

**PABLO RETONI, JR., PETITIONER, VS. COURT OF APPEALS, ET AL.,
RESPONDENTS.***G.R. No. 96776. February 05, 1993*

Ponente: CAMPOS, JR., J.

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Petitioner Pablo Retoni, Jr., together with two others, was charged with Serious Physical Injuries in the MTC of Dasmariñas, Cavite (presided over by respondent Judge Arthur A. Famini) for having boxed complainant Teotimo Rodriguez, causing a nasal bone fracture on the latter, requiring no less than thirty (30) days to heal. After trial, or on February 1, 1990, respondent MTC Judge Famini convicted petitioner and his co-accused (Ricardo and Rogelio Mandini), of the crime charged. Only petitioner Retoni, Jr. appealed his conviction to the Regional Trial Court, and his case was assigned to the sala of respondent RTC Judge Luis R. Reyes of Imus, Cavite. On May 21, 1990, respondent RTC Judge Reyes, after submission of all the required pleadings, rendered his questioned decision which was promulgated on June 14, 1990, affirming petitioner's conviction. There being no motion for reconsideration or a petition for review having been filed by petitioner after the lapse of fifteen (15) days from the date of the promulgation of the aforesaid decision or notice of the judgment, the same became final and the case was remanded for execution to the court of origin on July 6, 1990. Petitioner's counsel, claiming that he only received a copy of the decision of respondent RTC Judge Reyes on July 9, 1990 because he was then in the United States from June 9, 1990 to July 6, 1990, filed on July 20, 1990 a Motion for Reconsideration (dated July 17, 1990) of the questioned decision. Contending that his period to appeal should be counted from July 9, 1990 (alleged date of his counsel's receipt of the decision), petitioner filed a petition with the Court of Appeals seeking the review of his conviction. In a Resolution[*] dated January 7, 1991, the Court of Appeals dismissed the said petition for having been filed beyond the reglementary period of fifteen (15) days. It held:

"There is no showing that the Honorable respondent Court had reckoned the running of the period for the filing of a motion for reconsideration or notice of appeal from the receipt of a copy of the decision by petitioner-appellant, rather than from a receipt thereof by the office of counsel for petitioner-appellant. It must be pointed out that the date 9 July 1990 stated by counsel as the date of his receipt of the copy of the decision does not necessarily mean that it was also the date his office received it. Counsel was away from the Philippines for about a month. His office could have received a copy of the decision while he was away, but it was not until after his return that the copy was handed to him. He returned to Manila on 6 July 1990, a Friday. He must have reported to his office only the following Monday, 9 July, where he must have seen for the first time a copy of the decision. Receipt by his office of the copy of the decision during his absence was a valid one. The period for filing a motion for reconsideration or notice of appeal began to toll from that time. Counsel does not say when his office received a copy of the decision. It is, therefore, presumed that the information would be adverse to him, that is, it would show that his period to appeal from the decision had expired.

Assuming, however, that the lower court did reckon the running of the period for the filing of a motion for reconsideration or notice of appeal from petitioner-appellant's receipt of the decision, would this be correctible error? We do not believe so."^[1]

Petitioner now comes before Us assailing the validity of the dismissal of his appeal.

The only legal issues raised in this case are:

1. Whether or not the petition was filed beyond the reglementary period of 15 days; and
2. Whether or not there was conspiracy among petitioner herein and his two other co-accused.

On the first issue raised, We affirm the finding of the Court of Appeals that the petition was filed out of time.

The period for perfecting an appeal from the judgment rendered by the Regional Trial Court, under Section 6 of Rule 122 of the Revised Rules of Court, is fifteen (15) days from the promulgation or notice of the judgment appealed from.[2] Thus,

"Sec. 6. When appeal to be taken. -- An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel."

