

CARMELO C. BERNARDO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND F.T. YLANG-YLANG MARKETING CORPORATION, RESPONDENTS.

G.R. NO. 166980. April 03, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Carmelo C. Bernardo assails the Resolutions[1] of the Court of Appeals (CA) dated July 30, 2004 and January 14, 2005 dismissing his petition and denying reconsideration, respectively.

Petitioner was charged before the Metropolitan Trial Court (MeTC) of Manila with six counts of violation of Batas Pambansa Blg. 22 (B.P. 22), otherwise known as the Bouncing Checks Law, for issuing on December 3, 1997 six postdated checks in equal amounts of P22,500. Save for the check numbers and dates of maturity, four Informations under Criminal Case Nos. 320977 to 320980 were similarly worded as follows:

That on or about December 3, 1997, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully, feloniously make or draw and issue to F.T. YLANG-YLANG MARKETING, CORP. rep. by Dennis Tan to apply on account or for value PHILIPPINE SAVINGS BANK check no. 0007806 [0007805, 0007804, 0007803] dated April 30, [March 30, February 28, January 30] 1998 payable to YLANG-YLANG MFG. in the amount of P22,500.00 said accused well knowing that at the time of issue she did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for reason "Account Closed" and despite receipt of notice of such dishonor, said accused failed to pay said F.T. YLANG-YLANG MARKETING CORP. the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

Contrary to law.[2]

The two Informations under Criminal Case Nos. 320975-76 averred that Check Nos. 0007808 and 0007807 respectively dated June 30, 1998 and May 30, 1998 "would be dishonored by the drawee bank for the reason "Account Closed" if presented for payment as the account against which it was drawn ha[d] already been closed even before [their] said date[s]." [3]

Upon arraignment, petitioner, assisted by a counsel de oficio, pleaded "not guilty" to the offenses charged. At the pre-trial conference on August 25, 1999, petitioner failed to appear despite notice, prompting Branch 24 of the MeTC to issue a warrant of arrest against him and set the cases for trial in absentia.

After the prosecution presented its first witness, petitioner filed a Waiver of Appearance, a Motion to Lift Warrant of Arrest, and a Motion to Quash on the ground that the facts charged in the Informations under Criminal Case Nos. 320975-76 do not constitute an offense.

By Order of April 5, 2000, the trial court lifted the warrant of arrest in view of petitioner's appearance but denied

the Motion to Quash for lack of merit.

At the following trial date, petitioner failed to appear despite notice, drawing the trial court to proceed with his trial in absentia and issue warrant of arrest[4] against him.

By Decision[5] of October 23, 2001 promulgated in absentia on December 13, 2001, the trial court found petitioner guilty beyond reasonable doubt of violating B.P. 22 in all the cases. He was, in each case, sentenced to suffer the penalty of imprisonment of One (1) Year, to pay a fine of Twenty-Two Thousand Five Hundred Pesos (P22,500), and to indemnify private complainant in the amount of Twenty-Two Thousand Five Hundred Pesos (P22,500).

Ten months following the promulgation of the judgment, petitioner posted a bond before another branch of the court. Petitioner having been convicted and no motion having been filed for his provisional liberty pending any appeal from or motion for reconsideration of the Decision, the trial court cancelled the bond and issued an alias warrant of arrest.[6]

Petitioner thereupon filed an Urgent Motion for New Trial and/or to Set Aside Trial and Judgment (Motion for New Trial) which was, by Order[7] of January 10, 2003, denied following his and his counsel's failure to appear at the hearing of the motion and comply with the rule on proper service of a motion.[8] Petitioner's Urgent Motion for Reconsideration was likewise denied, by Order[9] of May 26, 2003.

Petitioner appealed the Orders dated January 10, 2003 and May 26, 2003 as well as the Decision dated October 23, 2001 to the Regional Trial Court (RTC) of Manila, Branch 26 of which, by Decision of December 22, 2003, affirmed[10] the judgment with modification as to the penalties imposed, thus:

WHEREFORE PREMISES CONSIDERED, the appealed decision is hereby affirmed with modification. This Court finds accused/appellant Carmelo C. Bernardo GUILTY beyond reasonable doubt for Violation of Batas Pambansa Bilang 22 but set [sic] aside the penalty of imprisonment and hereby sentences her [sic] to pay a fine of P22,500.00 in each case, with subsidiary imprisonment in case of insolvency or non-payment not to exceed six (6) months, and, to pay private complainant F.T. YLANG-YLANG MARKETING CORPORATION the total amount of P113,500.00 by way of indemnity.

