

ROMAN SANTOS, JR. AND HERMINIA SANTOS, PETITIONERS, VS. THE HON. COURT OF APPEALS AND FRANCISCO S. NIGOS, RESPONDENTS.*G.R. No. 56614. July 28, 1987*

Ponente: TEEHANKEE, C.J.

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The Court sets aside respondent appellate court's* decision, since it acted beyond its jurisdiction in entertaining respondent's special civil action to give due course to an appeal from a judgment that had long become final and executory. Respondent's failure to timely seek a review of the trial court's judgment through a petition for certiorari under R.A. No. 5440 as the correct mode of appeal, (and not by the discarded notice and record on appeal) notwithstanding the trial court's express directive to do so, rendered the judgment final and executory with the lapse of the 30-day statutory period for appeal. The special civil action filed almost a year later by respondent with the appellate court could not be availed of to take the place of a lost appeal. It is well settled that as long as a court acts within its jurisdiction, any alleged errors committed in the exercise thereof will amount to nothing more than errors of judgment which are reviewable only by timely appeal and not by a special civil action of certiorari filed long after the judgment has become final and executory.

On August 9, 1974, a passenger jeepney driven by Freddie Obillo hit petitioners' son in Quezon City. The victim was rushed to a hospital where he later died. The driver was charged and convicted in the City Court of Quezon City. After the decision became final and executory, the petitioners tried and failed to satisfy the civil liability imposed on the driver. They then asked private respondent Francisco S. Nigos, as the owner and operator of the passenger jeepney, to satisfy the subsidiary civil liability of Freddie Obillo in accordance with the provisions of Article 103 of the Revised Penal Code. In view of private respondents' refusal, petitioners sued him in the Court of First Instance of Quezon City. Instead of filing an answer, private respondent filed a motion to dismiss, challenging the constitutionality of Article 103 of the Revised Penal Code. This motion having been denied, he filed an answer denying that Freddie Obillo was the authorized driver of the passenger jeepney at the time of the accident and disclaimed therefore subsidiary civil liability. On October 17, 1978, the trial court[1] rendered a decision in favor of the herein petitioners, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs adjudging the defendant to pay the plaintiffs:

“(a) the sum of P12,000.00 for the death of the deceased; P6,000.00 for actual damages; P10,000.00 for loss of earnings; and P10,000.00 for moral damages the total of which is P40,000.00 with interest thereon at the rate of 12% per annum from the filing of the complaint until payment in full is made;

“(b) to pay the amount of P2,000.00 by way of attorney's fee, plus costs of suit.”

On November 27, 1978, private respondent filed his notice of appeal, depositing the amount of P120.00 as appeal bond and submitted his Record on Appeal for approval by the trial court. On August 8, 1979, the trial court[2] denied approval of the Record on Appeal on the ground that the remedy available to private respondent was a

petition for review on certiorari to the Supreme Court instead of the ordinary appeal, considering that private respondent raised only a question of law in his appeal. On October 3, 1979 the trial court granted, on motion of petitioners, the issuance of the writ of execution. On June 19, 1980, a writ of execution was issued and the Sheriff levied on the properties of private respondent and scheduled the auction sale on July 2, 1980 at 2:00 p.m.

Private respondent then went to the Court of Appeals on a petition for certiorari claiming that the acts of the trial court were contrary to law and challenged the validity of the trial court's orders denying approval of the record on appeal and issuing the writ of execution. On the scheduled date of auction sale, respondent Court of Appeals issued a temporary restraining order enjoining the Sheriff from conducting the said sale on July 2, 1980, until further orders. On March 19, 1981, respondent Court of Appeals rendered its decision, the dispositive portion of which states:

"WHEREFORE the writ of certiorari is granted and judgment is hereby ordered declaring that the decision rendered on October 17, 1978 by the respondent court, presided over by now retired Judge Augusto Valencia and the Order dated October 3, 1979 granting the issuance of the writ of execution and the Notice of Sheriff Sale, annexes F, I and J rendered by the respondent judge Rodolfo Ortiz are likewise declared null and void, and are therefore set aside and/or nullified.

"It is further ordered that the records of this case be remanded to the court of origin, the Court of First Instance of Rizal, Branch XXXI, in Quezon City for further proceedings. The restraining order issued on July 2, 1980 is hereby made permanent. Without any pronouncement as to costs.

"SO ORDERED."

The Court, after considering respondent's comment and the appellate court's judgment, finds merit in the petition.

