

**WILFREDO ADVINCULA AND EDUARDO VILLAFLOR, PETITIONERS,
VS. THE HONORABLE INTERMEDIATE APPELLATE COURT (THEN
HON. COURT OF APPEALS) AND THE HONORABLE SOLICITOR
GENERAL, RESPONDENTS.**

G.R. No. 75310. January 16, 1987

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

For review on Certiorari is respondent Appellate Court's (1) Resolution, dated 30 September 1983, in AC-G. R. No. 23678-CR, disallowing petitioners' appeal for failure to take the necessary steps for the completion of the record within the period specified by said Court, and (2) the Resolution, dated 8 November 1984, denying petitioners' Motion for Reconsideration.

On 9 January 1979, petitioners were convicted by the then Court of First Instance of Leyte, Branch IV, at Palo, Leyte, in Criminal Case No. 763, of two (2) crimes of Rape and sentenced in each case to ten (10) years and one (1) day of prision mayor to seventeen (17) years and one (1) day of reclusion temporal.[1] After denial of a Motion for New Trial by said Court, they filed a Notice of Appeal on 8 August 1979. In an Order dated 31 August 1979, the Trial Court directed the Clerk of Court to transmit to the Appellate Court the complete record of the case including the transcript of stenographic notes within five days from said date.

However, due to the loss of some of the stenographic notes, the Appellate Court, in a Resolution dated 11 January 1982, and upon previous comments obtained from petitioners and the Solicitor General, ordered the remand of the case to the Trial Court for the retaking of the testimony of defense witness, Father Bartolome Pastor, contained in the lost transcript of stenographic notes of stenographer Juliet Parce, and for the identification of Exhibits "G", "H", "4" and "4-A" of the prosecution and the defense, respectively.

The required testimony was retaken by the Trial Court on 27 April 1982 and on 1 June 1982, and forwarded together with the records by Deputy Clerk of Court of the Court of First Instance of Leyte, Atty. Fortunato P. Araullo, on 8 June 1982, to the Appellate Court addressed to Elsa de Guzman, Third Division Clerk of the latter Court.

On 17 May 1983, the Appellate Court required petitioners, within 20 days from notice, to take the necessary steps for the completion of the records, otherwise, the appealed would be dismissed in accordance with Section 1(h), Rule 50 of the Rules of Court.[2]

On 30 September 1983, the Appellate Court:

"Acting on the report of the Docket Division that petitioners had not complied with the resolution of May 17, 1983, x x x requiring them to take the necessary steps for the completion of the records (transcripts) that have been pending since 1980, the Court RESOLVED TO DISMISS the appeal pursuant to Section 1(h) of Rule 50 of the Rules of Court."

On 16 November 1983, the Resolution of dismissal became final and executory and entry of judgment was made on 19 December 1983 by the Appellate Court.

On 12 January 1984, petitioners moved for reconsideration of the Order of dismissal arguing that what may have prompted the dismissal was that the retaken testimony of Fr. Pastor, which was forwarded to the Appellate Court, may not have been attached to the records. Commenting thereon, the Solicitor General maintained that the reconsideration sought was too late, entry of judgment having been already made, and the records remanded to the Trial Court.

On 23 July 1984, the Appellate Court issued a Resolution requiring petitioners "to verify and examine if the records are really complete, including the transcripts retaken as ordered by the resolution of January 11, 1982, and to file a manifestation to that effect."

Complying therewith, petitioners' new counsel (the former counsel having died on 26 July 1984) submitted a Certification by the Deputy Clerk of Court of the Trial Court, Fortunato F. Araullo, reading:

"x x x (t)he steno-type notes of former Stenographer Remedios Petilla in Crim. Case No. 763, People of the Philippines vs. Wilfredo Advincula, et al., taken March 5, 1974 could not be found inspite diligent efforts in locating the same by the employee in charge of keeping her notes. With regards to the steno-type notes of stenographer Herminigilda Aguila, her notes were forwarded to her station in Quezon City for transcription. Until date, the same have not been submitted by said stenographer. x x x"[3]

Required to comment thereon, the Solicitor General reiterated his position that the appeal should not be reinstated on the ground that in spite of the Appellate Court's Order to petitioners to take the necessary steps to complete the record, the same was still incomplete in that not only was the transcript of the stenographic notes containing the testimony of Fr. Pastor missing but that the transcript of the stenographic notes taken by stenographers Remedios Petilla and Herminigilda Aguila had neither been transcribed.

