GREGORIO DIMARUCOT Y GARCIA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 183975. September 20, 2010

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

For resolution in this petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Resolution[1] dated July 23, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 30466 denying petitioner's omnibus motion to reconsider the August 29, 2007 Resolution dismissing his appeal, to expunge the same from the Book of Entries of Judgment, and to give petitioner a period of thirty (30) days within which to file the appellant's brief.

The antecedents:

Petitioner is the accused in Criminal Case No. 98-M-98 for Frustrated Murder in the Regional Trial Court (RTC) of Malolos, Bulacan, under the following Information:

> That on or about the 18[th] day of August, 1997, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an iron pipe and with intent to kill one Angelito Rosini y Go, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and hit with the said iron pipe the said Angelito Rosini y Go, hitting him on his head, thereby inflicting upon him physical injuries, which ordinarily would have caused the death of the said Angelito Rosini y Go, thus performing all acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to the said Angelito Rosini y Go which prevented his death.
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> Contrary to law.[2]

After trial, on September 11, 2006, the RTC promulgated its Decision[3] convicting petitioner of frustrated homicide, and sentencing him as follows:

> WHEREFORE, finding accused GREGORIO aka GEORGE DIMARUCOT y GARCIA liable of (sic) the lesser offense of Frustrated Homicide, this Court hereby sentences him to an indeterminate penalty of four (4) years and two (2) months and one (1) day, as minimum, to eight (8) years and one (1) day, as maximum, of imprisonment.
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> Accused is further directed to pay complainant Angelito Rosini y Go, actual damages broken down as follows: the amount of Nineteen Thousand One Hundred Ten Pesos and Sixty Five Centavos (P19,110.65) for the hospitalization/medical bills and the amount of Thirty Six Thousand Pesos (P36,000.00) as loss of income.
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> With costs against the accused.
>
> SO ORDERED.[4]

Upon receiving the notice to file appellant's brief, petitioner thru his counsel de parte requested and was granted additional period of twenty (20) days within which to file said brief.[5] This was followed by three (3) successive motions for extension which were all granted by the CA.[6] On August 29, 2007, the CA issued a Resolution dismissing the appeal, as follows:

> Considering the JRD verification report dated July 24, 2007 that the accused-appellant failed to file his appellant's brief within the reglementary period which expired on June 6, 2007, his appeal is considered ABANDONED and thus DISMISSED, pursuant to Sec. 1 (e), Rule 50, 1997 Revised Rules of Civil Procedure.
>
> SO ORDERED.[7]

Petitioner filed a motion for reconsideration,[8] his counsel admitting that he was at fault in failing to file the appellant's brief due to "personal problems emanating from his [counsel's] wife's recent surgical operation." It was thus prayed that the CA allow petitioner to file his appellant's brief which counsel undertook to submit within seven (7) days or until October 4, 2007. By Resolution[9] dated November 27, 2007, the CA, finding the allegations of petitioner unpersuasive and considering that the intended appellant's brief was not at all filed on October 4, 2007, denied the motion for reconsideration. As per Entry of Judgment, the Resolution of August 29, 2007 became final and executory on January 4, 2008.[10]

On May 8, 2008, petitioner filed an Omnibus Motion (1) To Reconsider August 29, 2007 Resolution, (2) To Expunge The Same From Book Of Entries Of Judgment, and (3) To Give Accused-Appellant A Final Period Of Thirty Days To File Appellant's Brief. Petitioner reiterated that his failure to file the appeal brief was solely the fault of his lawyer who is reportedly suffering from personal problems and depression. He also cited his advanced age (he will turn 76 on May 30, 2008) and medical condition (hypertension with cardiovascular disease and pulmonary emphysema), attaching copies of his birth certificate, medical certificate and certifications from the barangay and church minister.[11]

In the assailed Resolution dated July 23, 2008, the CA denied the omnibus motion holding that petitioner is bound by the mistakes and negligence of his counsel, such personal problems of a counsel emanating from his wife's surgical operation are not considered mistake and/or negligence contemplated under the law as to warrant reconsideration of the dismissal of petitioner's appeal for failure to file appellant's brief. Thus, when appellant did not file a petition before this Court to assail the validity of the August 29, 2007 and November 27, 2007 resolutions, the August 29, 2007 resolution attained finality and entry of judgment thereof is in order.[12]

The petition has no merit.

Section 8, paragraph 1, Rule 124 of the Revised Rules of Criminal Procedure, as amended, provides:

> SEC. 8. Dismissal of appeal for abandonment or failure to prosecute. - The Court of Appeals may, upon motion of the appellee or motu proprio and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel de oficio.
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> x x x x

It is clear under the foregoing provision that a criminal case may be dismissed by the CA motu proprio and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed.[13]

In the case at bar, there is no showing that petitioner was served with a notice requiring him to show cause why his appeal should not be dismissed for failure to file appellant's brief. The purpose of such a notice is to give an

appellant the opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the appellate court may determine whether or not the reasons, if given, are satisfactory.[14]

Notwithstanding such absence of notice to the appellant, no grave abuse of discretion was committed by the CA in considering the appeal abandoned with the failure of petitioner to file his appeal brief despite four (4) extensions granted to him and non-compliance to date. Dismissal of appeal by the appellate court sans notice to the accused for failure to prosecute by itself is not an indication of grave abuse. Thus, although it does not appear that the appellate court has given the appellant such notice before dismissing the appeal, if the appellant has filed a motion for reconsideration of, or to set aside, the order dismissing the appeal, in which he stated the reasons why he failed to file his brief on time and the appellate court denied the motion after considering said reasons, the dismissal was held proper. Likewise, where the appeal was dismissed without prior notice, but the appellant took no steps either by himself or through counsel to have the appeal reinstated, such an attitude of indifference and inaction amounts to his abandonment and renunciation of the right granted to him by law to prosecute his appeal.[15]

