

## **FRANCISCO SAPAD, TEOFILO GABUYA AND CIPRIANO GABUYA, PETITIONERS, VS.HON. COURT OF APPEALS, RESPONDENT.**

*G.R. No. 132153. December 15, 2000*

Ponente: KAPUNAN, J.

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### **KAPUNAN, J.:**

In a Decision dated July 25, 1995, the Regional Trial Court (RTC) of Tarlac convicted petitioners Francisco Sapad, Teofilo Gabuya and Cipriano Gabuya of homicide. A Notice of Appeal dated October 4, 1995 was filed by petitioners through their former counsel, Atty. Marcelito M. Millo.

On September 9, 1996, the Court of Appeals issued a Resolution reading:

For failure of accused Francisco Sapad, Teofilo Gabuya and Cipriano Gabuya to file their brief within the thirty (30) day period, notice of which was received by their common counsel, Atty. Marcelito M. Milo, on April 24, 1996 (registry return receipt, back of p. 6, rollo), the appeal of all three accused in the above entitled case is hereby deemed ABANDONED and DISMISSED pursuant to Section 8, Rule 124, of the Revised Rules of Court.[1]

On four occasions before (October 3 and 11, 1995) and after (December 2 and 23, 1995) the issuance of the Resolution, petitioners allegedly visited Atty. Millo to inquire about the status of their appeal. Atty. Millo purportedly assured them that everything was fine. Five times in 1996, on April 28, 1996, May 4, 1996, September 9, 1996, October 4 and 30, 1996 petitioners also called on Atty. Millo to ask about their case but counsel merely reassured them that they had nothing to worry about. On March 22 and 23, 1997, petitioners went to Atty. Millo but the latter either avoided or refused to see them.

Wary of counsel's behavior, petitioners asked a relative in Manila, petitioners being poor rural folks who could not afford the fare to Manila, to check on the status of their case with the Court of Appeals. Their relative subsequently informed them that the Court of Appeals had dismissed their appeal for failure to file the appellant's brief on time. Sometime in the last week of March 1997, petitioners received by mail a copy of the Entry of Judgment, stating that the Resolution of the Court of Appeals dismissing their appeal had become final and executory on October 2, 1996.

Petitioners thus engaged the services of present counsel, who filed on April 18, 1997, a motion for reconsideration for admission of the appellants' brief before the Court of Appeals. The motion contained allegations of gross negligence by petitioners' former counsel. This was followed by an urgent motion to lift warrant of arrest, a motion to set aside entry of judgment and a supplemental omnibus motion. All these motions were denied, however, prompting the filing of the instant petition for certiorari.

Petitioners pray that the Court order the Court of Appeals to admit their appellant's brief. We grant petitioners' prayer.

Section 8, Rule 124 of the Revised Rules of Court states:

Sec. 8. Dismissal of appeal for abandonment or failure to prosecute. -- 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.

The petition is hereby given DUE COURSE.

Under the above provision, a motu proprio dismissal by the Court of Appeals for failure of the appellant to file his brief, therefore, requires that notice be first made to the appellant.[2] In this case, it does not appear that a notice to the appellants was sent by the Court of Appeals that the appeal would be dismissed for their failure to file appellant's brief within the time prescribed. The purpose of the notice is to give appellants the opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory.[3] Assuming that the motion for reconsideration subsequently filed by petitioners cured this defect,[4] the Court of Appeals nevertheless committed grave abuse of discretion in dismissing the appeal.

The rule is that the negligence and mistakes of counsel binds the client.[5] The exception is when the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[6] Here, counsel for petitioners' conduct does not merely constitute negligence but, by his alleged false promises and his subsequent avoidance of petitioners' calls, borders on willful and deliberate evasion of his duties to the court and to his clients, resulting in the deprivation of petitioners' right to due process.

A healthy respect for petitioners' rights should caution courts against motu proprio dismissals of appeals, especially in criminal cases where the liberty of the accused is at stake. The rules allowing motu proprio dismissals merely confers a power and does not impose a duty; and the same is not mandatory but merely directory which thus requires a great deal of circumspection, considering all the attendant circumstances.[7] Courts are not exactly impotent to enforce their orders, including those requiring the filing of appellant's brief. This is precisely the *raison d'être* for the courts' inherent contempt power.[8] Motu proprio dismissals of appeals are thus not always called for. 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.[9]

Pending resolution of this case, two of the three petitioners, namely, Francisco Sapad, Teofilo Gabuya and Cipriano Gabuya filed a motion to withdraw their "appeal." In view of this Resolution, this matter is now best left to the Court of Appeals, where the two petitioners, if they so wish, may re-file the motion to withdraw appeal.

WHEREFORE, the petition is GIVEN DUE COURSE and GRANTED. The Court of Appeals is hereby directed to ADMIT petitioners' Appellants Brief.

### **SO ORDERED.**

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1]] Rollo, p. 23.

[2] Per the amendments effective December 1, 2000, the same Rule now requires notice to the appellant whether the dismissal is motu proprio or by motion of appellee:

SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. -- The Court of Appeals may, upon motion

of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.

[3] Baradi vs. People, 82 Phil. 297 (1948).

[4] Id.

[5] Casolita, Sr. vs. Court of Appeals, 275 SCRA 413 (1997); Bernardo vs. Court of Appeals, 275 SCRA 413 (1997).

[6] Legarda vs. Court of Appeals, 280 SCRA 642 (1997).

[7] See Reyes vs. Court of Appeals, 80 SCRA 144 (1977), although reference is to Section 1, Rule 50.

[8] Paredes-Garcia vs. Court of Appeals, 261 SCRA 693 (1996).

[9] Moslares vs. Court of Appeals (Third Division), 291 SCRA 440 (1998).

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