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**SUPREME COURT  
FIRST DIVISION**

**RAFAEL AMATORIO,  
*Petitioner,***

***-versus-***

**G.R. No. 150453  
February 14, 2003**

**PEOPLE OF THE PHILIPPINES,  
*Respondent.***

X-----X

**DECISION**

**AZCUNA, J.:**

Before us is a petition to reverse and set aside the Resolution<sup>[1]</sup> of the Court of Appeals dated October 9, 2001 in CA-G.R. No. 21247.

The pertinent facts and incidents appear from the records:

Petitioner Rafael Amatorio was charged with the crime of murder before the Regional Trial Court, Branch 39, 6th Judicial Region, Iloilo City and the case was docketed as Criminal Case No. 35460.<sup>[2]</sup>

After trial on the merits, the Regional Trial Court rendered judgment against Amatorio, disposing of the case as follows:

WHEREFORE, premises considered, the accused RAFAEL AMATORIO is hereby found GUILTY beyond reasonable doubt of the crime of Homicide only and there being no mitigating or aggravating circumstances and applying the Indeterminate Sentence Law, is hereby sentenced to suffer imprisonment for a period of Ten (10) years as minimum, to Seventeen (17) years and Four (4) months as maximum.

The accused is further ordered to pay the mother of the deceased Ofelia Melocoton [in] the amount of PhP63,200.00 for funeral and burial expenses and expense[s] during the wake, and further to pay the legal heirs of the deceased the amount of PhP50,000.00 for his wrongful death and another PhP50,000.00 for moral damages and the cost of this suit.

SO ORDERED.<sup>[3]</sup>

From the foregoing decision, petitioner appealed to the Court of Appeals.

Throughout the course of the trial, Amatorio was represented by Atty. Joelito T. Barrera of the Barrera Law Office.<sup>[4]</sup>

On March 2, 2001, while the case was pending before the Court of Appeals and before the appellate court could render a decision, Atty. Barrera died.<sup>[5]</sup>

After a review of the case on the merits, the Court of Appeals, in a decision dated April 18, 2001,<sup>[6]</sup> affirmed the decision of the Regional Trial Court, stating:

WHEREFORE, FOREGOING PREMISES CONSIDERED, the appealed Decision dated July 18, 1997 of the Regional Trial Court, Branch 39, Iloilo City in Criminal Case No. 35460, being in accordance with law and evidence is AFFIRMED with the correction in the sense that the accused-appellant is sentenced to suffer the imprisonment for a period of Ten (10) Years of prison mayor as minimum to Seventeen (17) Years and Four (4) Months of reclusion temporal as maximum. Costs against the appellant.

SO ORDERED.<sup>[7]</sup>

A copy of the Decision was received by the Barrera Law Office on May 7, 2001.<sup>[8]</sup> Thus, appellant had until May 22, 2001 within which to file a motion for reconsideration or to appeal the same to us.<sup>[9]</sup>

Petitioner alleges that he was not informed of the Decision of the Court of Appeals and that he learned of Atty. Barrera's death only on August 9, 2001. Thus, he was unable to file a timely motion for reconsideration of the said Decision.<sup>[10]</sup>

On August 17, 2001, represented by new counsel, Atty. Gerald C. Jacob, petitioner filed a "Motion for 30-day Extension to File Motion for Reconsideration."<sup>[11]</sup> The new counsel stated that "in the interest of justice," he was asking for "more time to thoroughly study the case and prepare an intelligent Motion for Reconsideration."

Acting upon the motion for extension, the Court of Appeals issued the assailed resolution denying the motion for lack of merit. The Court of Appeals stated:

Considering that no motion for extension of time to file a motion for reconsideration is allowed (Section 2, Rule 40 and Section 3, Rule 41, 1997 Rules of Civil Procedure, as amended) and considering further that the decision promulgated on April 18, 2001 is now final and executory that it can no longer be a subject of a motion for reconsideration, this instant motion for 30-day extension to file a motion for reconsideration dated August 17, 2001 filed by counsel for accused-appellant is DENIED for lack of merit.

SO ORDERED.<sup>[12]</sup>

A copy of said Resolution was received by counsel for petitioner on October 17, 2001.

Hence, this petition, filed on November 9, 2001.

Upon perusal of the pleadings, there is a need to resolve a preliminary question regarding the nature of the petition filed before us.

