

**SALVADOR K. MOLL, PETITIONER, VS. HON. MAMERTO M. BUBAN,
PRESIDING JUDGE, REGIONAL TRIAL COURT OF TABACO, ALBAY,
BRANCH 18 AND ATTY. NICETO N. VILLAMIN, PROSECUTOR II,
TABACO AL...**

G.R. No. 136974. August 27, 2002

Ponente: CARPIO, J.

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CARPIO, J.

In this special civil action for certiorari,[1] petitioner seeks to set aside the Orders dated December 10, 1998 and January 5, 1999 of the Regional Trial Court of Tabaco, Albay, Branch 18, issued in Criminal Case No. T-2685. Petitioner prays for the reinstatement of the Order dated November 12, 1998 of the trial court allowing petitioner to withdraw his first notice of appeal to the Court of Appeals and giving due course to his second notice of appeal directed to the Sandiganbayan.

The Antecedent Facts

The trial court rendered a Decision[2] on October 28, 1998 in *People of the Philippines vs. Salvador K. Moll and Ysmael Zepeda*, finding petitioner Salvador K. Moll, former Vice Mayor of Malinao, Albay, guilty of violating Section 3 (e) of Republic Act No. 3019, as follows:

“ACCORDINGLY, we find from the totality of the evidence, oral and documentary, unfolded before us that the GUILT of the accused, Salvador K. Moll, for VIOLATION OF SEC. 3 (e), RA 3019, AS AMENDED, alleged and recited in the information, had been established by proof beyond reasonable doubt, for which reason he is hereby SENTENCED to an imprisonment of six (6) Years and one (1) month, as minimum, to twelve (12) years as maximum, with perpetual disqualification from public office.

“Accused, YSMAEL ZEPEDA, whose GUILT has not been proved beyond reasonable doubt, is hereby ACQUITTED. Consequently, the property bailbond for his provisional liberty is ordered cancelled.

“SO ORDERED.”[3]

On November 3, 1998, petitioner, through counsel, filed a notice of appeal,[4] stating that he was appealing the decision to the Court of Appeals. Petitioner furnished a copy of his notice of appeal to respondent Prosecutor Niceto Villamin. The trial court gave due course to the appeal in an Order[5] dated November 4, 1998. However, on November 12, 1998, the last day of the reglementary period to appeal, petitioner filed a “Manifestation/Motion”[6] withdrawing the notice of appeal dated November 3, 1998 and filing in its stead a second notice of appeal.[7] This second notice of appeal sought to bring the appeal to the Sandiganbayan. In its Order[8] of November 12, 1998, the trial court gave due course to petitioner’s “Manifestation/Motion,” set aside its earlier Order, and ordered the entire record of the case forwarded to the Sandiganbayan for proper disposition.

On November 19, 1998, the respondent prosecutor filed a Motion for Reconsideration of the Order of November 12, 1998 and a Motion for Issuance of *Mittimus*[9] praying that the Order of November 12, 1998 be set aside on

three grounds. First, the accused perfected his appeal upon filing the first notice of appeal, and therefore, the respondent court, under Section 9, Rule 41 of the Rules of Court, lost jurisdiction over the case. Second, the accused failed to serve a copy of his “Manifestation/Motion” and second notice of appeal to the prosecution in violation of Section 3(a), Rule 122 and Section 4, Rule 13 of the Rules of Court. Third, the “Manifestation/Motion” did not contain a notice of hearing and proof of service to the prosecution. The prosecution further prayed that the trial court declare the Decision of October 28, 1998 final because of the withdrawal of the first notice of appeal. Alternatively, the prosecution prayed that the record of the case be forwarded to the Court of Appeals in accordance with the trial court’s earlier Order of November 4, 1998.

On December 10, 1998, the trial court issued an Order^[10] giving due course to the prosecution’s motion and reinstated its Order of November 4, 1998 giving due course to the appeal to the Court of Appeals. Upon petitioner’s motion for reconsideration, the trial court on January 5, 1999 affirmed^[11] its Order of December 10, 1998.

On January 20, 1999, petitioner filed this petition for certiorari under Rule 65 of the Rules of Court. Respondent prosecutor later filed his Comment, and the Office of the Solicitor General filed a Manifestation and Motion in Lieu of Comment recommending that petitioner’s second notice of appeal to the Sandiganbayan be given due course.

