

CIPRIANO L. LUBRICA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NOS. 156147-54. February 26, 2007

Ponente: CORONA, J.

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CORONA, J.:

On November 17, 2000, the Sandiganbayan rendered judgment[1] finding petitioner Cipriano L. Lubrica, together with Rolando Balderama and Rolando Nagal,[2] guilty beyond reasonable doubt of committing seven counts of direct bribery as defined and penalized under Article 210 of the Revised Penal Code. The anti-graft court found that each of the accused, as members of Mobile Team RP-SAS 106 of the Land Transportation Office Law Enforcement Division, conspired when they solicited and received from complainant Juan Armamento the amount of P300 on seven occasions[3] in consideration of their refraining from apprehending the taxi cabs owned and operated by complainant.

In addition, accused were also found guilty of violating Section 3(e) of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for causing undue injury to complainant with evident bad faith when they impounded one of the latter's taxi cabs on false charges.[4]

The accused filed separate motions asking the court to reconsider its judgment. Unconvinced, the Sandiganbayan denied all the motions in a resolution dated March 26, 2001.[5]

Thereafter, all the accused, except petitioner, individually elevated their convictions to us.[6] Consequently, the decision and resolution of the Sandiganbayan became final and executory with respect to petitioner upon the lapse of the appeal period.

On July 26, 2001, petitioner, through counsel, received the notice of resolution[7] scheduling execution of the judgment against him on September 5, 2001.

Five months after the denial of his motion for reconsideration, on September 4, 2001, petitioner filed a notice of appeal and a motion to admit the notice of appeal and suspend execution of judgment with the Sandiganbayan. The motion was denied. The court explained:

Plainly, it is [only the] third mode of appeal which is available to the accused, that is, by way of petition for review on [c]ertiorari under Rule 45 of the Revised Rules of Court. The said [r]ule does not require a notice of appeal in order for the appeal to be given due course. Thus, it is superfluous for the accused to file the instant motion.[8]

Undaunted, petitioner filed an Urgent Motion to Stay Execution citing Section 11, Rule 122 of the Rules of Court.[9] The court denied the motion and ordered the arrest of petitioner.[10] The motion for reconsideration was likewise denied.[11]

Petitioner brought this appeal by certiorari to assail the Sandiganbayan's refusal to order a stay of execution of the decision against him.

The petition is devoid of merit. We find nothing in the petition that can sway us to tip the scales of justice in favor of petitioner.

It bears stressing that the judgment petitioner wants us to enjoin from being enforced has long been final and executory.

Section 7 of Presidential Decree 1606, as amended by Republic Act 8249, provides that "[d]ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court." The said rule provides 15 days from notice of the denial of his motion for reconsideration within which to file a petition for review. Without an appeal, the judgment becomes final upon expiration of the period and execution should necessarily follow.

Here, petitioner failed to comply with the proper procedure. Instead of a petition for review on certiorari to this Court within the reglementary period, he submitted a notice of appeal months after the judgment had attained finality. Not only did he act belatedly, petitioner also resorted to the wrong mode of appeal. Thus, petitioner's notice of appeal has no legal effect and cannot suspend the enforcement of his sentence.

Petitioner insists that, despite his failure to file an appeal, his service of sentence should be suspended in view of the appeals interposed by his co-accused.

The argument is untenable.

Rule 122 of the Rules of Court gives the effect of an appeal taken by one or more of several accused:

SEC 11. Effect of appeal by any of several accused. -

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment is favorable and applicable to the latter. (emphasis supplied)

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From the foregoing, it is clear that the appeals taken by co-accused Balderama and Nagal cannot help petitioner insofar as suspension of execution is concerned. The benefit of stay of execution afforded to a co-accused who timely files an appeal cannot be extended to those who failed to file the same. Thus, the period to appeal continued to run against petitioner notwithstanding the petitions for review filed by his co-accused.

Petitioner cannot invoke the exception contained in the second clause of Section 11(a) because it speaks of a judgment rendered by the appellate court which is favorable to accused-appellant.[12] It is too strained to construe the exception as including procedural consequences of a pending appeal although it may be beneficial to the accused.

Having been sentenced to serve a total of 35 years and 3 months, minimum, to 47 years, 8 months and 21 days, maximum, petitioner advances the argument that he is entitled to an automatic review of his conviction by this Court which should effect a suspension of his commitment to serve sentence.

We note that petitioner was convicted under eight of ten informations charging him with different offenses. Although the judgments on all charges were rendered at the same time, each must be treated separately and distinctly. The periods of imprisonment of the penalties imposed cannot be added up for purposes of determining the proper mode of appeal. The reason for this is that each penalty refers to a particular judgment which should be appealed independently of the others.

This petition is nothing but a vain attempt to avoid the consequences of a conviction. By petitioner's fatal omission, the judgment became final and the sentence must be carried out accordingly.

WHEREFORE, the petition is hereby DENIED. The November 17, 2000 decision and March 26, 2001 resolution of the Sandiganbayan are AFFIRMED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, and Garcia, JJ., concur.
Azcuna, J., on official leave.

[1] Decision penned by Associate Justice Rodolfo G. Palattao (retired) and concurred in by Associate Justices Narciso S. Nario (retired) and Nicodemo T. Ferrer (retired) of the Fourth Division of the Sandiganbayan, rollo, pp. 25-48.

[2] Originally, there were four accused: Cipriano L. Lubrica, Rolando Balderama, Rolando Nagal and Cresencio de Jesus. During trial, accused de Jesus died and all charges against him were dismissed.

[3] The Sandiganbayan was convinced that accused received protection money from the complainant on February 15, February 29, March 30, April 30, May 15, May 30 and June 15, 1992.

[4] The Sandiganbayan found that the accused apprehended and impounded a 5J Taxi with plate number PKD 726 owned by complainant for allegedly having a defective meter. However, inspection and testing by the LTO revealed that the impounded 5J Taxi's meter waiting time mechanism was functioning properly. The said vehicle was then immediately released to the complainant.

[5] Penned by Associate Justice Rodolfo G. Palattao with the concurrence of Associate Justices Narciso S. Nario and Nicodemo T. Ferrer of the Fourth Division of the Sandiganbayan, rollo, pp. 59-64.

[6] The appeals of Rolando Balderama and Rolando Nagal were docketed as G.R. Nos. 147578-85 and G.R. Nos. 147598-605, respectively.

[7] Dated July 20, 2001, rollo, p. 65.

[8] Resolution dated December 18, 2001 penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Narciso S. Nario and Nicodemo T. Ferrer of the Fourth Division of the Sandiganbayan, rollo, pp. 72-75, at 74.

[9] Rollo, p. 76.

[10] Order dated July 4, 2002 issued by Associate Justices Rodolfo G. Palatao, Godofredo L. Legaspi and Raoul V. Victorino of the Fourth Division of the Sandiganbayan, rollo, p. 77.

[11] Resolution dated October 23, 2002, penned by Associate Justice Rodolfo G. Palattao and concurred in by Associate Justices Narciso S. Nario and Raoul V. Victorino of the Fourth Division of the Sandiganbayan, rollo, pp. 82-84.

[12] Cf. *People v. Fernandez*, G.R. No. 80481, 17 June 1990, 186 SCRA 830 and *People v. Perez, et al.*, G.R. No. 119014, 15 October 1996, 263 SCRA 206.

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