PORFERIO B. JOPILLO AND GLORIA M. JOPILLO, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 136727. May 06, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

The right to appeal is not among those provided for in the Bill of Rights. It is a mere statutory grant. Accordingly, one who seeks to avail of the right must faithfully comply with the statute or rules on appeal.

Before us is a petition for review on certiorari filed by spouses Porferio and Gloria Jopillo assailing the Resolution dated September 4, 1998[1] of the Court of Appeals in CA-G.R. CR No. 20993 dismissing petitioners' appeal on the ground that their appellants' brief was filed late by 215 days; and Resolution dated December 14, 1998[2] denying their motion for reconsideration.

In an Information dated December 22, 1992, filed with the Regional Trial Court, Branch 70, Pasig City, docketed therein as Criminal Case No. 96409, spouses Jopillo, petitioners, were charged with estafa committed as follows:

> "That on or about the 27th day of December 1991 in the Municipality of Pasig, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and mutually helping with each other by means of deceit and fraudulent representation that they were the owners of Mazda Fuso van bearing Plate No. UV-SAM-477, induced one Elvira Olarte to accept a chattel mortgage over the said van for the amount of P70,000.00 and said Elvira Olarte, believing their representation to be true, did in fact enter into a chattel mortgage agreement over the van in the amount of P70,000.00 and the accused did receive said amount of P70,000.0; but the accused, well knowing their representation was untrue, once in possession of the money, with intent to gain and to defraud Elvira Olarte did then and there willfully, unlawfully, and feloniously misappropriate, misapply, and convert to their own personal use and benefit the amount of P70,000.00, to the damage and prejudice of Elvira Olarte in the aforesaid amount of P70,000.00.
>
> CONTRARY TO LAW."

Upon being arraigned, petitioners, with the assistance of counsel de parte, pleaded not guilty.

The facts as found by the trial court are:

Petitioner spouses own a junk shop business. On December 26, 1991, being short of operating capital, they asked a former neighbor, one Carmelita Tolentino, if she could refer them to someone from whom they could secure a loan. Carmelita accompanied petitioners to the house of Elvira Olarte, private complainant. Elvira agreed to lend petitioners P70,000.00 if they will execute a chattel mortgage over their two (2) vehicles, a Mazda Fuso van and a Ford Laser car.

On December 27, 1991, Atty. Lucila Pawas-Yutok prepared the Deed of Chattel Mortgage which was signed by the parties. Under its terms, the loan is payable on May 27, 1992.

However, petitioners failed to pay the loan on the agreed date. Thus, on July 30, 1992, Elvira sent them a demand

letter but still they did not comply with their obligation.

Later, Elvira learned that even prior to the execution of the Deed of Chattel Mortgage, petitioners had sold their Mazda Fuso van, one of the mortgaged vehicles, to Amparo O. De Guzman for P25,000.00. What Elvira was able to collect from petitioners was only a video camera which she valued at P10,000.00.

On December 27, 1996, the trial court rendered its Decision, the dispositive portion of which reads:

> "WHEREFORE, all the elements of the offense of estafa under Article 315, subdivision 2(a) of the Revised Penal Code, as aforementioned, having been established, accused Porferio Jopillo and Gloria Jopillo are hereby found guilty beyond reasonable doubt of the offense and are hereby sentenced to suffer imprisonment for a period ranging from 6 years, 8 months and 21 days to 12 years. Accused are further ordered to pay private complainant, Elvira Olarte, the amount of P60,000.00 representing the balance of the loan after deducting the value of the video camera, with legal interest thereon from May 20, 1992, the day immediately following the date when the total amount of the loan became due until the total balance of the obligation shall have been paid.
>
> Costs against the accused.
>
> SO ORDERED.[3]"

On appeal, the Court of Appeals issued a Resolution directing petitioners to file their appellants' brief within forty-five (45) days from notice.

While petitioners filed their appellants' brief, however, it was late by 215 days. Hence, the Court of Appeals issued a Resolution dated September 4, 1998 dismissing their appeal.

Petitioners then filed a motion for reconsideration, but this was denied in a Resolution dated December 14, 1998.

Thus, the instant petition alleging that the Court of Appeals erred in dismissing petitioners' appeal.

Petitioners argue that it was error for the Court of Appeals to dismiss their appeal on a mere technicality since substantial justice requires that their case should be decided on the merits. They stress that pursuant to our ruling in Foralan v. Court of Appeals,[4] the Appellate Court should have first furnished them a notice to show cause why their appeal should not be dismissed.

In his comment on the petition, the Solicitor General counters that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional; that petitioners' failure to comply with the requirements renders the judgment of the trial court final and executory; and that even assuming that the Court of Appeals failed to give petitioners a notice to show cause why their appeal should not be dismissed, nonetheless, the defect was cured when they filed a motion for reconsideration.

Section 8, Rule 124, of the 1985 Rules of Criminal Procedure, then applicable, provides:

> "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 officio.
>
> The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

Clearly, if the appellant is represented by counsel de parte and he fails to file his brief on time, the appeal may be dismissed on motion of the appellee or by the Court of Appeals with notice to the appellant.

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In Foralan, the appellant's brief was indeed filed out of time. However, the appellant therein was represented by counsel de officio. Accordingly, it was error on the part of the Court of Appeals to dismiss the appeal motu proprio.

In this case, petitioners were represented by counsel de parte. Hence, the Foralan ruling is inapplicable.

On petitioners' contention that the Court of Appeals should have first given them a notice to show cause why their appeal should not be dismissed, we agree with the Solicitor General that the defect was cured when they filed their motion for reconsideration of the Resolution dismissing their appeal. They could have alleged in their motion the lack of such notice. Indeed, for their delay of 215 days, petitioners have only themselves to blame.

WHEREFORE, the petition is DENIED. The assailed Resolutions of the Court of Appeals in CA-G.R. CR No. 20993 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

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[1] Rollo at 15. Per Associate Justice Artemon D. Luna (ret.) with Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino (ret.) concurring.

[2] Id. at 20.

[3] Id. at 194-195.

[4] G.R. No. 109832, February 7, 1995, 241 SCRA 176.

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