



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated **March 16, 2022**, which reads as follows:*

“G.R. No. 251959 (Nelson Baptista y Sambrano and Romela Sarad y Carpentero, petitioners v. People of the Philippines, respondent) — The Court resolves to **NOTE** the Office of the Solicitor General’s Comment dated April 12, 2021, on the petition for review on *certiorari*.

This petition assails the Court of Appeals’ Resolutions dated May 29, 2018¹ and February 14, 2020² in CA-G.R. CR HC No. 10093 denying the appeal of petitioners Nelson Baptista y Sambrano (Baptista) and Romela Sarad y Carpentero (Sarad) for failure to file the Appellants’ Brief despite the lapse of two (2) extensions prayed for.

Antecedents

Sarad was charged with violation of Section 12 (Illegal Possession of Drug Paraphernalia) of Republic Act No. 9165 (RA 9165) under the following Information, *viz.*:

“That on or about the 3rd day of November 2013, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in her possession and control one glass tooter, a drug paraphernalia, without any license or authority in violation of the aforesaid law.

CONTRARY TO LAW.”³

Similarly, Sarad was charged with violation of Section 5 of RA 9165 (Illegal Sale of Dangerous Drugs), together with Baptista for the sale of 0.1560 gram of *methamphetamine hydrochloride*, otherwise known as “*shabu*”, thus:

¹ Penned by Now Supreme Court Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Magdangal M. De Leon and Renato C. Francisco; *rollo*, pp. 52-54.

² Penned by Associate Justice Ramon R. Gareia and concurred in by Associate Justices Victoria Isabel A. Paredes and Tita Marilyn B. Payoyo-Villordon; *id.* at 46-51.

³ *Id.* at 174.

“That on or about the 3rd day of November 2013, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously conspiring and confederating with each other to sell and deliver to a police poseur buyer ONE (1) heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride a dangerous drug locally known as “Shabu” with an aggregate weight of 0.1560 grams, a dangerous drug, without any license or authority to sell in violation of the aforesaid law.

CONTRARY TO LAW.”⁴

Further, Baptista was charged with violation of Section 11 of the same law for possession of two (2) heat-sealed transparent plastic sachets of *shabu* weighing 0.0942 gram and 0.1170 gram, respectively, *viz*:

“That on or about the 3rd day of November 2013, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in his control, possession and custody ONE (1) small heat sealed plastic sachet containing Methamphetamine Hydrochloride a dangerous drug locally known as “Shabu” with an aggregate weight of 0.0942 grams including plastic sachet without any license or authority, in violation of the aforesaid law.

CONTRARY TO LAW.”⁵

“That on or about the 3rd day of November 2013, in the City of Laoag, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously had in her possession, control and custody ONE (1) small heat sealed plastic sachet containing Methamphetamine Hydrochloride a dangerous drug locally known as “Shabu” with an aggregate weight of 0.1170 grams including plastic sachet without any license or authority, in violation of the aforesaid law.

CONTRARY TO LAW.”⁶

By Decision⁷ dated July 28, 2017, the trial court held Sarad guilty of illegal possession of drug paraphernalia and illegal sale of dangerous drugs. Baptista, on the other hand, was held guilty of illegal sale of dangerous drugs.

Petitioners appealed their conviction before the Court of Appeals. By Resolution dated May 29, 2018, the Court of Appeals considered the appeal abandoned and consequently denied the same for petitioners’ failure to file the

⁴ Id. 175.

⁵ Id. 174.

⁶ Id. 175.

⁷ Penned by Presiding Judge Philip G. Salvador; id. at 89-110.

required Appellants' Brief despite the lapse of the two (2) extensions prayed for.⁸

By Motion for Reconsideration and to Remand Cases for Reopening of Proceedings for Purpose of Plea Bargaining dated June 22, 2018, petitioners' then private counsel Atty. Macario D. Arquillo (Atty. Arquillo) explained that the failure to file the brief was due to the latter's deteriorating health because of his diabetes *mellitus* and kidney infection. These medical conditions hampered the preparation of his clients' pleadings. The series of changes in petitioners' choice of counsel rendered them unable to afford to pay the fees. This prompted petitioners to later on request the Public Attorney's Office (PAO) to represent them before the Court of Appeals.⁹

Under Resolution dated October 9, 2019, the Court of Appeals denied petitioners' Motion for Reconsideration and to Remand Cases for Reopening of Proceedings for the Purpose of Plea Bargaining earlier filed by Atty. Arquillo.¹⁰

The Court of Appeals held that petitioners' continued failure to file the required brief despite the lapse of more than one (1) year was inexcusable. For even after Atty. Arquillo withdrew his services on July 19, 2018, petitioners' new lawyer, albeit he (lawyer) subsequently abandoned them (petitioners), also failed to file the required brief. Moreover, to grant the remand of the case for purposes of plea bargaining runs counter to the virtues of plea bargaining namely speed, economy, and finality.¹¹

Meantime, the PAO filed an Omnibus Motion dated October 9, 2019, praying, among others, that the appeal be reinstated and that petitioners be allowed to file the Appellants' Brief.¹²

Then, the PAO filed a Manifestation with Motion dated November 19, 2019, praying that the appellate court relax technical rules in the interest of substantial justice.¹³

On December 6, 2019, petitioners also filed a Motion to Admit Attached Appellants' Brief.¹⁴

⁸ Id. at 13.

⁹ Id. at 15-16.

¹⁰ Id. at 16.

¹¹ Id. at 49.

¹² Id. at 16.

¹³ Id. at 16-17.

¹⁴ Id. at 17.

By Resolution dated February 14, 2020, the Court of Appeals denied the aforesaid motions. It further ordered that the attached Appellants' Brief to be expunged from the records.¹⁵

It held that the Manifestation with Motion is in truth a second motion for reconsideration which is a prohibited pleading under Section 16, Rule 124¹⁶ of the Rules of Court. The same rule rests on the basic tenet of immutability of judgment.¹⁷

The Present Petition

Petitioners now ask the Court to relax procedural rules and allow them to pursue their appeal and consequently direct the Court of Appeals to accept their Appeal Brief and resolve the case on the merits.

They assert that the Court of Appeals erred in pronouncing their conviction final and executory considering that the failure to submit the Appeal Brief was due to the fault of their previous counsel. Their conviction, if not corrected, will certainly cause them grave injustice.¹⁸

In their Comment¹⁹ dated April 12, 2021, the Office of the Solicitor General (OSG) ripostes that while the Court may relax procedural rules, it must be anchored on the basic consideration that the same must be warranted by the circumstances obtaining in each case. Here though, a considerable amount of time had already passed from the time Atty. Arquillo withdrew as counsel, he had been immediately replaced by another counsel, and thereafter by the PAO lawyers. As it was, however, another seven (7) months had passed before a Motion to Admit Attached Appellant's Brief was actually filed before the Court of Appeals.

Ruling

We reverse.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure provides:

¹⁵ Id.

¹⁶ **Sec. 16. Reconsideration.** – A motion for reconsideration shall be filed within fifteen (15) days from notice of the decision or final order of the Court of Appeals with copies thereof served upon the adverse party, setting forth the grounds in support thereof. The *mittimus* shall be stayed during the pendency of the motion for reconsideration. No party shall be allowed a second motion for reconsideration of a judgment or final order.

¹⁷ *Rollo*, p. 49.

¹⁸ Id. at 18-36.

¹⁹ Id. at 220-233.

Section 3. *Period of ordinary appeal.* - The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

This provision should be read in consonance with Section 7, Rule 44, which states:

Section 7. *Appellant's brief* - It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

Corollarily, the Court of Appeals may, under Section 1(e), Rule 50, dismiss respondent's appeal, thus:

Section 1. *Grounds for dismissal of appeal.* - An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]

Expounding on the discretion of the appellate court to dismiss or otherwise allow the appeal to proceed despite the belated service and filing of the required brief, the Court in *Diaz v. People*²⁰ held:

The usage of the word *may* in Section 1 (e) of Rule 50 indicates that the dismissal of the appeal upon failure to file the appellant's brief is not mandatory, but discretionary. Verily, the failure to serve and file the required number of copies of the appellant's brief within the time provided by the Rules of Court does not have the immediate effect of causing the outright dismissal of the appeal. This means that the discretion to dismiss the appeal on that basis is lodged in the CA, by virtue of which the CA may still allow the appeal to proceed despite the late filing of the appellant's brief: when the circumstances so warrant its liberality. In deciding to dismiss the appeal, then, the CA is bound to exercise its sound discretion upon taking all the pertinent circumstances into due consideration.

²⁰ 704 Phil. 146, 157 (2013).

In *The Government of the Kingdom of Belgium v. Court of Appeals*,²¹ the Court laid down the basic rules with respect to the issue of non-filing of appellant's brief with the Court of Appeals and its consequences, to wit:

- (1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;
- (2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;
- (3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;
- (4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency it is imperative that:
 - (a) the circumstances obtaining warrant the court's liberality;
 - (b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;
 - (c) no material injury has been suffered by the appellee by the delay;
 - (d) there is no contention that the appellees' cause was prejudiced;
 - (e) at least there is no motion to dismiss filed.
- (5) In case of delay, the lapse must be for a reasonable period; and
- (6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:
 - (a) where the reckless or gross negligence of counsel deprives the client of due process of law;
 - (b) when application of the rule will result in outright deprivation of the client's liberty or property; or
 - (c) where the interests of justice so require.

²¹ 574 Phil. 380, 397-398 (2008).

On this score, the Court's pronouncement in *Heirs of Spouses Natonton v. Magaway*²² is apropos:

As held by the Court in *Gregorio v. Court of Appeals* (70 SCRA 12 [1976]), “**(t)he expiration of the time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal is not a jurisdictional matter and may be waived by the parties.** Even after the expiration of the time fixed for the filing of the brief, the reviewing court may grant an extension of time, at least where no motion to dismiss has been made. Late filing or service of briefs may be excused where no material injury has been suffered by the appellee by reason of the delay or where there is no contention that the appellee’s cause was prejudiced.” (Emphasis supplied)

Technically, the Court of Appeals may dismiss an appeal for failure to file appellant’s brief on time. However, the dismissal is directory, not mandatory. It is not the ministerial duty of the court to dismiss the appeal. The failure of an appellant to file his brief within the time prescribed does not have the effect of dismissing the appeal automatically. The court has discretion to dismiss or not to dismiss an appellant’s appeal. It is a power conferred on the court, not a duty. The discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

We observe that petitioners’ arguments are based on technical grounds. While indeed respondents did not file their brief seasonably, it was not mandatory on the part of the Court of Appeals to dismiss their appeal. As held by this Court in the above-cited cases, late filing of brief may be excused. In other words, the dismissal of respondents’ appeal on that ground is discretionary on the part of the Appellate Court.

Significantly, there is no showing that petitioners suffered a material injury or that their cause was prejudiced when respondents failed to submit their brief promptly. What is clear is that the latter incurred delay in the filing of their brief because when the deadline fell due, they were not yet represented by a new counsel. (Emphasis supplied, citations omitted)

In *Heirs of Victoriana Villagracia v. Equitable Banking Corporation*,²³ petitioners therein similarly failed to file their Appeal Brief before the Court of Appeals within the reglementary period. They also failed to file their motion for extension before the expiration of the time sought to be extended. But in relaxing the application of the procedural rules and, thus, allowing the appeal to be reinstated, the Court ordained:

However, in the instant case, we are of the view that the ends of justice will be better served if it is determined on the merits, after full opportunity is given to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. It is far better

²² 520 Phil. 723, 728-729 (2006).

²³ 573 Phil. 212, 220 (2008).

to dispose of the case on the merits, which is a primordial end, rather than on a technicality that may result in injustice. While it is desirable that the Rules of Court be faithfully observed, courts should not be too strict with procedural lapses that do not really impair the proper administration of justice. The rules are intended to ensure the proper and orderly conduct of litigation because of the higher objective they seek, which is the attainment of justice and the protection of substantive rights of the parties.

In *Republic v. Imperial, Jr.* [362 Phil. 466], the Court, through Mr. Chief Justice Hilario G. Davide, Jr., stressed that the filing of the appellant's brief in appeals is not a jurisdictional requirement. But an appeal may be dismissed by the CA on grounds enumerated under Rule 50 of the Rules of Court. The Court has the power to relax or suspend the rules or to except a case from their operation when compelling reasons so warrant, or when the purpose of justice requires it. What constitutes good and sufficient cause that will merit suspension of the rules is discretionary upon the court. (Citations omitted)

Here, there appears to be good cause to warrant the suspension of the rules. Petitioners' failure to file the appeal brief within the extended period is excusable. They had to change their counsel because of their previous counsel's state of health. Petitioners' subsequent private counsel, too, withdrew their appearance since petitioners could no longer afford to pay the fees.

Notably, too, the People has not cited any material injury it would suffer if and when petitioners' Appellants' Brief be admitted, and the appeal resolved on the merits. On the contrary, it would serve the higher interest of substantial justice if we allow the appeal to proceed in light of the gravity of the offense and the penalty of life imprisonment imposed on petitioners *vis-à-vis* the miniscule amount of drugs (0.1560 gram and 0.1170 gram) involved.

Finally, we reckon with *Development Bank of the Phils. v. Court of Appeals*²⁴ where the Court disregarded the belated filing of the Appellant's Brief because the said pleading had already been attached to the motion for extension of time to file the said brief. Here, we too ought to relax the rules considering that as in *Development Bank of the Phils.*, the PAO already attached the Appellants' Brief to its motion or plea to allow the appeal.

Indeed, dismissal of appeals on purely technical grounds is not encouraged. The rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted precisely to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his or her complaint or defense rather than for him or her to lose life, liberty, honor or property on plain technicalities. When a rigid application of

²⁴ 411 Phil. 121 (2001)

the rules tends to frustrate rather than promote substantial justice, the Court is empowered to suspend their operation.²⁵

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Resolutions dated May 29, 2018 and February 14, 2020 of the Court of Appeals in CA-G.R. CR HC No. 10093 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals, which is **DIRECTED** to continue with the proceedings therein and to terminate the same with reasonable dispatch.

SO ORDERED.”

By authority of the Court:

Misael Domingo C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court ^{nlw/bj}

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²⁵ *Tiangco v. Landbank of the Philippines*, 646 Phil. 554, 568-569 (2010).