

**EDWARD GARRICK VILLENA AND PERCIVAL DOROJA,
PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, NOMAR B.
DEGERON, CHRISTIAN DANDAN, AND ELIZABETH BORCELIS,
RESPONDENTS.**

G.R. No. 184091. January 31, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Assailed in this petition[1] for review on certiorari under Rule 45 of the Rules of Court are the Resolutions dated April 30, [2008[2]] and August 1, [2008[3]] of the Court of Appeals (CA) in CA-G.R. SP No. 103224.

The antecedents--

Petitioners Police Inspector (P/Insp.) Edward Garrick Villena and Police Officer 1 (PO1) Percival Doroja, together with PO2 Nicomedes Lambas (PO2 Lambas), PO3 Dan Fermalino (PO3 Fermalino),[4] Police Chief Inspector Jovem C. Bocalbos, PO3 Reynaldo Macalinao (PO3 Macalinao), PO1 Alvaro Yumang (PO1 Yumang), and Imelda Borcelis, were indicted for the crime of robbery (extortion)[5] before the Regional Trial Court (RTC), Branch 202, Las Piñas City. The case was docketed as Criminal Case No. 05-0025.

After arraignment, where the accused all pled "not guilty," and pre-trial, trial on the merits ensued. Petitioners failed to appear before the trial court to adduce evidence in their defense. It was only PO3 Macalinao who appeared before the court to present his evidence.

On August 29, 2007, the RTC rendered its decision[6] convicting petitioners, together with PO2 Lambas, PO3 Fermalino, PO3 Macalinao, and PO1 Yumang, of the crime charged.

During the promulgation of judgment on September 3, 2007, petitioners again failed to appear despite proper notices to them at their addresses of record. In the absence of petitioners, the promulgation was made pursuant to paragraphs 4 and 5, Section 6, Rule 120 of the Revised Rules on Criminal Procedure. Consequently, the RTC issued warrants of arrest against them.

On October 11, 2007, petitioners, through their new counsel, Atty. William F. delos Santos, filed their separate notices of appeal before the RTC. In the said notices, they explained that they failed to attend the promulgation of judgment because they did not receive any notice thereof because they were transferred to another police station.[7]

In the Order[8] dated November 20, 2007, the RTC denied due course to petitioners' notices of appeal. The RTC ratiocinated in this wise--

Case record shows that the Decision of the court dated August 29, 2007 was promulgated on September 3, 2007. The appropriate notices and subpoenas were duly sent to the accused but [they were] returned with the notation that they are no longer residing at their given address/es. In the present case, all three accused raised

the excuse that they were not notified of the setting of the promulgation. The Court finds this ground unmeritorious since the accused have the obligation to inform the Court of the changes in their address in order that the orders, notices and other court processes may be properly sent to them. In any case, the counsels on record for the accused Macalinao, Doroja and Villena were duly notified of the scheduled hearings and promulgation of judgment.

Moreover, with the non-appearance of the accused-movants during the presentation of defense evidence and on the scheduled promulgation of the decision, the Court already issued a Warrant of Arrest against the three accused. This means that they have lost their standing in court and unless they surrender or submit to the jurisdiction of the court, they are deemed to have waived any right to seek relief from the court. (*People v. Del Rosario, et al.*, G.R. Nos. 107297-98, December 19, 2000, citing *People v. Mapalao*, 197 SCRA 79, 87-88 [1991]).

IN VIEW THEREOF, the Notices of Appeal filed by accused PO3 Reynaldo Macalinao, PO1 Percival Doroja and P/Insp. Edward Garrick Villena are hereby DENIED DUE COURSE.

SO ORDERED.

Subsequently, PO3 Macalinao filed a Motion with Leave of Court to Reconsider the November 20, 2007 Order.[9] Petitioners likewise filed a joint Motion for Reconsideration (of the Order of November 20, 2007).[10]

Resolving the said motions, the RTC issued its Order[11] dated February 8, 2008, granting the prayer for reconsideration of PO3 Macalinao, giving his notice of appeal due course. However, the said Order denied herein petitioners' motion, for failure to adduce any valid excuse or compelling justification for the reconsideration, reversal, and setting aside of the November 20, 2007 Order. The RTC found--

x x x In the case of accused Reynaldo Macalinao, it is pristinely clear from the case records that he has been actually attending the scheduled hearings of the case since its inception. He was also the only one, among the police officers accused in this case, who testified in Court in defense of the charges leveled against him.

