526 Phil. 822

FIRST DIVISION

[G.R. NO. 165711, June 30, 2006]

HERMOSO ARRIOLA AND MELCHOR RADAN, PETITIONERS, VS. SANDIGANBAYAN, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

For allegedly having lost the confiscated lumber entrusted to their custody, petitioners Barangay Captain Hermoso Arriola and Barangay Chief Tanod Melchor Radan of Dulangan, Magdiwang, Romblon were convicted as principal and accessory respectively by the Regional Trial Court of Romblon, Romblon, Branch 81 of the crime of Malversation of Public Property thru Negligence or Abandonment defined and penalized under Article 217 of the Revised Penal Code, in an Information[1] docketed as Criminal Case No. 2064, which alleges –

> That on, about and during the first week of May, 1996, in barangay Dulangan, municipality of Magdiwang, province of Romblon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, being then a duly appointed/elected Barangay Captain and Chief Tanod of Dulangan, Magdiwang, Romblon and as such, they have under their custody and control approximately forty four (44) pieces of illegally sawn lumbers of assorted sizes and species, with an estimated value of P17,611.20, Philippine currency, which were confiscated or recovered by the elements of the Philippine National Police and DENR personnel and thereafter turned over the same to accused Brgy. Capt. Hermoso Arriola which he acknowledged to have received the same and stockpiled at the backyard of accused Chief Tanod Melchor Radan's house, and through abandonment or negligence, they permitted any other person to take the public property wholly or partially, to the damage and prejudice of the government in the sum of P17,611.20.
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> Contrary to law.

Upon arraignment, both pleaded not guilty. Trial on the merits ensued thereafter. On May 3, 1998, the trial court rendered its Decision,[2] the dispositive portion of which reads:

> WHEREFORE, this Court finds co-accused barangay captain HERMOSO ARRIOLA GUILTY beyond reasonable doubt as principal of the crime of Malversation of Public Property Thru Negligence or Abandonment and he is hereby sentenced to not less than 14 years and 8 months, as minimum, to 18 years, 2 months and 20 days, as maximum, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of P17,611.20, Philippine Currency, and to pay the sum of P13,209.20 as indemnification of consequential damages

to the government.

Likewise, co-accused barangay chief tanod MELCHOR RADAN is found GUILTY beyond reasonable doubt as accessory of the crime of Malversation of Public Property Thru Negligence or Abandonment and he is sentenced to not less than 6 years, as minimum, to 8 years and 8 months, as maximum, with the accessories of the law, with the additional penalty of perpetual special disqualification and of a fine of P4,402.80, Philippine Currency, and to pay the sum of P4,402.80 as indemnification of consequential damages to the government.

No subsidiary imprisonment in case of failure to pay the fine is imposed to both accused under Article 39, paragraph 3, RPC but either accused is subsidiarily liable for the quota of either in the indemnity for consequential damages to the government (Art. 110, RPC). Both accused shall pay the costs equally.

The accused are entitled to credit for preventive imprisonment under Article 29, RPC.

The accused are allowed to continue on provisional liberty under the same bail bonds during the period to appeal subject to the consent of the bondsmen (Section 5, Rule 114 of the 1985 Rules on Criminal Procedure as amended.)

SO ORDERED.[3]

Petitioners filed an appeal before the Court of Appeals which referred the same to the public respondent Sandiganbayan on a finding that the latter has jurisdiction over the case.[4] On June 29, 2004, the First Division of the Sandiganbayan resolved[5] thus –

Notwithstanding the referral of this case to this Court by the Court of Appeals, it appearing that no correction was made of the correct appellate court by the appellant, this Court is constrained to **DISMISS** the instant case pursuant to Section 2, Rule 50 of the 1997 Revised Rules of Civil Procedure, stating insofar as pertinent, that "(a)n appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright," and the ruling in the case of *Moll vs. Buban, et al.,* G.R. No. 136974 promulgated on August 27, 2002, that the designation of the correct appellate court should be made within the 15-day period to appeal.

Petitioners' motion for reconsideration was denied[6] by the Sandiganbayan; hence, this petition for certiorari alleging grave abuse of discretion of the Sandiganbayan in dismissing their appeal. They maintain that the trial court committed the following errors:

I. IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA IS AN ACCOUNTABLE PUBLIC OFFICER WITH RESPECT TO CONFISCATED ILLEGALLY LOGGED LUMBER, BY REASON OF THE DUTIES OF HIS

OFFICE.

II. IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA MISAPPROPRIATED OR CONSENTED OR, THROUGH NEGLIGENCE OR ABANDONMENT, PERMITTED ANOTHER PERSON TO TAKE THE CONFISCATED LUMBER.