On 8 November 1984, respondent Appellate Court found the comment of the Solicitor General well founded and denied petitioners' Motion for Reconsideration, since its Resolution dated 30 September 1983 had already become final and executory.

At issue is the question of whether or not respondent Appellate Court committed grave abuse of discretion in dismissing the appeal.

We are constrained to rule in the affirmative. Petitioners' right to a hearing on appeal has not been accorded full respect.

In all criminal prosecutions the accused shall have the right of appeal in the manner prescribed by law.[4] Because the right to appeal is granted by the statute, it is part of due process of law, denial of which violates the due process clause of the Constitution.[5] Appeal being an essential part of our judicial system, Courts should proceed with caution so as not to deprive a party of the right to appeal.[6]

Section 1 of Rule 50 under which respondent Court dismissed petitioners' appeal merely confers a power and does not impose a duty; and the same is not mandatory but merely directory which thus requires a great deal of circumspection, considering all the attendant circumstances.[7]

It was primarily because of the negligence and lackadaisical attitude of the Court stenographic reporters that the notes of the proceedings were either lost or not transcribed. This nonfeasance should not prejudice the right of the accused-appellants to have their convictions reviewed by a higher Court, especially since it is their liberty which is at stake.

As early as 31 August 1979, the Trial Court directed its Clerk of Court to transmit to the Appellate Court the complete records of the case, including the transcript of stenographic notes within five (5) days therefrom.[8] The Rules impose upon the stenographic reporters the duty to transcribe their stenographic notes of the proceedings, to certify to the correctness of the notes and the transcript thereof and to file the transcripts with the Clerk without unnecessary delay.[9] The Rules further require, upon an appeal being taken, that the Clerk or Judge of the Court with whom the notice of appeal shall have been filed, must, within five (5) days after the filing of the notice, transmit to the Clerk of the Court to which the appeal is taken, the complete record in the case. In fact, the Rules require that the transcript of stenographic notes be also transmitted to the Clerk of the Appellate Court together with the record, or as soon thereafter as possible.[10] It is the Clerk of Court who is primarily responsible for seeing to it that records of appealed cases as well as the transcripts of stenographic notes are properly sent to the Appellate Court without delay; although the party litigants should also see to it that the Court is made aware of any delay in action over their cases.[11]

It devolves upon the Government and not on the defendant to cause to be kept and in case of an appeal by the defendant, to be sent to the Appellate Court, a complete record of the proceedings in the Court of First Instance; and when the record so sent is deficient the appeal will not be dismissed on motion of the Government.[12] When the record sent in a criminal case does not contain all the testimony given in the Court below, and the testimony lacking can not be obtained, the case must be remanded to the Court below for a new trial to the extent of the missing evidence.[13]

The deprivation of petitioners' right to appeal in violation of due process vitiated the final and executory Order of respondent Appellate Court and is a valid ground for setting it aside.[14]

ACCORDINGLY, respondent Appellate Court's Resolutions of September 30, 1983 and November 8, 1984 in AC-G.R. CR No. 23678 entitled "The People of the Philippines, Plaintiff-Appellee, versus, Alfredo Advincula, et al., Accused-Appellants" are hereby SET ASIDE, and said Court is hereby directed to recall the entry of judgment, reinstate the appeal, and take such remedial steps as may be necessary to complete the records either through administrative sanctions or by remanding the case for new trial.

SO ORDERED.

Yap, (Chairman), Narvasa, Cruz, Feliciano, and Gancayco, JJ., concur.

[1] Rollo, p. 77.

[2] An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx

xxx

xxx

(h) Failure of the appellant to take the necessary steps for the correction or completion of the record within the time limited by the court in its order;

[3] Rollo, p. 95.

[4] Section 1(i), Rule 115, 1985 Rules on Criminal Procedure.

[5] Reyes vs. Court of Appeals, 80 SCRA 144 (1977).

[6] Castro vs. Court of Appeals, 123 SCRA 782 (1983).

[7] Reyes vs. Court of Appeals, *supra*.

[8] Rollo, p. 13.

[9] Section 7, Rule 122, 1985 Rules on Criminal Procedure.

[10] Section 8, *ibid*.

[11] Jumalon vs. Montes, 113 SCRA 103 (1982).

[12] U. S. vs. Tan, 4 Phil. 625 (1905).

[13] *Ibid*.

[14] Laxamana vs. Court of Appeals, 87 SCRA 48 (1978).

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