Supreme Court E-Library

Either the two were too fast for him and were thus able to act ahead of him or that he voluntarily desisted from further pursuing the deceased after hitting him on the left hand. In line with the presumption of innocence which We are constitutionally bound to accord him, We are constrained to hold that he had no homicidal intent. He can be held criminally responsible only for the wound on the back of the left hand of the deceased which is described as a "stab wound, 2-1/2 inches wide at the back of the left hand" by witness Felix S. Toledo, the Sanitary Inspector, who examined the corpse. And there being no evidence as to the period of incapacity or medical attendance consequent of said wound, appellant is guilty only of slight physical injuries. (Aquino, The Revised Penal Code, Vol. II, p. 1258, 1961 ed.)

IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby modified, and in its stead, appellant is found guilty only of slight physical injuries and hereby sentenced to suffer the penalty of twenty (20) days of *arresto menor*, and to pay the costs.

Fernando (Chairman), Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Antonio, J., took no part.

SECOND DIVISION

[G.R. No. L-35093. May 19, 1978]

E.S. BALTAO & CO., INC., *petitioner*, *vs.* **CHINA BANKING CORPORATION and FEDERICO O. BORROMEO, INC.**, *respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; MATERIAL DATA RULE; WHEN NOT APPLICABLE. — The strict rule

Supreme Court E-Library

about the application of Section 1, Rule 50 in the cases beginning with *Government of the Philippines vs. Antonio*, 15 SCRA 119, are not necessarily controlling anymore. Where the appellee does not deny the factual timeliness of the appeal approved by the trial court, and the only ground for dismissal is the omission in the record on appeal of the facts showing such timeliness, the Court will regard such technical objection as inconsistent with substantial justice.

2. **ID.; ID.; ID.; BRIEFS; ISSUES OF WHETHER APPEAL WAS PERFECTED ON TIME IS A PREJUDICIAL QUESTION TO BE RESOLVED BEFORE BRIEF MAY BE FILED.** — The issue whether or not an appeal has been perfected on time constitutes a prejudicial question, the result of which must in logic and practical reasons be awaited, since there might be no appeal for which a brief would be needed. However, even if only out of courtesy and good practice, petitioner should take the proper and timely moves in the Court of Appeals for the corresponding suspension of the period to file brief.

3. **LEGAL ETHICS; ATTORNEYS; DUTY TO COMPLY WITH RULES.** — It is best that the members of the bar should make it a point to know and to comply with the rules, which are as simple as they can be, without having to depend on this Court to save the situation for their clients in the paramount interest of substantial justice.

APPEARANCES OF COUNSEL

Eugenio T. Estavillo and *Lino M. Patajo* for petitioner.

Sycip, Salazar, Feliciano, Hernandez & Castillo for respondent China Banking Corporation.

Modesto Mendoza for respondent Federico O. Borromeo, Inc.

D E C I S I O N

BARREDO, *J.*:

Petition for *certiorari* impugning the resolutions of the Court of Appeals of February 9, 1972 and April 21, 1972 in CA-G.R.

Supreme Court E-Library

No. 45569, *E. S. Baltao & Co. Inc. vs. F. O. Borromeo, et al.*, insofar as the same dismissed the appeal of E. S. Baltao & Co. from the decision of the Court of First Instance of Rizal in Civil Case No. 6660, between the same parties, on the ground that the record on appeal filed with the trial court by herein petitioner does not "contain the date when plaintiff received copy of the appealed decision, pursuant to Section 1 (a), Rule 50 of the Rules of Court, which requirement is mandatory and jurisdictional."

When this case was set for hearing on February 8, 1978, none of the parties could reliably inform the Court as to when in fact petitioner was served with the copy of trial court's decision being appealed from, hence the Court resolved to require them to verify the matter and submit the result to the Court. On February 10, 1978, counsel for respondent China Banking Corporation submitted his "Compliance and Manifestation" stating that:

"1. Copy of the appealed Decision (dated December 28, 1968) was received by petitioner's counsel on January 28, 1969.

"2. On February 26, 1969, petitioner filed an *Ex-Parte* Motion for extension of 20 days from February 27, 1969 within which to file its record on appeal. On February 27, 1969, an order was issued by the trial court granting petitioner's motion for extension.

