Supreme Court E-Library

to thirty-five days to heal, the corresponding penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period should be imposed in its maximum period, in view of the aggravating circumstances attending the commission of the crime. As a result, each and everyone of the three defendants are sentenced to suffer an indeterminate sentence of eight (8) years and twenty (20) days of *prision mayor,* as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal* as maximum.

MODIFIED AS ABOVE INDICATED, the appealed decision is affirmed in all other respects. With costs.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Ruiz Castro, Fernando, Capistrano and *Teehankee, JJ.,* concur.

Barredo, J., did not take part.

Reyes, J.B.L. and *Zaldivar, JJ.,* are on leave.

[G.R. No. L-30165. August 22, 1969]

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellant, *vs.* ROSENDO RESUELLO, et al., defendants, ROSENDO RESUELLO, defendant-appellee.

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL FROM TRIAL COURT TO SUPREME COURT ON PURE QUESTION OF LAW; APPELLANT IS REQUIRED TO FILE PETITION FOR CERTIORARI.— In appeals from the decisions or orders of the trial court to this Court involving pure question of law, as long as the steps formerly required for the perfection of an appeal were taken in due time, we have adopted the policy of giving due course to the appeal, without prejudice to requiring the appellant to file the necessary petition for review by certiorari—which is also a form of appeal.

2. ID.; ID.; DISMISSAL; APPELLEE GUILTY OF LACHES IN INSTANT CASE.— Appellee, through counsel, appears to have

Supreme Court E-Library

received copies of the brief filed by the State on April 23, 1969. On May 22 of the same year, his attorneys of record filed a motion for first extension of time to file their brief, which this Court granted on May 27, 1969. Again on June 20, 1969, his attorneys filed a motion for second extension for the same purpose which We also granted on June 25, of the same year. It was only on July 5, 1969 that the motion under consideration was filed. These facts show, in our opinion, that appellee is guilty of laches.

APPEARANCES OF COUNSEL

Solicitor General Felix V. Makasiar, Assistant Solicitor General Frine C. Zaballero and *Solicitor Rosalio A. de Leon* for plaintiff-appellant.

Sycip, Salazar, Luna, Manalo & Feliciano for defendant-appellee.

DECISION

DIZON, *J.*:

The information (for estafa) filed with the Court of First Instance of Pampanga in Criminal Case No. 5232 against Rosendo Resuello and others alleged that Rosendo Resuello, as President and General Manager of the Security Credit and Acceptance Corporation, and his co-defendants, as officers of the same entity, had "received for deposit from FLORENTINA G. LIMPIN the amount of EIGHT HUNDRED (₱800.00) PESOS, with the obligation, on the part of the accused to return and deliver the amount so deposited upon demand the said accused far from complying with the said obligation, conspiring together and mutually helping and aiding one another, with intent of gain and to defraud and with grave abuse of confidence and by means of deceit, once in possession of the said money, did then and there wilfully, unlawfully and feloniously misapply, misappropriate and convert to their own personal use and benefit the said amount of EIGHT HUNDRED (₱800.00) PESOS, and in spite of repeated and insistent demands made on the said accused to return and deliver the money, said accused failed and refused and still fail and refuse to return or deliver the said amount of ₱800.00, to

Supreme Court E-Library

the damage and prejudice of the said FLORENTINA G. LIMPIN in the aforesaid amount, Philippine currency."

On June 24, 1968 Resuello filed a motion to quash the information on the ground that the facts charged do not constitute an offense. After hearing the parties, the court, in its order of October 10, 1968, sustained the motion aforesaid and, as a result, dismissed the case, with costs de oficio, upon the ground that the liability of the defendant and his co-accused was purely civil in nature.

In due time the Provincial Fiscal appealed from the order of dismissal by filing the corresponding notice of appeal, and on April 21, 1969 the State filed its brief claiming therein that the trial court committed the following errors:

"I. The lower court erred in considering the transaction involved as a simple loan;

"II. The lower court erred in concluding that the relationship between the accused-defendant and the complaining witness is one of creditor and debtor;

"III. The lower court likewise erred in resolving that defendant's liability is only civil, not criminal; and

"IV. The lower court finally erred in quashing the information on the ground that the facts alleged do not charge an offense."

On July 5, 1969, instead of filing his brief, the accused-appellee filed a motion to dismiss the appeal "on the ground that the order appealed from is not appealable and has become final and executory," claiming in this connection that under Section 17 of the Judiciary Act, as amended by Republic Act No. 5440—which took effect on September 9, 1968, or more than one month before the perfection of the appeal—the remedy of appeal does not lie from the trial court's order of dismissal since only a question of law is sought to be reviewed, the proper remedy being, therefore, a petition for review on certiorari.

The motion to dismiss must be denied. In cases similarly situated, and as long as the steps formerly required for the

Supreme Court E-Library

perfection of an appeal were taken in due time, we have adopted the policy of giving due course to the appeal, without prejudice to requiring the appellant to file the necessary petition for review by certiorari—which is also a form of appeal.

Moreover, appellee, through counsel, appears to have received copies of the brief filed by the State on April 23, 1969. On May 22 of the same year, his attorneys of record filed a motion for first extension of time to file their brief, which this Court granted on May 27, 1969. Again on June 20, 1969, his attorneys filed a motion for second extension for the same purpose which We also granted on June 25 of the same year. It was only on July 5, 1969 that the motion under consideration was filed. These facts show, in our opinion, that appellee is guilty of laches.

WHEREFORE, the motion to dismiss the State's appeal is denied, but appellant is hereby required to file within ten (10) days from notice hereof the necessary petition for review. Appellee, on the other hand, is required to file his brief within the reglementary period to be counted from notice of said petition for review.

Concepcion, C.J., Makalintal, Sanchez, Ruiz Castro, Fernando, Capistrano and *Barredo, JJ.*, concur.

Teehankee, J., took no part.

Reyes, J.B.L., and *Zaldivar, JJ.*, are on leave.

[G.R. No. L-30830. August 22, 1969]

PHILIPPINE COMMERCIAL & INDUSTRIAL BANK, plaintiff-appellee, *vs.* ELRO DEVELOPMENT CORPORATION and MERIDIAN ASSURANCE CORPORATION, defendants, ELRO DEVELOPMENT CORPORATION, defendant-appellant.

SYLLABUS

1. REMEDIAL LAW; ACTIONABLE DOCUMENT; EFFECT OF FAILURE TO DENY UNDER OATH ITS AUTHENTICITY AND