



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated November 15, 2021, which reads as follows:

“G.R. No. 235526 (ELSIE HEN [deceased], substituted by her heirs, petitioners v. VIE NOUVELLE JEWELRY, INC., respondent). — A court’s failure to note the judicial record of a party’s appeal is a serious misapprehension of fact that will allow this Court to examine the timeliness of the appeal. A timely appeal from the trial court’s decision vests jurisdiction over the case in the appellate court until the appeal is resolved.

This Court resolves a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court praying for the reversal and setting aside of the Court of Appeals’ Decision² and Resolution,³ and that Elsie Hen’s (Elsie) appeal be given due course.

The Court of Appeals, in the assailed Decision, held Elsie jointly and severally liable with her son, Francis Hen, Jr. (Francis), in the civil aspect of their estafa case. The Court of Appeals ruled that Elsie’s failure to appeal the Regional Trial Court Decision finding her civilly liable had rendered her civil liability final.⁴ The assailed Resolution denied Elsie’s Motion for Reconsideration.⁵

¹ *Rollo*, at 8–16, Petition for Review on Certiorari, pp. 1–8.

² *Id.* at 33–47. The June 23, 2017 Decision in CA-G.R. CR No. CR-38397 was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Myra V. Garcia-Fernandez of the First Division, Court of Appeals, Manila.

³ *Id.* at 17–18. The October 27, 2017 Resolution in CA-G.R. CR No. 38397 was penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Myra V. Garcia-Fernandez and Henri Jean Paul B. Inting (now a member of this Court) of the Special Former First Division, Court of Appeals, Manila.

⁴ *Id.* at 38.

⁵ *Id.* at 19–29.

Elsie and Francis were charged with estafa in six separate Informations docketed as Criminal Case Nos. 08-027 to 08-032. The information in Criminal Case No. 08-027 reads, as follows:

That on or about the 19th day of February, 2007, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and both of them mutually helping and aiding one another, received in trust from Vie Nouvelle Jewelry, herein represented by Amelie Rosie Co, pieces of jewelry worth Php2,269,200.00 with express obligation to sell the same and to remit to the complainant the proceeds in the amount of Php2,269,200.00 if sold, and return said jewelry if unsold, but accused, far from complying with their obligation, with intent to gain, abuse of confidence and in defraudation [sic] of complainant Vie Nouvelle Jewelry, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert to their own personal use and benefit the pieces of jewelry received and/or the proceeds of the sale of said jewelry in the amount of Php2,269,200.00; and despite repeated demands, accused refused and still fails and refuses to account and/or remit the said amount Php2,269,200.00, or to return the unsold jewelry, to the damage and prejudice of the said complainant Vie Nouvelle Jewelry in the aforementioned amount of Php2,269,200.00.

Contrary to Law.⁶

The other five Informations for Criminal Case Nos. 08-028 to 08-032 contain nearly identical wording, except for the jewelries' release dates to Elsie and Francis, and their corresponding values.⁷

On September 6, 2007, Vie Nouvelle Jewelry also filed Civil Case No. 07-821 before the Makati Regional Trial Court for the recovery of sum of money. The same trial court consolidated Civil Case No. 07-821 with Criminal Case Nos. 08-027 to 032, in view of the identical parties and transactions involved.⁸

In its December 10, 2015 Decision,⁹ the Regional Trial Court convicted Francis, but acquitted Elsie of estafa.¹⁰ It ruled that the prosecution sufficiently established the elements for estafa, but only as to Francis's criminal liability.¹¹ It found that while the conspiracy claim was not proven, a preponderance of evidence established Elsie's participation in the transactions, rendering her civilly liable.¹² The relevant portion of the trial court's Decision reads:

⁶ Id. at 35.

⁷ Id. at 35-36.

⁸ Id. at 36.

⁹ Id. at 52-94. The December 7, 2016 Joint Decision was penned by Presiding Judge Carlito B. Calpatura of Branch 145, Regional Trial Court, Makati City.

¹⁰ Id. at 89.

¹¹ Id.

¹² Id. at 90.

Both accused Francis Hen and Elsie Hen are adjudged to pay jointly and solidarily private complainants/plaintiff the total amount of Three Million Seven Hundred Sixty One Thousand Three Hundred Seventy Seven Pesos (Php. 3,761,377.00), by way of actual damages equivalent to the value of the jewelry as redeemed, plus attorney's fees in the amount of Eight Hundred Ninety Nine Thousand One Hundred [Pesos] (Php. 899,100.00), and the costs of suit.

However, for lack of proof beyond reasonable doubt, accused Elsie Hen is ACQUITTED on the criminal aspect of these cases.

