VIRGILIO V. QUILESTE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 180334. February 18, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Resolution[2] dated June 8, 2007, dismissing the appeal of petitioner Virgilio Quileste (Quileste) and the Resolution[3] dated September 21, 2007 denying his Motion for Reconsideration.

The antecedents follow—

Quileste was charged with Malversation in an Information filed by the Office of the Ombudsman-Mindanao which reads—

> That on or about 25 June 2002, or sometime prior or subsequent thereto, in Dapa, Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, above-named accused Virgilio V. Quileste, a low-ranking public officer, being then a Revenue Collection Officer II of the Bureau of Internal Revenue, upon examination of the cash and accounts from the accountable forms, and by reason of his office is accountable for said public funds under his control and custody, did then and there fail to produce and to have fully forthcoming upon official demand a cash shortage in the total amount of TWO HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED SIX PESOS & 26/100 (P265,606.26), which amount he willfully, unlawfully and feloniously took and misappropriated for his own personal use and benefit to the damage and prejudice of the Government and to public interest.
>
> Contrary to Law.[4]

The case, docketed as Criminal Case No. 2354, was raffled to the Regional Trial Court (RTC), Branch 31, Dapa, Surigao del Norte. During the arraignment, he pleaded "Not Guilty."

After pre-trial and trial, the RTC found Quileste guilty beyond reasonable doubt of Malversation. The dispositive portion of the Decision[5] dated June 13, 2006 reads —

> WHEREFORE, the Court finds accused VIRGILIO V. QUILESTE, GUILTY beyond reasonable doubt as principal of the crime of MALVERSATION as defined and penalized under Article 217 of the Revised Penal Code and appreciating in his favor the mitigating circumstance of reimbursement of funds misappropriated, being analogous to voluntary surrender hereby sentences the accused Virgilio V. Quileste to suffer an indeterminate penalty of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, EIGHT (8) MONTHS and ONE (1) DAY, as maximum, both of Reclusion Temporal; to suffer the penalty of perpetual special disqualification; and to pay the costs.
>
> No fine is hereby adjudge (sic) in view of the payment or reimbursement by the accused of the shortage in the amount of P265,606.66.

SO ORDERED.[6]

Aggrieved, Quileste appealed to the CA. However, in its Resolution dated June 8, 2007, the CA dismissed outright the appeal because Quileste failed to furnish the Office of the Solicitor General (OSG) a copy of his Motion for Extension to File Appellant's Brief and his Appellant's Brief in violation of Section 3, Rule 124[7] of the Rules of Court.

Quileste moved to reconsider the June 8, 2007 Resolution. The motion was denied by the CA in its Resolution dated September 21, 2007 on the finding that, despite the allegation that a copy of the motion was served upon the OSG via registered mail, the registry receipt was not attached to the motion, in violation of Sections 5[8] and 13[9] of Rule 13 of the Rules of Court. Furthermore, it appeared that the affidavit of service attached to the motion to rectify the defect in the appellant's brief showed that the same was filed via registered mail and the registry receipt was not attached to the said affidavit. Neither was there an explanation why registered mail was resorted to in the service of the appellant's brief upon the OSG, also in violation of Sections 11[10] and 13 of the same Rule.

Hence, this petition anchored on the sole issue that his appeal was dismissed merely on a technicality for failure to furnish a copy of his brief to the OSG despite a showing of substantial compliance with the requirement. According to Quileste, the CA dwelt on technicalities without considering the merit of his appeal questioning the failure of the prosecution to present in evidence the cash book, which was the basis of the finding of shortage against him, and other documentary evidence relevant to the audit conducted on him as an accountable officer.

The petition necessarily fails.

It may be recalled that this case involves malversation of public funds, punishable under Article 217 of the Revised Penal Code, committed by a low-ranking public officer (with salary grade below SG 27). Thus the case was correctly filed with, and tried by, the RTC, the court that has exclusive original jurisdiction over the case. Upon Quileste's conviction by the RTC, his remedy should have been an appeal to the Sandiganbayan, pursuant to Presidential Decree No. (PD) No. 1606,[11] as amended by Republic Act (R.A.) No. 7975 and R.A. No. 8249, specifically Section 4 thereof, viz.:

> Section 4. Jurisdiction. - x x x
>
> 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 officers 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.[12]

This is complemented by the Revised Internal Rules of the Sandiganbayan, Part III, Rule XI, Section 1, which reads—

> Section 1. Ordinary Appeal. — Appeal to the Sandiganbayan from a decision rendered by a Regional Trial Court in the exercise of its original jurisdiction shall be by ordinary appeal under Rules 41 and 44 of the 1997 Rules of Civil Procedure or Rule 122 and 124 of the Rules of Criminal Procedure, as amended, as the case may be.

We reiterate that the right to appeal is neither a natural right nor a part of due process, it being merely a statutory

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privilege which may be exercised only in the manner provided for by law.[13] In this case, Quileste should have appealed the RTC Decision of conviction to the Sandiganbayan within 15 days from promulgation of the judgment or from notice of the final order appealed from.[14] By lodging his appeal with the CA which, in turn, erred in taking cognizance of the same, although it dismissed the appeal on technical grounds, the period within which to appeal to the proper court - the Sandiganbayan - lapsed. Thus, Quileste lost his right to appeal. Consequently, he cannot come before this Court to question the dismissal of his appeal, the RTC Decision having become final and executory upon the expiration of the period to appeal.

In this light, it would be pointless to further discuss the merits of this case.

WHEREFORE, the petition is DENIED. Costs against petitioner.

SO ORDERED.

Quisumbing,[*] Austria-Martinez,[**] (Acting Chairperson), Chico-Nazario, and Peralta, JJ. concur.

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[*] Additional member in lieu of Associate Justice Consuelo-Ynares-Santiago per Special Order No. 564 dated February 12, 2009.

[**] In lieu of Associate Justice Consuelo-Ynares-Santiago per Special Order No. 563 dated February 12, 2009.

[1] Rollo, pp. 17-28.

[2] Id. at 31-32.

[3] Id. at 29-30.

[4] Id. at 33.

[5] Id. at 33-40.

[6] Id. at 40.

[7] Sec. 3. When brief for the appellant to be filed. - Within thirty (30) days from receipt by the appellant or his counsel of the notice from the clerk of court of the Court of Appeals that the evidence, oral and documentary, is already attached to the record, the appellant shall file seven (7) copies of his brief with the clerk of court which shall be accompanied by proof of service of two (2) copies thereof upon the appellee. (Emphasis supplied.)

[8] SEC. 5. Modes of service. - Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

[9] SEC. 13. Proof of service. - Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof of the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[10] SEC. 11. Priorities in modes of service and filing.—Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A

violation of this Rule may be cause to consider the paper as not filed.

[11] Revising Presidential Decree No. 1486 Creating a Special Court to be Known as "Sandiganbayan" and For Other Purposes.

[12] Emphasis supplied.

[13] People v. Laguio, Jr., G.R. No. 128587, March 16, 2007, 518 SCRA 393, 402.

[14] Revised Rules on Criminal Procedure, Rule 122, Sec. 6.

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