1. Going back to the basics, the trial court's judgment had long become final and executory in August, 1979 by virtue of respondent's failure to timely appeal therefrom by the mode of petition for review on certiorari under Republic Act No. 5440[3] long in force and effect since its approval on September 9, 1968, notwithstanding that the trial court had expressly called his attention that his remedy was by filing with the Court such a petition for review.
2. The trial court correctly disapproved respondent's proffered appeal bond by way of an ordinary appeal. Republic Act No. 5440 had long superseded Rule 42 and Section 1, Rule 122 of the Rules of Court on direct appeals from the court of first instance directly to the Supreme Court in civil and criminal cases. (In civil cases, the cited Act had limited in Section 3 thereof, amending Section 17 of the Judiciary Act, the right of appeal to this Court to the three specific cases therein enumerated.) In all other cases, the cited Act restated the provisions of Rule 42 that direct appeals to this Court from the trial court on questions of law had to be through the filing of a petition for review on certiorari, wherein this Court could either give due course to the proposed appeal or deny it outright to prevent the clogging of its docket with unmeritorious and dilatory appeals.
3. Respondent has no one to blame but himself. By not filing the petition for review on certiorari with this Court as mandated by law and directed by the trial court, he thereby waived his right to seek a review of the decision of the trial court. Instead of following promptly the trial court's directive of taking the proper recourse with this Court, he allowed the trial court's judgment to become final and executory with the lapse of the 30-day statutory period to file an appeal. He is now precluded from questioning the validity of the trial court's final and executory judgment and order of execution after having failed all this time (almost a year had lapsed from the time he received the order of the trial court of August 8, 1979 to the time he filed his special civil action for certiorari in the Court of Appeals on or about the end of June, 1980) to file such petition for review.
4. Respondent cannot revive a right which he had irretrievably lost through his gross inaction. On this score alone,

the respondent appellate court should have dismissed outright private respondent's belated petition for certiorari. As this Court held in *Agricultural and Industrial Marketing Inc. v. Court of Appeals*,^[4] "it is beyond question that the perfection of an appeal, or the filing of petition for review, within the statutory or reglementary period is mandatory and jurisdictional; and that failure to so perfect an appeal renders final and executory the questioned decision and deprives the appellate court of jurisdiction to entertain appeal. The lapse of the appeal period deprives the courts of jurisdiction to alter the final judgment, and the prevailing party becomes entitled as a matter of right to its execution, and for the court, it becomes its ministerial duty to order the execution of judgment."

5. Respondent Court of Appeals, in rendering its questioned judgment, committed grave abuse of discretion and acted without jurisdiction. A petition for certiorari, as the one filed with it by respondent, must be based on jurisdictional grounds against the trial court's judgment because, as long as the trial court acted with jurisdiction, any error committed by it in the exercise thereof will amount to nothing more than an error of judgment which is reviewable only by timely appeal. A special civil action of certiorari, filed long after the trial court's judgment has become final and executory, cannot be availed of as a substitute for a lost appeal. In *De la Cruz v. Intermediate Appellate Court*,^[5] the Court held once more: "Time and again We have dismissed petitions for certiorari to annul decisions or orders which could have, but have not, been appealed. Where the Court has jurisdiction over the subject matter, as respondent judge has in this case, the orders or decision upon all questions pertaining to the cause are orders or decision within its jurisdiction, and however erroneous they may be, they cannot be corrected by certiorari. This special civil action does not lie where the remedy by appeal has been lost because said remedy cannot take the place of an appeal."^[6]

6. Finally, as may be seen from respondent appellate court's judgment itself, respondent had filed with it the petition on the claim that "there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law except this petition for certiorari x x x (and) that these acts of the (trial) court are all contrary to law," and that petitioner sought "to nullify only the order of the (trial) court dated August 8, 1979 [denying his proffered appeal] and the writ of execution dated June 19, 1980." In fine, what respondent sought of the appellate court was to set aside the questioned orders and to allow its appeal to be given due course. But respondent court went beyond this into the very merits of the lost appeal and resolved the case in favor of respondent without any appeal being before it by nullifying even the trial court's judgment on the pleadings, justifying its action on the ground that it was contrary to law and respondent had prayed in his petition "for any relief just and equitable in the premises."^[7] As already stressed hereinabove, this merely compounded its acts without and in excess of jurisdiction. The trial court's judgment has long become final and executory. Appellate court could no longer resuscitate respondent's lost right of appeal much less overturn and set aside the trial court's final and executory judgment.

ACCORDINGLY, the petition is granted and the decision of respondent Court of Appeals dated March 19, 1981 is hereby set aside. Let the case be remanded to the Quezon City Regional Trial Court, successor of the Court of First Instance, for enforcement of the writ of execution of the judgment rendered in favor of petitioner. This decision is immediately executory.

SO ORDERED.

Narvasa, Cruz, Paras, and Gancayco, JJ., concur.

* First Division then composed of Justices Ramon Gaviola, Milagros German, ponente, and Lino M. Patajo.

[1] Presided by Judge Augusto Valencia

[2] Presided by Judge Rodolfo A. Ortiz after the retirement of Judge Valencia

[3] Section 3 of R.A. 5440 provides: "The Supreme Court shall provide by rule for the procedure governing petitions for writs of certiorari to review judgments mentioned in Section seventeen of Republic Act Numbered Two hundred ninety-six, as amended by this Act and the effect of the filing thereof on the judgment or decree sought to be reviewed. Until the Supreme Court provides otherwise, said petitions shall be filed within the period fixed in the rules of court for appeals in criminal or civil cases or special civil actions or special proceedings, depending upon the nature of the case in which the judgment or decree sought to be reviewed, was rendered; the filing of said petition shall stay the execution of the judgments sought to be reviewed; and the aforesaid petitions shall be filed and served in the form required for petitions for review by certiorari of decisions of the Court of Appeals."

[4] 118 SCRA 49

[5] 134 SCRA 417

[6] See also *People v. Villanueva*, 110 SCRA 465 to same effect.

[7] *Rollo*, pp. 17-18

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