The counterclaim of the defendants/accused is dismissed for lack of merit.

SO ORDERED.¹³

Elsie and Francis filed separate Notices of Appeal.¹⁴ In a December 21, 2015 Order, the Regional Trial Court noted the timely filing of Elsie's appeal and elevated the case records to the Court of Appeals.¹⁵

In its June 23, 2017 Decision, the Court of Appeals dismissed Francis' appeal and held that "Elsie Hen did not take an appeal relating to the civil aspect of the case, hence, the finding that she is jointly and severally liable with [Francis] is already final in so far as she is concerned."¹⁶

Elsie moved for reconsideration¹⁷ of the Court of Appeals' Decision which the Court of Appeals denied in its October 27, 2017 Resolution.¹⁸

After her motion was denied, Elsie filed this Petition for Review on Certiorari, arguing that the trial court's adverse decision on the case's civil aspect had not yet become final because she timely filed a notice of appeal, which the trial court itself recognized in an Order as filed "within the reglementary period."¹⁹ She also argues that the Court of Appeals denied her due process by not giving her the opportunity to submit her brief on her pending appeal of the estafa charge's civil aspect.²⁰

¹³ Id. at 93-94.

¹⁴ Id. at 30-31.

¹⁵ Id. at 32.

¹⁶ Id. at 38.

¹⁷ Id. at 19-29.

¹⁸ Id. at 17-18.

¹⁹ Id. at 11.

²⁰ Id. at 12.

Respondent Vie Nouvelle Jewelry, Inc. commented,²¹ arguing that the petition raises a question of fact and that the Court of Appeals committed no error when it ruled that petitioner Elsie Hen's civil liability had become final.²² Further, respondent submits that petitioner is estopped from questioning the Joint Decision's finality since she did not question the absence of a purported separate appeal during the criminal proceedings in CA-G.R. CR No. 38397, where her son, Francis, actively participated.²³

In a Manifestation,²⁴ the People of the Philippines, through the Office of the Solicitor General, asked to be excused from filing a comment on the ground that the petition involves the civil aspect of the case; therefore, there is no longer a governmental interest that compels their participation. They also asked to be dropped as a respondent.

On January 20, 2020, petitioner's counsel notified this Court of petitioner's death, and of her son's appointment as her legal representative.²⁵

This Court must resolve the following issues:

First, whether or not the Petition for Review on Certiorari may be given due course; and

Second, whether or not the Regional Trial Court's Decision had attained finality, which requires a finding on whether or not petitioner Elsie Hen timely appealed the trial court's Decision.

This Court finds merit in the petition.

I

The petition raises a question of law. *Tongonan Holdings and Development Corporation v. Escano*,²⁶ citing *Republic of the Philippines v. Malabanan*,²⁷ distinguished between questions of fact and law in order to determine the sufficiency of a Rule 45 Petition:

In *Republic of the Philippines v. Malabanan*, this Court distinguished a question of law from a question of fact. *A question of law*

²¹ Id. at 122–128. December 20, 2017 Comment to the Petition for Review on Certiorari.

²² Id. at 122–124.

²³ Id. at 124.

²⁴ Id. at 107–110. June 26, 2018 Manifestation in Lieu of Comment.

²⁵ *Supplemental rollo*, Notice of Death, pp. 1–2.

²⁶ 672 Phil. 747 (2011) [Per J. Mendoza, Third Division].

²⁷ 646 Phil. 631 (2010) [Per J. Villarma, Jr., Third Division].

arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party, raising the same; rather, it is *whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.*²⁸ (Emphasis supplied, citations omitted)

Here, before the Court of Appeals, petitioner questioned whether her civil liability had become final, directing the court's attention to her Notice of Appeal and a Regional Trial Court Order noting her appeal's timely filing:

Considering that an appeal has been filed, within the reglementary period, by accused/defendant Elsie Hen through counsel, let the entire records of this case be transmitted to the Court of Appeals for further proceedings.

SO ORDERED.²⁹

Despite proof of her timely appeal, the Court of Appeals ruled that petitioner's civil liability had become final. Thus, petitioner raised the same issue before this Court. We are, thus, required to apply the relevant procedural rule in appeals of civil cases, which poses a question of law.

Even assuming that the petition raises a question of fact, *Pascual v. Burgos*³⁰ recognizes several exceptions to the prohibited review of factual questions in a Rule 45 Petition:

However, these rules do admit exceptions. Over time, the exceptions to these rules have expanded. At present, there are 10 recognized exceptions that were first listed in *Medina v. Mayor Asistio, Jr.*:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) *When the judgment is based on a misapprehension of facts;*
- (5) When the findings of fact are conflicting;
- (6) When

²⁸ 672 Phil. 747, 756 (2011) [Per J. Mendoza, Third Division].

