457 Phil. 785

FIRST DIVISION

[G.R. No. 153845, September 11, 2003]

EFREN SALVAN Y PRESENES, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court, which seeks to set aside the Order of the Regional Trial Court, Branch 13 of Malolos, Bulacan, dated February 12, 2002, denying due course to petitioner Efren Salvan's Notice of Partial Appeal, and the Order of the same court, dated June 6, 2002, denying petitioner's Motion for Reconsideration.[1] The petition also specifically prays for the issuance of an Order directing the trial court to give due course to the petitioner's Notice of Partial Appeal.[2]

Petitioner Efren Salvan, a bus driver, was charged with Reckless Imprudence Resulting in Homicide for the death of John Barry Abogado, in Criminal Case No. 718-M-00 before the Regional Trial Court of Malolos, Bulacan, Branch 13.[3] At his arraignment, petitioner pleaded guilty to the charge. The trial court then proceeded to receive evidence to determine the civil liability of petitioner. During the course of the hearing, petitioner and private complainant Edna Abogado, the mother of the accused, agreed to amicably settle the civil aspect of the case.[4]

On October 23, 2001, the trial court promulgated its Decision, the decretal portion of which provides:

> WHEREFORE, premises considered, this Court finds the accused GUILTY beyond reasonable doubt of the crime of simple negligence resulting in homicide as per the recitals in the information, punished under the second paragraph of Article 365 of the Revised Penal Code, and hereby sentences him to suffer the penalty of six (6) months of *arresto mayor.* Accused is directed to pay to the heirs of the deceased the net sum of P100,000.00, representing the difference between the P100,000.00 earlier paid by way of amicable settlement herein and the sum of:
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> a) P50,000.00 in actual damages;
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> b) P50,000.00 in civil indemnity; and
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> c) P100,000.00 in moral damages.
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> SO ORDERED.[5]

Petitioner filed a Motion for Partial Reconsideration praying for the deletion of the additional award of damages.[6] He also filed an Application for Probation on the same date.[7] On January 28, 2002, the trial court denied the petitioner's Motion for Partial Reconsideration, but gave due course to the petitioner's Application for Probation.[8]

Petitioner then filed a Notice of Partial Appeal on February 8, 2002. On February 12, 2002, the trial court issued the first assailed Order, the dispositive portion of which states:

> Considering that the application for probation of the accused was given due course as per the Order of this Court dated January 28, 2002, and the application for probation is deemed under the law to be a waiver of the right to appeal, the Notice of Appeal is hereby DENIED due course.
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> SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration, which was denied on June 6, 2002.[10]

Petitioner is now before us, alleging that:

> THE TRIAL COURT ERRED WHEN IT DENIED GIVING DUE COURSE TO ACCUSED'S NOTICE OF PARTIAL APPEAL EXCLUSIVELY ON THE AWARD OF DAMAGES.[11]

In Rule 41 of the 1964 Rules of Court, the dismissal of appeals was governed by the following provisions:

> SEC. 13. *Effect of failure to file notice, bond, or record on appeal*. — Where the notice of appeal, appeal bond or record on appeal is not filed within the period of time herein provided, the appeal shall be dismissed.
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> SEC. 14. *Motion to dismiss appeal*. — A motion to dismiss an appeal on any of the grounds mentioned in the preceding section, may be filed in the Court of First Instance prior to the transmittal of the record to the appellate court.

Rule 41, Section 13 of the 1997 Rules of Civil Procedure, provides for the grounds to dismiss appeals, to wit:

> Sec. 13. *Dismissal of appeal*. — Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period.[12]

The above-quoted rule limits the grounds for dismissal of appeals to very specific instances. The filing of an application for probation is not one of them.

In the parallel case of *Ortigas & Company Limited Partnership v. Velasco*,[13] we held:

> His Honor was apparently incognizant of the principle that dismissals of appeals from the judgment of a Regional Trial Court by the latter are authorized only in the instances specifically set forth in Section 13, Rule 41 of the Rules of Court. The succeeding provision, Section 14 of said Rule 41, provides that "(a) motion to dismiss an appeal may be filed in the (Regional Trial) Court . . . prior to the transmittal of the record to the appellate court;" and the grounds are limited to those "mentioned in the preceding section," *i.e.*, Section 13 to wit: where "the notice of appeal, appeal bond, or record on appeal is not filed within the period of time herein provided . . ."
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> These two (2) sections clearly establish "that. . . . (A) trial court may not dismiss an appeal as frivolous, or on the ground that the case has become moot and academic, such step devolving upon the appellate courts. Otherwise, the way would be opened for (regional trial) courts . . . to forestall review or reversal of their decisions by higher courts, no matter how erroneous or improper such decisions should be.[14]

Although the aforementioned ruling was made in a civil case, we see no reason why the principles enunciated therein cannot be applied, by analogy, to a criminal case, such as the one at bar. Thus, aside from its competence to dismiss withdrawn appeals,[15] the Regional Trial Court's power to dismiss an appeal is limited to the instances provided for in Rule 41, Section 13.

Going now to the issue of probation, we recall that the law which governs all matters relating to probation is Presidential Decree No. 968, commonly known as the Probation Law, as amended by Presidential Decree No. 1990. The provision of the law that is pertinent to the current controversy 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 defendant, and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best; *Provided*, That no application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction.
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> Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal.

An order granting or denying probation shall not be appealable.

Relying solely on the letter of the law, the filing of the application for probation should be deemed a waiver of the right to appeal. However, in the case of *Budlong v. Apalisok*,[16] we had occasion to rule that the above provision of the Probation Law clearly provides only for the suspension of the sentence imposed on the accused by virtue of his application for probation. It has absolutely no bearing on civil liability. This ruling was clarified in *Salgado v. Court of Appeals*,[17] wherein we ruled that, although the execution of sentence is suspended by the grant of