

LUZ E. TAN, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 80812. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for review on certiorari to annul and set aside the Resolution dated October 7, 1987 of the Court of Appeals[1] dismissing petitioner's appeal in CA-G.R. No. 04348 denying the admission of her appellant's brief as well as the Resolution dated November 9, 1987[2] denying petitioner's Motion for Reconsideration.

It appears on record that petitioner was charged before the Regional Trial Court of Manila, Branch XLI in Criminal Case No. 85-34251 for the crime of ILLEGAL RECRUITMENT in violation of Section 1, Presidential Decree No. 1693, further amending Article 38 of Presidential Decree No. 442, as amended or otherwise known as the New Labor Code of the Philippines in an Information which reads:

“That in or about July, 1984, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by falsely representing herself to have the capacity to contract, enlist and recruit workers for employment abroad, did then and there willfully, unlawfully and feloniously, for a fee, recruit and promise employment/job placement to Ronillo Fangon, Danilo Gerardo and Jaime Estillore, Jr., without first securing the required license or authority from the Ministry of Labor and Employment.”[3]

Upon arraignment on April 16, 1985, petitioner pleaded “Not Guilty”.

During trial, the prosecution presented complainants Gerardo and Estillore together with a Philippine Overseas Employment Administration Officer Visitation Carreon as witnesses. However, the defense was not able to present any witness despite several hearings scheduled since December 16 1985. Consequently, on May 14, 1986, the trial court declared petitioner to have lost her right to present her evidence and the case was deemed submitted for decision.

On May 28, 1986, a decision was rendered by the trial court finding petitioner guilty as charged, the dispositive portion of which reads:

“WHEREFORE, judgement is hereby rendered finding accused LUZ E. TAN guilty beyond reasonable doubt for the crime of Illegal Recruitment as defined in Art. 38 and made punishable under Art. 39 of PD 442, otherwise known as the Labor Code of the Philippines, as amended, and hereby sentences the said accused to suffer an indeterminate sentence ranging from four (4) years as minimum to six (6) years eight (8) months as maximum and to pay a fine of TWENTY THOUSAND PESOS (P20,000.00), and to further pay the complainants as follows: (1) to Danilo Gerardo the sum of P10,000.00, and (2) to complainant Jaime Estillore the sum of P12,000.00 as and by way of actual damage[s]. Cost against accused.”[4]

Thereafter, petitioner filed a Notice of Appeal with the Court of Appeals and when she could not file her appellant's brief within the 30-day reglementary period, she moved for and was granted by the appellate court a 90-day extension, or until August 12, 1987, to file the appellant's brief.

On August 4, 1987, petitioner, through her new counsel, filed an Urgent Manifestation and Motion praying that the period for filing the appellant's brief be suspended and that appellant be given five (5) days or until August 9, 1987 within which to file a Motion for New Trial.

On August 18, 1987, the appellate court issued a Resolution denying the aforesaid Manifestation for suspension of the period for the filing of the appellant's brief, but granting the filing of the Motion for New Trial provided that the decision of the trial court had not yet become final on account of petitioner's failure to file her appellant's brief.

On August 24, 1987, petitioner filed her Motion for New Trial which was denied on September 8, 1987.

On September 18, 1987, petitioner filed a Motion for Leave to Admit Appellant's Brief which was denied in the Resolution of October 7, 1987, the pertinent portion of which reads:

“The period for filing the appellant's brief has long expired. In the resolution of August 18, 1987, the Court, taking into account the considerable delay occasioned by the request for extensions of time filed by the accused-appellant, finally resolved to deny further extension of ninety (90) days as requested in her motion dated August 3, 1987. The result is that the decision of the trial court is now final and executory.

“WHEREFORE, the accused-appellant's motion for the admission of the appellant's brief and the decision of the trial court are DENIED.”[5]

Hence, this petition alleging grave abuse of discretion on the part of the appellate court in dismissing petitioner's appeal for her failure to submit her appellant's brief considering that the filing of a motion for new trial automatically suspends the filing of said brief.

The petition is devoid of merit.

The filing of petitioner's motion for new trial in the appellate court does not suspend the period for filing appellant's brief which was due to expire on August 12, 1987. When petitioner filed her motion for new trial, she did not take any step to file her appellant's brief, but simply waited for the resolution of said motion which was subsequently denied by the appellate court. Considering that the appellate court had already denied petitioner's motion for the suspension of the period to file the appellant's brief in its Resolution dated August 18, 1987 and only allowed petitioner to file a motion for new trial provided that the decision of the trial court has not yet become final on account of petitioner's failure to file her appellant's brief, petitioner cannot assume that the filing of the motion for new trial automatically suspended the running of the period within which to file the appellant's brief, since such assumption is not supported by the Rules of Court or any other authority. As correctly pointed out by the appellate court in its Resolution:

“Anyway, the failure of her former counsel to ask for new trial in the court below based on this ground does not constitute accident or excusable neglect. The accused-appellant herself is negligent. Knowing that she had a pending criminal case, it was incumbent upon her to inquire from her counsel what the status of the case was.

“Indeed, we note the tendency of the accused-appellant of constantly changing counsel and putting the blame on him or using this circumstance for delaying the disposition of this case. This motion for new trial based on vague excuses why the matter, which is the subject of the motion, was not taken up in the trial court instead of raising it for the first time in this Court, appears to be just another attempt to further delay this case. As noted in our resolution of August 14, 1987:

““The accused-appellant was given an extension of ninety (90) days within which to file her appellant's brief with warning that no further extension will be entertained except on highly meritorious grounds. Accused?appellant's former counsel, Atty. Joaquin Yuseco, Jr., manifested to the Court that his appearance was limited to “seeking

provisional liberty for the accused-appellant and filing a notice of appeal,” in view of which the Court, in its resolution of March 11, 1987, considered the 30-day original period for filing the appellant's brief to commence from receipt of the notice by the accused-appellant.

““The ninety (90) days extension granted to the appellant, according to her, would expire on August 4, 1987. However, instead of filing the appellant's brief, the accused?appellant now files a new motion, asking for five (5) days from August 4, 1987 within which to file a motion for new trial and for the suspension of the period to file the appellant's brief.

““Considering the delay already incurred in the processing of the accused-appellant's appeal in this case, the Court RESOLVED to DENY the motion for suspension of the appellant's brief. The accused-appellant may, however, file a motion for new trial provided that the decision of the trial court has not become final on account of accused?appellant's failure to file her appellant's brief.’

“WHEREFORE, the motion for new trial is DENIED.”[6]

Indeed, petitioner was grossly negligent and had no one to blame but herself in losing her right to appeal since “the right to appeal is a statutory right and the party who seeks to avail of the same must comply with the requirements of the Rules.”[7] Failing to do so, the right to appeal is lost,[8] as in the case at bar.

WHEREFORE, the petition for certiorari is hereby DISMISSED for lack of merit with costs against petitioner.

SO ORDERED.

Narvasa, C.J.,(Chairman), Padilla, Regalado, and Melo, JJ., concur.

[1] Penned by Justice Vicente V. Mendoza with the concurrence of Justice Manuel G. Herrera and Justice Jorge S. Imperial.

[2] Rollo, p. 13.

[3] CA-Rollo, p. 5.

[4] Id., p. 21.

[5] Rollo, p. 14.

[6] CA-Rollo, pp. 51-52.

[7] Ozaeta vs. Court of Appeals, 179 SCRA 800 (1989).

[8] Id.

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