

FIRST DIVISION

[G.R. NO. 157331, April 12, 2006]

**ARNOLD ALVA, PETITIONER, VS. HON. COURT OF APPEALS,
RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, assailing the twin Resolutions of the Court of Appeals (CA), dated 18 October 2002^[1] and 19 February 2003,^[2] respectively, in CA-G.R. CR No. 24077, entitled *People of the Philippines v. Arnold Alva*.

The CA, in the assailed resolutions, dismissed petitioner's appeal of the trial court's judgment of conviction for failing to post a new bail bond to secure his provisional liberty on appeal.

The Facts

The present petition stemmed from an Information^[3] charging petitioner with having committed the crime of estafa defined under Article 315, Paragraph 2(a) of the Revised Penal Code, alleging as follows:

The undersigned accuses ARNOLD ALVA of the crime of ESTAFA, committed as follows:

That in or about and during the period covered between October 18, 1993 up to December 18, 1993, inclusive, in the City of Manila, Philippines, the said accused, did then and there willfully (sic), unlawfully and feloniously defraud YUMI VERANGA y HERVERA in the following manner, to wit: the said accused, by means of false manifestation and fraudulent representation which he made to said YUMI VERANGA y HERVERA to the effect that he could process the latter's application for U.S. Visa provided she would give the amount of P120,000.00, and by means of other similar deceit, induced and succeeded in inducing said YUMI VERANGA y HERVERA to give and deliver, as in fact she gave and delivered to said accused the amount of P120,000.00 on the strength of said manifestation and representation said accused well knowing that the same were false and untrue for the reason that the U.S. Visa is not genuine and were made solely to obtain, as in fact he did obtain the amount of P120,000.00 which amount once in his possession with intent to defraud, he wilfully (sic), unlawfully and feloniously misappropriated, misapplied and converted the said amount to his own personal use and benefit, to the damage and prejudice of the said YUMI VERANGA y HERVERA in the aforesaid amount of P120,000.00, Philippine Currency.

CONTRARY TO LAW.

The resultant criminal case was filed and docketed as Criminal Case No. 95-143803 and raffled to the Regional Trial Court (RTC) of Manila, Branch 54, presided by Judge Manuel T. Muro.

On 5 September 1995, the RTC issued a Recall Order^[4] of the Warrant of Arrest issued on 18 July 1995 against petitioner in view of the approval of his bail bond by Hon. William Bayhon, then Executive Judge of the RTC of Manila.

Upon arraignment on 7 December 1995, petitioner, duly assisted by counsel, ^[5]pleaded not guilty to the crime charged.

After the trial on the merits, in an Order^[6] dated 6 April 1998, the RTC considered the case submitted for decision.

On 4 May 1999, petitioner's counsel filed an *Urgent Motion to Cancel Promulgation*^[7] praying for the resetting of the 5 May 1999 schedule of promulgation of the RTC's decision to 17 June 1999 in view of the fact that said counsel already had a prior commitment on subject date. The RTC granted the motion. The promulgation, however, was deferred only until 19 May 1999.

A day before the rescheduled date of promulgation, or on 18 May 1999, petitioner's counsel again moved for the deferment of the promulgation, due to prior "undertakings of similar importance."^[8]

On 19 May 1999, petitioner and counsel both failed to appear in court despite due notice. In his stead, claiming to be petitioner's representative, a certain *Joey Perez* personally delivered to the RTC a hand written medical certificate^[9] expressing petitioner's inability to attend the day's hearing due to hypertension.

In response to the aforestated acts of petitioner and counsel, the RTC issued an Order^[10] directing the promulgation of its decision in *absentia* and the issuance of a bench warrant of arrest against petitioner for his failure to appear before it despite due notice.

In its decision dated 25 March 1999,^[11] the RTC found petitioner guilty of the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, the decretal part of which reads:

WHEREFORE, judgment is hereby rendered: finding the accused guilty beyond reasonable doubt of the crime of estafa under Article 315, No. 2(a) of the RPC and sentences him to an indeterminate term of imprisonment of nine (9) years and one (1) day as minimum of prision mayor to seventeen (17) years as maximum of reclusion temporal in accordance with the provisions of Article 315, first, and the Indeterminate Sentence Law, and further for the accused to return the P120,000.00 to the complainant with an interest at the rate of twelve percent (12%) compounded annually from January 1, 1994 (the amount has been given to the accused in October and December 1993).

Meanwhile, as appearing in the records of the RTC, immediately following an original duplicate copy of the aforequoted decision, a document entitled *Personal Bail Bond*^[12] dated 21 May 1999 issued by Mega Pacific Insurance Corporation, seemed to have been filed before and approved by the RTC as evidenced by the signature of Judge Muro on the face of said bail bond.^[13] For such reason, petitioner appeared to have been admitted to bail anew after his conviction.

Incongruous to the above inference, however, in an Order^[14] dated 25 May 1999, judgment was rendered against Eastern Insurance and Surety Corporation, the bonding company that issued petitioner's original bail bond, in the amount of P17,000.00, for failure to produce the person of petitioner within the 10 day period earlier provided and to explain why the amount of its undertaking should not be forfeited.

In the interregnum, Police Superintendent Ramon Flores De Jesus, Chief of Warrant and Subpoena Section,^[15] manifested to the RTC the return of the unexecuted Warrant of Arrest issued on 19 May 1999 "for the reason that the address of the accused (petitioner) is not within our area of responsibility. x x x" Nevertheless, De Jesus reassured the RTC that "the name of the accused will be included in our list of wanted persons for our future reference." Examination of the records of the case revealed that petitioner already moved out of his address on record without informing the RTC.

