



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 17, 2020** which reads as follows:*

“G.R. No. 241351 – Bonifacio Chua v. People of the Philippines and Court of Appeals, Manila

This is a Petition for *Certiorari*¹ under Rule 65 of the Rules of Court, assailing the Resolutions dated December 22, 2017² and June 13, 2018³ of the Court of Appeals (CA) in CA-G.R. CR No. 39460.

The Facts

In a Decision⁴ dated August 3, 2015 issued by the Regional Trial Court (RTC) of Trece Martires City, Branch 23, Bonifacio Chua (petitioner) was found guilty beyond reasonable doubt of *estafa* for issuing a check for a loan obtained amounting to ₱180,000.00, which was dishonored by the drawee bank upon presentment for payment. Thus, he was sentenced to suffer the penalty of imprisonment from six years and one day to eight years of *prision mayor*, and to pay the value of the check.

Petitioner then appealed his conviction through a Notice of Appeal on August 10, 2015.⁵ Acting upon said appeal, on April 25, 2017, the CA issued a Notice, requiring petitioner to file an appellant’s brief within 30 days from notice, together with the legible certified true copies of the decision or final order appealed from and

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¹ Rollo, pp. 28-45.

² Penned by Associate Justice Ramon A. Cruz, with Associate Justices Eduardo B. Peralta, Jr. and Maria Elisa Sempio Diy, concurring; id. at 52-53.

³ Id. at 58-59.

⁴ Penned by Executive Judge Aurelio G. Icasiano, Jr; id. at 54-57.

⁵ Id. at 58.

directing him to notify the appellate court of any pending and/or subsequent filing of any case involving the same parties and issues in consonance with A.M. No. CA-13-51-J.⁶ Notably, said Notice was sent to Atty. Vivencio S. Baclig (Atty. Baclig) and Atty. Jaime P. Tamondong (Atty. Tamondong), petitioner's counsels of record.⁷ Despite his counsels' receipt of said Notice on May 26, 2017, as evidenced by the registry return receipt, petitioner failed to file the required appellant's brief.⁸

Subsequently, the CA sent the same Notice to File Brief to petitioner at his address of record at No. 10-A Cristobal Street, 1000 Cubao, Quezon City. No one received the same per Registry Return No. 2315.⁹

Thus, in a Resolution dated September 14, 2017, the CA required petitioner's counsels on record (Atty. Baclig and Atty. Tamondong) to inform the court of petitioner's correct, current, and complete address within 10 days from notice. Despite receipt of the same on October 12, 2017, counsels for petitioner again failed to comply with the CA's directive.¹⁰

Consequently, on December 22, 2017, the CA issued the assailed Resolution, dismissing petitioner's appeal, thus:

We are thereby constrained to **DISMISS** the appeal for abandonment or failure to prosecute pursuant to Section 8, Rule 124 of the Rules of Court. The case is deemed closed and terminated.

SO ORDERED.¹¹

On January 22, 2018, petitioner, through his "new" counsel, filed a Motion for Reconsideration¹² alleging that: (1) his counsel of record, Atty. Baclig is filing his formal withdrawal of appearance, and that such withdrawal of appearance is sufficient reason for the court to reconsider its December 22, 2017 Resolution; (2) in compliance with the CA's previous directive, he is furnishing the court with petitioner's address at Unit 16-E, 20 Landsberg Condominium, 170, Tomas Morato, Quezon City; (3) he is invoking the appellate court's

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⁶ Id. at 52.

⁷ Id. at 58.

⁸ Id. at 52.

⁹ Id.

¹⁰ Id.

¹¹ Id. at 52-53.

¹² Id. at 60-64.

liberality as Atty. Baclig is of senior age with limitations in handling the case; and (4) as substitute for Atty. Baclig, Atty. Tamondong formally enters his appearance as his new counsel of record.

The CA, however, observed that petitioner's alleged "new" counsel of record is the same lawyer who filed the Notice of Appeal dated August 10, 2015 for and in behalf of petitioner. The CA found that Atty. Tamondong is not petitioner's "new" counsel of record but one of his counsels of record. He actually received the April 25, 2017 Notice to File Brief issued by the CA, as well as the Minute Resolution, requiring him to inform the appellate court of petitioner's correct, current, and complete address, which were both unheeded.¹³

Thus, the appellate court concluded that the fact that Atty. Baclig, one of petitioner's counsels of record, is withdrawing his appearance, was not a valid ground to set aside its order dismissing the appeal. The CA held that petitioner was not denied due process as he was sufficiently notified of the court directives and thus, given the opportunity to present his case. Furthermore, the CA found that the Withdrawal of Appearance attached in the Motion for Reconsideration did not even comply with the proper procedure under Section 26, Rule 138 of the Rules of Court.¹⁴ Hence, the assailed dismissal of appeal stood through the CA's assailed Resolution dated June 13, 2018:

WHEREFORE, the Motion for Reconsideration dated January 19, 2018 is **DENIED** for lack of merit.

SO ORDERED.¹⁵

Hence, this Petition.

Invoking the Court's liberality and alleging a meritorious defense, petitioner would have us strike down the CA's Resolutions dismissing his appeal on the ground of abandonment for purportedly being issued in grave abuse of discretion. Petitioner insists that Atty. Baclig's withdrawal of appearance as his counsel and the appearance of Atty. Tamondong as "substitute" due to the former's inability to further handle the case because of his advanced age is a sufficient ground for the appellate court to reconsider the dismissal of his appeal. Petitioner argues that the CA is guilty of grave abuse of discretion for strictly applying the rules of procedure in his case as such rigidity denied him of his opportunity to present his case in violation of his right to due process.

