PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. FRANCISCO TARUC @ TARUC, ACCUSED-APPELLANT.R E S O L U T I O N

G.R. No. 185202. February 18, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, as amended, assailing the Decision[1] of the Court of Appeals dated 27 February 2008 in CA-G.R. CR H.C. No. 01638 entitled, People of the Philippines v. Francisco Taruc @ Taruc, which affirmed with modification the Decision dated 29 June 2005 of the Regional Trial Court (RTC) of Bataan, Branch 3, in Criminal Case No. 8010 for murder.

Accused-appellant Francisco Taruc was charged in Criminal Case No. 8010 before the RTC of Bataan, Branch 3, with the crime of murder in connection with the death of Emelito Sualog.

The Information reads:

> That on or about November 8, 1998 at Brgy. Puting Buhangin, Orion, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack , assault and use personal violence upon Emelito Sualog @ Elmer, by then and there shooting him with a Celiber (sic) 45 on the different parts of his body, thereby inflicting upon him mortal wounds which were the direct and immediate cause of his death, thereafter, to the damage and prejudice of the heirs of the said victim.[2]

Upon arraignment on 25 April 2005, accused, duly assisted by a lawyer from the Public Attorney's Office (PAO),[3] pleaded not guilty to the crime charged.

After trial on the merits, the RTC on 29 June 2005 rendered a Decision[4] convicting the accused, the decretal portion of which reads:

> WHEREFORE, accused FRANCISCO TARUC is found GUILTY beyond reasonable doubt as principal by direct participation pf the crime of MURDER, defined and penalized under Article 248 of the Revised Penal Code, and with the attending aggravating circumstance of treachery, is hereby sentenced to suffer the penalty of DEATH.
>
> Accused Francisco Taruc is likewise ordered to pay the heirs of the victim Emelito Saulog the amounts of P49,225.00 in actual damages, P50,000.00 in civil indemnity and P30,000.00 in moral damages.
>
> Issue warrant of arrest against accused Francisco Taruc that he may serve the sentence imposed against him.[5]

The case was brought to the Court of Appeals for automatic review pursuant to A.M. No. 00-5-03-SC[6] where it was docketed as CA-G.R. CR No. 01638.

On 13 January 2006, accused-appellant, through the PAO, filed a Motion for Extension of Time to File Appellant's Brief.[7]

Considering that the Notice to File Brief addressed to accused-appellant was returned to the appellate court with postal notation "moved out," the Court of Appeals directed accused-appellant's counsel to furnish it with the present and complete address of his client within five days from notice.

In compliance, the PAO lawyer concerned informed[8] the Court of Appeals that accused-appellant escaped from prison on 23 August 2002. Said PAO lawyer claimed that he had no means of knowing the current whereabouts of the accused-appellant. Thereupon, the PAO lawyer asked the Court of Appeals to direct the Warden of the Provincial Jail in Balanga, Bataan, to file a certification as to the accused-appellant's escape.

On 20 February 2006, the Court of Appeals required[9] the Warden of the Bataan Provincial Jail to comment on the afore-stated information relayed by the PAO lawyer.

On 6 March 2006, Ropadolfo Fabros Torcuato, Sr., Officer-in-Charge (OIC), Warden of the Bataan Provincial Jail, conveyed[10] to the appellate court that accused-appellant was indeed committed to said jail on 10 November 2000 but escaped at about 11:00 p.m. on 23 August 2002.

On 23 March 2006, notwithstanding the escape of accused-appellant from prison, the Court of Appeals granted PAO's Motion for Extension of Time to File Appellant's Brief, in view of the ruling of the Supreme Court in People v. Flores,[11] making the review of death penalty cases mandatory. The period of extension granted had lapsed without the accused-appellant filing his brief; thus, the Court of Appeals required the PAO to show cause why the latter should not be held in contempt for failing to file the same.[12]

The Court of Appeals found the explanation valid, and accepted the briefs of both the appellant and the appellee, and considered the case submitted for decision.

On 27 February 2008, the Court of Appeals rendered a Decision affirming with modification the Decision of the RTC, the dispositive portion of which reads:

> WHEREFORE, the Decision of the Regional Trial Court, Branch 3, City of Balanga, Bataan in Criminal Case No. 8010 is AFIRMED WITH MODIFICATIONS. The accused-appellant Francisco Taruc, is found guilty beyond reasonable doubt of murder qualified by treachery, defined in Article 248 of the Revised Penal Code, as amended by Republic Act No. 7659. In view of R.A. No. 9346, the modification of the penalty imposed by the trial court from death to reclusion perpetua is ordered.
>
> The accused-appellant Francisco Taruc is likewise ordered to pay the heirs of the victim, Emelito Sualog, Fifty Thousand Pesos (P50,000.00) as civil indemnity ex delicto; Forty-Nine Thousand Two Hundred Fifty Five (P49,255.00) as actual damages; Fifty Thousand Pesos (P50,000.00) as moral damages and Twenty-Five Thousand Pesos (P25,000.00) as exemplary damages. Costs against the accused-appellant.

On 13 March 2008, accused-appellant, still represented by the PAO, filed a Notice of Appeal[13] stating that he was appealing the Decision of the Court of Appeals to the Supreme Court on questions of law and fact. And on 29 April 2008, the Court of Appeals gave due course to accused-appellant's appeal and directed its Records Division to forward the rollo and records of the case to the Supreme Court.[14]

Hence, this Petition.

