

MELCHOR L. LAGUA, PETITIONER, VS. THE HON. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENT.*G.R. No. 173390. June 27, 2012*

Ponente: SERENO, J.

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In dismissing the present Petition filed under Rule 65 of the Rules of Court, we find no valid, justifiable reason for petitioner's failure to file his appellant's brief with the Court of Appeals (CA) that would warrant a reversal of the CA Resolutions dated 25 November 2005^[1] and 17 May 2006.^[2] To rule otherwise would make light of this Court's extraordinary certiorari jurisdiction, which operates only upon a clear showing of grave abuse of discretion tantamount to lack or excess of jurisdiction on the part of the appellate tribunal.^[3]

On 11 April 2003, the Regional Trial Court (RTC) of Pasig rendered a Decision in Criminal Case Nos. 118032-H and 118033-H finding the accused petitioner guilty of homicide and sentencing him to 8 years of prision mayor as minimum to 14 years of reclusion temporal as maximum in each case. On 19 May 2003, petitioner filed a Notice of Appeal with the CA, docketed as CA-G.R. CR No. 27423. On 18 June 2003, he filed a Very Urgent Petition for Bail Pending Appeal, which the CA granted without objection from the Office of the Solicitor General.^[4] On 6 November 2003, an Order of release upon bond was issued in his favor by the Division Clerk of Court of the CA.^[5]

On 14 October 2003, petitioner received the Order from the CA requiring, within 45 days from receipt thereof, or until 28 November 2003, the filing of his Appellant's Brief.^[6] He filed a Motion for Extension of another 45 days from 28 November 2003, or until 12 January 2004, within which to file the said brief. On 8 January 2004, he filed a Second Motion for Extension asking for an additional 45 days, which the CA granted with a warning that no further extension shall be allowed.^[7] Thus, petitioner had 45 days from 12 January 2004 or until 26 February 2004.

Despite the two extensions, petitioner Lagua still failed to file his appellant's brief. On 5 May 2004, the CA ordered him through counsel to show cause, within five days from receipt, why the appeal should not be dismissed pursuant to Section 8, Rule 124 of the Rules of Court. He again failed to submit his brief within the reglementary period and to comply with the Court's 5 May 2004 Resolution. Thus, on 1 September 2004, the CA issued a Resolution declaring the appeal abandoned and accordingly dismissed pursuant to the Rules.

On 14 October 2004, petitioner's counsel of record, Atty. Salvador Quimpo, manifested to the Court that he had already withdrawn as defense counsel for petitioner, but that he had failed to secure the latter's conformity.^[8] The following day, petitioner himself filed a Motion for Reconsideration of the 1 September 2004 Resolution, requesting more time to secure the services of another counsel. On 20 October 2004, the Solicitor General, manifesting that accused-appellant's abandonment of his appeal rendered the judgment of conviction final and executory, moved for his immediate arrest and confinement at the New Bilibid Prison.^[9]

In its Resolution dated 9 February 2005, the CA stated that it had never received a Notice of Withdrawal from

Atty. Quimpo, but nevertheless granted a 30-day period for petitioner and his new counsel to file a Notice of Appearance. Again, petitioner failed to comply. On 8 July 2005, the CA issued another Show Cause Order, directing him to explain within 10 days why he had not caused the appearance of his new counsel, and why the appeal should not be considered abandoned. Instead of filing a timely compliance, petitioner's new counsel, Atty. Emerson Barrientos filed a Notice of Appearance on 8 March 2005 or almost a month after the Show Cause Order.

On 17 August 2005, the CA filed a Resolution stating that in the interest of justice, the Notice of Appearance was considered sufficient compliance with the Order of 8 July 2005. It granted the Motion for Reconsideration, set aside the Order of Dismissal issued on 1 September 2004, and gave petitioner and his new counsel a non-extendible period of 30 days within which to file the appellant's brief.

Notwithstanding the new non-extendible period, petitioner again failed to seasonably file his brief, prompting the CA to issue the first assailed Resolution dated 25 November 2005, which, for the second time, declared his appeal abandoned and accordingly dismissed. Roused from inaction, he filed another Motion for Reconsideration with Motion to Admit Appellant's Brief on 19 December 2005, or 18 days after his counsel received the 25 November 2005 Resolution.

In its second assailed Resolution issued on 17 May 2006, the CA denied petitioner's Motion for Reconsideration and ordered the Appellant's Brief to be expunged from the records, viz:

Indeed the present appeal has been dismissed twice by the Court because of accused-appellant's failure to file his brief. The present motion for reconsideration of the second dismissal of the appeal was even filed three (3) days beyond the reglementary period. Ineluctably, the dismissal of the present appeal has become final and accused-appellant has lost his right to appeal.