Petitioner's counsel does not deny receipt by his office of the questioned decision during his absence from June 9, 1990 to July 6, 1990. Petitioner himself received a copy of the said decision on the day of its promulgation. This, too, is not disputed. In *Ongsiako vs. Natividad*,[3] We held that under Section 2, Rule 13 of the Rules of Court, service upon the party himself would be valid if ordered by the court, and when there is nothing to show that there has been no such notice, regularity of procedure is presumed. Usually, service is ordered upon the party himself, instead of upon his attorney, when it is doubtful who the attorney for such party is, or when he cannot be located[4] or when the party is directed to do something personally, as when he is ordered to show cause.

In this case, petitioner's counsel cannot suspend the court proceedings by his mere absence from the country without leaving any arrangement for the appropriate and effective service of court orders and the parties' pleadings on him during his absence. As observed by respondent Court of Appeals, "he should have filed a motion in the instant case for approval of a procedure to be followed during his absence regarding service of orders from the court, and pleadings from the opposing party".[5] But he was remiss in this regard. Sad to say, his client will have to suffer the consequences of his negligence.

Well-settled is the rule that the perfection of an appeal in the manner and within the reglementary period laid down by law is not only mandatory but jurisdictional, and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the court below and deprives the appellate court of jurisdiction to entertain the appeal.[6] It was only on July 20, 1990 when petitioner filed his Motion for Reconsideration of the questioned decision. More than fifteen (15) days have elapsed, or 46 long days to be exact, since the date of promulgation of the said judgment on June 14, 1990 and receipt by petitioner of the same on even date. The respondent Court of Appeals was, therefore, correct in dismissing the petition for having been filed out of time.

On certain occasions, this Court has allowed the filing of an appeal outside the period prescribed by law in the interest of justice. But emphatic in these said decisions are strong considerations of substantial justice. Where the interest of justice would not be served by a policy of liberality, however, We cannot cite a lower court as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules.[7]

Even on the merits, petitioner's appeal will still fail. It has been the consistent ruling of this Court that the findings of the trial court on questions of fact are accorded the highest respect on appeal, if not regarded as conclusive, absent the usual exceptions to this policy. The reason is the opportunity available to the trial court -

but not to the appellate court - to observe the witnesses on the stand and to assess their credibility not only by the nature of their testimony but also by their demeanor under questioning.[8] From the evidence submitted, petitioner herein was shown to be a principal by direct participation in the commission of the offense. Complainant Teotimo Rodriguez and his sister testified that petitioner, together with his co-accused, successively boxed complainant causing a nasal bone fracture, needing no less than thirty (30) days to heal.[9] Nothing was shown by petitioner to controvert said allegation, hence, Our affirmance of the same. Thus, whether or not there was conspiracy, is, therefore, inconsequential as petitioner is personally liable for his direct participation in the commission of the crime charged.

WHEREFORE, premises considered, We hereby DISMISS the petition for lack of merit.
SO ORDERED.

Narvasa, C.J., (Chairman), Feliciano, Regalado, and Nocon, JJ., concur.

[*] Penned by Associate Justice Luis A. Javellana, concurred in by Associate Justices Alfredo M. Marigomen and Artemon D. Luna.

[1] Rollo, p. 11.

[2] See also Batas Pambansa Blg. 129, Section 39; Interim Rules and Guidelines for the Implementation of Batas Pambansa Blg. 129 and 1985 Rules on Criminal Procedure, as amended.

[3] 79 Phil. 3 (1947).

[4] Riego vs. Riego, 18 SCRA 91 (1966).

[5] Rollo, p. 12.

[6] Montejo vs. Cabangon, 5 SCRA 266 (1962); Goganta vs. Court of Appeals, 105 Phil. 412 (1960); Miranda vs. Guanzon, et al., 92 Phil. 168 (1952).

[7] Jamilano vs. Cuevas, 152 SCRA 158 (1987) citing Castro vs. Court of Appeals, 123 SCRA 782 (1983); Vda. de Crisologo vs. Court of Appeals, 137 SCRA 231 (1985).

[8] People vs. Francisco, 182 SCRA 305 (1990).

[9] Rollo, p. 61.

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