423 Phil. 443

FIRST DIVISION

[A.M. No. RTJ-99-1503, December 13, 2001]

LUZ LILIA, COMPLAINANT, VS. JUDGE BARTOLOME M. FANUÑAL, REGIONAL TRIAL COURT, BRANCH 25, ILOILO CITY, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

For denying the accused's notice of appeal and motion for admission to bail in Criminal Case No. 45124 entitled, "*People of the Philippines v. Expedito Lilia, Salvador Lilia and Jessie Lilia*," respondent Judge was charged with Gross Ignorance of the Law.

In a sworn letter-complaint dated May 15, 1997, complainant Luz Lilia alleged that on April 24, 1997, respondent Judge promulgated a decision[1] in Criminal Case No. 45124 finding accused Salvador Lilia and Jessie Lilia guilty of Attempted Murder and sentencing them to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correcional,* as minimum, to eight (8) years and twenty (20) days, as maximum, and to pay the costs. For failure of their bondsmen to be present during the promulgation, the accused were ordered committed to Iloilo Rehabilitation Center, formerly known as the Iloilo Provincial Jail.

On April 30, 1997, the accused filed their Notice of Appeal[2] and Motion for Admission to Bail and To fix Amount Thereof[3] on the assumption that their bonds had already been cancelled and the amount thereof increased on account of their conviction.

On May 5, 1997, respondent issued an Order[4] denying the notice of appeal and the motion for admission to bail in this wise:

> The judgment in this case having already been partially served by accused-convicts Salvador and Jessie, both surnamed Lilia, and has thus become final, their notice of appeal subject judgment and their motion to be admitted to bail and released from legal custody are denied for having been filed out of time.

On May 6, 1997, counsel for accused filed a Motion for Reconsideration[5] which respondent Judge denied in an Order dated May 7, 1997[6] reasoning as follows:

> It appearing that the accused upon promulgation of the judgment of conviction rendered against them, although they were duly bonded even up to now has not been cancelled or withdrawn, did not manifest that they would like to enjoy their temporary liberty on the strength thereof if they intended to appeal the judgment. There being no manifestation

> whatsoever, the court thus openly announced that they be held to serve their sentence.
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> After the promulgation of the judgment on April 24, 1997 the accused already began to serve their sentence and this fact rendered the judgment against them final, notwithstanding the fact that the period within which to appeal may not have yet elapsed as provided in Section 7, Rule 120 of the Rules on Criminal Procedure of 1985, as amended.

Respondent Judge filed a Comment dated September 4, 1997,[7] denying the allegations in the complaint. In the comment, respondent Judge argued that:

1.] At the time the judgment was promulgated on April 24, 1997 the accused and/or their counsel did not manifest that they intended to appeal the judgment of conviction. Both accused were bonded and their counsel did not manifest or tell the Court that they would appeal the judgment and that they be set free on the strength of their bail bond, which has not been cancelled although deemed inoperative and ineffective following their conviction.

2.] There being no manifestation to be freed on the strength of the existing bail bond and/or intention to appeal, the Court, upon promulgation of judgment, announced and ordered that the accused be furnished with a copy of the judgment and that they be committed to jail to serve their sentence. A commitment order was then made directing that the accused be sent to jail to commence serving their sentence on April 24, 1997.

3.] On April 30, 1997 or six (6) days later, the accused filed a motion to fix the amount of their bail bond and to be granted bail, on the belief that their bail bond was already cancelled. They filed a notice to appeal the judgment.

4.] On May 5, 1997, the Court ordered the denial of the aforesaid motion and notice of appeal for having been filed out of time.

After evaluating the case the OCA recommended that respondent Judge be fined P10,000.00 for Gross Ignorance of the Law reasoning that -

> . . . despite respondent's length of service in the judiciary, he still misconstrued the basic provisions of the Rules of Court on when a judgment has become final and executory and when an appeal is perfected.
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> The respondent judge committed grave abuse of discretion or had exhibited gross ignorance of the law when he disapproved the Notice of Appeal seasonably filed by accused based merely on [the] failure of the accused to manifest in open court after a judgment of conviction was promulgated, that they (accused) are going to appeal said judgment.
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> The accused (Criminal Case No. 45124) were on bail in all stages of the proceeding, from arraignment up to the promulgation of the judgment. During the promulgation of the judgment the bonds men did not appear in court and the accused were represented only by PAO lawyer who did not participate in the trial of the case. After the promulgation of the

> judgment of conviction, the respondent immediately issued an order that the "accused be furnished a copy of the judgment and that they be remitted to jail to commence serving their sentence" simply because the accused and/or the PAO lawyer failed to manifest in open court that the accused be freed on the strength of the existing bail bond and they intend to appeal the judgment.
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> The law does not require accused and/or counsel to manifest an intention to appeal a judgment of conviction immediately after its promulgation. Precisely, the law gives the accused fifteen (15) days from the date of promulgation of judgment of conviction to avail [of] other remedies, either by filing a Motion for Reconsideration or New Trial which stops the running of the period for perfecting an appeal or file a Notice of Appeal. [8]
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> Respondent denied the Notice of Appeal although the fifteen (15) day period had not yet expired because the accused have already started to serve sentence, according to him. Respondent, however, lost sight of the fact that the accused was in jail when the Notice of Appeal was filed because he erroneously ordered their commitment. When the judgment was promulgated the bail bonds posted by the accused were still valid and subsisting, and even up to now, have not been cancelled, according to respondent. Mere failure of the accused and/or counsel to manifest in open court [an] intention to appeal the judgment is not a waiver of said right. The order of commitment issued by the respondent was without legal basis and the accused cannot be considered to have partially served sentence when the Notice of Appeal was filed.

During the pendency of the proceedings, respondent Judge compulsorily retired on April 21, 2001.[9] However, the retirement of a judge or any judicial officer from the service does not preclude the finding of any administrative liability to which he shall still be answerable. As pointed out by the Court in ***Gallo v. Cordero***:[10]

> This jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications . . . If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

The Court finds the recommendation of the OCA well taken.

Anent the charge of gross ignorance of the law, respondent judge failed to differentiate the concept of a "final" judgment or order from one which has "become final" - or to use a more established term, "final and executory" - a distinction that is definite and settled. If only to refresh the memory of respondent Judge, the Court