²⁹ *Rollo*, p. 32.

³⁰ 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.

These exceptions similarly apply in petitions for review filed before this court involving civil, labor, tax, or criminal cases.³¹ (Citations omitted; Emphasis supplied)

*Dela Cruz v. Sosing*³² illustrated how the Court of Appeals misapprehended an initiatory complaint's date of filing, resulting in the complaint's erroneous dismissal. This Court reversed the dismissal after examining the case records and "in the exercise of its discretion":

*There is no question that the decision of the Court of Appeals is premised on a misapprehension of fact, not only as pointed out by appellee in her motion for reconsideration, but as may be seen from a perusal of the pertinent portion of the record on appeal submitted in this case. It should be noted that the initial pleading appearing in said record on appeal is an amended complaint. This amended complaint appears to have been filed on February 17, 1949. The original complaint with which this case was initiated has been omitted undoubtedly because appellant did not consider it necessary to include it because its allegations are already reproduced in the amended complaint. That is the reason why the true date of the commencement of the action does not appear therein which led the Court of Appeals to believe that the action commenced on February 17, 1949. But the truth is that the correct date of the commencement of the action is November 13, 1940, the date of the filing of the original complaint. This fact being important to make a correct adjudication, fairness requires that proper rectification be made to give justice where justice is due. This rectification the court can do in the exercise of its discretion because it is a matter that can be gleaned from the record. Thus rectified, the logical consequence is that defendant has not acquired any title by prescription over the land in litigation contrary to the finding of the Court of Appeals.*³³ (Emphasis supplied)

Here, the Regional Trial Court issued an order noting the timeliness of petitioner's appeal, and ordered the elevation of case records to the Court of Appeals. The Court of Appeals failed to note the trial court's order, and thus,

³¹ Id. at 182-183.

³² 94 Phil. 26 (1953) [Per J. Bautista Angelo, En Banc].

³³ Id. at 28.

overlooked the timely filing of petitioner's appeal. The Court of Appeal's statement that "[petitioner] did not take an appeal relating to the civil aspect of the case," is a misapprehension of fact. This error allows this Court to now decide whether petitioner's civil liability had become final.

II

Having resolved the propriety of the procedural recourse, we find that petitioner timely appealed the Regional Trial Court's adverse decision on her civil liability. The Court of Appeals committed serious reversible error in holding that petitioner's civil liability on the charges of estafa had become final and executory.

*E.I. Dupont De Nemours v. Francisco*³⁴ teaches that an "[a]ppel is not a right but a mere privilege granted by statute. It may only be exercised in accordance with the law that grants it."³⁵ Further, *Cortal v. Inaki A. Larrazabal Enterprises*³⁶ provides:

Appeal is the remedy available to a litigant seeking to reverse or modify a judgment on the merits of a case. *The right to appeal is not constitutional or natural, and is not part of due process but is a mere statutory privilege. Thus, it must be availed in keeping with the manner set by law and is lost by a litigant who does not comply with the rules.*

Nevertheless, appeal has been recognized as an important part of our judicial system and courts have been advised by the Supreme Court to cautiously proceed to *avoid inordinately denying litigants this right*.³⁷ (Emphasis supplied, citations omitted)

*Heirs of Garcia v. Municipality of Iba, Zambales*³⁸ discussed how appeals are perfected when taken under Rules 41 and 42 of the Rules of Court, as well as the distinctions between the two modes of appeal:

Pursuant to this rule, in conjunction with Section 3 and Section 4 of Rule 41, the petitioners should have filed a notice of appeal in the RTC within the period of 15 days from their notice of the judgment of the RTC, and within the same period should have paid to the clerk of the RTC the full amount of the appellate court docket and other lawful fees. *The filing of the notice of appeal within the period allowed by Section 3 sets in motion the remedy of ordinary appeal because the appeal is deemed perfected as to the appealing party upon his timely filing of the notice of appeal. It is upon the perfection of the appeal filed in due time, and the expiration of the time to*

³⁴ 794 Phil. 97 (2016) [Per J. Leonen, Second Division].

³⁵ Id. at 119, citing *Spouses Manalili v. Spouses Arsenio*, 422 Phil. 214, 220 (2001) [Per J. Panganiban, Third Division].

³⁶ 817 Phil. 464 (2017) [Per J. Leonen, Third Division].

³⁷ Id. at 474-475.