The Issues

The petitioner raises the following issues:

- WHETHER RESPONDENT COURT ERRED WHEN IT GRANTED DUE COURSE TO THE SECOND NOTICE OF APPEAL FILED BY THE ACCUSED ON NOVEMBER 12, 1998.
- WHETHER RESPONDENT COURT ERRED WHEN IT GAVE DUE COURSE TO THE MOTION FOR RECONSIDERATION FILED BY THE PROSECUTION ON NOVEMBER 19, 1998.
- WHETHER RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ISSUED ITS ORDERS OF DECEMBER 10, 1998 AND JANUARY 5, 1999.

These issues can be reduced into one central issue - whether the first notice of appeal is valid, rendering the second notice of appeal unnecessary.

The Court’s Ruling

The Court grants this petition.

The assailed Orders of the trial court direct petitioner, over his vigorous objections, to bring his appeal to the Court of Appeals where the appeal is bound to be dismissed outright for being filed in the wrong court. Petitioner asserts that the trial court, in directing him to bring his appeal to the wrong court, acted with grave abuse of discretion amounting to lack of jurisdiction.

At the time of the alleged commission of the offense, petitioner was the municipal vice-mayor of Malinao, Albay, a position corresponding to Salary Grade “25” pursuant to Republic Act No. 7160.^[12] Under Republic Act No. 8249, the Sandiganbayan had exclusive appellate jurisdiction over petitioner’s case, to wit:

“SECTION 4. Section 4 of the same decree is hereby further amended to read as follows:

Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

xxx xxx xxx

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.”[13] (Emphasis supplied)

Section 1 of Presidential Decree No. 1861,[14] which amended Presidential Decree No. 1606 and Batas Pambansa Blg. 129 relative to the jurisdiction of the Sandiganbayan, also provides:

“Sec. 1. Section 4 of Presidential Decree No. 1606 is hereby amended to read as follows:

'Sec. 4. Jurisdiction. The Sandiganbayan shall exercise:

xxx xxx xxx

(b) Exclusive appellate jurisdiction:

(1) On appeal, from the final judgments, resolutions or orders of the Regional Trial Courts in cases originally decided by them in their respective territorial jurisdiction.

(2) By petition for review, from the final judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, in their respective jurisdiction.”

Under the law, the Court of Appeals is bereft of any jurisdiction to review the judgment petitioner seeks to appeal. As correctly observed by the Office of the Solicitor General, this will have a fatal effect on the petitioner's appeal, thus:

“While respondent court gave due course to petitioner's first notice of appeal to the Court of Appeals, the fact remains that said appeal is likely to be dismissed by the Court of Appeals for lack of jurisdiction. Thus, the net effect of respondent court's assailed orders is the denial of petitioner's right to appeal.”[15]

Petitioner's first notice of appeal, filed well within the requisite fifteen-day period and with notice duly furnished to the prosecution, was valid. The designation of the wrong court does not necessarily affect the validity of the notice of appeal. The Court has held that the rule requiring a party to specify the court where the appeal is being taken is merely directory. An error in designating the appellate court is not fatal to the appeal.[16]

Further, petitioner's “Manifestation/Motion” and second notice of appeal, in substance, merely sought a correction of where to bring the petitioner's appeal. The “Manifestation/Motion” is not the withdrawal of appeal contemplated under Section 12 of Rule 122 of the Rules of Court, which results in the finality of the judgment of the trial court. Petitioner's intent is clear - to appeal the trial court's decision. Petitioner had no intention to abandon his appeal and to serve the sentence imposed by the trial court. Once validly perfected, the appeal, if not abandoned, continues.

Upon perfection of the appeal, the trial court loses jurisdiction over the case under appeal subject to the last paragraph of Section 9, Rule 41, to wit:

“Sec. 9. Perfection of appeal; effect thereof.—

A party’s appeal by notice of appeal is deemed perfected as to him upon the filing of the notice of appeal in due time.

xxx

In appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties.

xxx

In either case, prior to the transmittal of the original record or the record on appeal, the court may issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, approve compromises, permit appeals of indigent litigants, order execution pending appeal in accordance with Section 2 of Rule 39, and allow withdrawal of the appeal.” (Emphasis supplied)

The right to appeal, which petitioner availed of on time, is a right not litigated by the appeal.[17] The correction of the court where petitioner’s appeal is to be taken merely preserves petitioner’s right to an appeal he has already perfected within the reglementary period. The trial court retains jurisdiction to make such correction before actual transmittal of the records to the proper appellate court.

