



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated June 23, 2021, which reads as follows:

“G.R. No. 215121 (*Dr. Benigno A. Agbayani, Jr. v. People of the Philippines*). - Challenged in this Petition for Review on *Certiorari*¹ are the April 29, 2014² and October 23, 2014³ Resolutions of the Court of Appeals (CA) in CA-G.R. CR No. 36468 which denied due course and dismissed outright the appeal of petitioner Dr. Benigno A. Agbayani, Jr. (Agbayani) for lack of merit.

The Antecedents:

Agbayani was charged before the Metropolitan Trial Court (MeTC) with reckless imprudence resulting in serious physical injuries in an Information⁴ that reads:

That on or about January 5, 2006, in the City of Manila, Philippines, the said accused, being then the surgeon and/or orthopedist of complainant Saul Q. Hofflena, Jr., did then and there voluntarily but without malice, conduct an operation (arthroscopy) upon said complainant in a reckless manner by using a medical instrument (arthroscope) that was not sterilized without taking the necessary precaution to avoid injury to said complainant, taking into consideration his employment or occupation and degree of intelligence, causing as a consequence of his said carelessness, recklessness, negligence, imprudence and lack of precaution, the said complainant to suffer serious physical injuries on his left knee which rendered him incapacitated for work and/or labor for more than thirty (30) days and in fact said complainant had undergone another operation at St. Luke's Hospital, Quezon City on his left knee to remove the infection introduced by the accused and subsequent operation on his right wrist

¹ *Rollo*, pp. 12-46.

² *CA rollo*, pp. 279-299; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda (now a member of the Court) and Maria Elisa Scmpio Diy.

³ *Id.* at 204.

⁴ *Id.* at 160-161.

as a result of walking with a cane for a prolonged period of time, to the damage and prejudice of said Saul Q. Hofilana, Jr.⁵

Agbayani pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued.

Ruling of the Metropolitan Trial Court:

On July 29, 2013, the MeTC rendered its Decision⁶ finding Agbayani guilty beyond reasonable doubt of Reckless Imprudence Resulting in Serious Physical Injuries. The dispositive portion of the judgment reads:⁷

WHEREFORE, premises considered, the Court finds the accused Dr. Benigno A. Agbayani, Jr. guilty beyond reasonable doubt of the crime of Reckless Imprudence Resulting to Serious Physical Injuries.

Accordingly, the said accused is hereby sentenced to suffer the penalty of imprisonment of two (2) years of *prison correccional* minimum.

SO ORDERED.⁸

Pctitioner appealed before the RTC on September 3, 2013. Thereafter, on October 11, 2013, the RTC ordered⁹ him to file a memorandum of appeal as per Section 7(b), Rule 40 of the Rules of Court. The October 11, 2013 Order was received by petitioner on November 19, 2013. Thus, petitioner had until December 4, 2013 within which to file his appeal memorandum. However, instead of filing his appeal memorandum, he filed a motion asking for an extension of 15 days which was granted by the RTC in its December 16, 2013 Order. Hence, petitioner had until December 19, 2013 within which to file his appeal memorandum.¹⁰ However, he failed to do so.

Ruling of the Regional Trial Court:

In an Order¹¹ dated December 23, 2013, the RTC dismissed petitioner's appeal for failure to file an appeal memorandum within the reglementary period, viz.:¹²

As prayed for, the court favorably acted on accused-appellant's Motion for Extension of time to file Appeal-Memorandum, by giving him until December 19, 2013, to file the same. However, accused-appellant failed to comply with the order of the court dated December 16, 2013.

Rule 40, Section 7(b) of the Rules of Court provides:

⁵ Id. at 160.

⁶ Id. at 43-51.

⁷ Id. at 51.

⁸ Id.

⁹ Id. at 62.

¹⁰ Id. at 40.

¹¹ Id.

¹² Id.

Section 7. Procedure in the Regional Trial Court.

(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.

WHEREFORE, for failure to file his memorandum, the court orders the appeal DISMISSED.¹³

Agbayani filed a motion for reconsideration but it was denied by the RTC in its February 26, 2014 Order.¹⁴ It held that despite the extension given to petitioner until December 19, 2013 within which to file his appeal memorandum, he still failed to submit within the reglementary period. Instead, he filed two other motions for extension on December 19, 2013 and January 3, 2014 which were received by the RTC on January 15, 2014 and January 20, 2014, respectively, through registered mail.

Aggrieved, petitioner filed a petition for review before the CA alleging grave abuse of discretion on the part of the RTC for dismissing his appeal for his failure to file an appeal memorandum within the extended period.

