433 Phil. 844

THIRD DIVISION

[G.R. No. 141986, July 11, 2002]

NEPLUM, INC., PETITIONER, VS. EVELYN V. ORBESO, RESPONDENT.

D E C I S I O N

PANGANIBAN, J.:

Within what period may private offended parties appeal the civil aspect of a judgment acquitting the accused based on reasonable doubt? Is the 15-day period to be counted from the promulgation of the decision to the accused or from the time a copy thereof is served on the offended party? Our short answer is: from the time the offended party had *actual or constructive knowledge* of the judgment, whether it be during its promulgation or as a consequence of the service of the notice of the decision.

The Case

Before us is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court, seeking to set aside the February 17, 2000 Order[2] of the Regional Trial Court (RTC) of Makati City (Branch 133) in Criminal Case No. 96-246. The Order reads in full as follows:

> "Opposition to Notice of Appeal being well-taken, as prayed for, the Notice of Appeal and the Amended Notice of Appeal are denied due course."[3]

The foregoing Order effectively prevented petitioner from appealing the civil aspect of the criminal proceedings in which the accused was acquitted based on reasonable doubt.

The Facts

The factual antecedents, as narrated by petitioner in its Memorandum,[4] are as follows:

> "2.01 On 29 October 1999, the trial court promulgated its judgment (the 'Judgment') in Criminal Case No. 96-246 acquitting the accused of the crime of estafa on the ground that the *prosecution failed to prove the guilt of the accused beyond reasonable doubt. The accused and her counsel as well as the public and private prosecutors were present during such promulgation.*

'2.01.1 The private prosecutor represented the interests of the petitioner who was the private offended party in Criminal Case No. 96-246.'

> "2.02 On 12 November 1999, the petitioner, through the private prosecutor, received its copy of the Judgment.

> "2.03 On 29 November 1999, petitioner filed its 25 November 1999 Motion for Reconsideration (Civil Aspect) of the Judgment.

'2.03.1 Considering that 27 November 1999 was a Saturday, petitioner filed its Motion for Reconsideration on 29 November 1999, a Monday.'

> "2.04 On 28 January 2000, a Friday, petitioner received its copy of the 24 January 2000 Order of the Trial Court denying for lack of merit petitioner's Motion for Reconsideration.
>
> "2.05 On 31 January 2000, a Monday, petitioner filed its 28 January 2000 Notice of Appeal from the Judgment. On the same day, petitioner filed by registered mail its 28 January 2000 Amended Notice of Appeal.
>
> "2.06 On 17 February 2000, the Trial Court issued its Challenged Order, which petitioner received through the private prosecutor on 22 February 2000, denying due course to petitioner's Notice of Appeal and Amended Notice of Appeal x x x."[5]

Ruling of the Trial Court

The RTC refused to give due course to petitioner's Notice of Appeal[6] and Amended Notice of Appeal.[7] It accepted respondent's arguments that the Judgment from which the appeal was being taken had become final, because the Notice of Appeal and the Amended Notice of Appeal were filed beyond the reglementary period. The 15-day period was counted by the trial court from the promulgation of the Decision sought to be reviewed.

Hence, this Petition.[8]

The Issue

In its Memorandum, petitioner submits this lone issue for our consideration:

> "Whether the period within which a private offended party may appeal from, or move for a reconsideration of, or otherwise challenge, the civil aspect of a judgment in a criminal action should be reckoned from the date of promulgation or from the date of such party's actual receipt of a copy of such judgment considering that any party appealing or challenging such judgment would necessarily need a copy thereof, which is in writing and which clearly express the factual and legal bases thereof to be able to file an intelligent appeal or other challenge."[9]

The Court's Ruling

The Petition is unmeritorious.

Preliminary Matter:
Mode of Review

Petitioner brought this case to this Court through a Petition for Review on Certiorari under Rule 45 of the Rules of Court. The Petition seeks to set aside the February 17, 2000 Order of the RTC which, in effect, disallowed petitioner's appeal of its Judgment.

An ordinary appeal from the RTC to the Court of Appeals (CA) is "taken by filing a notice of appeal with the court which rendered the judgment or final order appealed

from and serving a copy thereof upon the adverse party."[10] Consequently, the disallowance of the notice of appeal signifies the disallowance of the appeal itself.

A petition for review under Rule 45 is a mode of appeal of a lower court's decision or final order direct to the Supreme Court. However, the questioned Order is not a "decision or final order" from which an appeal may be taken. The Rules of Court states explicitly:

> "No appeal may be taken from:
>
> x x x x x x x x x
>
> (d) An order disallowing or dismissing an appeal;"[11]

On the other hand, a petition for certiorari is the suitable remedy that petitioner should have used, in view of the last paragraph of the same provision which states:

> "In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65."[12]

In turn, Rule 65, Section 1, provides:

> "SEC. 1. *Petition for certiorari* -- When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law*, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require."[13] (Italics supplied)

By availing itself of the wrong or inappropriate mode of appeal, the Petition merits an outright dismissal.[14] Supreme Court Circular No. 2-90[15] (hereinafter "Circular") is unequivocal in directing the dismissal of an inappropriate mode of appeal thus:

> "4. *Erroneous Appeals* – An appeal taken to either the Supreme Court or the Court of Appeals by the wrong or inappropriate mode shall be dismissed."[16]

The same Circular provides that petitioner's counsel has the duty of using the proper mode of review.

