



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JOSE "PEPE" SANICO,
Petitioner,

G.R. No. 198753

Present:

- versus -

SERENO, C.J.,
LEONARDO-DE CASTRO,
BERSAMIN,
PEREZ, and
PERLAS-BERNABE, JJ.

**PEOPLE OF THE PHILIPPINES
AND JENNIFER SON-TENIO,**
Respondents.

Promulgated:

MAR 25 2015

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DECISION

BERSAMIN, J.:

The dismissal by the Regional Trial Court (RTC) of an appeal by an accused on the ground of his failure to submit his memorandum on appeal should be nullified because the pertinent rule of procedure governing the appeal specifies such submission as optional on his part, and commands the resolution of the appeal by the RTC on the basis of the records of the trial court and of any memoranda of appeal as the parties *may* file in the case.

The Case

This appeal directly assails the resolution promulgated on April 14, 2011 in C.A.-G.R. CR UDK No. 0019 entitled *People of the Philippines v. Jose "Pepe" Sanico, et al.*,¹ whereby the Court of Appeals (CA) dismissed the petitioner's petition to review and undo the dismissal of his appeal by the

¹ *Rollo*, pp. 44-47; penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justice Pampio A. Abarintos (retired) and Associate Justice Gabriel T. Ingles concurring.

RTC; and the subsequent resolution promulgated on September 15, 2011,² denying his motion for reconsideration.

Antecedents

The petitioner and Marsito Batiquin were criminally charged for trespassing (Criminal Case No. 3433-CR) and theft of minerals (Criminal Case No. 3434-CR) in the Municipal Circuit Trial Court of Catmon-Carmen-Sogod, Cebu (MCTC). In due course, the MCTC rendered its judgment on April 2, 2009, convicting the accused, disposing as follows:

WHEREFORE, and in view of the foregoing judgment is hereby rendered in Criminal Case No. 3434-CR finding the accused Jose “Pepe” Sanico and Marsito Batiquin guilty beyond reasonable doubt for Violation of Section 103 of Republic Act No. 7942 otherwise known as the Philippine Mining Act of 1995, and they are hereby both sentenced to suffer an imprisonment of Six (6) Months and One (1) Day of Prision Correccional, as minimum, to Two (2) Years Four (4) Months and One (1) day of Prision Correccional, as maximum, and to pay a fine of Ten Thousand Pesos (₱10,000.00) each, with subsidiary imprisonment in case of insolvency.

The truck with Plate No.GAX-119, as an instrument of the crime is hereby ordered confiscated in favour of the government.

In addition, both accused are hereby ordered to solidarily pay private complainant Jennifer S. Tenio actual damages in the amount of Four Million Forty Two Thousand and Five Hundred Pesos (₱4,042,500.00), Moral damages in the amount of Five Hundred Thousand Pesos (₱500,000.00), Exemplary Damages in the amount of Two Hundred Thousand Pesos (₱200,000.00), Attorney’s Fees in the amount of One Hundred Thousand Pesos (₱100,000.00) and Litigation Expenses in the amount of Fifty Thousand Pesos (₱50,000.00).

In Criminal Case No. 3433-CR Trespassing, the Court finds accused Jose “Pepe” Sanico and Marsito Batiquin not guilty for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt.

SO ORDERED.³

On April 22, 2009, Sanico’s counsel filed a notice of appeal in the MCTC.⁴ Consequently, on January 5, 2010, the RTC, Branch 25, in Danao City ordered Sanico to file his memorandum on appeal. Sanico did not comply; hence, the RTC ruled on March 16, 2010,⁵ as follows:

² Id. at 50-53.

³ Id. at 74-75.

⁴ Id. at 79-80.

⁵ Id. at 54.

The motion of plaintiff is impressed with merit. The failure of the accused-appellants to file Memorandum on Appeal is a ground for dismissal of the Appeal.

WHEREFORE, the appeal of the accused is ordered dismissed with prejudice.

SO ORDERED.⁶

On April 26, 2010, one Atty. Dennis Cañete, another lawyer acting for Sanico, filed a motion for reconsideration⁷ vis-à-vis the dismissal of the appeal, stating that Sanico had not filed the memorandum on appeal because he had been beset with problems due to his wife's debilitating illness which eventually claimed her life, as well as his counsel, Atty. Baring's own medical condition which caused her to forget how she got this case and whom to contact as principal counsel hereof.