Ruling of the Court of Appeals:

The appellate court dismissed¹⁵ petitioner's appeal for lack of merit. It ruled that the right to appeal is not a natural right nor a part of due process but a mere statutory privilege which may be exercised only in the manner and in accordance with the provisions of law. Thus, petitioner must comply with the requirements of the Rules of Court and failure to do so would result to the loss of his right to appeal.

Moreover, the appellate court noted that petitioner failed to append to his petition the following: (a) Information dated January 22, 2006; (b) petitioner's Affidavits as well as private complainant's Reply Affidavit filed before the MeTC; (c) witnesses' affidavits; (d) evidence of the prosecution; (e) petitioner's Comment and Opposition thereto; (f) petitioner's Answer; (g) RTC Order dated October 11, 2013; (h) petitioner's motions for extension filed on December 4, 2013, December 19, 2013 and January 3, 2014; (i) petitioner's motion for reconsideration of the RTC Order dated December 23, 2013; (j) petitioner's Memorandum on Appeal filed on January 10, 2014; and (k) all other pleadings filed before the lower courts.

Citing Section 2(d), Rule 42 of the Rules of Court, the appellate court ruled that the petition for review must be accompanied by clearly legible

¹³ Id.

¹⁴ Id. at 41-42.

¹⁵ Supra note 2.

duplicate originals or true copies of the judgments or final orders of both the first level and second level courts, certified correct by the clerk of court of the RTC, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations of the petition. Non-compliance therewith is a ground for dismissal of the petition as per Section 3 of the same rule.

Moreover, the Rules of Court are designed for the proper and prompt disposition of cases. Petitioner is mandated to file his appeal memorandum within 15 days from notice of the clerk of court under Section 7, Rule 40. His failure to do so shall be a ground for the dismissal of an appeal. The said rule explicitly provided that "it shall be the duty of the appellant to submit a memorandum" and "failure to do so shall be a ground for dismissal of the appeal." It used the word "shall" which means mandatory and compulsory. Hence, petitioner is duty-bound to submit his memorandum on appeal; it is not discretionary on his part.

As regards petitioner's motions for extension, the appellate tribunal held that the grant or denial of motions for extension, including the duration thereof, lies within the sound discretion of the court, to be exercised in accordance with the particulars of each case. Hence, petitioner is not justified to expect that the extension he sought would be granted. While it is true that rules of procedure are liberally construed to accord litigants ample opportunity to prove their respective claims and in order to avoid a possible denial of substantial justice due to legal technicalities, it is also equally true that an appeal is a statutory right which requires the appellant to strictly comply with the the Rules of Court.

Petitioner's subsequent motion for reconsideration was denied by the CA in its October 23, 2014 Resolution.¹⁶

Hence, this Petition¹⁷ for Review on *Certiorari* under Rule 45.

Issues

Petitioner raised the following errors:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN DISMISSING PETITIONER'S APPEAL FOR FAILURE TO ATTACH ALL THE PLEADINGS AND DOCUMENTS PERTINENT TO THE PETITION FOR REVIEW UNDER RULE 42.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN UPHOLDING RTC'S DISMISSAL OF HIS

¹⁶ Supra note 3.

¹⁷ Supra note 1.

APPEAL FOR FAILURE TO FILE THE APPEAL MEMORANDUM
WITHIN THE PERIOD OF EXTENSION ORIGINALLY GRANTED.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN FAILING TO CONSIDER AND REVERSE METC'S ERRONEOUS CONVICTION OF PETITIONER FOR RECKLESS IMPRUDENCE RESULTING IN SERIOUS PHYSICAL INJURIES.¹⁸

Petitioner's Arguments:

Petitioner claims that he submitted the following pertinent documents in support of his petition under Rule 42, to wit: (a) December 23, 2013 Order of the RTC dismissing his appeal; (b) February 26, 2014 Order of the RTC denying his motion for reconsideration; (c) July 29, 2013 Judgment of the MeTC; (d) transcript of stenographic notes (TSN) dated May 25, 2012; and (e) TSN dated June 5, 2009. Petitioner contends that he did not submit the motions for extension as they were duly mentioned by the RTC in its February 26, 2014 Order and the said facts were not in dispute. As to the Information, the same was already set forth in MeTC July 29, 2013 Order.

He argues that his failure to attach all pleadings and documents is not a sufficient ground to dismiss the petition. Petitioner cites several instances in which the Court liberally construed the rules of procedure in order to advance the cause of substantial justice. Petitioner claims that a relaxation of the rules is warranted in his case as he is not guilty of the crime charged and was wrongfully convicted thereof.

Agbayani likewise insists that the prosecution failed to prove that the arthroscope used on private complainant Saul Q. Hofilena, Jr. (Hofilena, Jr.) was not sterile. The trial court merely assumed that the arthroscope was not sterile. Although the MeTC's July 29, 2013 Decision found petitioner to have failed to prove that he had observed due care and diligence required of him under the circumstances, it likewise ruled that private complainant failed to present evidence to establish the standards in medical practice regarding the sterilization of subject instrument.

Moreover, the prosecution failed to prove that the infection on Hofilena, Jr.'s knee was due to petitioner's alleged negligence during the arthroscopy. Although it presented pathologist Dr. Debbie Dela Fuente (Dr. Dela Fuente) to prove that Hofilena, Jr.'s knee was infected as well as the source of its infection, and medical technologist Christine Marie Javelona Pascual, who conducted the laboratory test, both medical practitioners did not take a sample tissue on Hofilena, Jr.'s knee. The prosecution failed to identify and present the person who allegedly took the sample tissue which was the subject of the laboratory examination. Thus, the results of the laboratory test could not serve as proof that Hofilena, Jr.'s knee was actually infected. Dr. Dela Fuente

¹⁸ Id. at 19-20.

herself testified that the results of the laboratory examination could not categorically prove the alleged negligence of petitioner. Hence, the prosecution failed to prove his guilt beyond reasonable doubt.

Respondent's Arguments:

On the other hand, the respondent argues that petitioner's failure to attach the pertinent documents cited by the appellate court in its April 29, 2014 Resolution was fatal to his cause. Petitioner failed to submit all the lacking requirements without any plausible explanation when he filed a motion for reconsideration of the April 29, 2014 Resolution.

Respondent insists that petitioner's counsel's excuse of "heavy workload", "almost daily court hearings", and "submission of equally important pleadings," as grounds for extension of period to file his appeal memorandum, were unjustified. The relaxation of procedural rules can only be made under justifiable circumstances which the petitioner failed to do. The grant or denial of a motion for extension lies in the sound discretion of the appellate court in accordance with the particulars of each case. Hence, petitioner is not justified to presume that his motion for extension would be granted and for the duration it sought for.

Finally, only questions of law may be raised in a Petition for Review on *Certiorari*. It is not the function of the Court to weigh all over again the evidence already considered in the proceedings before the trial court. The issue on the sterilization or non-sterilization of the arthroscope used on Hofilena, Jr.'s knee is obviously factual as it requires a reassessment and re-evaluation of the the weight, credence and probative value of the evidence presented by the parties before the MeTC.

Our Ruling

The petition is without merit.

Section 2(d), Rule 42 of the Rules of Court requires the submission of clearly legible duplicate originals or true copies of the judgments or final orders of both lower courts, certified correct by the clerk of court of the RTC, the requisite number of plain copies thereof and of the pleadings and other material portions of the record as would support the allegations in the petition. Agbayani's Petition for Review before the appellate court lacked material portions of the record that would support his allegations in the petition which, as enumerated by the appellate court, are as follows: (a) Information dated January 22, 2006; (b) petitioner's Affidavits as well as private complainant's Reply Affidavit filed before the MeTC; (c) witnesses' affidavits; (d) evidence of the prosecution; (e) petitioner's Comment and Opposition thereto; (f) petitioner's Answer; (g) RTC Order dated October 11, 2013; (h) petitioner's motions for extension filed on December 4, 2013, December 19, 2013 and January 3, 2014; (i) petitioner's motion for reconsideration of the RTC Order

dated December 23, 2013; (j) petitioner's Memorandum on Appeal filed on January 10, 2014; and (k) all other pleadings filed before the lower courts.

Petitioner did not deny his omission to attach the above-mentioned pertinent pleadings and portions of the records to his Petition. When he filed his motion for reconsideration of the appellate court's April 29, 2014 Resolution, he still failed to attach the following material documents despite being informed by the appellate court, to wit: (a) petitioner's Affidavits as well as private complainant's Reply Affidavit filed before the MeTC; (b) witnesses' affidavits; (c) evidence of the prosecution; (d) petitioner's Comment and Opposition thereto; and, (e) petitioner's Answer.

In *Barcenas vs Spouses Tomas*,¹⁹ we declared that petitioners are required by the Rules of Court to provide the appellate court with certified true copies of the judgments or final orders subject of review, as well as the material portions of the record. These documents and pleadings are needed by the reviewing courts in resolving whether to give due course to the petition. Hence, they should not be perfunctorily ignored or violated. Failure to comply with these rules hinders the review of cases on the merits and deprives the appellate court of definitive bases for its rulings, results in frustrating delays, and disrupts the orderly administration of justice.