As may be gleaned from the records, before the prosecution witness Randy Espina could be cross-examined,[15] accused-appellant escaped from the Bataan Provincial Jail on 23 August 2002. Thus, the RTC considered the act of the accused as a waiver to cross-examine said witness. Thereafter, the trial court promulgated a judgment of conviction while accused-appellant was at large. He remains at large even while his counsel continues to file various pleadings on his behalf before the RTC, the Court of Appeals, and this Court.

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Given that the accused-appellant escaped from jail and eluded arrest until the present, the issue of whether he has lost his right to appeal his conviction inexorably ensues.

An accused is required to be present before the trial court at the promulgation of the judgment in a criminal case. If the accused fails to appear before the trial court, promulgation of judgment shall be made in accordance with Rule 120, Section 6, paragraphs 4 and 5 of the Revised Rules of Criminal Procedure, to wit:

> 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. (Emphasis supplied.)

Consistently, Rule 124, Section 8, paragraph 2 of the same Rules allows the Court of Appeals, upon motion of the appellee or motu proprio, to dismiss the appeal of the accused-appellant who eludes the jurisdiction of the courts over his person, viz:

> 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.
>
> 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. (Emphasis supplied.)

In allowing the dismissal of the appeal of the accused-appellant under the circumstances identified by the foregoing rule, the Court, in People v. Mapalao,[16] explained that:

> [O]nce an accused escapes from prison or confinement or jumps bail or flees to a foreign country, he loses his standing in court and 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.

Although Rule 124, Section 8 particularly applies to the Court of Appeals, it has been extended to the Supreme Court by Rule 125, Section 1 of the Revised Rules of Criminal Procedure, which reads:

> SECTION 1. Uniform procedure. - Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original and in appealed cases shall be the same as in the Court of Appeals.

It is indisputable that accused-appellant herein, by escaping from jail, was not present at the promulgation by the RTC of its Decision dated 29 June 2005 in Criminal Case No. 8010, finding him guilty of the crime of murder. Accused-appellant failed to surrender and file the required motion within 15 days from the promulgation of the RTC Decision. This alone already deprived him of any remedy against said judgment of conviction available under the Revised Rules of Criminal Procedure, including the right to appeal the same.

The foregoing notwithstanding, the escape of the accused-appellant did not preclude the Court of Appeals from exercising its review jurisdiction, considering that what was involved was capital punishment. Automatic review being mandatory, it is not only a power of the court but a duty to review all death penalty cases.[17]

In this case, considering that the penalty imposed by the trial court was death, the Court of Appeals rightly took cognizance of the case. Upon review by the appellate court, however, it modified the penalty from death to reclusion perpetua.

We now come to the resolution of the case.

By escaping prison, accused-appellant impliedly waived his right to appeal. In People v. Ang Gioc,[18] the Court enunciated that:

> There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him x x x.

The accused cannot be accorded the right to appeal unless he voluntarily submits to the jurisdiction of the court or is otherwise arrested within 15 days from notice of the judgment against him.[19] While at large, he cannot seek relief from the court, as he is deemed to have waived the appeal.[20] Thus, having escaped from prison or confinement, he loses his standing in court; and unless he surrenders or submits to its jurisdiction, he is deemed to have waived any right to seek relief from the court.

By putting himself beyond the reach and application of the legal processes of the land, accused-appellant revealed his contempt of the law and placed himself in a position to speculate, at his pleasure on his chances for a reversal. In the process, he kept himself out of the reach of justice, but hoped to render the judgment nugatory at his option.[21] Such conduct is intolerable and does not invite leniency on the part of the appellate court.[22]

Accused-appellant, in the case at bar, has remained at large for most of the proceedings before the RTC, as well as for the entirety of the pendency of his appeal before the Court of Appeals, and even until now when his appeal is pending before this Court. He cannot so audaciously hope that his appeal before this Court would succeed. He only hopes in vain.

WHEREFORE, the appeal is dismissed. Let the records of this case be remanded to the trial court for the issuance of the mittimus.

SO ORDERED.

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

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[*] Associate Justice Leonardo A. Quisumbing was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 11 February 2009.

[**] Per Special Order No. 575, Associate Justice Antonio T. Carpio was designated as an additional member in place of Associate Justice Consuelo Ynares-Santiago who is on official leave under the Court's Wellness Program.

[1] Penned by Associate Justice Regalado E. Maambong with Associate Justices Celia C. Librea-Leagogo and Ramon R. Garcia, concurring; rollo, pp. 2-20.

[2] Records, p. 1.

[3] Id. at 16.

[4] CA rollo, pp. 11-14.

[5] Id. at 14.

[6] Sec. 3. How appeal taken. x x x

(d) No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.

x x x x

Sec. 10. Transmission of records in case of death penalty. - In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter.

[7] CA rollo, p. 18.

[8] Id. at 21.

[9] Id. at 26.

[10] Id. at 27.

[11] G.R. No. 170565, 31 January 2006, 481 SCRA 451, 454.

[12] CA rollo, pp. 41-42.

[13] Rollo, p. 107.

[14] Id. at 110.

[15] CA Decion, p. 6; rollo, p. 7.

[16] 274 Phil. 354, 363 (1991).

[17] People v. Esparas, 329 Phil. 339, 345-346 (1996).

[18] 73 Phil 366, 369.

[19] Id.

[20] Id., citing People v. Mapalao, supra note 16.

[21] Francisco, Criminal Procedure (1996, 3[rd] ed.), p. 520.

[22] Id.

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