

EMILIO YANGO, PETITIONER, VS. BUENAVENTURA OCAMPO, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, RESPONDENT.

G.R. No. 37171. July 18, 1932

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for the writ of mandamus filed by Emilio Yango against Buenaventura Ocampo, Judge of the Court of First Instance of Nueva Ecija, requiring him to accept the notice of appeal presented by the petitioner, and to give it due course, in the meantime staying the execution of the judgment appealed from.

The facts upon which the petitioner bases his application, and which are not disputed by the respondent are as follows:

On February 12, 1932, the petitioner Emilio Yango was personally notified in the Court of First Instance of Nueva Ecija of the sentence of one year and one day of imprisonment, with P1,500 indemnity and subsidiary imprisonment in case of insolvency, imposed upon him in criminal case No. 7114 of said court for the crime of estafa.

On February 26, 1932, the petitioner aforementioned, a Manila resident, deposited in the post office of this city registered envelope No. 73636 addressed to the clerk of the Court of First Instance of Nueva Ecija containing a notice of appeal from the aforesaid sentence, a copy of the notice being attached to the present proceedings as annex A.

On February 27, 1932, at about 10.30 in the morning, the registered envelope containing the petitioner's notice of appeal was received in the post office of Cabanatuan, Nueva Ecija, and at once deposited by the postmaster in post-office box No. 63, rented by the Court of First Instance of Nueva Ecija, according to the sworn statement signed by the postmaster of Cabanatuan, Nueva Ecija, annex B.

The clerk of the Court of First Instance of Nueva Ecija did not collect the mail in the post-office box until March 1, 1932. Among the correspondence in the box on that day was the registered envelope containing the petitioner's notice of appeal, and it was marked with the court's stamp with the date of March 1, 1932.

There is no question, then, that the registry notice referring to the notice of appeal of the petitioner, Emilio Yango, was deposited by the postmaster of Cabanatuan, Nueva Ecija, on the morning of February 27, 1932, in post-office box No. 63 rented by the Court of First Instance of Nueva Ecija, within the statutory period of fifteen days.

The only question to decide, therefore, is whether or not the deposit of the registry notice referring to the appeal of said petitioner in the post-office box of the Court of First Instance of Nueva Ecija amounts to the delivery to or filing of said notice of appeal with the clerk of said court, in accordance with the provision of section 45 of General Order No. 58.

Section 45 of General Order No. 58 provides the following:

"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."

This court, interpreting the word "filing" used in that section said:

"* * * The word 'filing', as used in the section quoted, can be construed only as requiring a placing or depositing with the clerk of a written notice of intention to take an appeal." (United States vs. Tenorio, 37 Phil., 7.)

The law does not say that the filing of notice of appeal must be done in person; neither has this court so interpreted the law. Consequently said filing may be done by any of the means now employed for the purpose of delivering correspondence to the addressee, one of them being the mails.

The petitioner being a resident of the City of Manila, the surest and cheapest means of filing the notice of appeal from the sentence of conviction imposed upon him by the Court of First Instance of Nueva Ecija was to send it by mail in any of the forms established by the Bureau of Posts. Since he had to know for certain whether the clerk of the Court of First Instance of Nueva Ecija had received the notice of appeal, he chose to have it registered, for then the addressee would have to give a receipt for the registered letter.

In renting post-office box No. 63 for the exclusive use of its official correspondence, the Court of First Instance of Nueva Ecija extended, so to speak, its office to that of the post office of Cabanatuan. Since the clerk of court was the head of said office, with the key to the post-office box in his possession, and he was the only one authorized to collect or to have the contents collected, he had the control of said box. If this be so, the deposit of the registry notice referring to the appeal in the post-office box of the court of which the clerk of said court was in charge, amounted to filing said notice with that clerk, and was a substantial compliance with the law.

For the foregoing considerations, we are of opinion and so hold that a notice of appeal in a criminal case sent by registered mail and addressed to the clerk of the court having cognizance of the case, and deposited during office hours in the post-office box of said court, amounts to filing it with the clerk thereof and constitutes a substantial compliance with the provision contained in section 45 of General Order No. 58.

Wherefore, the petitioner's notice of appeal having been filed with the clerk of the Court of First Instance of Nueva Ecija within the period of fifteen days, and it being a ministerial duty of the respondent judge to accept said notice and let the appeal take its course, it is ordered that the same be done, and the execution of the sentence stayed, without special finding of costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Abad Santos, Hull, Vickers, Imperial, and Butte, JJ., concur.

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