Meanwhile, the alias warrant of arrest issued against accused x x x

is hereby ordered lifted and set aside.

No pronouncement as to costs. (Underscoring supplied)

SO ORDERED.[11]

Petitioner filed a Motion for Partial Reconsideration of the RTC decision but it was denied.

Unsatisfied, petitioner elevated the case to the CA.

Petitioner filed with the appellate court a Motion for Extension of Time to File Petition for Review within 30 days from June 1, 2004, the 15th day from his counsel's receipt of the RTC Order denying his Motion for Partial Reconsideration.

The Court of Appeals, by Resolution of June 21, 2004, granted petitioner an extension, but only 15 days pursuant to Section 1 of Rule 42,[12] to file his Petition.

Apparently unaware of the above-said Resolution of June 21, 2004 under which his petition would be filed not later than June 16, 2004, petitioner used up the 30-day extension sought and filed his petition on July 1, 2004. Petitioner in fact received the June 21, 2004 Resolution only on July 9, 2004.[13]

By Resolution[14] of July 30, 2004, the appellate court denied petitioner's petition due course for having been filed 15 days late and for failure to attach the MeTC Decision and other pertinent and material documents. Petitioner's Motion for Reconsideration was likewise denied by Resolution[15] of January 14, 2005, the appellate court noting that the MeTC Decision attached to the Motion for Reconsideration was a mere photocopy and uncertified.

Hence, the instant petition faulting the appellate court:

- . . . IN RECKONING THE PERIOD OF 15 DAYS EXTENSION FROM THE EXPIRY DATE OF THE ORIGINAL PERIOD OF 15 DAYS FROM RECEIPT OF THE DECISION OF THE REGIONAL TRIAL COURT OR FINAL ORDER APPEALED FROM, INSTEAD OF FROM DATE OF THE RECEIPT OF THE ORDER GRANTING EXTENSION;

- . . . IN APPLYING THE RULES OF PROCEDURE VERY STRICTLY AND IN UTTER DISREGARD OF ITS INTERNAL RULES WHICH LIBERALLY ALLOW COMPLETION OF PORTIONS OF RECORDS IN COMPLIANCE WITH THE RULES AND THE SETTLED JURISPRUDENCE APPLYING LIBERALLY THE RULES OF PROCEDURE;

- . . . [IN NOT] CONSIDER[ING] THE MERITS OF THE PETITION FOR REVIEW.[16] (Underscoring supplied)

Petitioner argues that the 15-day extension granted to him by the appellate court should be reckoned from his date of receipt of its June 21, 2004 Resolution.

The argument fails. A.M. No. 00-2-14-SC[17] issued on February 29, 2000 is clear. It provides that "[a]ny extension of time to file the required pleading should . . . be counted from the expiration of the period . . ." The extension should thus be tacked to the original period, to commence immediately after the expiration of such period. The court has no discretion to reckon the commencement of the extension from a date later than the expiration of such original period, not even if the expiry date is a Saturday, Sunday, or a legal holiday.[18]

Petitioner's reliance on the 1989 case of *Vda. de Capulong v. Workmen's Insurance Co., Inc.*[19] on this point does not thus lie. Parenthetically, the factual milieus in *Vda. de Capulong* and the present case are dissimilar. The respondent in *Vda. de Capulong* specifically moved that it be given an additional period "from receipt of the order" of the court allowing extension, and the court granted an extension of time without indicating when it would commence. In the present case, petitioner prayed for a period of extension to be counted from the expiration of the original period or "from June 1, 2004," which date the appellate court correctly used in reckoning the extension.[20]

Petitioner goes on to fault the appellate court in not resolving his motion for extension before the expiration of the 15-day extension so that he would have known that his request for 30 days was not granted.

Petitioner's position does not lie too.

Section 1 of Rule 42 is clear. The Court of Appeals may grant an "additional period of 15 days only" within which to file the petition for review. Albeit under the same section, a "further extension" not to exceed 15 days may be granted "for the most compelling reason," petitioner had no basis to assume that his request for a 30-day extension is meritorious and would be granted.[21]

Motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement would be granted or that they would be granted the length of time they pray for.[22]

Petitioner claims, however, that his motion for extension presented a compelling reason for the grant of a further extension. Justifying the 30-day period sought, petitioner explains that he was implicitly seeking both a 15-day extension and a further extension of 15 days.