It bears stressing that accused-appellant cannot simply trifle with the rules of procedure on the pretext that his life and liberty are at stake. For appeal is a mere statutory privilege to be exercised in the manner and in accordance with the provisions of the law granting the privilege.[10] x x x.

Petitioner comes to this Court alleging grave abuse of discretion on the part of the lower court in declaring the appeal abandoned, pointing to the negligence and errors of his counsel as the cause of the two-year delay in coming up with the brief. Petitioner reasons that there would be no prejudice to the People if his appeal is reinstated, and that he has a good defense that can lead to his acquittal.

We dismiss the Petition.

The certiorari jurisdiction of the Supreme Court is rigorously streamlined, such that Rule 65 only admits cases based on the specific grounds provided therein. The Rule applies if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. The independent action for certiorari will lie only if grave abuse of discretion is alleged and proven to exist. Grave abuse of discretion is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or a capricious exercise of power that amounts to an evasion or a refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[11]

In the present case, petitioner would have us strike down the Resolutions of the CA declaring his appeal as abandoned for purportedly being issued in grave abuse of discretion. Yet, far from committing the grievous error petitioner presents it to be, the CA merely exercised the authority expressly granted to it under Rule 124, which we quote below:

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.

Petitioner was represented by private counsel (and not counsel de oficio) to whom the CA had granted multiple extensions: two for Atty. Quimpo; and two for Atty. Barrientos, whose Notice of Appearance was submitted a month after the Show Cause Order of 8 July 2005. As for Atty. Quimpo, he filed his Manifestation more than a month after the CA had first issued the dismissal. It was only because of the plea for compassion in petitioner's Motion for Reconsideration that the CA granted him another 30 days in order to secure the services of another lawyer. Again, petitioner failed to comply. Both he and the new counsel, Atty. Barrientos, also failed to comply with the second Show Cause Order.

Yet again, the CA allowed Atty. Barrientos' Notice of Appearance and considered it substantial compliance with the second Show Cause Order. Out of the CA's liberality, petitioner was given another 30 days to come up with the Appellant's Brief. This he failed to submit, prompting the CA, for the second and final time, to declare his appeal as abandoned. Even then, his Motion for Reconsideration with Motion to Admit Appellant's Brief was filed 18 days after his counsel received the CA Resolution.

In his Petition, Laguna bewails the negligence and mishandling by his two previous counsels as the reason for the delay, which has lasted for more than two years. However, it is clear from the facts that despite the liberality and consideration afforded to him by the CA, he is by no means blameless. More importantly, his excuse cannot serve as a substitute for the jurisdictional requirements under Rule 65. It does not amount to any grave abuse of discretion tantamount to lack or excess of discretion that may be attributable to the appellate court. Under the circumstances, the CA was well within the authority granted to it under the cited rule.

Nothing is more settled than the rule that the negligence and mistakes of counsel are binding on the client.^[12] Otherwise, there would never be an end to a suit, so long as counsel could allege its own fault or negligence to support the client's case and obtain remedies and reliefs already lost by the operation of law.

The rationale for this rule is reiterated in the recent case *Bejarasco v. People*:

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.

It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.^[13] (Emphasis supplied.)

In *Tan v. Court of Appeals*, the Court explained:

As clients, petitioners should have maintained contact with their counsel from time to time, and informed themselves of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business."

Even in the absence of the petitioner's negligence, the rule in this jurisdiction is that a party is bound by the mistakes of his counsel. In the earlier case of *Tesoro v. Court of Appeals*, we emphasized –

It has been repeatedly enunciated that "a client is bound by the action of his counsel in the conduct of a case and cannot be heard to complain that the result might have been different had he proceeded differently. A

client is bound by the mistakes of his lawyer. If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced or learned.”

Thus, with the ordinary remedy of appeal lost through the petitioner’s own fault, we affirm that no reversible error was committed in the dismissal of the petition by the appellate court.[14]

Petitioner was granted bail, and he had all the time to contact his counsel or follow up on the appeal himself. He is similarly responsible for procuring the services of new counsel after having been told of Atty. Quimpo’s withdrawal. Yet he offered no explanation why it took him so long to apprise Atty. Barrientos of the case, or why they had repeatedly failed to comply with the CA’s Orders after several extensions. As he has lost the ordinary remedy of appeal because of his own laxity, we cannot allow him to haphazardly take advantage of the remedy of certiorari.

The Court cannot tolerate habitual failure to follow the procedural rules, which are indispensable for the orderly and speedy disposition of justice. Otherwise these rules would be rendered useless.[15] In *Polintan v. People*, the Court of Appeals gave the petitioner therein a total of 75 days to submit his Appellant’s Brief, but he failed to do so. In that case, the accused Polintan filed a “Very Urgent Ex-Parte Motion to Admit Appellant’s Brief.” This Court affirmed the CA Resolution declaring his appeal abandoned, after finding his excuses too flimsy to warrant reversal.