Moreover, the Court, after a second look at the records finds that his failure to attend the promulgation of judgment on September 3, 2007 (of the Decision dated August 29, 2007) was due to an excusable and justifiable reason. As stated in his Manifestation/Motion on the Subpoena dated August 29, 2007, the basis for his non-appearance was for the reason that he was transferred from Raxa Bago, Tondo, Police Station (PS-1) to Police Station 11, Meisic located at Felipe II, Binondo, Manila, since July 26, 2006, as evidenced by [the] Certification dated September 19, 2007 issued by P/Insp. Ricardo Tibay Tangunan, Chief Administration Section.

We cannot say the same thing for the other two (2) accused, namely, PO1 Percival Doroja and P/Insp. Edward Garrick Villena as they have not manifested nor informed the Court of the cause of their non-appearances despite notices and subpoenas sent to them nor sought for the lifting of the Bench Warrant issued against them unlike accused Reynaldo Macalinao. Also, it can be keenly observed that they both failed to appear in several if not most of the hearings set by the Court since the commencement of the trial of the instant case against them. Noteworthy of such non-appearances in court despite due notices and subpoenas are the scheduled hearings on November 23, 2005, February 8, 2006, February 15 and 22, 2006, April 26, 2006, May 10, 2006, June 21, 2006, September 20, 2006, October 11 and 25, 2006, November 29, 2006, January 24, 2007, February 26, 2007, March 14 and 19, 2007, April 25, 2007 and the promulgation of judgment on September 3, 2007.

From all the foregoing actions during the trial of this instant criminal case, and after their conviction by this Court, it is only accused PO3 Reynaldo Macalinao who had shown sufficient interest in defending his case. The records show no unusual and deliberate delay caused by him in the trial of the criminal case.

As to the other two accused, it can[not] be gainsaid that they have not proffered any cogent and excusable

reason to justify their non-appearance during the aforesaid dates and they only asked for judicial leniency, which this Court cannot give. They have only themselves to be blamed.[12]

Aggrieved, petitioners filed a petition[13] for certiorari, prohibition, and mandamus under Rule 65 of the Rules of Court before the CA. The CA, in its Resolution[14] dated April 30, 2008, initially dismissed the petition for not being accompanied with clearly legible duplicate originals or certified true copies of the questioned Orders. Petitioners thus moved to reconsider the April 30, 2008 Resolution.

In the August 1, 2008 Resolution,[15] even as it took into account the merits of petitioners' motion for reconsideration, the CA nevertheless resolved to deny the same for failure to show prima facie evidence of any grave abuse of discretion on the part of the RTC. Hence, this petition ascribing error to the CA in dismissing their petition and in not finding grave abuse of discretion against the RTC for denying their notices of appeal.

Petitioners now argue that the CA erred in upholding the RTC in its denial of their respective notices of appeal since they already contained the required manifestation and information as to the cause of their non-appearance on the scheduled promulgation on September 3, 2007, i.e., lack of notice. According to them, their notices of appeal have substantially complied with the requirement of Section 6, Rule 120 of the Rules of Court, and have effectively placed them under the RTC's jurisdiction. They allege further that their motion for reconsideration should have been considered by the CA since they have offered the explanations that their failure to appear during the promulgation of judgment was due to the change of their respective addresses, and that their former counsel of record did not inform them of the need to notify the RTC thereof, much less properly advise them of the current status of the proceedings. As regards their failure to move for the lifting of the bench warrants issued for their arrest, petitioners asseverate that the Rules of Court do not provide for such a requirement before they could avail of the remedies they seek.

The petition is without merit.

While it is true that an appeal is perfected upon the mere filing of a notice of appeal and that the trial court thereupon loses jurisdiction over the case, this principle presupposes that the party filing the notice of appeal could validly avail of the remedy of appeal and had not lost standing in court. In this case, petitioners have lost their standing in court by their unjustified failure to appear during the trial and, more importantly, during the promulgation of judgment of conviction, and to surrender to the jurisdiction of the RTC.

Petitioners insist that their failure to attend the promulgation of judgment was due to the lack of notice of the date thereof, allegedly because they were transferred to another police station. Notably, however, petitioners did not proffer any documentary and convincing proof of their supposed transfer, not even to inform the court as to which police station they were transferred. In contrast, their fellow accused PO3 Macalinao submitted to the RTC a Certification issued by P/Insp. Ricardo Tibay Tangunan, Chief of the Philippine National Police Administrative Section, evidencing his transfer from Police Station (PS-1), Raxa Bago, Tondo Manila to Police Station 11, Meisic in Binondo, Manila. Petitioners were duty bound to inform the RTC of their transfer, assuming its truth, so that notices may be sent to their respective new mailing addresses. They were remiss in the discharge of this responsibility.