The wording of the rule with respect to further extension is couched in restrictive terms. Section 1 of Rule 42 provides that "[n]o further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days."

Petitioner's motion for extension was anchored on a lone ground, his counsel's being "pre-occupied in the preparation of petitions, memoranda, briefs, and other lengthy pleadings in cases as important as this case" and in "daily court appearance and personal commitments." Sustaining petitioner's lone ground would obliterate the distinguishing essence of a further extension for it would do away with the necessity of presenting compelling grounds addressed to the sound discretion of the court.

But crediting arguendo petitioner's "implicit" justification, this Court sees no reason to disturb the exercise by the appellate court of its discretion in denying a "cumulative" extension and in effectively ruling that heavy workload of counsel is not a most compelling reason.

Respecting the second assigned error, the CA correctly dismissed petitioner's appeal for failure to comply with Section 2 (d) of Rule 42, which specifically requires that both lower courts' judgments or final orders must be attached to the petition in the required form — clearly legible duplicate originals or certified true copies. Indeed, petitioner fell short in his compliance. He attached to his petition only the RTC Decision of December 22, 2003 and its Order of May 4, 2004. He did not attach thereto the MeTC Orders dated January 10, 2003 and May 26, 2003, and the Decision dated October 23, 2001 which were appealed[23] to the RTC and which were likewise adverse to him.[24] While to his Motion for Reconsideration, he attached the October 23, 2001 Decision, it was not in the required form, and while he attached a duplicate original of the May 26, 2003 Order, he failed to submit the January 10, 2003 Order.

There is no cogent reason to deviate from such requirement under Section 2(d) of Rule 42, the mandatory tenor of which has been held to be discernible and well settled.[25]

Petitioner having failed to perfect his appeal, the RTC judgment had become final and executory.[26] This leaves it unnecessary to dwell on petitioner's assertion that he was denied due process of law and the right to counsel before the trial court.

Suffice it to state that the requisites of a valid trial in absentia, viz, (1) the accused has already been arraigned, (2) he has been duly notified of the trial, and (3) his failure to appear is unjustifiable, are, as reflected above, present in the case.[27]

Estrada v. People[28] should, under the facts and circumstances attendant to the case, dispel any lingering doubts of petitioner on the validity of the trial court's proceedings.

The holding of trial in absentia is authorized under Section 14 (2), Article III of the 1987 Constitution which provides that "after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable." x x x

x x x Conformably with our decision in *People v. Salas*, [the] escape should have been considered a waiver of their right to be present at their trial, and the inability of the court to notify them of the subsequent hearings did not prevent it from continuing with their trial. They were deemed to have received notice. The same fact of their escape made their failure to appear unjustified because they have, by escaping, placed themselves beyond the pale and protection of the law. This being so, then pursuant to *Gimenez v. Nazareno*, the trial against the fugitives, just like those of the others, should have been brought to its ultimate conclusion. Thereafter, the trial

court had the duty to rule on the evidence presented by the prosecution against all the accused and to render its judgment accordingly. It should not wait for the fugitives' re-appearance or re-arrest. They were deemed to have waived their right to present evidence on their own behalf and to confront and cross-examine the witnesses who testified against them.[29] (Emphasis and italics in the original)

As for the promulgation of judgment in absentia, the following pertinent provision of Section 6 of Rule 120 should likewise put to rest any doubts on its validity:

The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x x

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried in absentia because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

x x x x (Italics in the original; emphasis supplied)

A word on the modified penalty imposed by the RTC. Contrary to its reasoning, the penalty of imprisonment in cases of violation of B.P. 22 was not deleted. As clarified by Administrative Circular 13-2001, the clear tenor and intention of Administrative Circular 12-2000 is not to remove imprisonment as an alternative penalty, but to lay down a rule of preference in the application of the penalties provided for in B.P. 22.[30]

Since the prosecution did not raise the matter as an issue and, at any rate, there is no showing of repeated violation or wanton bad faith on the part of petitioner, the non-imposition of the penalty of imprisonment is in order.

WHEREFORE, in light of the foregoing, the petition is DENIED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] CA rollo, pp. 41, 94-95, respectively. Penned by Justice Eliezer R. De Los Santos with the concurrence of Justice Delilah Vidallon-Magtolis and Justice Arturo D. Brion. Justice Monina Arevalo Zenarosa, vice Justice Brion, concurred in the second Resolution.