On June 1, 2010, the RTC denied the motion for reconsideration because of its lack of verification and affidavit of merit; and because the supposed sickness of Sanico's wife and the lapses of Atty. Baring were not justifiable reasons.⁸

On June 23, 2010, Sanico, through Atty. Cañete, filed a petition for review in the CA,⁹ contesting his conviction, and assailing the dismissal of his appeal for failure to file the memorandum on appeal.¹⁰

On April 14, 2011, the CA denied the petition for review on the following grounds, namely: (a) the docket fees were not paid; (b) there was no proper proof of service of a copy of the petition for review on the adverse party; (c) the petitioner did not furnish to the RTC a copy of the petition for review; (d) there was no affidavit of service; (e) no written explanation for not resorting to personal filing was filed; (f) the documents appended to the petition were only plain photocopies of the certified true copies; (g) no copies of pleadings and other material portions of the record were attached; (h) the verification and certification of non-forum shopping were defective due to failure to contain a statement that the allegations therein were based on the petitioner's personal knowledge; (i) the verification and certification of non-forum shopping did not contain competent evidence of identity of the petitioner; and (j) the serial number of the commission of the notary public and the office address of the notary public were not properly indicated.¹¹

⁶ Id.

⁷ Id. at 81-84.

⁸ Id. at 55.

⁹ Id. at 85-97.

¹⁰ Id. at 87.

¹¹ Supra note 1.

The petitioner moved for reconsideration, but his motion was denied on September 15, 2011,¹² with the CA holding:

Jurisprudence is replete with pronouncements in regard to the mandatory and jurisdictional nature of the legal requirement to pay docket and appeal fees. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executor. Further, the other infirmities of the Petition, insofar as the lack of proper proof of service and failure to append material portions of the record, necessarily warrant the dismissal of the Petition, given the mandatory language of Section 3, Rule 42 of the 1997 Rules of Civil Procedure.

x x x x

Petitioner invoked that it could not be bound by the gross and inexcusable negligence of his counsels. However, a client is generally bound by the acts, even mistakes, of his counsel in the realm of procedural technique. In cases where the negligence of counsel is so gross, reckless and inexcusable that the client is deprived of his day in court, the appropriate recourse is provided under the Rules: x x x.

WHEREFORE, in view of the foregoing premises, appellant's Motion for Reconsideration with Application for Temporary Restraining Order and Preliminary injunction dated 31 May 2011 is hereby DENIED.

SO ORDERED.¹³

In the meantime, the counsel for respondent Jennifer S. Tenio filed an *Ex Parte* Motion for Entry of Judgment, which the RTC authorized the issuance of on March 28, 2011.¹⁴ Thence, Sanico filed an omnibus motion to recall the order and to quash the entry of judgment,¹⁵ but the RTC denied the omnibus motion on August 22, 2011, noting that Sanico did not provide the RTC with a copy of his petition for review; hence, the RTC had no way of knowing about the pendency of his petition for review in the CA; and that in any case, the CA had already denied his petition for review, while his motion for reconsideration had yet to be acted upon by the CA.¹⁶ Sanico's motion for reconsideration was denied by the RTC on October 3, 2011.¹⁷

The records show that the entry of judgment was issued on March 30, 2011,¹⁸ and the writ of execution on April 19, 2011;¹⁹ and that execution sales covering several personal properties of the petitioner were made on

¹² Supra note 2.

¹³ Id. at 52-53.

¹⁴ *Rollo* p. 140.

¹⁵ Id. at 150-159.

¹⁶ Id. at 155.

¹⁷ Id. at 161.

¹⁸ Id. at 141.

¹⁹ Id. at 142-143.

June 14 and June 16, 2011, and the certificates of sale were issued in favor of Tenio.²⁰

Issues

Hence, this appeal by petition for review on *certiorari*.

The petitioner contends that the CA erred in holding against him his former counsel's gross and inexcusable negligence, thereby depriving him of his right to have the conviction reviewed by the RTC; that the CA committed reversible error in not nullifying the RTC's order dismissing the appeal for failure to file a memorandum, and in not nullifying the entry of judgment issued by the RTC despite the pendency of the petition for review in the CA; and that the CA further erred in not remanding the case to the RTC for the review of the legal infirmities committed by the MCTC in rendering its judgment of conviction.²¹

In her comment,²² Tenio avers that the appeal seeks to evaluate, assess and examine the findings of the lower courts, which cannot be done in this appeal; and that the petitioner already lost all his opportunities to contest the decision and orders by which he was aggrieved through the usual process by not complying with the requirements under the *Rules of Court* to submit his appeal memorandum to the RTC, and by filing a petition for review that was plagued with congenital infirmities.²³

