

CATALINA F. CRISOSTOMO AND REGINO L. CRISOSTOMO, DOING BUSINESS AS CFC TRANSPORTATION, PETITIONERS, VS. JUDGE MODESTO S. BASCOS, COURT OF FIRST INSTANCE OF PANGASINAN, DAGUPAN C...

G.R. Nos. 57511-13. April 27, 1982

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the propriety of giving due course to an appeal from a joint decision in three cases where the appellants mistakenly filed only one appeal bond and filed the two other appeal bonds after the expiration of the reglementary period.

The spouses, Catalina F. Crisostomo and Regino L. Crisostomo, doing business under the tradename CFC Transportation, appealed from the joint decision of Judge Modesto S. Bascos dated October 2, 1980 in three cases, ordering them to pay solidarily (1) damages amounting to P350 ,977.57 to the heirs of Alex Mejia, (2) damages in the amount of P138,750 to the heirs of Angel Ubando, and (3) damages in the sum of P22,229.50 to Fernando Paras (Civil Cases Nos. D-3994, D-3996 and D-3995).

The Crisostomos filed a notice of appeal and an appeal bond and were granted up to December 29, 1980 within which to file a joint record on appeal. It was filed on December 24, 1980.

Counsel for the Mejia plaintiffs objected to the appeal in two of the three cases because no appeal bond was filed therefor and, hence, as contended by him, the decision, insofar as the two cases were concerned, had already become final and executory. Counsel filed a motion for execution.

To meet that objection, the Crisostomos deposited on February 11, 1981 the sum of P240 as appeal bond for the other two cases.

On that same date, the lower court issued an order dismissing the appeal on the ground that because only one appeal bond was filed, it could not be determined to which case, among the three cases, that appeal bond corresponded.

The Crisostomos filed in this Court a petition for the review of the order of dismissal. It is really a petition for mandamus to compel the trial court to give due course to their appeal.

The issue is whether the trial court erred in dismissing the appeal due to the failure of the Crisostomos to file on time their appeal bond for two of the three cases.

Considering that the time for filing the appeal bond cannot be extended, failure to file it on time is fatal to the appeal unless there is a showing of excusable negligence justifying such failure (2 Moran's Comments on the Rules of Court, 1979 Ed., p. 413).

We hold that the omission of the Crisostomos to file on time the two appeal bonds is excusable. As there was only one decision for the three related cases and a joint record on appeal was filed, their counsel inadvertently filed only one appeal bond.

In *Aquino vs. De Guzman*, 93 Phil. 824, a civil case and a land registration case, involving the same parties represented by the same attorneys, were tried jointly. After the judgment in the two cases was rendered, the losing party filed a joint record on appeal and an appeal bond of sixty pesos (now one hundred twenty pesos). The appeal bond for the land registration case was filed about two months later.

It was held that the failure to file on time the appeal bond for the land registration case was due to excusable oversight and that, as the two cases were inextricably linked, the appeal should be given due course. That ruling, which was followed in *Rosales vs. Court of Appeals*, L-25882, July 28, 1969, 28 SCRA 813, 819, applies to the three cases herein which stemmed from the same vehicular accident.

WHEREFORE, the trial court's order dismissing the appeal is set aside. It is directed to act on the joint record on appeal. However, as a matter of justice and as there is no security for the payment of the judgment in favor of the plaintiffs, the trial court (as held in this Court's minute resolution in this case dated January 8, 1982) may at the same time entertain a motion for execution pending appeal if there are good reasons for doing so. No costs.

SO ORDERED.

Barredo, (Chairman), De Castro, Ericta, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

Abad Santos, J., on leave.

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