Here, the Court notes the repeated non-observance by petitioner and his counsel of the reglementary periods for filing motions and perfecting appeal. While still at the trial stage, petitioner's motion to admit and demurrer to evidence was denied as it was not seasonably filed (petitioner was granted fifteen (15) days from August 8, 2001 within which to file demurrer to evidence but filed his motion to dismiss only on September 4, 2001), in accordance with Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended.[16] Before the CA, petitioner and his counsel filed no less than four (4) motions for extension to file brief, which was never filed nor attached in the motion for reconsideration of the August 29, 2007 Resolution dismissing the appeal. The last extension given expired on June 6, 2007, without any brief submitted by petitioner or his counsel. And even when he filed the Omnibus Motion on May 8, 2008, still no appellant's brief was attached by petitioner. Neither did petitioner file any petition before this Court questioning the validity of the August 29, 2007 resolution and the November 27, 2007 denial of his motion for reconsideration. The dismissal of his appeal having become final, it was indeed too late in the day for petitioner to file the Omnibus Motion on May 8, 2008, which was four (4) months after the finality of the resolution dismissing the appeal.

Having been afforded the opportunity to seek reconsideration and setting aside of the motu proprio dismissal by the CA of his appeal for non-filing of the appeal brief, and with his subsequent inaction to have his appeal reinstated after the denial of his motion for reconsideration, petitioner cannot impute error or grave abuse on the CA in upholding the finality of its dismissal order. Non-compliance with the requirement of notice or show cause order before the motu proprio dismissal under Section 8, paragraph 1 of Rule 124 had thereby been cured.[17] Under the circumstances, the petitioner was properly declared to have abandoned his appeal for failing to diligently prosecute the same.

Petitioner cannot simply harp on the mistakes and negligence of his lawyer allegedly beset with personal problems and emotional depression. The negligence and mistakes of counsel are binding on the client.[18] There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property or liberty through a technicality. However, in this case, we find no reason to exempt petitioner from the general rule.[19] The admitted inability of his counsel to attend fully and ably to the prosecution of his appeal and other sorts of excuses should have prompted petitioner to be more vigilant in protecting his rights and replace said counsel with a more competent lawyer. Instead, petitioner continued to allow his counsel to represent him on appeal and even up to this Court, apparently in the hope of moving this Court with a fervent plea for relaxation of the rules for reason of petitioner's age and medical condition. Verily, diligence is required not only from lawyers

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but also from their clients.[20]

Negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period. Thus, we explained in Redeña v. Court of Appeals:[21]

> In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.
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> Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here.
>
> For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below. (Emphasis supplied.)

The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.[22]

Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.[23]

WHEREFORE, the petition is DENIED for lack of merit. The Resolution dated July 23, 2008 of the Court of Appeals in CA-G.R. CR No. 30466 is AFFIRMED.

SO ORDERED.

Carpio Morales, (Chairperson), Carpio,[*] Peralta,[**] and Bersamin, JJ., concur.

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[*] Designated additional member per Special Order No. 893 dated September 20, 2010.

[**] Designated additional member per Special Order No. 885 dated September 1, 2010.

[1] Rollo, pp. 19-22. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] Records, p. 2.

[3] Id. at 530-536. Penned by Judge Herminia V. Pasamba.

[4] Id. at 536.

[5] CA rollo, pp. 46-51.

[6] Id. at 52-66.

[7] Id. at 68.

[8] Id. at 69-72.

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[9] Id. at 75-76.

[10] Id. at 78.

[11] Id. at 79-88.

[12] Rollo, p. 20.

[13] Masas v. People, G.R. No. 177313, December 19, 2007, 541 SCRA 280, 285, citing Foralan v. CA, 311 Phil. 182, 185-186 (1995).

[14] M.R. Pamaran REVISED RULES OF CRIMINAL PROCEDURE ANNOTATED (2007 ed.) p. 666, citing Baradi v. People, 82 Phil. 297, 298 (1948).

[15] Id.; Salvador v. Reyes, 85 Phil. 12, 17 (1949).

[16] Records, pp. 215, 219-225, 254-255.

[17] See Salvador v. Reyes, supra note 15, at 16-17.

[18] Polintan v. People, G.R. No. 161827, April 21, 2009, 586 SCRA 111, 116, citing Sapad v. Court of Appeals, G.R. No. 132153, December 15, 2000, 348 SCRA 304, 308.

[19] Cariño v. Espinoza, G.R. No. 166036, June 19, 2009, 590 SCRA 43, 47, citing Estate of Felomina G. Macadangdang v. Gaviola, G.R. No. 156809, March 4, 2009, 580 SCRA 565, 572-573.

[20] Lumbre v. Court of Appeals, G.R. No. 160717, July 23, 2008, 559 SCRA 419, 432, citing Delos Santos v. Elizalde, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 17.

[21] G.R. No. 146611, February 6, 2007, 514 SCRA 389, 402.

[22] Polintan v. People, supra note 18, citing Spouses Ortiz v. Court of Appeals, 360 Phil. 95, 100-101 (1998).

[23] Id. at 117, citing Trans International v. Court of Appeals, G.R. No. 128421, January 26, 1998, 285 SCRA 49, 54-55.

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