III. IN RULING THAT ACCUSED-APPELLANT HERMOSO ARRIOLA MALICIOUSLY OR FRAUDULENTLY ATTEMPTED TO MAKE IT APPEAR THAT THE MISSING LUMBER WERE FOUND AND RECOVED (sic).

IV. IN RULING THAT ACCUSED-APPELLANT MELCHOR RADAN IS AN ACCESSORY AFTER THE CRIME WHO SHOULD BE HELD LIABLE, TOGETHER WITH HIS CO-PETITIONER.

V. IN RULING THAT THE GUILT OF BOTH ACCUSED-APPELLANTS WERE ESTABLISHED BY EVIDENCE OF GUILT BEYOND REASONABLE DOUBT.[7]

The factual antecedents of the case are as follows:

At noon on April 22, 1996 Department of Environment and Natural Resources (DENR) Forest Rangers Efren Mandia (Mandia) and Joepre Ferriol, Senior Inspector Noel Alonzo, the team leader of Task Force Kalikasan together with the Chief of Police of Magdiwang, Romblon SPO3 Agustin Ramal and some other police officers, confiscated 44 pieces of illegally sawn lumber totaling 1,174 board feet with an estimated value of P17,611.20.[8]

Mandia scaled the lumber and made notches on most of the pieces before issuing the seizure receipt[9] and turning over its custody to petitioner Arriola in the presence of petitioner Radan. Arriola acknowledged receipt thereof and signed[10] accordingly. Mandia subsequently discovered the lumber missing on May 5, 1996.[11]

He went back to Barangay Dulangan on May 14, 1996 accompanied by several police officers and Foresters Gerardo Sabigan and Glenn Tansiongco. They requested petitioners to turn over custody of the confiscated lumber but the latter claimed that the same were taken away without their knowledge. Subsequently, petitioners produced lumber and claimed that these were the ones they recovered. Upon closer inspection however, Mandia noted that the lumber produced by petitioners were different from those previously confiscated.

The subsequent investigation conducted by Mandia together with Forester and Officer-in-Charge Gerardo Sabigan, SPO1 Jose Fabrique, Jr., and some members of the Multi-Sectoral Forest Protection Committee showed that the missing lumber was actually hauled to and used in the Magdiwang Cockpit where petitioner Arriola is a stockholder.[12]

On June 10, 1996, a complaint was filed against petitioners before the Romblon Provincial Prosecution Office.

In his defense, Arriola asserts that contrary to the finding of the trial court, he is not an accountable officer insofar as the confiscated lumber is concerned. He maintains that none of the powers, duties and functions of a Barangay Captain as enumerated in the Local Government Code[13] (R.A. 7160) directly or by inference suggests that as such Barangay Captain, he is an accountable officer with respect to the custody of illegally sawn lumber confiscated within his territorial jurisdiction.

He insists that the confiscated lumber was placed in his custody "not by reason of the duties of his office" as Barangay Captain, thus he is not legally accountable to answer for its loss so as to make him liable for Malversation under Art. 217 of the Revised Penal Code. Petitioners claim that they did not misappropriate, abandon or neglect the confiscated lumber and insist that the same were stolen. Arriola claims he visited the stockpiled lumber regularly so the theft probably occurred at night.

With respect to the replacement lumber they subsequently produced, petitioners believed in good faith that the various lumber found scattered in a nearby creek were the missing confiscated lumber left by the thieves who failed to transport them across.

Before going into the merits of the case, we must first resolve the procedural issue of whether the Sandiganbayan correctly dismissed the appeal. The Sandiganbayan anchored its dismissal on this Court's pronouncement in *Moll v. Buban*[14] that the designation of the wrong court does not necessarily affect the validity of the notice of appeal. However, the designation of the proper court should be made within the 15-day period to appeal. Once made within the said period, the designation of the correct appellate court may be allowed even if the records of the case are forwarded to the Court of Appeals. Otherwise, Section 2, Rule 50 of the Rules of Court would apply, the relevant portion of which states:

> Sec. 2. Dismissal of improper appeal to the Court of Appeals. –
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> An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.

In this case, the records had been forwarded to the Court of Appeals which endorsed petitioners' appeal to the Sandiganbayan. However, petitioners failed to designate the proper appellate court within the allowable time.

We cannot fault the Sandiganbayan for dismissing the appeal outright for it was merely applying the law and existing jurisprudence on the matter. Appeal is not a vested right but a mere statutory privilege; thus, appeal must be made strictly in accordance with provisions set by law.[15] Section 2, Rule 50 clearly requires that the correction in designating the proper appellate court should be made *within* the 15-day period to appeal.

However, the rules of procedure ought not to be applied in a very rigid, technical sense for they have been adopted to help secure – not override – substantial justice.[16] This Court has repeatedly stressed that the ends of justice would be served better when cases are determined, not on mere technicality or some procedural nicety, but on the merits – after all the parties are given full opportunity