



Republic of the Philippines
 Supreme Court
 Manila
 FIRST DIVISION

SUPREME COURT OF THE PHILIPPINES
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NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated July 23, 2014 which reads as follows:

“G.R. No. 189955 – ROSEMARIE H. ENCARNACION, Petitioner, v. PEOPLE OF THE PHILIPPINES, Respondent.

The petitioner assails the decision promulgated on May 28, 2009,¹ whereby the Court of Appeals (CA) affirmed the orders dated February 18, 2008² and May 5, 2008³ of the RTC of Cavite City, Branch 17, rendered in Criminal Case Nos. 305-07 and 306-07.

On March 6, 2006, the petitioner was charged with violation of Batas Pambansa Bilang 22 in the Municipal Trial Court of Rosario, Cavite.⁴ After trial, the MTC found her guilty as charged.⁵ She appealed,⁶ and the RTC required her to submit her memorandum of appeal on or before December 18, 2007. However, her counsel, Atty. Rosemarie Carmen Veloz Perey, sought an additional 15 days, or until January 2, 2008, within which to file the memorandum of appeal.⁷ Despite the additional time for her, she failed to submit her memorandum of appeal on time.⁸

Allegedly, on January 4, 2008, or two days beyond the extension of the period to file her memorandum, the petitioner’s counsel filed a motion to admit memorandum of appeal, citing the counsel’s chronic migraine as the reason for the belated filing of the memorandum of appeal.⁹

¹ *Rollo*, pp. 50-56; penned by Associate Justice Jose C. Reyes, Jr., with Associate Justice Martin S. Villarama, Jr. (now a Member of the Court) and Associate Justice Normandie B. Pizarro concurring.

² *Id.* at 127-128.

³ *Id.* at 123.

⁴ *Id.* at 23.

⁵ *Id.* at 24.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

According to the RTC, however, it received the petitioner's motion to admit memorandum only on January 9, 2008.¹⁰ Thus, the RTC denied the petitioner's motion to admit memorandum, as well as her subsequent motion for reconsideration.¹¹

Assailing the RTC's denial of the motion to admit memorandum by petition for *certiorari*, the petitioner contended in the CA that the RTC thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction.

On May 28, 2009, the CA promulgated its decision dismissing the petition for *certiorari* on the ground that the RTC did not commit any grave abuse of discretion.¹²

Hence, this appeal, with the petitioner praying for the relaxation of the rules of procedure;¹³ and for the Court to decide her case on the merits.¹⁴

The appeal lacks merit.

Section 7(b), Rule 40 of the *Rules of Court*¹⁵ provides that the failure of the appellant to file her memorandum of appeal is a ground for the dismissal of the appeal. But the petitioner wants us to liberalize the rule, citing Section 6, Rule 1 of the *Rules of Court*, the rule of liberal construction, which states that the rules of procedure "shall be liberally construed in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action or proceeding."

We cannot side with the petitioner. The rule of liberal construction embodied in Section 6, Rule 1 of the *Rules of Court* does not serve as a blanket authority to relax the rules of procedure everytime a party invokes it. In *AMA Computer College – Santiago City, Inc. v. Nancino*,¹⁶ the Court

¹⁰ Id. at 127.

¹¹ Id. at 24.

¹² Supra note 1.

¹³ Rollo, pp. 26-27.

¹⁴ Id at 27.

¹⁵ Section 7. *Procedure in the Regional Trial Court.* –

x x x x

(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.

¹⁶ G.R. No. 162739, February 12, 2008, 544 SCRA 502.

has frowned on the misapprehension of litigants on the coverage of the rule, viz:

Verily, rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.¹⁷

This has been the reason why the Court has clarified in *Gonzales v. Gonzales*,¹⁸ a ruling quoted and relied upon by the petitioner, that the rules of procedure are to be relaxed only in extraordinary cases and upon compelling grounds.

Did the petitioner proffer an extraordinary and compelling reason to justify the relaxation of the rules of procedure in her favor?

We do not think so.

