

FOURTH DIVISION

[CA-G.R. SP NO. 133364, March 25, 2015]

MYRNA TANALEON, PETITIONER, VS. HON. THELMA BUNYI-MEDINA, IN HER CAPACITY AS THE PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 32 OF THE CITY OF MANILA, PEOPLE OF THE PHILIPPINES AND ROLANDO ESTRELLA, RESPONDENTS.

DECISION

BALTAZAR-PADILLA, J.:

This petition^[1] for *certiorari* under Rule 65 of the Rules of Court assails the Orders dated September 3, 2013^[2] and October 25, 2013^[3] issued by respondent Honorable Judge Thelma Bunyi-Medina (hereinafter, "respondent Judge") of the Regional Trial Court, Branch 32 of the City of Manila (hereinafter, "RTC") in Criminal Case No. 01-193938.

On August 15, 2013, the RTC convicted herein petitioner of Estafa in Criminal Case No. 01-193938, thus -

"WHEREFORE, judgment is hereby rendered finding accused [*herein petitioner*] GUILTY beyond reasonable doubt of estafa, under Article 315, paragraph 1 (b), of the Revised Penal Code, sentencing her to an indeterminate prison term of six (6) months and one (1) day of prison correctional to twenty (20) years of reclusion temporal.

Further, she is sentenced to pay the private complainant [*herein respondent Rolando Estrella*] the amount of Php180,000.00, the amount defrauded by her, plus six percent (6%) interest per annum of the total amount due to her from the filing of the case in court up to its full payment.

SO ORDERED."^[4]

Petitioner received a copy of the said Decision on the same date of its promulgation through her counsel.

On August 30, 2013, petitioner timely filed her Notice of Appeal.

On September 3, 2013, respondent Judge denied due course to petitioner's Notice of Appeal citing Section 8 of Rule 124 of the Rules of Court, viz -

"**Rule 124 Section 8** of the Rules of Court explicitly provides, thus:

SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* - The Court of Appeals may, upon motion of the appellee or motu proprio

and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except in case the appellant is represented by a counsel de oficio.

The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jump bail or flees to a foreign country during the pendency of the appeal.”^[5]

Respondent Judge ratiocinated that petitioner's notice of appeal should be dismissed outright because she escaped from custody while being transported to the Manila City Jail pending the hearing of her verbal motion that she be released on bail while her case is on appeal. By escaping to evade her sentence, she has waived her right to appeal^[6].

Petitioner through her counsel filed a Motion for Reconsideration of the Order dismissing her Notice of Appeal but the same was denied.^[7]

Hence, this recourse raising the sole issue of -

“Whether or not the Public Respondent Honorable Presiding Judge committed a grave abuse of discretion in denying the NOTICE OF APPEAL of the petitioner (then accused) and the subsequent denial of the MOTION FOR RECONSIDERATION, which entitles the petitioner for a Writ of Certiorari being the only available, adequate and speedy remedy under the circumstance.”
^[8]

Petitioner insists that respondent Judge acted without and in excess of her jurisdiction when she denied due course to her appeal based on Section 8 of Rule 124 of the Rules of Court. It is clear from the cited provision that the power to dismiss an appeal belongs solely to the Court of Appeals.

Petitioner maintains that since the filing of her Notice of Appeal and payment of the corresponding appeal fee^[9] were timely made, it becomes ministerial on the part of the RTC to give due course to her Notice of Appeal.

WE deny the petition.

In the case of *Teope vs. People, et al.*,^[10] the High Court upheld the Court of Appeals' dismissal of the petition for mandamus which sought to compel the RTC to give due course to the Notice of Appeal filed by therein petitioner. The RTC in that case denied due course to the Notice of Appeal on the ground that petitioner therein had lost her right to appeal when she became a fugitive from justice. In sustaining the appellate court's dismissal of the petition for mandamus, the Supreme Court held, viz:

“The Court finds no error committed by the Court of Appeals in dismissing the case for mandamus.cralaw

Section 6 of Rule 120 of the Revised Rules of Criminal Procedure clearly provides that:

SEC. 6. Promulgation of judgments. – x x x

x x x

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Underscoring supplied)

There is no question that petitioner escaped after her arraignment. Subsequently, the trial was ordered to continue but after the accused failed to appear, the RTC terminated the trial and, thereafter, promulgated the Joint Judgment of conviction. During that time petitioner was at large. She remains at large even while her counsel continues to file various pleadings on her behalf before the RTC, the Court of Appeals and this Court.

Under the Rules of Court, petitioner is barred from availing of the remedies allowed by the rules against the judgment of the RTC, one of which is the right to file an appeal with the Court of Appeals. The reason for this rule is because once an accused escapes from prison or confinement, or jumps bail or flees to a foreign country, he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.

Thus, having no right to appeal the RTC decision to the Court of Appeals, the petition for mandamus cannot prosper. Mandamus will only lie to compel the performance of a ministerial duty and the petitioner must show a well-defined, clear and certain right to warrant the grant thereof."

In this case, considering that petitioner escaped from custody after the promulgation of judgment for her conviction, she likewise became a fugitive from justice, impliedly waiving her right to appeal. In *People vs. Ang Gioc*,^[11] it was held that:

"There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him x x x."

In *People vs. Taruc*,^[12] the High Court had the occasion to rule that -