Concededly, any infirmity on the form of the petition may be waived to give the parties a chance to argue their causes and defenses on the merits.²⁰ The concerned party must, however, offer a satisfactory explanation and subsequently comply with the requirements to justify a relaxation of the rules.²¹ Unfortunately, petitioner failed to offer any reasonable justification or to comply with the deficiencies in his motion for reconsideration notwithstanding the enumeration of the lacking documents made by the appellate court.

As regards petitioner's failure to timely submit his appeal memorandum before the RTC, Section 7(b), Rule 40 of the Rules of Court explicitly states that failure of the appellant to file a memorandum within 15 days from filing a notice of appeal shall be a ground for the dismissal of such appeal. The issue on whether the filing of a memorandum is mandatory or not has already been settled in *Enriquez v. Court of Appeals*,²² viz.:

Rule 40, Section 7 (b) provides that, **"it shall be the duty of the appellant to submit a memorandum" and failure to do so "shall be a ground for dismissal of the appeal."** The use of the word **"shall"** in a **statute or rule expresses what is mandatory and compulsory.** Further, the Rule imposes upon an appellant the "duty" to submit his memorandum. A duty is a "legal or moral obligation, mandatory act, responsibility, charge,

¹⁹ 494 Phil. 565 (2005).

²⁰ *Id.*

²¹ *Id.*

²² 444 Phil. 419 (2003).

requirement, trust, chore, function, commission, debt, liability, assignment, role, pledge, dictate, office, (and) engagement.” **Thus, under the express mandate of said Rule, the appellant is duty-bound to submit his memorandum on appeal. Such submission is not a matter of discretion on his part. His failure to comply with this mandate or to perform said duty will compel the RTC to dismiss his appeal.**²³

A perusal of the records reveal that petitioner was granted an extension of 15 days or until December 19, 2013 within which to file his appeal memorandum. However, instead of submitting his memorandum, petitioner filed two more motions for extension with the expectation that the same would be granted by the RTC. Petitioner should not expect that his motions for extension would be granted much less for the period sought for.

His counsel’s excuse of “heavy workload” does not persuade. It bears stressing that petitioner had 15 days to file a notice of appeal, another 15 days to file a memorandum from such notice and an extension of 15 days to file the said memorandum. In sum, petitioner had 45 days to prepare his appeal memorandum which is more than sufficient for his counsel to complete the drafting, printing, proofreading and filing of his memorandum.

At this juncture, it must be stressed that an appeal is a statutory right and the party who intends to appeal must comply with the rules and procedures governing appeals, otherwise, the right to appeal may be lost.²⁴ Hence, petitioner has only himself to blame for the dismissal of his appeal.

Finally, petitioner raised the issue of the non-sterilization of the arthroscope he inserted on Hofilena, Jr.’s knee during the operation which may have caused the growth of bacterial infection on the latter’s knee. Well-settled is the rule that in a petition for review on *certiorari* under Rule 45, this Court only dwells on questions of law and not questions of facts. There is a question of law when doubts or differences arise as to what law pertains to a certain state of facts, and a question of fact when the doubt pertains to the truth or falsity of alleged facts.²⁵ Obviously, the sterilization or non-sterilization of the arthroscope is a question of fact as it involved a review of the probative value of the evidence presented before and considered by the MeTC. Besides, petitioner had the opportunity to raise factual issues before the RTC and CA. However, he failed to take advantage of the opportunity when he unjustifiably and unmeritoriously failed to submit an appeal memorandum.

In fine, we hold that the appellate court committed no reversible error when it dismissed outright petitioner’s appeal for lack of merit. However, We deem it necessary to modify the penalty imposed by the MeTC. Article 365 of

²³ *Id.*

²⁴ *Spouses Lebin v. Mirasol*, 672 Phil. 477, 494 (2011).

²⁵ *Barceñas v. Spouses Tomas*, supra note 19, citing *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947, (2001) citing *Reyes v. Court of Appeals*, 328 Phil. 171, 179, (1996); *China Road and Bridge Corporation v. Court of Appeals*, 401 Phil. 590 (2000).

the Revised Penal Code provides that:

ART. 365, Imprudence and negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed. Xxx

Considering the circumstances of this case and applying the Indeterminate Sentence Law, We deem it proper to impose the penalty of one (1) month and one (1) of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prisión correccional*, as maximum.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The April 29, 2014 and October 23, 2014 Resolutions of the Court of Appeals (CA) in CA-G.R. CR No. 36468 are hereby **AFFIRMED** with **MODIFICATION** that Benigno A. Agbayani, Jr. shall suffer the penalty of imprisonment of one (1) month and one (1) day of *arresto mayor*, as minimum, to one (1) year and one (1) day of *prisión correccional*, as maximum.

SO ORDERED.”

By authority of the Court:

Mis PDC Batt
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