

FIRST DIVISION

[G.R. No. 150453, February 14, 2003]

**RAFAEL AMATORIO, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

AZCUNA, J.:

Before us is a petition to reverse and set aside the Resolution^[1] of the Court of Appeals dated October 9, 2001 in CA-G.R. No. 21247.

The pertinent facts and incidents appear from the records:

Petitioner Rafael Amatorio was charged with the crime of murder before the Regional Trial Court, Branch 39, 6th Judicial Region, Iloilo City and the case was docketed as Criminal Case No. 35460.^[2]

After trial on the merits, the Regional Trial Court rendered judgment against Amatorio, disposing of the case as follows:

WHEREFORE, premises considered, the accused RAFAEL AMATORIO is hereby found GUILTY beyond reasonable doubt of the crime of Homicide only and there being no mitigating or aggravating circumstances and applying the Indeterminate Sentence Law, is hereby sentenced to suffer imprisonment for a period of Ten (10) years as minimum, to Seventeen (17) years and Four (4) months as maximum.

The accused is further ordered to pay the mother of the deceased Ofelia Melocoton [in] the amount of Php63,200.00 for funeral and burial expenses and expense[s] during the wake and further to pay the legal heirs of the deceased the amount of Php50,000.00 for his wrongful death and another Php50,000.00 for moral damages and the cost of this suit.

SO ORDERED.^[3]

From the foregoing decision, petitioner appealed to the Court of Appeals.

Throughout the course of the trial, Amatorio was represented by Atty. Joelito T. Barrera of the Barrera Law Office.^[4]

On March 2, 2001, while the case was pending before the Court of Appeals and before the appellate court could render a decision, Atty. Barrera died.^[5]

After a review of the case on the merits, the Court of Appeals, in a decision dated April 18, 2001,^[6] affirmed the decision of the Regional Trial Court, stating:

WHEREFORE, FOREGOING PREMISES CONSIDERED, the appealed Decision dated July 18, 1997 of the Regional Trial Court, Branch 39, Iloilo City in Criminal Case No. 35460, being in accordance with law and evidence is AFFIRMED with the correction in the sense that the accused-appellant is sentenced to suffer the imprisonment for a period of Ten (10) Years of prision mayor as minimum to Seventeen (17) Years and Four (4) Months of reclusion temporal as maximum. Costs against the appellant.

SO ORDERED.^[7]

A copy of the decision was received by the Barrera Law Office on May 7, 2001.^[8] Thus, appellant had until May 22, 2001 within which to file a motion for reconsideration or to appeal the same to us.^[9]

Petitioner alleges that he was not informed of the decision of the Court of Appeals and that he learned of Atty. Barrera's death only on August 9, 2001. Thus, he was unable to file a timely motion for reconsideration of the said decision.^[10]

On August 17, 2001, represented by new counsel, Atty. Gerald C. Jacob, petitioner filed a "Motion for 30-day Extension to File Motion for Reconsideration."^[11] The new counsel stated that "in the interest of justice," he was asking for "more time to thoroughly study the case and prepare an intelligent Motion for Reconsideration."

Acting upon the motion for extension, the Court of Appeals issued the assailed resolution denying the motion for lack of merit. The Court of Appeals stated:

Considering that no motion for extension of time to file a motion for reconsideration is allowed (Section 2, Rule 40 and Section 3, Rule 41, 1997 Rules of Civil Procedure, as amended) and considering further that the decision promulgated on April 18, 2001 is now final and executory that it can no longer be a subject of a motion for reconsideration, this instant motion for 30-day extension to file a motion for reconsideration dated August 17, 2001 filed by counsel for accused-appellant is DENIED for lack of merit.

SO ORDERED.^[12]

A copy of said Resolution was received by counsel for petitioner on October 17, 2001.

Hence, this petition, filed on November 9, 2001.

Upon perusal of the pleadings, there is a need to resolve a preliminary question regarding the nature of the petition filed before us.

We note that the petition^[13] filed on behalf of Amatorio by his counsel Atty. Gerald C. Jacob was expressly denominated as a "Petition for Certiorari (under Rule 65 of the 1997 Rules of Court)."^[14]

Clearly raised therein as issues for resolution are two instances of alleged "grave abuse of discretion" committed by the Court of Appeals. In addition, counsel alleges

that the verified petition is filed, "there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law."

However, in a "Reply to Comment"^[15] dated June 25, 2002, petitioner, through the same counsel, now alleges that the petition he filed was in fact one under Rule 45 of the Rules of Court. Counsel now asserts that "the proper remedy available to petitioners was a petition for review under Rule 45, not 65." Citing Section 4 of Rule 45 of the Rules of Court,^[16] he avers that he has complied with all the requisites under the said rule. He particularly points out that the petition was filed within the 15-day period under Rule 45 and that the Court of Appeals need not be impleaded as respondent.

