

THIRD DIVISION

[G.R. No. 177961, April 07, 2009]

LOURDES A. SABLE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND HON. ENRIQUETA LOQUILLANO-BELARMINO, PRESIDING JUDGE, BRANCH 57, RTC, CEBU CITY, RESPONDENTS.

DECISION

CHICO-NAZARIO, J.:

Before Us is a Petition for *Certiorari*^[1] under Rule 65 of the Revised Rules of Court filed by petitioner Lourdes A. Sable seeking the reversal and the setting aside of the Decision^[2] dated 14 December 2006 and Resolution^[3] dated 21 February 2007 of the Court of Appeals in CA-G.R. CEB-CR No. 81981. In its assailed Decision, the Court of Appeals affirmed the Order^[4] dated 22 July 2003 of the Regional Trial Court (RTC) of Cebu, Branch 57, disallowing petitioner's application for probation in Criminal Case No. CBU-35455, and denied petitioner's Motion for Reconsideration thereof.

The undisputed facts are as follows:

Petitioner, together with Concepcion Abangan (Concepcion), Ildefonsa Anoba (Ildefonsa) and Valentine Abellanosa (Valentine), is accused in Criminal Case No. CBU-35455 of Falsification of Public Documents under Article 172(1) in relation to Article 171 of the Revised Penal Code.

Petitioner and co-accused Ildefonsa were arraigned on 20 July 1994 while co-accused Concepcion was never arrested. During the initial trial, Atty. Gines Abellana, counsel for all the accused, manifested that co-accused Valentine was already dead and requested that his name be dropped from the information.

Petitioner and co-accused Ildefonsa are the grand-daughters of Eleuteria Abangan, who is one of the registered owners of Lot No. 3608, which is registered under Original Certificate of Title (OCT) No. RO-2740 in the names of Andrea Abangan, Fabian Abangan, Sergio Abangan, Antonino Abangan, Perfecta Abangan and Eleuteria Abangan. Private complainant Gaspar Abangan (Gaspar) is the grandson of Lamberto Abangan, who is a brother of the registered owners of the lot. Petitioner, together with her co-accused Ildefonsa, allegedly falsified an Extrajudicial Declaration of Heirs with Waiver of Rights and Partition Agreement, as the signatures contained therein were not the signatures of the true owners of the land. Petitioner and Ildefonsa also allegedly caused it to appear that a certain Remedios Abangan, who was already dead, signed the document.

By virtue of the Extrajudicial Declaration of Heirs, Lot No. 3608 was subdivided into two lots, namely, 3608-A and 3608-B; and OCT No. RO-2740 was cancelled. Lot No.

3608-A was transferred to the name of co-accused Concepcion and was registered under Transfer Certificate of Title (TCT) No. 113266. With respect to Lot No. 3608-B, petitioner was able to execute a Deed of Absolute Sale in favor of one Perpetua Sombilon, and accordingly, the title to the lot was transferred to the name of the latter under TCT No. 113267.

On 28 November 2000, the RTC convicted petitioner of the crime of Falsification of Public Documents under Article 172(1) in relation to Article 171 of the Revised Penal Code, but acquitted Ildefonsa. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the court finds accused Ildefonsa Anoba not guilty. However, the court finds Lourdes Abellanosa Sable guilty beyond reasonable doubt of the crime charged and hereby sentences her to suffer an indeterminate penalty of FOUR (4) YEARS, TWO (2) MONTHS and ONE (1) DAY to SIX (6) YEARS.^[5]

Thereafter, petitioner filed a Motion for Reconsideration^[6] of said RTC Decision on 20 January 2001. After several postponements due to the vacancy in the court *a quo*, the motion was submitted for resolution only on 29 June 2001. The same was denied by respondent Judge Enriqueta Loquillano-Belarmino in an Order^[7] dated 20 November 2003. On 13 December 2002, a copy of the Order denying reconsideration of the judgment was received by petitioner's counsel.

Due to petitioner's failure to interpose a timely appeal, an entry of judgment was issued on 5 June 2003. Petitioner, through counsel, filed Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment with Reconsideration and Explanation^[8] on 12 June 2003 alleging, among other things, that petitioner's counsel did not receive the Order because it was received by a certain Che who was undergoing practicum in her counsel's law office. On the day of receipt thereof, it was Che's last day at the office. Petitioner's counsel further alleged that he was of the belief that his Motion for Reconsideration of the judgment of conviction would be rescheduled for hearing after the same had been postponed due to the vacancy in the court *a quo*.

Pending resolution of the Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment with Reconsideration, petitioner filed a Notice of Appeal on 17 June 2003.^[9]

Subsequently, in an Order^[10] dated 22 July 2003, respondent Judge denied the Motions to Recall Warrant of Arrest and to Vacate Entry of Judgment. Petitioner's Notice of Appeal was also denied for having been filed out of time.

On 25 August 2003, petitioner moved for the reconsideration of the 22 July 2003 Order and intimated her desire to apply for probation instead of appealing the judgment of conviction.^[11] In a Motion^[12] dated 15 October 2003, petitioner again prayed for the Recall of the Warrant of Arrest against her, while her Motion for Reconsideration and her application for probation were pending resolution before the RTC.

Finally, on 20 November 2003, the RTC issued the assailed Order, the dispositive portion of which reads as follows:

WHEREFORE, accused's motion for reconsideration of the Order dated July 22, 2003, motion to recall warrant of arrest and motion to allow accused to avail of the benefits of the Probation Law, all are hereby denied.^[13]

Petitioner filed a Petition for *Certiorari* under Rule 65 before the Court of Appeals docketed as CA-G.R. CEB-CR No. 81981, raising the sole issue of whether or not the respondent court acted with grave abuse of discretion in denying the application for probation.

In its Decision^[14] dated 14 December 2006, the Court of Appeals denied the petition for lack of merit, stating that the alleged failure of petitioner's counsel to timely appeal the judgment of conviction following the denial of the reconsideration thereof could not amount to excusable negligence. It further enunciated that a notice of appeal of judgment filed six months after the denial of the motion for reconsideration was denied is filed out of time and, as a result, the application for probation must necessarily fail because the remedies of appeal and probation are alternative and mutually exclusive of each other.

The Court of Appeals refused to reconsider its earlier Decision in a Resolution dated 21 February 2007.

Hence, this Petition for *Certiorari* under Rule 65 of the Rules of Court raising the sole issue:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN AFFIRMING THE TRIAL COURT'S ORDER DENYING PETITIONER'S APPLICATION FOR PROBATION.^[15]

The petitioner prays that the instant petition be granted by allowing her to apply for probation and ordering the RTC through respondent Judge to act on the application for probation by the petitioner, based upon the recommendation of the probationer who may be assigned to conduct the investigation of said application.

For the State, the Solicitor General argues that the Court of Appeals properly denied the petition before it because, first, it is procedurally flawed for being an improper recourse; and secondly, for non-compliance with the mandatory requirement of the law that an application for probation must be filed within the period for perfecting an appeal.

We find the Petition devoid of merit.

Probation is a special privilege granted by the state to a penitent qualified offender. It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state the time, effort and expenses to jettison an appeal.^[16]

The pertinent provision of the Probation Law, as amended, reads:

Sec. 4. **Grant of Probation.**--Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a