

MERCEDES D. NAVARRO, PETITIONER, VS. THE COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. 112389-90. August 01, 1994

Ponente: CRUZ, J.

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CRUZ, J.:

Petitioner Mercedes D. Navarro was convicted of violating B.P. 22 in Criminal Cases Nos. L-3848 and L-3849 in the Regional Trial Court of Pangasinan.[1] She went to the Court of Appeals. In a motion dated September 15, 1992, she asked for an extension of 90 days from September 17, 1992, within which to file her brief. The motion was granted. However, she failed to file her brief within the extension, and even beyond. On February 9, 1993, the appellate court dismissed her appeal[2] pursuant to Sec. 8, Rule 124 of the Rules of Court.*

On March 1, 1993, Navarro filed a motion for new trial on the ground of "newly-discovered evidence." This was denied on June 9, 1993, the appellate court observing as follows:

While this Court's Resolution dismissing the above-entitled cases has not yet become final when the present motion for new trial was filed, appellant-movant failed to show any compelling reason or justifiable cause for the reinstatement of the appeal. Hence, the dismissal of the appeal stands and the filing of the motion for new trial is out of order. Before the motion for new trial could be considered by us, it is incumbent upon appellant-movant to move for reconsideration of this Court's Resolution dismissing the appeal. No such motion for reconsideration having been filed by herein movant-appellant, said Resolution has become final as of March 5, 1993.

On July 5, 1993, Navarro filed a motion for reconsideration, but this was denied on October 20, 1993.

In her petition for review before this Court, she alleges that:

- a) She never sought reinstatement of her appeal but asked that a new trial be granted on the ground of "newly-discovered evidence."
- b) The conclusion of the Court of Appeals that she should have filed a motion for reconsideration of the dismissal of the appeal before she filed her motion for new trial has no support under the present rules and jurisprudence.

In his comment on the petition, the Solicitor General contends that the appeal had already been dismissed. What she should have done first was to move for reconsideration of the order of dismissal and have the appeal reinstated. The respondent court could not entertain and give due course to any other pleading filed after the dismissal of the appeal.

The petition must fail.

As Navarro filed only a notice of appeal and not an appellant's brief, her appeal was correctly dismissed for lack of interest in prosecuting it.

The Court of Appeals was also correct in denying her motion for new trial, although not simply on the technical

ground of failure to file a motion for reconsideration of the dismissal order.

Rule 124, Sec. 14, of the Rules of Court provides:

At any time after the appeal from the lower court has been perfected and before the judgment of the appellate court convicting the accused becomes final, the latter may move for a new trial on the ground of newly-discovered evidence material to his defense, the motion to conform to the provisions of Sec. 4, Rule 121.

In the present case, the motion for new trial was filed with the Court of Appeals after the dismissal of the appeal for non-filing of the appellant's brief. The dismissal of an appeal becomes a final judgment of the appellate court after the lapse of 15 days from service of a copy thereof upon the accused or his counsel unless the period is suspended by a motion for new trial.

At the time the motion for new trial was filed by the petitioner with the appellate court, the resolution dismissing the appeal (and thus affirming the judgment of the trial court) had not yet become final. Navarro received notice of the resolution on February 17, 1993. The judgment became final on March 5, 1993. The motion for new trial was filed on March 1, 1993, within the period fixed under Rule 124. In fact, the appellate court itself admitted that its resolution dismissing the appeal "ha(d) not yet become final when the motion for new trial was filed."

It would appear, however, that the petitioner decided to file the motion for new trial only when she received a copy of the resolution of the appellate court dismissing her appeal.

After the alleged accidental meeting with the saleslady to whom she claims to have made payment, the petitioner had taken no step, either by herself or her counsel, to manifest before the Court of Appeals that she was filing a motion for new trial because of "newly-discovered evidence."

Neither did she move to have her appeal reinstated after it was dismissed, nor did she offer any explanation for her failure to file her brief. It was only on March 1, 1993, or more than 60 days after the lapse of the 90-day extension granted by the appellate court, that she filed her motion for new trial.

The petitioner probably hoped that her lost appeal could be retrieved by a motion for new trial. It was not.

There is another justification for the denial of the petitioner's motion for new trial. The appellate court did not exercise its discretion capriciously or whimsically because the so-called "newly-discovered evidence," if admitted, would at most have been corroborative only. We do not consider it of so substantial a character as to overturn the judgment of conviction.

The alleged newly-discovered evidence would have made a difference if the date of payment made by Navarro to Tamayo's saleslady had been stated therein, to prove that payment was made within 5 banking days from notice of the dishonor of the checks. The prima facie presumption laid down in B.P. 22 that the drawer had knowledge of the insufficiency of his funds at the time of the issuance of the check would have been rebutted. The alleged payment would have precluded the filing of the charges were it not for the significant fact that the receipt was undated.

The conviction was correctly sustained by the respondent court. The elements of the offense punished in B.P. 22 are: (1) the making, drawing and issuance of any check to apply to account or for value; (2) the knowledge of the maker, drawer or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (c) subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[3]

Payment of the value of the check either by the drawer or by the drawee bank within five banking days from notice of the dishonor given to the drawer is a complete defense. The prima facie presumption that the drawer had knowledge of the insufficiency of his funds or credit at the time of the issuance and on its presentment for payment is rebutted by such payment. This defense lies regardless of the strength of the evidence offered by the prosecution to prove the elements of the offense. In the case at bar, the petitioner failed to overcome the presumption by substantiating her allegation of payment. There is no proof that the payment, if it was really made at all, was done within 5 days from the notice of dishonor.

Worthy of special note are the following acute observations of Judge Antonio M. Belen, with which we fully agree:

It is rather strange why the accused did not immediately inform the complaining witness that she had already paid the amounts covered by exhibits A and B (checks in question) when oral as well as written demands were made to her before the filing of the cases. It is likewise hard to believe that the accused will just pay and give the sum of P28,750 to a mere saleslady of the complainant without any receipt. There is a legal maxim that evidence to be credible must not only proceed from the mouth of a credible witness but it must be credible in itself. No better test has yet been found to measure the value of a witness' testimony than its conformity to the knowledge and common experience of mankind (*People vs. Baquiran*, 20 SCRA 451).

We are satisfied that the respondent court did not err in not granting the motion for new trial based on the supposed newly-discovered evidence, which, even if admitted, would not have reversed the petitioner's conviction.

WHEREFORE, the petition is DENIED and the challenged decision of the Court of Appeals is AFFIRMED, with costs against the petitioner. It is so ordered.

Davide, Jr., Quiason, and Kapunan, JJ., concur.
Bellosillo, J., on official leave.

[1] Rollo, pp. 23-27.

[2] *Ibid.*, p. 28.

* Section 8. Dismissal of Appeal for abandonment or failure to prosecute. - The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule x x x.

[3] *People v. Laggui*, 171 SCRA 305.

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