

TIBURCIO RUGES, PETITIONER AND APPELLEE, VS. TERESO M. DOSDOS ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. 46341. November 10, 1939

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by certiorari wherein it is asked that this court review the decision rendered by the Second Division of the Court of Appeals in case CA-G. R. No. 2463, Tiburcio Ruges, petitioner and appellee, vs. Tereso M. Dosdos, as Judge of the Municipal Court of Cebu, and Julian Alcantara, as Provincial Warden of Cebu, respondents and appellants, which reversed that of the Court of First Instance of Cebu, assigning the following errors of law allegedly committed by the said Court of Appeals:

"In not holding that section 45 of Act No. 58 (Charter, City of Cebu) which requires appeals from the municipal court of the City of Cebu in criminal cases to be filed with said court in writing within six o'clock post-meridian of the day after rendition and entry of judgment, is unconstitutional as being a class legislation, discriminatory, unjust and absurd; and

"2. In not holding that the resolution of this Honorable Supreme Court dated March 24, 1937 permitting oral appeals refers not only to justice of the peace courts but also municipal courts."

The facts found established by the Court of Appeals upon which its decision was based, are the following:

"On October 8, 1937, Tiburcio Ruges was sentenced, for physical injuries, to two months and one day of arresto mayor in the municipal court of Cebu. According to the municipal judge, he was informed of such sentence on the same day. Eleven days afterwards said Ruges, who was then in jail, filed habeas corpus proceedings in the Court of First Instance of Cebu, alleging that he had appealed from that judgment for physical injuries to the Court of First Instance of Cebu and was willing to file a bond. The respondents, the judge of the municipal court of Cebu and the provincial warden, replied that the judgment had become final; that the petitioner had not appealed therefrom. After hearing, said court found that Ruges had appealed verbally on the same day he was informed of the decision, and that, consequently, his appeal was perfected in due time. The municipal judge was ordered to forward the criminal case. The court also said that the petitioner could file a bond for his provisional liberty."

The only question, therefore, to decide in this petition for review is one of law, namely, whether the notice of intention to appeal from a judgment of conviction in a criminal case, rendered by the Municipal Court of Cebu, should be made in writing or verbally.

Section 45 of Commonwealth Act No. 58, known as the Charter of the City of Cebu and approved on October 20, 1935, provides as follows:

"SEC. 45. Procedure on appeal from Municipal Court to Court of First Instance.—An appeal shall lie to the Court of First Instance in all cases where fine or imprisonment, or both, is imposed by the Municipal Court. The party desiring to appeal shall, before six o'clock postmeridian of the day after the rendition and entry of the

judgment by the Municipal Court, file with the clerk of the court a written statement that he appeals to the Court of First Instance. The filing of such statement shall perfect the appeal. The judge of the court from whose decision appeal is taken shall, within five days after the appeal is taken, transmit to the clerk of the Court of First Instance a certified copy of the record of proceedings and all the original papers and process in the case, and the clerk of the Court of First Instance shall docket the appeal in that court. A perfected appeal shall operate to vacate the judgment of the Municipal Court, and the action, when duly entered in the Court of First Instance, shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced. Pending an appeal, the defendant shall remain in custody unless released in the discretion of the judge of the Municipal Court or of the judge of the Court of First Instance, upon sufficient bail, in accordance with the rules and regulations now or hereinafter enforced, to await the judgment of the appellate court."

This court, by resolution of March 24, 1937, adopted under the power conferred upon it by Article VIII, Section 13 of the Constitution, amended section 43 of the Code of Criminal Procedure, entitled General Orders No. 58; as follows:

"SEC. 43. Appeals.—From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Supreme Court as hereinafter prescribed. 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 notifying such justice thereof, verbally or in writing, within fifteen days after the entry of judgment. Upon such notice being given, the justice shall enter the same in the docket and forward to the Court of First Instance all original papers and a transcript of all docket entries in the cause, and the provincial fiscal shall thereupon take charge of the cause in behalf of the prosecution: Provided, however, That the period of fifteen days within which the accused may give his notice of appeal either from a judgment of a justice of the peace or from a judgment of a Court of First Instance shall be interrupted from the time a motion for new trial is filed."

The amendatory resolution above-quoted is subsequent to the said Commonwealth Act No. 58, and was adopted in the exercise of the power which section 13, Article VIII of the Constitution of the Philippines confers on this Court to promulgate rules concerning pleadings, practice and procedure in all courts. In providing in said resolution that "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 notifying such justice thereof, verbally or in writing", this Court used the phrase "justice of the peace" in the sense of "lower court", which includes municipal courts, thereby impliedly amending the said section 45 of Commonwealth Act No. 58 as to the manner and period of making the notice of the intention to appeal.

The verbal notice of intention to appeal from the judgment of conviction of the Municipal Court of Cebu, filed by the herein petitioner and appellee Tiburcio Ruges, was, therefore, in accordance with law and the appeal should have been given due course; and the decision of the Court of First Instance of Cebu, rendered in the petition for habeas corpus filed by the said defendant Tiburcio Ruges against the Honorable Tereso M. Dosdos, Municipal Judge of Cebu, and Julian Alcantara, provincial warden of Cebu, which orders the respondent Municipal Judge to give due course to the appeal taken by the petitioner, is likewise in accordance with law.

In view of the foregoing considerations, we are of the opinion and so hold, that the notice of intention to appeal from a judgment rendered by the Municipal Court of Cebu may be made verbally or in writing.

Wherefore, the petition is granted, and the appealed decision reversed, without special pronouncement as to the costs.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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