"3. Petitioner filed the Record on Appeal dated March 10, 1969 on March 12, 1969." (Page 57, Record).

Thus, it is unquestionable that petitioner s appeal in question was in fact perfected on time.

Now, as to the omission in the record on appeal to state when petitioner was served notice of the decision, it appears that in acting on the motion to approve said record on appeal, the trial court issued the following order:

"Acting on plaintiff's Motion for Approval of Amended Record on Appeal dated the 2nd instant, and defendant China Banking Corporation having manifested its non-objection to the same, as prayed, the Branch Clerk of Court is directed to insert pages 43(a)

Supreme Court E-Library

to 43(i) attached to the Motion as Annex 'A', after page 43 of plaintiff's Record on Appeal, and to attach the subject Index Thereto. With the compliance of the above, plaintiff's Amended Record on Appeal, Notice of Appeal, Appeal Bond are APPROVED and the Clerk of Court is directed to give due course to the appeal by complying with the pertinent provisions of the Rules of Court." (Pp. 148-149, Record on Appeal).

In a similar case decided by this Court, the trial court approved appellant's record on appeal as follows:

"It appearing that the defendants have already included the motion to dismiss, opposition filed thereto and the resolution of the court thereon, in the amended Record on Appeal filed by the defendants, and for want of any further objection on the part of the plaintiff, AS PRAYED FOR, the amended record on appeal filed by the defendants is hereby approved. (R.A. p. 172)." (72 SCRA 417)

Ruling on the propriety of such approval, We held:

"It may be added here that when Araneta objected to the original record on appeal, it was only on the ground of omission of certain papers therein, not for its being out of time. Under the omnibus motion rule, the objection of untimeliness was waived by Araneta, and it is reasonable to assume that he would not have raised such a clearly jurisdictional fatality, if in fact the original Doronila record on appeal had been filed out of time. Since the purpose of the strict rule of literal compliance with the 'material data rule' is to avoid debate on the timeliness of the appeal, and there is here no occasion for such debate, such timeliness being a matter no longer disputable by Araneta, it should follow that the amended record on appeal may be read in the sense that the order of the court approving the same includes the finding that the original thereof had been filed on time. We hold that thus read, said amended record on appeal sufficiently complies with the rules. (Berkenkotter, supra, and subsequent rulings analogous thereto.) (*Araneta vs. Doronila*, 72 SCRA 413, 420).

The foregoing ruling is aptly applicable to the instant case, the circumstances in the Araneta case being practically identical in the two cases. The strict rule relied upon by respondents about the application of Section 1, Rule 50 in the cases beginning with *Government of the Philippines vs. Antonio*, 15 SCRA

Supreme Court E-Library

119, are not necessarily controlling anymore. Where appellee does not deny the factual timeliness of the appeal approved by the trial court, and the only ground invoked for dismissal is the omission in the record on appeal of the facts showing such timeliness, We regard the technical objection as inconsistent with substantial justice. (*Pimentel vs. Court of Appeals*, 64 SCRA 475; *Luna vs. Court of Appeals*, 67 SCRA 503; *Krueger vs. Court of Appeals*, 69 SCRA 50 and others of similar vein.) It may not be amiss to add here, however, that it is best that the members of the bar should make it a point to know and to comply with the rules, which are as simple as they can be, without having to depend on this Court to save the situation for their clients in the paramount interest of substantial justice.

Anent the ground being also invoked by private respondents that petitioner has not yet filed its appellant's brief notwithstanding the expiration of the original period and extensions granted by the Court of Appeals, We agree with petitioner that the issue in this case, which was resolved by the appellate court before the expiration of petitioner's period, constitutes a prejudicial question, the result of which must in logic and practical reasons be awaited, since there might be no appeal for which a brief would be needed. However, We must state that even if only out of courtesy and good practice, petitioner should have taken the proper and timely moves in the Court of Appeals for the corresponding suspension of said period.

WHEREFORE, the petition is granted; the resolutions of the Court of Appeals complained of are set aside, and the respondent Court of Appeals is directed to give due course to petitioner's appeal in question by granting it a reasonable period within which to file its brief. Costs against private respondents.

Fernando (Chairman), Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Antonio, J., took no part.