

EN BANC

[A.M. No. CA-02-33, July 31, 2002]

TAN TIAC CHIONG, COMPLAINANT, VS. HON. RODRIGO V. COSICO, ASSOCIATE JUSTICE, COURT OF APPEALS, RESPONDENT.

RESOLUTION

YNARES-SANTIAGO, J.:

On December 8, 2000, the Office of the Court Administrator received a sworn Letter-Complaint dated December 4, 2000,^[1] signed by complainant Tan Tiac Chiong a.k.a. Ernie Tan, charging respondent Court of Appeals Associate Justice Rodrigo V. Cosico with Grave Abuse of Discretion and Conduct Prejudicial to the Service, relative to CA-G.R. CR No. 13844 entitled, "*People of the Philippines v. Jesusa T. Dela Cruz.*"

Complainant alleged that in a criminal case he filed for violation of B.P. Blg. 22, accused Dela Cruz was convicted by the Regional Trial Court of Manila and he was awarded the amount of more or less P1,602,505.00. An appeal was filed by the accused which was docketed as CA-G.R. CR No. 13844. On October 13, 1998, the decision of the Regional Trial Court of Manila was affirmed in toto by the Court of Appeals with the respondent as ponente. An Entry of Judgment was issued making the decision final and executory as of December 2, 1998. On January 11, 1999, the records of the case were remanded to the Regional Trial Court for execution as well as the payment of back taxes. Pursuant to the writ of execution issued on January 12, 1999, the Office of the Ex-Oficio Sheriff of Manila posted a Notice of Sale on Execution of Real Property, setting the auction sale for March 8, 1999.^[2]

In February 2000, complainant learned that a Motion for Reconsideration was filed by the accused with the Court of Appeals. The Office of the Solicitor General (OSG) did not file any responsive pleading to the motion for reconsideration. On January 24, 2000, respondent issued a Resolution^[3] reversing his earlier ponencia of October 13, 1998.

Complainant further charged that there was an alleged connivance between respondent, the counsel of accused Dela Cruz and the OSG because while counsel for the accused maintained that he received a copy of the October 13, 1998 Decision only on April 30, 1999, he filed his twenty-seven page Motion for Reconsideration on the same day.^[4] This, according to complainant, was a superhuman thing to do considering that a pleading consisting of twenty-seven (27) pages would normally take several days to prepare.

In his Comment with Motion to Dismiss,^[5] respondent denied the allegations of the complaint. He argued that, assuming without admitting that an error of judgment was committed, the well-established rule is that an administrative case is not the

proper remedy for alleged errors of judgment. Respondent alleged that on March 16, 1999, accused-appellant filed a "Motion to Recall Entry of Judgment and to Restrain Execution of Judgment" on the ground that the decision dated October 13, 1998 has not yet become final because neither she nor her counsel had received a copy of the decision. Upon verification, it was discovered that a copy of the decision sent to the former address of accused-appellant's counsel was returned to the Court of Appeals. On April 19, 1999, the Motion to Recall Entry of Judgment and to Restrain Execution of Judgment was granted and a copy of the Decision dated October 13, 1998 was again sent to the new address of accused-appellant's counsel, who filed a Motion for Reconsideration, attaching thereto a Statement of Deliveries and Payments of Teacher's Uniforms showing an overpayment of P2,993,595.36 by accused-appellant. The Office of the Solicitor General was directed to file a comment within 10 days from notice. However, despite several extensions granted, the OSG failed to file any comment. Hence, the Motion for Reconsideration was submitted for resolution without the appellee's comment.

On January 24, 2000, the Motion for Reconsideration was granted, in effect acquitting the accused-appellant. Complainant filed an Urgent Motion for Reconsideration praying that the civil aspect of the case be reinstated and the Court's Resolution dated January 24, 2000 be recalled. The motion for reconsideration was denied. A petition for certiorari was filed before this Court which was, however, denied on July 10, 2000.

In his Reply,^[6] complainant insists that respondent acted with "partiality" and "bias" in favor of accused-appellant because the recall of an entry of judgment, as a rule, is prohibited and allowed only in extremely justifiable causes. To allow the same on the ground that there was no proper service of the decision would be a dangerous precedent. He avers that accused-appellant had knowledge of the decision when she filed a motion for reconsideration on May 4, 1999, which was way beyond the reglementary period of fifteen (15) days.

Respondent filed a Rejoinder with Motion for Early Decision,^[7] wherein he argues that the complaint is dismissible because the same is based purely on conjecture and speculation.

In his Comment to Rejoinder,^[8] complainant insists that the recall of entry of judgment was unwarranted because accused-appellant and counsel were apprised of the judgment when they received a copy of the writ of execution to which was appended a copy of the decision. Hence, the decision had become final and executory fifteen days after receipt of the writ because knowledge is equivalent to notice. Furthermore, the claim that the decision was sent to the wrong address is not true because counsel used two addresses alternately in the filing of pleadings, one in Las Piñas City and the other in Pasay City, thereby causing confusion in the sending of notices. Counsel for the accused failed to notify the court of any change of address, hence, he should not be allowed to profit from his negligence.

Based on the respective motions for early decision filed by complainant^[9] and respondent Justice,^[10] the Court deemed the case submitted for resolution.

Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause.^[11] It generally means wrongful, improper or unlawful

conduct motivated by a premeditated, obstinate or intentional purpose.^[12] To justify the taking of drastic disciplinary action, the law requires that the error or mistake must be gross or patent, malicious, deliberate or in bad faith.^[13]

For liability to attach, the assailed order, decision or actuation of the judge in the performance of official duty must not only be found to be erroneous but, most importantly, it must be established that he was moved by bad faith, dishonesty, hatred or some other like motive.^[14] Similarly, a judge will be held administratively liable for rendering an unjust judgment – one which is contrary to law or jurisprudence or is not supported by evidence – when he acts in bad faith, malice, revenge or some other similar motive.^[15]

In other words, in order to hold a judge liable for knowingly rendering an unjust judgment, it must be shown beyond reasonable doubt that the judgment was made with a conscious and deliberate intent to do an injustice.^[16] In fine, bad faith is the ground for liability in either or both offenses.^[17] This criteria can not be applied to respondent Justice since there is no showing of any wrongful, improper or unlawful conduct on his part.

The records reveal that a copy of the decision of the Court of Appeals dated October 13, 1998 was sent to the former address of accused-appellant's counsel at Room 502, Doña Generosa Building, EDSA Extension, Pasay City; however, the same was returned to the Court of Appeals with the notation "Moved Out."^[18] Thus, the appellate court recalled the Entry of Judgment dated December 2, 1998 and sent a copy of the decision to counsel's new address at Lot 1, Block 1 St. Vincent Street, St. Joseph Subdivision, Pulang Lupa, Las Piñas City.^[19] Accused-appellant thereafter filed a Motion for Reconsideration, which was granted.

The right to appeal is not a natural but a statutory right. Generally, the party who seeks to avail of the same must comply with the requirements of the rules; failing to do so, the right to appeal is lost.^[20] However, under exceptional circumstances, delay in the filing of an appeal may be excused on grounds of substantial justice.^[21] Where a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case. Litigations should, as much as possible, be decided on the merits and not on technicalities.^[22] Since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.^[23] Technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.^[24] In *Aguam v. CA, et al.*,^[25] the following ruling was made with regard to dismissal of appeals filed with the appellate court, viz:

x x x. ***The court has the discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case."*** Technicalities must, however, be avoided. The law abhors technicalities that impede the cause of justice. The court's primary duty is to render or dispense justice "A litigation is not a game of technicalities." "Lawsuits unlike duels are not to