Atty. Perey, the petitioner's counsel, blamed her chronic migraine for her failure to file the memorandum of appeal on time. According to Atty. Perey, her migraine "was triggered by the noise and smoke that filled the air during the year-end revelry."¹⁹ Whether the stated reason for the failure to file was true or not was not significant, for the fact remained that Atty. Perey had already sought and obtained an additional 15 days reckoned from December 18, 2007 within which to prepare and file the memorandum of appeal. Had she been mindful and diligent in going about her professional duty, Atty. Perey could have attended to the task of preparing and filing the memorandum of appeal even prior to the year-end festivities. Her conceded inability to do so proved that she wasted 15 days of the extension period to file the memorandum of appeal, rendering her tendered excuse for the non-filing on time as neither exceptional nor compelling. Under the circumstances, there is no justification to liberalize the rule of procedure in question.

¹⁷ Id. at 510.

¹⁸ G.R. No. 151376, February 22, 2006, 483 SCRA 57, 69.

¹⁹ *Rollo*, p. 25.

Verily, that the RTC exercised its benevolence in granting the petitioner's request for the 15-day extension negated any assertion of abuse of discretion, least of all grave, on the part of said court, especially considering that the failure to file the memorandum of appeal within the extension period allowed could be attributed to the petitioner herself.

The client is bound by the negligence of her own counsel.²⁰ The only exception is when the negligence of the counsel is so gross that the client is deprived of due process.²¹ Even so, the gross negligence of the counsel must not be accompanied by the negligence of the client.²² Indeed, the client has the obvious duty to be herself vigilant about her rights, and to keep herself updated on the status of her case.²³

The negligence of Atty. Perey was not so gross as to have the petitioner's situation come under the exception. In *Estate of Felomina G. Macadangdang v. Gaviola*,²⁴ the Court ruled that the counsel's failure to file a memorandum did not amount to gross negligence because it did not involve a clear abandonment of the client's cause.²⁵ Moreover, the petitioner could have prevented her counsel's neglect to file the memorandum of appeal had she exercised the necessary vigilance of a client in her shoes. In short, the petitioner was bound by her counsel's negligence.

Nonetheless, even if we were to look into the merits of the petitioner's case, her appeal would not earn any sympathy. It is clear that she challenges her conviction for violation of Batas Pambansa Bilang 22 by harping on the lack of credibility of complainant Dulce J. Amin.²⁶ But the Court is not a trier of facts, and does not disturb the trial court's finding of the events that had transpired herein.²⁷ The issue of the credibility of witnesses is a question of fact, not of law.²⁸ In any case, credibility of witnesses and of versions is better left to the determination by the trial court due to its unique opportunity to assess and evaluate the witnesses' demeanor while testifying.²⁹ Hence, the Court cannot pass upon the issue of credibility on appeal by *certiorari*.

²⁰ *Lagua v. Court Appeals*, G.R. No. 173390, June 27, 2012, 675 SCRA 176, 182.

²¹ *Dimarucot v. People*, G.R. No. 183975, September 20, 2010, 630 SCRA 659, 667.

²² *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331.

²³ *Id.*

²⁴ G.R. No. 156809, March 4, 2009, 580 SCRA 565.

²⁵ *Id.* at 573.

²⁶ *Rollo*, pp. 28-31.

²⁷ *Dela Cruz v. Court Appeals*, G.R. No. 85450, July 3, 1990, 187 SCRA 165, 170.

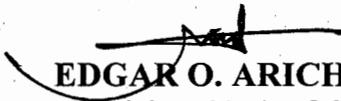
²⁸ See *Bernardo v. CA*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232.

²⁹ *People v. Tan*, G.R. No. 116200-02, June 21, 2001, 359 SCRA 283, 300.

WHEREFORE, the petition for review on *certiorari* is **DENIED** for lack of merit.

SO ORDERED. *VILLARAMA, JR., J.*, took no part; *BRION, J.*, additional member per raffle dated November 25, 2009

Very truly yours,


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Division Clerk of Court
93-A

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