[2] Records, pp. 5-8.

[3] Id. at 3-4.

[4] Records show that no motion to lift the May 3, 2000 Warrant of Arrest was filed by petitioner's counsel de parte before his appearance as such was considered withdrawn on August 16, 2000. This Court observes that the issuance of the warrant of arrest was unnecessary since petitioner already filed a waiver of appearance and even consented to the waiver of appearance clause in his bond. While petitioner could have been still compelled to appear in court for identification purposes, the April 5, 2000 Order did not specifically require petitioner to appear at said trial date nor was the testimony of the prosecution witness intended to identify petitioner. Notably, the

matter of identification was never raised as an issue as petitioner never disputed his identity as the accused in this case. (Vide rollo, pp. 32, 91, 102-104, 277-291; Carredo v. People, G.R. No. 77542, March 19, 1990, 183 SCRA 273)

[5] Id. at 186-189. The Decision was penned by Judge Jorge Emmanuel M. Lorredo, then pairing judge of Branch 24, MeTC, Manila.

[6] Id. at 224-225.

[7] Id. at 244.

[8] RULES OF COURT, Rule 15, Secs. 5-6, Rule 121, Sec. 4.

[9] Records, p. 267.

[10] The RTC denied the appeal sub silentio insofar as the Orders dated January 10, 2003 and May 26, 2003 are concerned. No appeal may be taken from an order denying a motion for new trial, the appropriate recourse being a special civil action for certiorari. (Vide Rules of Court, Rule 41, Sec. 1 (a) in relation to Rule 40, Sec. 9; Casalla v. People, 439 Phil. 958 [2002]) Moreover, petitioner was barred from availing of the remedies allowed by the Rules against the judgment since he did not file the proper motion for leave of court within the given period. (Vide RULES OF COURT, Rule 120, Sec. 6, last par.; Teope v. People, G.R. No. 149687, April 14, 2004, 427 SCRA 540) The lower court/prosecution, however, failed to notice/raise these grounds in dismissing/opposing the appeal.

[11] Id. at 322-323. Penned by Judge Oscar P. Barrientos in Criminal Case Nos. 03-216527 to 32.

[12] "x x x The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days." (Emphasis supplied)

[13] Rollo, p. 16.

[14] Id. at 32.

[15] Id. at 35-36.

[16] Id. at 15.

[17] "Whereas, the aforecited provision [Section 1, Rule 22] applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday, or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;

"Whereas, the question has been raised if the period is extended ipso jure to the next working day immediately following where the last day of the period is a Saturday, Sunday or legal holiday so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period;

"NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to

file the required pleading should therefore be counted from the expiration of the period regardless of the fact that the said due date is a Saturday, Sunday or legal holiday." (Underscoring supplied)

[18] Luz v. National Amnesty Commission, G.R. No. 159708, September 24, 2004, 439 SCRA 111.

[19] G.R. No. 30960, October 5, 1989, 178 SCRA 314.

[20] Vide CA rollo, pp. 4, 7.

[21] Vide Videogram Regulatory Board v. Court of Appeals, 332 Phil. 820 (1996).

[22] Cosmo Entertainment Management, Inc. v. La Ville Commercial Corporation, G.R. No. 152801, August 20, 2004, 437 SCRA 145, 150.

[23] Records, p. 270.

[24] Cf. Ramos v. Court of Appeals, 341 Phil. 157 (1997), which ruled that a petitioner is not required to attach to the petition before the Court of Appeals a certified true copy" but only a true or plain copy" of the MeTC Decision since petitioner is not appealing therefrom as it was rendered in her favor.

[25] Vide Atillo v. Bombay, 404 Phil. 179, 188 (2001), as differentiated from the directory nature of the second part of the rule requiring the attachment of "pleadings and other material portions of the record" from which the appellate court has the discretion to determine the sufficiency to make out a prima facie case.

[26] Vide Borlongan v. Buenaventura, G.R. No. 167234, February 27, 2006, 483 SCRA 405-406.

[27] Vide People v. Salas, 227 Phil. 152 (1986); Vide People v. Valeriano, G.R. Nos. 103604-605, September 23, 1993, 226 SCRA 694, where it was held that one who jumps bail can never offer a justifiable reason for his non-appearance during the trial.

[28] G.R. No. 162371, August 25, 2005, 468 SCRA 233.

[29] Id. at 245-246.

[30] Tan v. Mendez, Jr., 432 Phil. 760, 773 (2002).

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