a bum check, upon which premise, the Solicitor General concludes and recommends that petitioner be given his opportunity to present his evidence.

With respect to the fourth error, the lower court, in denying petitioner's appeal, considered him to have waived his right to appeal because of his failure to be present during the promulgation of the judgment on October 30, 1995, despite due notice to him and his bondsman or counsel.

We do not agree.

The last sentence of Section 6, Rule 120 states that:

... If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel.

This means that whether or not the absence of the accused during promulgation is justified, the right to appeal is

not lost, the only requirement being that the notice of appeal must be filed within 15 days notice of the judgment.

The Mapalao ruling (197 SCRA 79 [1991]), upon which the lower court and the court of Appeals based their denial of petitioner's appeal, does not appear to be applicable herein, as the facts of the two cases differ. In Mapalao, the accused escaped from detention and trial in absentia continued against him. He remained at large even at the time of the promulgation of judgment, and thus, was deemed to have waived his right to appeal. In the instant case, however, petitioner is not a fugitive from justice. On the contrary, petitioner has been seeking redress under the law as evidenced by the various pleadings and motions he has filed with the courts. Petitioner, therefore, cannot be considered as one who has lost his standing in court and thus, cannot be deprived of his right to seek judicial relief.

Inasmuch as petitioner's appeal was perfected within the 15-day reglementary period, the same must be given due course. To deny petitioner's appeal is tantamount to denying him due process. Although the right to appeal is a statutory, not a natural right, it is an essential part of the judicial system and courts should proceed with caution so as not to deprive a party of this prerogative, but instead, afford every party-litigant the amplest opportunity for the proper and just disposition of his cause, freed from the constraints of technicalities (*Santos vs. Court of Appeals*, 253 SCRA 623 [1996]).

On the matter of bail, the Court of Appeals denied petitioner's motion to post bail on the ground that the decision of the lower court had become final and executory, inasmuch as the petitioner's appeal has also been denied.

The following provision of Rule 114 of the Rules of Court, as amended by Administrative Circular No. 12-94, are pertinent:

Sec. 4. Bail, a matter of right. - All persons in custody shall: (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities and Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, be admitted to bail as a matter of right, with sufficient sureties, or be released on recognizance as prescribed by law or this Rule.

Sec. 5. Bail, when discretionary - Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua or life imprisonment, the court, on application, may admit the accused to bail.

The court, in its discretion, may allow the accused to continue on provisional liberty under the same bail bond during the period of appeal subject to the consent of the bondsman.

If the court imposed a penalty of imprisonment exceeding six (6) years but not more than twenty (20) years, the accused shall be denied bail, or his bail prebe cancelled, upon a showing by the prosecution, with notice to the accused of the following or other similar circumstances:

- (a) That the accused is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That the accused is found to have previously escaped from legal confinement, evaded sentence, or has violated the conditions of his bail without valid jurisdiction;
- (c) That the accused committed the offense while on probation, parole or under conditional pardon
- (d) That the circumstances of the accused or his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that during the pendency of the appeal, the accused may commit another crime.

The appellate court may review the resolution of the Regional Trial Court, on motion and with notice to the

adverse party.

Petitioner was not convicted of an offense punishable by death, reclusion perpetua, or life imprisonment where bail is not matter of right on the part of petitioner nor of discretion on the part of the Court. Neither has he been convicted of an offense punishable by imprisonment of six to twenty years where bail becomes a matter of judicial discretion and may be denied if any of the circumstances aforementioned are present. Rather, petitioner was convicted erroneously - it is to be hastily added - of offenses punishable only by imprisonment of one year each. In this light, petitioner's admission to bail becomes imperative and indispensable, moreso because of petitioner's deteriorating health.

The right to bail is a constitutional guaranty which every person under legal custody may invoke, except those qualified under the law. Petitioner does not fall under these exceptions and must, therefore, be duly accorded such right. Verily, it was patent error for the respondent Court of Appeals to deny petitioner of said right.

WHEREFORE, the instant petition for certiorari is GRANTED. The decision of the Court of Appeals dated November 29, 1996 affirming the October 30, 1996 decision of the lower court, as well as said latter decision, are hereby set aside, and the case is remanded to the court of origin for further proceedings whereat, petitioner may be given an opportunity to post bail. For this reason, respondent court's resolution dated April 11, 1997 and May 19, 1997 denying petitioner's petition for bail are likewise set aside. No special pronouncement is made as to costs.

SO ORDERED.

Regalado, (Chairman), Puno, Mendoza, and Martinez, JJ., concur.

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