The State, through the Office of the Solicitor General (OSG),²⁴ submits that the CA did not err in dismissing the petition for review for failure to comply with procedural requirements; that the petitioner was bound by the mistakes of his counsel in the realm of procedural technique; that there was no compelling reason to warrant the relaxation of the rules of procedure in favor of the petitioner because, firstly, the dismissal of his appeal was in accord with Section 7, Rule 40 of the *Rules of Court*; secondly, the decisions of the RTC rendered in the exercise of its appellate jurisdiction were immediately executory without prejudice to an appeal; thirdly, the MCTC validly acquired jurisdiction over the criminal case; and, finally, the variance in the mode of commission of the offense was binding on the accused if he did not object to the evidence showing that the crime was committed in a manner different from what was alleged.²⁵

²⁰ Id. at 147-149.

²¹ Id. at 21-22.

²² Id. at 179-206.

²³ Id. at 181-182.

²⁴ Id. at 212-244.

²⁵ Id. at 222-223.

Ruling of the Court

The appeal is meritorious.

To start with, the RTC was guilty of the prejudicial error of misapplying the *Rules of Court* in its dismissal of the appeal timely made by the petitioner. In dismissing the appeal for the sole reason that he did not file the memorandum on appeal, the RTC wrongly relied on Section 7, Rule 40 of the *Rules of Court*, which authorizes the dismissal of the appeal once the appellant fails to file the memorandum on appeal, *viz.*:

Section 7. *Procedure in the Regional Trial Court.*

(a) Upon receipt of the complete record or the record on appeal, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. **Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal.**

(c) Upon the filing of the memorandum of the appellee, or the expiration of the period to do so, the case shall be considered submitted for decision. The Regional Trial Court shall decide the case on the basis of the entire record of the proceedings had in the court of origin and such memoranda as are filed.

The RTC thereby ignored Rule 122 of the *Rules of Court*, which specifically governed appeals in criminal cases. The relevant portions of Rule 122 are the following:

Section 3. *How appeal taken.*—

(a) The appeal to the Regional Trial Court, or to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction, **shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and by serving a copy thereof upon the adverse party.**

x x x x

Section 8. *Transmission of papers to appellate court upon appeal.*—Within five (5) days from the filing of the notice of appeal, the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case, together with said notice. The original and three copies of the transcript of

stenographic notes, together with the records, shall also be transmitted to the clerk of the appellate court without undue delay. The other copy of the transcript shall remain in the lower court. (8a)

Section 9. *Appeal to the Regional Trial Courts.*—

(a) Within five (5) days from perfection of the appeal, the clerk of court shall transmit the original record to the appropriate Regional Trial Court.

(b) Upon receipt of the complete record of the case, transcripts and exhibits, the clerk of court of the Regional Trial Court shall notify the parties of such fact.

(c) Within fifteen (15) days from receipt of said notice, **the parties may submit memoranda or briefs, or may be required by the Regional Trial Court to do so. After the submission of such memoranda or briefs, or upon the expiration of the period to file the same, the Regional Trial Court shall decide the case on the basis of the entire record of the case and of such memoranda or briefs as may have been filed.** (9a) (Emphasis supplied)

The failure to file the memorandum on appeal is a ground for the RTC to dismiss the appeal only in civil cases. The same rule does not apply in criminal cases, because Section 9(c), *supra*, imposes on the RTC the duty *to decide* the appeal “*on the basis of the entire record of the case and of such memoranda or briefs as may have been filed*” upon the submission of the appellate memoranda or briefs, or upon the expiration of the period to file the same. Hence, the dismissal of the petitioner’s appeal cannot be properly premised on the failure to file the memorandum on appeal.

Having timely perfected his appeal by filing the notice of appeal in the MCTC, the petitioner was entitled to expect that the RTC would resolve his appeal in due course, whether he filed his memorandum on appeal or not. The unwarranted dismissal of the appeal by the RTC was, therefore, an outright denial of due process to him in a manner that occasioned severe prejudice because his conviction was not reviewed despite his first-time appeal being a matter of right, and because his conviction was then declared to have attained finality, causing the execution of the decision as to its civil aspect.

We are appalled that the CA turned a blind eye to the egregious error of the RTC by limiting its attention to the supposedly patent defects and shortcomings of the petitioner’s petition for review. The foremost noted defect was the non-payment of the docket fees, which, in other circumstances, *would have* alone warranted the outright rejection of the petition for review due to the mandatory and jurisdictional character of the payment of the full amount of docket fees within the prescribed period.²⁶

²⁶ *Tamayo v. Tamayo, Jr.*, G.R. No. 148482, August 12, 2005, 466 SCRA 618, 622.