³⁸ 764 Phil. 408 (2015) [Per J. Bersamin, First Division].

appeal of the other parties that the RTC shall lose jurisdiction over the case. On the other hand, the non-payment of the appellate court docket fee within the reglementary period as required by Section 4, is both mandatory and jurisdictional, the non-compliance with which is fatal to the appeal, and is a ground to dismiss the appeal under Section 1, (c), Rule 50 of the Rules of Court. The compliance with these requirements was the only way by which they could have perfected their appeal from the adverse judgment of the RTC.

In contrast, an appeal filed under Rule 42 is deemed perfected as to the petitioner upon the timely filing of the petition for review before the CA, while the RTC shall lose jurisdiction upon perfection thereof and the expiration of the time to appeal of the other parties.

The distinctions between the various modes of appeal cannot be taken for granted, or easily dismissed, or lightly treated. *The appeal by notice of appeal under Rule 41 is a matter [of] right, but the appeal by petition for review under Rule 42 is a matter of discretion. An appeal as a matter of right, which refers to the right to seek the review by a superior court of the judgment rendered by the trial court, exists after the trial in the first instance. In contrast, the discretionary appeal, which is taken from the decision or final order rendered by a court in the exercise of its primary appellate jurisdiction, may be disallowed by the superior court in its discretion.*³⁹ (Emphasis supplied, citations omitted)

The foregoing rules clearly provide that an ordinary appeal shall be taken within 15 days from notice of the appealed judgment. Here, petitioner sought to appeal the Regional Trial Court's December 10, 2015 Decision. In accordance with Section 3 of Rule 41, it follows that petitioner had until December 25, 2015 to file a notice of appeal. The records show that the Regional Trial Court's decision had not attained finality because petitioner filed her notice of appeal within the prescribed period, or on December 21, 2015.

Accordingly, "in appeals by notice of appeal, the court loses jurisdiction over the case upon the perfection of the appeals filed in due time and the expiration of the time to appeal of the other parties."⁴⁰ Thus, jurisdiction is transferred to and the remedy lies with the Court of Appeals upon the appeal's perfection.⁴¹

The Court of Appeals committed a grave error in disregarding petitioner's appeal without explaining how it arrived at its conclusion that petitioner did not take an appeal. Worse, no reference to the records or the filed pleadings were made, despite proof of petitioner's timely appeal having

³⁹ Id. at 413-415.

⁴⁰ 1997 Rules of Civil Procedure, Rule 41, sec. 9.

⁴¹ *PNB-Republic Bank v. Spouses Cordova*, 572 Phil. 326 (2008) [Per J. Nachura, Third Division], citing Regalado, Remedial Law Compendium, Sixth Revised Edition, Vol. 1, p. 507.

been submitted in petitioner's subsequent motion for reconsideration. Instead, the Court of Appeals dispensed with the issue due to the supposed absence of an appeal, which is contradicted by the record.

The record shows that petitioner's Notice of Appeal was not acted upon by the Court of Appeals. Petitioner received neither a resolution on her Notice of Appeal nor an order to file an Appellant's Brief. Considering that the Regional Trial Court's decision had not yet attained finality, the natural consequence is that the Court of Appeals still has jurisdiction over the matter of her civil liability. By having timely perfected her appeal, it was incumbent upon the lower courts to proceed with deciding petitioner's pending appeal in accordance with Rule 41, Section 10, and Rule 44, Section 7 of the 1997 Civil Rules of Procedure.

The Court of Appeals' serious error in ignoring petitioner's pending appeal requires that this case be remanded for a proper ventilation of the legal issues that petitioner may raise in support of her appeal.

WHEREFORE, the petition is **GRANTED**. The assailed June 23, 2017 Decision and October 27, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 38397 are **SET ASIDE**. The case is remanded to the Court of Appeals for a resolution on the merits of the case.

SO ORDERED."

By authority of the Court:

Misa D C Batt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
CA 18/2/22

Atty. Modesto A. Ticman, Jr.
Counsel for Petitioner
GILERA & TICMAN LAW FIRM
Unit 403, Dona Consuelo Building
929 Nicanor Reyes Street
1000 Manila

ROMULO MABANTA BUENAVENTURA SAYOC &
DELOS ANGELES
Counsel for Private Complainant
21st Floor, Philam Life Tower
8767 Paseo de Roxas Street
1226 Makati City

COURT OF APPEALS
CA G.R. CR No. 38397
1000 Manila

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street
Legaspi Village, 1229 Makati City

The Presiding Judge
REGIONAL TRIAL COURT
Branch 145, 1200 Makati City

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