On 15 July 1999, hand delivered by a certain *Remedios Caneda*, petitioner wrote^[16] the RTC requesting for a certified photocopy of his exhibits submitted to it during trial.

On 21 July 1999, a *Termination of Legal Services* was filed by petitioner before the RTC informing it of his decision to terminate the services of his counsel and that he was currently in the process of hiring a new one.

On 26 July 1999,^[17] petitioner filed a *Motion for Reconsideration* before the RTC.

In an Order^[18] dated 30 August 1999, the RTC declined to give due course to said motion for failure to set it for hearing; thus, treating it as a mere scrap of paper.

On 2 September 1999, petitioner received the above Order. The next day, or on 3 September 1999, petitioner filed a Notice of Appeal^[19] before the RTC.

In an Order^[20] dated 20 September 1999, the RTC again declined to give due course to the *Notice of Appeal*, ratiocinating thus:

The "Notice of Appeal" filed by accused cannot be given due course as it was filed out of time. Although accused filed a "Motion for Reconsideration" dated 23 July 1999, the Court considered it as a mere scrap of paper and was not acted upon as the same was not set for hearing, hence, it did not stop the reglementary period to file appeal.

On 25 November 1999, petitioner filed anew a motion praying for the RTC's categorical resolution of his 23 July 1999 *Motion for Reconsideration*.

In an Order dated 7 December 1999, the RTC granted the abovestated motion, the full text of which states:

The Motion to Resolve the Motion for Reconsideration of the accused, dated November 20, 1999 is granted in the interest of justice, considering that the one who prepared the Motion for Reconsideration appears to be the accused himself, who may not appear to be a lawyer and may not be conversant with the rules, among others, governing motions.

Acting on the said Motion for Reconsideration itself, same is denied for lack of merit. The Decision has examined and discussed the evidence presented and the merits of the case.

Because of the pendency of the Motion for Reconsideration, the appeal is deemed filed on time, and the appeal is given due course.

Let the records of the case, together with three (3) copies of the transcripts of stenographic notes be transmitted to the Hon. Court of Appeals.

On appeal before the Court of Appeals, in a Resolution^[21] dated 16 October 2001, the appellate court required petitioner to show cause why his appeal should not be dismissed it appearing that no new bail bond for his provisional liberty on appeal had been posted, to wit:

Considering the arrest warrant issued by the trial court against the accused who failed to appear at the promulgation of the judgment, and it appearing from the record that no new bond for his provisional liberty on appeal has been posted, appellant is ORDERED to SHOW CAUSE within ten (10) days from notice why his appeal should not be dismissed outright.

On 29 October 2001, petitioner, through new counsel, filed a *Compliance*^[22] essentially stating therein that:

x x x x

3. Upon learning of the course of action taken by the presiding judge, and for purposes of appealing the decision subject of the instant case, on May 21, 1999, accused immediately posted a new bond for his provisional liberty. The presiding judge of the lower court, which issued the questioned decision, duly approved the new bond. Certified true copy of the bond is hereto attached as Annex "3" and made an integral part hereof;

x x x x.

In a Resolution^[23] dated 18 October 2002, the Court of Appeals, nonetheless dismissed the appeal filed by petitioner for "appellant's failure to post a new bond for his provisional liberty on appeal despite our directive as contained in our Resolution dated October 16, 2001, and in view of the fact that his personal bail bond posted in the lower court had already expired, x x x."

Undaunted, petitioner filed a *Motion for Reconsideration*^[24] thereto seeking its reversal. According to petitioner's counsel, he was of the understanding that the "Show Cause" Resolution of 16 October 2001 merely sought an explanation vis-à-vis the absence of a bail bond guaranteeing petitioner's provisional liberty while his conviction was on appeal. All the same, petitioner's counsel manifested that Mega Pacific Insurance Corporation, had already extended the period covered by its 21 May 1999 bail bond. Attached to said motion was a *Bond Endorsement*^[25] extending the coverage of the bail bond from 21 May 1999 to 21 May 2003.

Asked to comment on the *Motion for Reconsideration*, respondent People of the Philippines (People), through the Office of the Solicitor General (OSG), interposed objections. In its Comment,^[26] respondent People raised two arguments: 1) that "an application for bail can only be availed of by a person who is in the custody of the law or otherwise deprived of his liberty;" and 2) that "bail on appeal is a matter of discretion when the penalty imposed by the trial court is imprisonment exceeding six (6) years."

On 19 February 2003, the Court of Appeals issued the second assailed Resolution,^[27] disposing of petitioner's motion as follows:

Finding no merit in appellant's motion for reconsideration (citation omitted) filed on November 12, 2002, the same is hereby DENIED. ***We agree with the appellee that appellant has failed to submit himself under the jurisdiction of the court or under the custody of the law since his conviction in 1999 and that there was no valid bail bond in place when appellant took his appeal.***

WHEREFORE, appellant's motion for reconsideration is DENIED.
[Emphasis supplied.]

Hence, this petition.

The Issues

Petitioner now comes to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court alleging the following errors:^[28]

I.

THE HONORABLE COURT OF APPEALS HAS DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH APPLICABLE DECISIONS OF THIS HONORABLE SUPREME COURT;

II.

THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION DOCKETED AS CA G.R. CR NO. 24077 ON THE GROUND OF ALLEGED FAILURE TO POST A NEW BOND FOR PETITIONER'S PROVISIONAL LIBERTY AND THAT THE PERSONAL BAIL