Such payment was the condition *sine qua non* for the perfection of the appeal by petition for review, and only by such payment could the CA have acquired jurisdiction over the appeal.²⁷ But the appeal of the conviction before the RTC had not yet been completed, and, as such, the petition for review of the petitioner was logically premature. In other words, it was plain to the CA that it could not validly act on the petition for review. To insist otherwise would be unjust against the petitioner, considering that the wrong turn in procedure that had generated the whole problem had been caused by the RTC.

The parties have argued on whether or not the negligence of the petitioner's counsel should be binding on the petitioner. In our view, however, we do not need to belabor the point with a lengthy discussion. Without doubt, the petitioner could reasonably expect that his counsel would afford to him competent legal representation. The mere failure of the counsel to observe a modicum of care and vigilance in the protection of the interests of the petitioner as the client – as manifested in the multiple defects and shortcomings discovered in the petition for review – was gross negligence in any language because the defects were plainly avoidable by the simple application of the relevant guidelines existing in the *Rules of Court*. If the incompetence of counsel was so great and the error committed as a result was so serious that the client was prejudiced by a denial of his day in court, the litigation ought to be re-opened to give to the client another chance to present his case. The legitimate interests of the petitioner, particularly the right to have his conviction reviewed by the RTC as the superior tribunal, should not be sacrificed in the altar of technicalities.

The Court notes that the petitioner has raised several issues against the award of damages in favor of Tenio.²⁸ We defer from making any findings on such issues at this stage, however, because the logical outcome is to remand the case to the RTC for appellate review as if the appeal was filed on time, which it was. Meanwhile, the petitioner is entitled to be restored to his situation at the time when the RTC wrongly dismissed his appeal. The RTC should quash the execution enforced against him; order the restitution of whatever properties were levied and sold on execution; and assiduously review the conviction.

Finally, it behooves the Court to remind all lower courts and their judges to be alert in safeguarding the right of the parties to appeal. Although the right to appeal is statutory, it must be respected and observed because it is an essential component of due process. What happened herein was the uncharacteristic oversight of the RTC in the application of the proper governing rules. There should have been no difficulty to discern the applicable rules, given the clear distinction between the civil and the

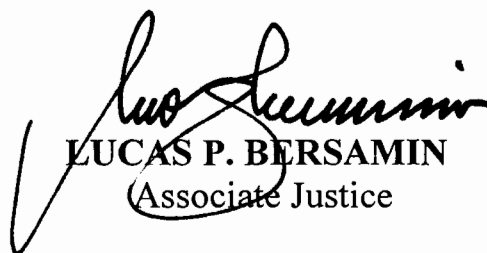
²⁷ *Enriquez v. Enriquez*, G.R. No. 139303, August 25, 2005, 468 SCRA 77, 85.

²⁸ *Rollo*, pp 36-38.

criminal procedures. The alertness could have avoided the oversight, and prevented the waste of time by the petitioner who had to come all the way to this Court to safeguard his right to appeal.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the resolutions promulgated on April 14, 2011 and September 15, 2011 by the Court of Appeals in C.A.-G.R. CR UDK No. 0019 entitled *People v. Jose "Pepe" Sanico, et al.* respectively dismissing the petitioner's petition for review assailing the dismissal of his appeal by the Regional Trial Court, and denying his motion for reconsideration; **ANNULS** and **SETS ASIDE** the orders issued on March 16, 2010, June 1, 2010, and August 22, 2011 by the Regional Trial Court, Branch 25, in Danao City respectively dismissing his appeal, denying his motion for reconsideration, and denying his omnibus motion to recall the order issued on March 28, 2011 for the issuance of the entry of judgment and to quash the entry of judgment; **QUASHES** and **VACATES** the entry of judgment dated March 30, 2011 for lack of legal basis; **NULLIFIES** all acts taken by virtue of the entry of judgment; **REMANDS** the records to the Regional Trial Court for further proceedings as outlined in this decision; and **ORDERS** the private respondent to pay the costs of suit.

SO ORDERED.




LUCAS P. BERSAMIN
Associate Justice

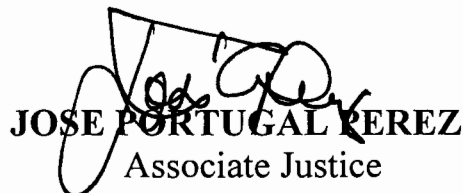
WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice