

GREGORIO RICANA AND EUPEMIA GLORY, PETITIONERS AND APPELLANTS, VS. THE PROVINCIAL WARDEN OF TAYABAS, RESPONDENT AND APPELLEE.

G.R. No. 33410. August 08, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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This is an appeal by the petitioners, Gregorio Ricana and Eufemia Glory, from the judgment of the Court of First Instance of Tayabas denying the writ of habeas corpus prayed for by them against the warden of the provincial jail of Tayabas.

In support of their appeal, the appellants assign the following alleged errors as committed by the court below in its judgment, to wit:

"1. The lower court erred in holding that the notice of appeal presented by the petitioners in the justice of the peace of Macalelon, Tayabas, does not fulfill the requisites provided in section 43 of the General Orders, No. 58.

"2. The lower court also erred in holding that the imprisonment of the petitioners in the provincial jail of Tayabas is legal.

"3. The lower court erred in denying the petition of the petitioners for a writ of habeas corpus."

It appears from the petition filed by the petitioners and from the respondent's answer that the former had been accused of the theft of coconuts and several bunches of bananas, the total value of which amounted to T7, in the justice of the peace court of Macalelon, Tayabas, on February 6, 1930. On February 17 of the same year, they were found guilty as charged, and sentenced to four months and twenty-one days of arresto mayor, and to indemnify the offended party in the sum of P7. Although it does not appear in the register of the justice of the peace court, the petitioners allege that they verbally announced their intention to appeal to the Court of First Instance of Tayabas, and an appeal bond was fixed by the justice of the peace at P600; the forms prescribed therefor were subscribed by the petitioners and their bondsmen on February 18, 1930, by virtue of which the petitioners were temporarily released. 'Said appeal bond does not appear to have been approved by the proper justice of the peace. On March 17, 1930, about thirty days from the rendition of the judgment, the said justice of the peace issued a subpoena, enjoining the two accused, the herein petitioners to appear before him for the compliance of the judgment rendered, as their intention to appeal was not perfected within the period provided by law. The petitioners were detained in the municipal jail of Macalelon for several days, until they were transferred

to the provincial jail of Tayabas as provincial prisoners. From the latter place they petitioned for the writ of habeas corpus now under consideration.

In regard to the first assignment of error, the English text of the pertinent part of section 43 of General Orders, No. 58, as amended by section 34 of Act No. 1627 and section 1 of Act No. 2677, provides as follows:

"* * * The convicted party may appeal from any final judgment of a justice of the peace in a criminal cause to the Court of First Instance by filing a notice of appeal with such justice within fifteen days after the entry of judgment. Upon such notice being so filed, the justice shall forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, * * *."

And the English text of section 45 of General Orders, No. 58 states:

"Sec. 45. An appeal shall be taken by filing with the clerk of the court in which the judgment or order was rendered, or with such court, a notice stating the appeal, and by serving a copy thereof upon the adverse party or his attorney."

In *United States vs. Tenorio* (37 Phil., 7), this court laid down the following ruling:

"It has been held in numerous cases that an appeal in criminal causes must be perfected in the manner and form prescribed in section 45 of General Orders No. 58. A recital in the appeal that a notice of appeal has been served and filed is no evidence that an appeal has been taken. The notice of appeal must be served and filed. When no notice of appeal is given, in writing, or no record that any was given appears in the Supreme Court, the cause will be stricken from the calendar, there being no appeal. It is elementary law that where the statute points out a particular mode for taking an appeal that mode must be strictly adhered to in order to confer jurisdiction upon the appellate court. It is obvious that giving notice in open court that appellant intends taking an appeal is an essentially different proceeding from filing such notice with the clerk of the court. The word 'filing' as used in the section, can be construed only as requiring a placing or depositing with the clerk of a written notice of intention of taking an appeal."

While it is true that the case just quoted, wherein this court construed the word "filing" as used in the law, to mean the presentation of a written notice of the intention to appeal before the clerk of court, deals with an appeal from a judgment of the Court of First Instance, the self-same word "filing" used in the English text of section 43 in dealing with the manner of giving notice of appeal in justice of the peace courts, can have no other meaning merely because proceedings in justice of the peace courts are summary proceedings.

If section 43 of General Orders, No. 58, had been intended to provide a different manner of giving notice of the intention to appeal from a decision of the justice of the peace, from that given when the appeal is taken from the Court of First Instance, a verb other than "to file" would have been employed to indicate that the notice might be given either verbally or in writing.

As the petitioners herein only gave verbal notice of their intention to appeal, they did not comply with the requirements of the law, and, therefore, their alleged notice of intention to appeal did not produce the desired legal effect; and, fifteen days, as fixed by the law for perfecting an appeal, having elapsed without their having observed the legal formality, the decision of the justice of the peace of Macalelon became final and executory.

The two remaining assignments of error, being mere consequences of the first, need not be discussed.

Wherefore, finding no error in the judgment appealed from, the same is affirmed in its entirety, with costs against the appellants. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns and Romualdez, JJ., concur.

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