> "e) *Duty of counsel* – It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or of law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause." [17]

This Court has often admonished litigants for unnecessarily burdening it with the task of determining under which rule a petition should fall. It has likewise warned lawyers to follow scrupulously the requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to the client's cause.[18]

On this score alone, the Petition could have been given short shrift and outrightly dismissed. Nevertheless, due to the novelty of the issue presented and its far-reaching effects, the Court will deal with the arguments raised by petitioner and lay down the rule on this matter. As an exception to Circular 2-90, it will treat the present proceedings as a petition for certiorari under Rule 65.

Main Issue:
Timeliness of Appeal

Petitioner contends that an appeal by the private offended party under the Rules of Criminal Procedure must be made within 15 days from the time the appealing party *receives a copy of the relevant judgment*. It cites Section 6, Rule 122 of the 1985 Rules on Criminal Procedure, which provides:

> "SEC. 6. *When appeal to be taken*. – An *appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from*. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel." (Italics supplied)

The italicized portion of the provision uses the conjunctive "or" in providing for the reckoning period within which an appeal must be taken. It shall be counted from the promulgation *or* the notice of the judgment or order.

It is petitioner's assertion that "the parties would always need a written reference or a copy of the judgment x x x to intelligently examine and consider the judgment from which an appeal will be taken."[19] Thus, it concludes that the 15-day period for filing a notice of appeal must be counted from the time the losing party actually receives a copy of the decision or order. Petitioner ratiocinates that it "could not be expected to capture or memorize all the material details of the judgment during the promulgation thereof."[20] It likewise poses the question: "why require all proceedings in court to be recorded in writing if the parties thereto would not be allowed the benefit of utilizing these written [documents]?"[21]

We clarify. Had it been the accused who appealed, we could have easily ruled that the reckoning period for filing an appeal be counted from the promulgation of the judgment. In *People v. Tamani*,[22] the Court was confronted with the question of when to count the period within which the accused must appeal the criminal conviction. Answered the Court:

> "The assumption that the fifteen-day period should be counted from February 25, 1963, when a copy of the decision was allegedly served on appellant's counsel by registered mail is not well-taken. The word 'promulgation' in section 6 should be construed as referring to 'judgment', while the word 'notice' should be construed as referring to 'order'."[23]

The interpretation in that case was very clear. The period for appeal was to be counted from the date of promulgation of the decision. Text writers[24] are in agreement with this interpretation.

In an earlier case,[25] this Court explained the same interpretation in this wise:

> "It may, therefore, be stated that one who desires to appeal in a criminal case must file a notice to that effect within fifteen days from the date the decision is announced or promulgated to the defendant. And this can be done by the court either by announcing the judgment in open court as was done in this case, or by promulgating the judgment in the manner set forth in [S]ection 6, Rule 116 of the Rules of Court."[26]

Clear as those interpretations may have been, they cannot be applied to the case at bar, because in those instances it was the accused who appealed, while here we are confronted with the offended party's appeal of the civil aspect only. Thus, the question arises whether the accused-appellant's period for appeal, as construed in the cited cases, is the same as that for the private offended party. We answer in the negative.

No Need to Reserve
Independent Civil Action

At the outset, we must explain that the 2000 Rules on Criminal Procedure deleted the requirement of reserving independent civil actions and allowed these to proceed separately from criminal ones. Thus, the civil actions referred to in Articles 32,[27] 33,[28] 34[29] and 2176[30] of the Civil Code shall remain "separate, distinct and independent" of any criminal prosecution based on the same act. Here are some direct consequences of such revision and omission:

1. The right to bring the foregoing actions based on the Civil Code need not be reserved in the criminal prosecution, since they are not deemed included therein.

2. The institution or waiver of the right to file a separate civil action arising from the crime charged does not extinguish the right to bring such action.

3. The only limitation is that the offended party cannot recover more than once for the same act or omission.

Thus, deemed instituted in every criminal prosecution is the civil liability arising from the crime or delict per se (civil liability *ex delicto*), but not those liabilities from quasi-delicts, contracts or quasi-contracts. In fact, even if a civil action is filed separately, the *ex delicto* civil liability in the criminal prosecution remains, and the offended party may -- subject to the control of the prosecutor -- still intervene in the criminal action in order to protect such remaining civil interest therein.[31] By the same token, the offended party may appeal a judgment in a criminal case acquitting the accused on reasonable doubt, but only in regard to the civil liability *ex delicto*.

And this is precisely what herein petitioner wanted to do: to appeal the civil liability arising from the crime -- the civil liability *ex delicto*.

Period for Perfecting an Appeal

Section 6 of Rule 122 of the 2000 Rules on Criminal Procedure declares:

> "Section 6. *When appeal to be taken*. – An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motions has been served upon the accused or his counsel at which time the balance of the period begins to run."