Petitioners contend that their act of filing notices of appeal was already substantial compliance with the requirements of Section 6, Rule 120 of the Rules of Court.

We differ. Said provision states--

Sec. 6. Promulgation of judgment.--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.

If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have the authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

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.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.[16]

Thus, the accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available under the Rules of Court against the judgment--(a) the filing of a motion for new trial or reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122). However, the Rules allow the accused to regain his standing in court in order to avail of these remedies by: (a) his surrender, and (b) his filing of a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment. If the trial court finds that his absence was for a justifiable cause, the accused shall be allowed to avail of the said remedies within 15 days from notice or order finding his absence justified and allowing him the available remedies against the judgment of conviction.[17]

Thus, petitioners' mere filing of notices of appeal through their new counsel, therein only explaining their absence during the promulgation of judgment, cannot be considered an act of surrender, despite the fact that said notices were filed within 15 days from September 28, 2007, the purported date when their new counsel personally secured a copy of the judgment of conviction from the RTC. The term "surrender" under Section 6, Rule 120 of the Rules of Court contemplates an act whereby a convicted accused physically and voluntarily submits himself to the jurisdiction of the court to suffer the consequences of the verdict against him. The filing of notices of appeal cannot suffice as a physical and voluntary submission of petitioners to the RTC's jurisdiction. It is only upon petitioners' valid surrender, and only after proper motion, that they can avail of the remedy of appeal. Absent compliance with these requirements, their notices of appeal, the initiatory step to appeal from their conviction, were properly denied due course.

Even if petitioners' notices of appeal were given due course, the CA would only be constrained to dismiss their appeal. This is because petitioners, who had standing warrants of arrest but did not move to have them lifted, are considered fugitives from justice. Since it is safe to assume that they were out on bail during trial, petitioners were deemed to have jumped bail when they failed to appear at the promulgation of their sentence. This is a ground for dismissal of an appeal under Section 8, Rule 124 of the Rules of Court, which 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 officio.

The Court of Appeals may also, upon motion of the appellee or motu proprio, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.[18]

Once an accused escapes from prison or confinement, jumps bail (as in the case of petitioners), or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.[19]

What is more, the judgment of conviction against petitioners had already acquired finality. Under Section 6, Rule 120 of the Rules of Court, they had only 15 days from the date of promulgation of judgment within which to surrender and to file the required motion for leave of court to avail of the remedies against the judgment. As the judgment was promulgated on September 3, 2007, petitioners had only until September 18, 2007 to comply with the mandatory requirements of the said rule.

This Court has invariably ruled that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of 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.[20]

WHEREFORE, the petition is DENIED. The Resolutions dated April 30, 2008 and August 1, 2008 of the Court of Appeals in CA-G.R. SP No. 103224 are AFFIRMED. Costs against petitioners.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Rollo, pp. 3-22.

[2] Per Associate Justices Rebecca de Guia-Salvador, Vicente S.E. Veloso, and Apolinario D. Bruselas, Jr.; id. at 28.

[3] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso, concurring; id. at 30-32.

[4] Also known as PO3 Dan Firmalino in other documents.

[5] Per the Information for Robbery (Extortion); id. at 77-78.

[6] Id. at 80-94.

[7] Notices of Appeal of Doroja and Villena, respectively; id. at 63-64 and 66-67.

[8] Id. at 57-58.

[9] As mentioned in the RTC Order dated February 8, 2008; id. at 60.

[10] Id. at 69-73.

[11] Id. at 60-62.

[12] Id. at 61-62.

[13] Id. at 33-48.

[14] Supra note 2.

[15] Supra note 3.

[16] Emphasis supplied.

[17] People v. De Grano, G.R. No. 167710, June 5, 2009, 588 SCRA 550, 570, citing Pascua v. Court of Appeals, 401 Phil. 350, 363 (2000).

[18] Emphasis supplied.

[19] Estrada v. People, 505 Phil. 339, 352 (2005), citing People v. Mapalao, et al., 274 Phil. 354, 363 (1991).

[20] De Guzman v. People, G.R. No. 167492, March 22, 2007, 518 SCRA 767, 771-772, citing Balgami v. Court of Appeals, 487 Phil. 102, 115 (2004).

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