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¹³ Id. at 58.

¹⁴ Id. at 58-59.

¹⁵ Id. at 59.

Issue

Did the CA commit grave abuse of discretion in dismissing petitioner's appeal?

The Court's Ruling

We dismiss the Petition.

Nothing is more settled than the rule that for a writ of *certiorari* to issue, the respondent court must be shown to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as the capricious or whimsical exercise of judgment, equivalent to lack of jurisdiction. An act done with grave abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary or despotic manner by reason of passion or hostility.¹⁶

In this case, far from the grievous error that petitioner attempts to impress upon this Court, we find that the CA merely exercised the authority expressly granted to it under Section 8, Rule 124 of the Revised Rules of Criminal Procedure:

SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de officio*.

Petitioner was represented by private counsels, who despite proper notices of the appellate court's directives with regard to the filing of the appellant's brief, failed to comply therewith. Notably, petitioner was also furnished with said notice to file the appellant's brief, which was sent to his address on record. The required appeal brief, however, was never filed.

Atty. Baclig's withdrawal of appearance cannot justify such failure. Foremost, it is undisputed that such formal withdrawal of

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¹⁶ *People v. Court of Appeals*, 755 Phil. 80, 101 (2015).

appearance came only after the dismissal of the appeal. Thus, when the CA's directives were issued, Atty. Baclig was still serving as petitioner's counsel of record. Records also show that while Atty. Baclig may be petitioner's "chief counsel,"¹⁷ his being indisposed while serving as petitioner's counsel, if at all true, did not prejudice petitioner's cause when he has a well-capacitated co-counsel of record, Atty. Tamondong, who was also properly notified of the court processes. In fact, he was able to comply with the CA's directive to inform the court of petitioner's current and complete address. Unfortunately, such compliance was belatedly done in the motion for reconsideration. Further, it should be emphasized that Atty. Tamondong is not a "new" counsel of record, contrary to petitioner's allegation. As intimated above, he has been Atty. Baclig's co-counsel for petitioner's case. Records show that Atty. Tamondong is the same lawyer who filed petitioner's Notice of Appeal.¹⁸

It cannot be denied that petitioner had more than ample time from the filing of the Notice of Appeal on August 10, 2015 to prepare the required appeal brief, as well as to make proper arrangements with his counsels if he was truly having issues with one of his counsel's competence in properly representing him in court.

On this note, we have reminded litigants that they are expected to be vigilant and conscious of the status of their cases at all times.¹⁹ The same prudence is required from them whether or not they have a counsel at some point in the proceedings because, needless to say, such sense of vigilance in pursuing a cause does not entail legal intricacy. A simple showing that petitioner has been requesting updates with his counsels with regard to his case would have made a difference in the outcome of his plea for the Court's liberality. There was not even an allegation to that effect in this case. Moreover, Atty. Tamondong's misrepresentation as a "new" counsel of record, when in truth he is not, cannot be countenanced.

Indeed, petitioner and his counsels' inexplicable inaction until the dismissal of the appeal was decreed is a clear manifestation of sheer laxity²⁰ and utter disregard of established court rules, which are indispensable for the orderly and speedy disposition of justice.²¹

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¹⁷ *Rollo*, p. 30.

¹⁸ *Id.* at 58.

¹⁹ *Mendoza v. Court of Appeals*, 764 Phil. 53, 65 (2015).

²⁰ *Lagua v. Court of Appeals*, 689 Phil. 452, 460 (2012).

²¹ *Id.*

With such travesty and inaction, on the part of both petitioner and his counsels, the Court is constrained to rule that petitioner had already lost his remedy of appeal not only through his counsels' fault to which he is bound, but also through his own fault.²²

Considering the foregoing, the CA was well-within its authority to dismiss petitioner's appeal.

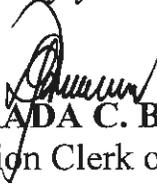
Certainly, petitioner's plea for liberality is unworthy of any sympathy from the Court. Petitioner did not give any cogent reason that could warrant the relaxation of the rules in his favor. At any rate, we have ruled, time and again, that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law.²³ To rule otherwise is to tolerate unjustifiable shortcomings, which treads upon our established rules that guarantee the smooth administration of justice for every litigant.²⁴ Consistent in our jurisdiction is this Court's exercise of liberality in the application of rules only for the most persuasive reasons. There must be no indication that the failure to comply with such rules is due to negligence or design. Liberality is an exception, justifiable only when equity exists.²⁵

Finding no reversible error, much less grave abuse of discretion on the part of the CA in dismissing petitioner's appeal, the instant Petition fails.

WHEREFORE, premises considered, the Petition is **DENIED**. Accordingly, the assailed Resolutions of the Court of Appeals dated December 22, 2017 and June 13, 2018 are hereby **AFFIRMED**.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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²² See *Estate of Filomina G. Macadangdang v. Gaviola*, 599 Phil. 708-716 (2009).

²³ Id. at 715-716.

²⁴ *Heirs of Arturo Garcia I v. Municipality of Iba, Zambales*, 764 Phil. 408, 417 (2015).

²⁵ See *Viva Shipping Lines v. Keppel Philippines Mining, Inc.*, 781 Phil. 95-132 (2016).



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