As belatedly realized by the petitioner, the proper remedy for him in this case is an appeal under Rule 45 of the Rules of Court. Assuming *arguendo* that the Court of Appeals erred in denying his motion for extension of time to file a motion for reconsideration, said error is correctible by appeal under Rule 45.

Petitioner submits a question of law^[17] before us. We are called upon to determine what the law is for the particular undisputed facts of this case.

Time and again we have established the distinctions between the remedies under Rule 45 and Rule 65.^[18] We have constantly reminded members of the bench and bar regarding these distinct remedies and the requisites to avail of them. An erroneous mode of appeal can have fatal consequences to a petition.

We find occasion herein to caution Atty. Jacob as counsel for petitioner. First, he came to us using the wrong mode of appeal. Subsequently, he attempted to correct his mistake by alleging in a subsequent pleading that he in fact filed the petition under Rule 45. This is notwithstanding the fact that his earlier pleading clearly and unequivocally declared that the petition was filed under Rule 65.

For the foregoing reasons, this petition could have been dismissed outright. However, in order to clarify the issue raised, we resolve to treat this petition as one filed under Rule 45 of the Rules of Court.

We now resolve the main issue.

Petitioner submits the following assigned errors:

- I. THAT THE COURT OF APPEALS HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK [OR] EXCESS OF JURISDICTION WHEN IT RENDERED A RESOLUTION THAT NO MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION IS ALLOWED (SECTION 2, RULE 40 AND SECTION 3, RULE 41 1997 RULES OF CIVIL PROCEDURE, AS AMENDED); AND
- II. THAT THE COURT OF APPEALS HAS ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE DECISION IT PROMULGATED ON APRIL 18, 2001 IS FINAL AND EXECUTORY DESPITE THE DEATH OF COUNSEL WHICH EXTINGUISHES THE ATTORNEY-CLIENT RELATIONSHIP.^[19]

The sole issue for resolution is whether or not, under the circumstances of this case, a motion for extension of time to file a motion for reconsideration of a decision of the Court of Appeals is allowed.

Petitioner seeks to convince us that he still has a right to file a motion for extension of time to file a motion for reconsideration, and the motion for reconsideration itself, before the Court of Appeals.^[20]

Petitioner argues that when Atty. Barrera died on March 2, 1991, his death effectively cancelled the attorney-client relationship. Thus, notice sent to the deceased counsel would no longer bind him because death extinguished the juridical tie. Petitioner adds that although legal representation was made by the law firm of the deceased Atty. Barrera, the professional partnership was likewise extinguished by the death of one of the partners. He also avers that immediately upon Atty. Barrera's death, his associates formed their own law offices. Petitioner contends that it would be a miscarriage of justice to consider the notice to the "dissolved and inexistent" Barrera Law Office as binding on the accused.

On the other hand, the Solicitor General contends that the Court of Appeals was correct in denying the motion for extension of time to file a motion for reconsideration. First, such a motion is proscribed under Rules 40 and 41 of the Rules of Court. Second, petitioner is represented by the Barrera Law Office and not by Atty. Barrera alone. Considering this, any one of Atty. Barrera's partners or associates in the law firm should have filed the appropriate pleading to protect the interest of petitioner who is still their client, notwithstanding the death of the handling lawyer, Atty. Barrera. Citing *Bernardo v. Court of Appeals*,^[21] the Solicitor General contends that the death of a particular attorney does not extinguish the lawyer-client relationship where the legal representation is by a law firm. Service of a copy of the decision dated April 18, 2001 on petitioner's counsel of record, the Barrera Law Office, is service upon the petitioner. The failure of petitioner's counsel, the Barrera Law Office, to file the necessary motion for reconsideration, binds petitioner in this case.

At the outset, it must be pointed out that Rules 40 and 41 of the Rules of Court, cited by both the Court of Appeals and the Solicitor General, specifically pertain to appeals from decisions of the lower courts. We note that the stage of the proceedings before us pertains to a decision of the Court of Appeals. Thus, the cited Rules 40 and 41 of the Revised Rules of Civil Procedure are inapplicable. Nevertheless, the Court of Appeals is still correct in denying the motion for extension of time to file a motion for reconsideration but the denial should have been anchored on the then existing Revised Internal Rules of the Court of Appeals (RIRCA), as well as on prevailing jurisprudence.

On all fours with the case at bar is the case of *Heirs of Andrea Cristobal v. Court of Appeals*.^[22] We stated therein:

We agree with private respondents. Pursuant to Sec. 12 of the Judiciary Reorganization Act of 1980, as amended, the Court of Appeals adopted and promulgated the RIRCA designed to govern the internal operating procedures of the appellate court. Under Sec. 2, Rule 9, of the RIRCA, as amended, a party may file a motion for reconsideration of a decision or