In the present case, accused Laguna was given more time, not only to file his Appellant’s Brief, but also to secure new counsel to adequately prepare the appeal. The CA issued two Show Cause Orders and two Resolutions declaring the appeal as abandoned. Despite these issuances, his second Motion for Reconsideration was filed 18 days after his receipt of the second and final CA Resolution. To our mind, this delay is indicative of sheer laxity and indifference on his part, for which he has lost the statutory right of appeal. Even during the intervening period after counsel has withdrawn, litigants are expected to be vigilant and conscious of the status of their cases, viz:

The appellate court committed no error therefore in dismissing the appeal. Petitioners-appellants have shown no valid and justifiable reason for their inexplicable failure to file their brief and have only themselves to blame for their counsel’s utter inaction and gross indifference and neglect in not having filed their brief for a year since receipt of due notice to file the same. They could not even claim ignorance of the appellate court’s notice to file brief since it had required withdrawing counsel Valente to secure their written conformity before granting his withdrawal as counsel, and certainly they must have ascertained from him as well as new counsel the status of their appeal — which accounts for Atty. Valente’s repeated prayers in his two motions for withdrawal for the granting of sufficient time for new counsel to file the brief. They had almost a year thereafter to make sure that their new counsel did attend to their appeal and did file the brief.[16]

In *Estate of Felomina G. Macadangdang v. Gaviola*,[17] the Court made a clear finding of negligence on the part of the lawyer handling the petitioner’s case, but nevertheless affirmed the denial of the appeal. It confirmed that the petitioner was bound by his counsel’s negligence. It ruled that “the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law.”

Neither can we deem petitioner Laguna’s Motion for Reconsideration with Motion to Admit Appellant’s Brief as substantial compliance with the procedural requirement. In *Cariño v. Espinoza*,[18] the appellate court rightly disallowed the submission of the Appellant’s Brief after a delay of seven months. In this case, it took petitioner almost two years from 26 February 2004 (after the CA gave him a second non-extendible period of 45 days) to finally submit his Appellant’s Brief on 19 December 2005.

Lastly, it is erroneous for petitioner to declare that there would be no prejudice to the People if his appeal is reinstated.[19] The judgment of conviction having attained finality, respondent is now entitled to execution as a matter of right. This Court has recently declared:

Nothing is more settled in law than that once a judgment attains finality it thereby becomes immutable and unalterable. The enforcement of such judgment should not be hampered or evaded, for the immediate enforcement of the parties' rights, confirmed by final judgment, is a major component of the ideal administration of justice. This is the reason why we abhor any delay in the full execution of final and executory decisions. Thus, a remedy intended to frustrate, suspend, or enjoin the enforcement of a final judgment must be granted with caution and upon a strict observance of the requirements under existing laws and jurisprudence.[20] x x x.

WHEREFORE, the Petition is DISMISSED. The assailed Resolutions issued by the Court of Appeals on 25 November 2005 and 17 May 2006 in CA-G.R. CR No. 27423 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Del Castillo,[*] Perez, and Reyes, JJ., concur.

[*] Designated additional member per Raffle dated 27 June 2012 in lieu of Associate Justice Arturo D. Brion due to prior action in the Court of Appeals.

[1] In CA-G.R. CR No. 27423, penned by Associate Justice Delilah Vidallon-Magtolis, and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta; rollo, pp. 37-38.

[2] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Martin S. Villarama, Jr. and Mario L. Guariña III, rollo, pp. 39-42.

[3] 1997 Rules of Civil Procedure, Rule 65, Sec. 1.

[4] Rollo, p. 78.

[5] Id. at 80.

[6] Id. at 81.

[7] Id. at 86.

[8] Id. at 89-90.

[9] Id. at 91-91.

[10] Id. at 42.

[11] *Beluso v. COMELEC*, G.R. No. 180711, 22 June 2010, 621 SCRA 450.

[12] *Sapad v. Court of Appeals*, 401 Phil. 478, 483 (2000).

[13] G.R. No. 159781, 2 February 2011, 641 SCRA 328, 330-331.

[14] 524 Phil. 752, 760-761 (2006).

[15] *Polintan v. People*, G.R. No. 161827, 21 April 2009, 586 SCRA 111.

[16] *Villasis v. CA*, 158 Phil. 335, 340-341 (1974).

[17] G.R. No. 156809, 4 March 2009, 580 SCRA 565, 573.

[18] G.R. No. 166036, 19 June 2009, 590 SCRA 43.

[19] Rollo, pp. 27-28.

[20] Pahila- Garrido v. Tortogo, G.R. No. 156358, 17 August 2011, 655 SCRA 553, 558.

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