It is the law, not the choice of the parties, which determines jurisdiction.[18] The trial court knew that the law grants to the Sandiganbayan exclusive appellate jurisdiction over petitioner’s case. Petitioner correctly and timely informed the trial court that the Sandiganbayan had exclusive jurisdiction over the appeal. Despite the vigorous objections of petitioner, the trial court still directed the appeal to be taken to the Court of Appeals. The trial court also knew that the appeal, if brought to the wrong court, would for certain be dismissed outright, effectively depriving petitioner of his right to appeal. Manifestly, the trial court acted with grave abuse of discretion amounting to lack of jurisdiction.

We emphasize, however, that the correction in designating the proper appellate court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, Section 2, Rule 50 of the Rules of Court would apply, the relevant portion of which states:

“Sec. 2. Dismissal of improper appeal to the Court of Appeals. – xxx

An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.”

In this case, the records had not yet been forwarded to the Court of Appeals. Moreover, petitioner corrected his notice of appeal before the lapse of the fifteen-day period to file an appeal.[19] Petitioner’s failure to serve the prosecution a copy of the correction, contained in the second notice of appeal, did not invalidate what was already a perfected appeal under the first notice of appeal.

Besides, failure of service to the adverse party or prosecution in a criminal proceeding is not always fatal. Section 5, Rule 122 of the Rules of Court provides that:

“Sec. 5. Notice waived. – The appellee may waive his right to a notice that an appeal has been taken. The appellate court may, in its discretion, entertain an appeal notwithstanding failure to give such notice if the

interests of justice so require.”[20] (Emphasis supplied)

The Sandiganbayan may, in its discretion and in the interest of justice, give due course to petitioner’s appeal despite his failure to serve a copy to the prosecution of the notice of appeal. It may also allow the appeal in the exercise of its equity jurisdiction. As we ruled in *Cojuangco, Jr. vs. Court of Appeals*[21] :

“xxx when noncompliance with the Rules of Court is not intended for delay or does not prejudice the adverse party, the dismissal of an appeal on a mere technicality may be stayed and the court may, at its sound discretion, exercise its equity jurisdiction.”

As for the other “lapses” in procedure attributed by the prosecution to the petitioner, the same are not errors in law because there is no requirement to set for hearing the approval of a notice of appeal.

WHEREFORE, the petition is GRANTED. The trial court’s Orders of December 10, 1998 and January 5, 1999 are SET ASIDE, and the Order of November 12, 1998 giving due course to the petitioner’s appeal to the Sandiganbayan is REINSTATED.

SO ORDERED.

Puno, (Chairman), and Panganiban, JJ., concur.
Sandoval-Gutierrez, J., on leave.

[1] Under Rule 65 of the Rules of Court.

[2] Penned by respondent Judge Mamerto M. Buban.

[3] Rollo, pages 57 and 58.

[4] Ibid., page 14.

[5] Ibid., page 15.

[6] Ibid., page 17.

[7] Ibid., page 18.

[8] Ibid., page 19.

[9] Ibid., page 20.

[10] Ibid., page 32.

[11] Ibid., page 44.

[12] Section 445 (b) of the Local Government Code of 1991 (R.A. No. 7160) provides:

Section 445. Powers, Duties and Compensation.—

xxx xxx xxx

(b) The vice-mayor shall receive a monthly compensation corresponding to Salary Grade twenty five (25) as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

[13] Republic Act No. 8249 (1997) Entitled “An Act Further Defining The Jurisdiction Of The Sandiganbayan, Amending For The Purpose Presidential Decree No. 1606, As Amended, Providing Funds Therefor, And For Other Purposes.”

[14] Presidential Decree No. 1861 (1983).

[15] Rollo, page 92.

[16] *People v. Torres*, G.R. No. 130661 (June 27, 2001) citing *Valerio v. Tan*, 97 Phil 558 (1955); *Heirs of Pizarro, Sr. v. Consolacion*, 161 SCRA 187 (1988).

[17] *Embroidery and Apparel Control and Inspection Board v. Cloribel*, 20 SCRA 517 (1967).

[18] Pangilinan v. Court of Appeals, 321 SCRA 51 (1999).

[19] Rule 122, Section 6 of the Rules of Court.

[20] The same provision appears verbatim in the 1985 and 2000 Rules on Criminal Procedure.

[21] Cojuangco v. Court of Appeals, 309 SCRA 602 (1999).

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