

SECOND DIVISION

[G.R. No. 103174, July 11, 1996]

**AMADO B. TEODORO, PETITIONER, VS. COURT OF APPEALS AND
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

DECISION

MENDOZA, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals affirming the decision of the Regional Trial Court of Pasig, Metro Manila, finding petitioner guilty of grave slander by deed and sentencing him to imprisonment for three (3) months of arresto mayor and to pay the costs. The decision of the RTC was a modification of the original sentence of fine in the amount of P110.00 imposed by the Metropolitan Trial Court of Mandaluyong.

Petitioner Amado B. Teodoro was vice-president and corporate secretary of the DBT-Marbay Construction, Inc., while complainant, Carolina Tanco-Young, was treasurer of the same corporation. Petitioner is the brother of the president of the corporation, Donato Teodoro, while complainant is the daughter of the chairman of the board of the corporation, Agustin Tanco. The incident, which gave rise to this case, is narrated in the following portion of the decision dated February 12, 1986 of the RTC:

Records show that the incident complained of took place at the Room of the D.B.T. Mar Bay Construction Incorporated in the afternoon of August 17, 1984. Present at the meeting were Agustin Tanco, Chairman of the Board; the President, Donato Teodoro; the accused, Amado Teodoro, as Corporate Secretary; the complainant, Carolina Tanco-Young who is the Treasurer; and one Oscar Benares.

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It appears that there was a controversial document being insisted upon by the accused, as secretary, to be signed by the chairman. The Board Treasurer, Carolina Tanco-Young questioned the propriety of having the document signed as there was, according to her, no such meeting that ever took place as to show a supposed resolution to have been deliberated upon. A verbal exchange of words and tirades took place between the accused Secretary and the Treasurer. One word led to another up to the point where Carolina Tanco-Young, the treasurer, either by implication or expressed domineering words, alluded to the accused as a "falsifier" which blinded the accused-appellant to extreme anger and rage, thus leading him to slap Tanco-Young - the alleged name caller. Carolina Tanco-Young's father, Agustin Tanco, being present and so proximate to the daughter, was helplessly observing and hearing the verbal tirades between the two members of the board and when the

accused Teodoro slapped Tanco-Young, he stood and made a move to lunge at his daughter's assailant. Knowing that her father has a heart condition, Tanco-Young, in order to prevent her father from engaging a much younger man to a physical confrontation, simply embraced her father The [accused's claim] that he swung his arms which accidentally was done to parry the lunge of Tanco in which at the same time Carolina coming from her position in between them, is hardly demonstrable.^[1]

The MeTC found petitioner guilty of simple slander by deed and sentenced him to pay a fine of P110.00. Petitioner appealed. It appears that the parties were required to file their memoranda by the RTC, but petitioner filed instead, on June 6, 1985, a motion to withdraw his appeal and, on July 16, 1985, paid the fine of P110.00 imposed in the judgment of the MTC.

On July 26, 1985, the RTC denied his motion for the following reasons stated in its order of that date:

The Appeal from the Metropolitan Trial Court has already been perfected. Records are already in the Regional Trial Court. The withdrawal of appeal should have been properly filed in the trial court within the period to perfect appeal.

Although this Court is given the discretion under Section 12 Rule 122 of the Interim Rules of Court to grant or not to grant withdrawal of appeal, the court chooses to deny the motion on the ground that the prosecution has already submitted its memorandum brief.^[2]

The RTC gave petitioner ten (10) days within which to file his memorandum, but petitioner insisted on the withdrawal of his appeal, filing for this purpose a motion for reconsideration of the order denying his motion to withdraw appeal.

On November 11, 1985, the RTC denied reconsideration and, on February 12, 1986, it rendered a decision finding petitioner guilty of grave slander by deed and sentencing him to three (3) months of *arresto mayor*. In holding that the slander was serious in character, the RTC took into account the fact that Young is a woman and that, at the time of the incident, she was seven months pregnant and, therefore, could be emotionally upset by the incident.

Petitioner filed a petition for review, which the Court of Appeals dismissed in its decision rendered on November 27, 1987. Petitioner's motion for reconsideration was also denied. Hence this petition.

There are two points in the decision of the Court of Appeals. The first is that under Rule 122, §12 the withdrawal of appeals from the decisions of MTCs and MeTCs lies in the sound discretion of the RTC and that, in denying petitioner's motion for the withdrawal of his appeal, the RTC did not act with abuse of discretion. The second point is that because petitioner's motion to withdraw his appeal had been denied, his payment of the fine as imposed on the judgment of the MeTC did not render that decision final and executory. Hence, petitioner was not placed in double jeopardy by the decision of the RTC on his appeal.

We find no reversible error committed by the Court of Appeals. First, the appellate court agreed with the RTC that to allow the withdrawal of the appeal would be to allow an error of the MeTC to go uncorrected, because the crime committed was not simple slander by deed but a grave one. (Under Art. 359 of the Revised Penal Code, if the slander by deed is serious and insulting in nature, the penalty is *arresto mayor* in its maximum period to *prision correccional* in its minimum period, or a fine ranging from P200.00 to P1,000.00, otherwise it is only *arresto menor* or a fine not exceeding P200.00.) In this case, the person slandered was a woman who was seven months pregnant, whose emotional stress could cause an abortion.

Petitioner maintains that he has an absolute right to withdraw his appeal and that because his appeal did not vacate the decision of the MeTC but only stayed it (Rule 122, 10), by paying the fine imposed in the judgment of the MeTC, the decision became final and his appeal in the RTC was automatically withdrawn (Petition pp. 11-22). Petitioner cites in support of his contention Rule 120, §7 which provides:

§7. Modification of judgment. - A judgment of conviction may, upon motion of the accused, be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the accused has expressly waived in writing his right to appeal, or the accused has applied for probation.

The assumption underlying the above-quoted provision is that the decision of a court becomes final only if no appeal has been taken from it. Hence, any of the following conditions renders the decision final: (1) the period for perfecting an appeal has lapsed; (2) the sentence is partially or totally satisfied or served; (3) the accused expressly waives in writing his right to appeal; or (4) the accused applies for probation. Consequently, although an appeal does not vacate the judgment appealed from, it does prevent it from becoming final so that it does not bar the RTC from acting on the appeal and imposing on the accused such penalty as may be warranted by the law and the evidence. The fact is that petitioner appealed from the decision of the MeTC. Until that appeal is withdrawn, there is no decision of the MeTC to serve or satisfy because the appeal, at the very least, stayed the decision.

Second, as the Court of Appeals correctly ruled, the withdrawal of appeal is not a matter of right, but a matter which lies in the sound discretion of the court and the appellate court. Rule 122, §12 provides:

§12. Withdrawal of Appeal. -

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The Regional Trial Court may also, in its discretion, allow the appellant from the judgment of a Municipal Trial Court, Municipal Circuit Trial Court, or Metropolitan Trial Court to withdraw his appeal, provided a motion to that effect is filed before judgment of the case on appeal, in which case the judgment of the court *a quo* shall become final and the case shall be remanded to the court *a quo* for execution of the judgment.

In this case, petitioner filed a motion to withdraw his appeal on June 6, 1985, after he had been required to file his memorandum and after his counsel had received the