We note that the Petition<sup>[13]</sup> filed on behalf of Amatorio by his counsel Atty. Gerald C. Jacob was expressly denominated as a “Petition for Certiorari (under Rule 65 of the 1997 Rules of Court).”<sup>[14]</sup> Clearly raised therein as issues for resolution are two instances of alleged “grave abuse of discretion” committed by the Court of Appeals. In addition, counsel alleges that the verified petition is filed, “there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.”

However, in a “Reply to Comment”<sup>[15]</sup> dated June 25, 2002, petitioner, through the same counsel, now alleges that the petition he filed was in fact one under Rule 45 of the Rules of Court. Counsel now asserts that “the proper remedy available to petitioners was a petition for review under Rule 45, not 65.” Citing Section 4 of Rule 45 of the Rules of Court,<sup>[16]</sup> he avers that he has complied with all the requisites under the said rule. He particularly points out that the petition was filed within the 15-day period under Rule 45 and that the Court of Appeals need not be impleaded as respondent.

As belatedly realized by the petitioner, the proper remedy for him in this case is an appeal under Rule 45 of the Rules of Court. Assuming arguendo that the Court of Appeals erred in denying his motion for extension of time to file a motion for reconsideration, said error is correctible by appeal under Rule 45.

Petitioner submits a question of law<sup>[17]</sup> before us. We are called upon to determine what the law is for the particular undisputed facts of this case.

Time and again we have established the distinction between the remedies under Rule 45 and Rule 65.<sup>[18]</sup> We have constantly reminded members of the bench and bar regarding these distinct remedies and the requisites to avail of them. An erroneous mode of appeal can have fatal consequences to a petition.

We find occasion herein to caution Atty. Jacob as counsel for petitioner. First, he came to us using the wrong mode of appeal.

Subsequently, he attempted to correct his mistake by alleging in a subsequent pleading that he in fact filed the petition under Rule 45. This is notwithstanding the fact that his earlier pleading clearly and unequivocally declared that the petition was filed under Rule 65.

For the foregoing reasons, this petition could have been dismissed outright. However, in order to clarify the issue raised, we resolve to treat this petition as one filed under Rule 45 of the Rules of Court. We now resolve the main issue.

Petitioner submits the following assigned errors:

- I. THAT THE COURT OF APPEALS HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK [OR] EXCESS OF JURISDICTION WHEN IT RENDERED A RESOLUTION THAT NO MOTION FOR EXTENSION OF TIME TO FILE A MOTION FOR RECONSIDERATION IS ALLOWED (SECTION 2, RULE 40 AND SECTION 3, RULE 41 1997 RULES OF CIVIL PROCEDURE, AS AMENDED); AND
- II. THAT THE COURT OF APPEALS HAS ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING THAT THE DECISION IT PROMULGATED ON APRIL 18, 2001 IS FINAL AND EXECUTORY DESPITE THE DEATH OF COUNSEL WHICH EXTINGUISHES THE ATTORNEY-CLIENT RELATIONSHIP.<sup>[19]</sup>

The sole issue for resolution is whether or not, under the circumstances of this case, a motion for extension of time to file a motion for reconsideration of a decision of the Court of Appeals is allowed.

Petitioner seeks to convince us that he still has a right to file a motion for extension of time to file a motion for reconsideration, and the motion for reconsideration itself, before the Court of Appeals.<sup>[20]</sup>

Petitioner argues that when Atty. Barrera died on March 2, 1991, his death effectively cancelled the attorney-client relationship. Thus, notice sent to the deceased counsel would no longer bind him because

death extinguished the juridical tie. Petitioner adds that although legal representation was made by the law firm of the deceased Atty. Barrera, the professional partnership was likewise extinguished by the death of one of the partners. He also avers that immediately upon Atty. Barrera's death, his associates formed their own law offices. Petitioner contends that it would be a miscarriage of justice to consider the notice to the "dissolved and inexistent" Barrera Law Office as binding on the accused.

On the other hand, the Solicitor General contends that the Court of Appeals was correct in denying the motion for extension of time to file a motion for reconsideration. First, such a motion is proscribed under Rules 40 and 41 of the Rules of Court. Second, petitioner is represented by the Barrera Law Office and not by Atty. Barrera alone. Considering this, any one of Atty. Barrera's partners or associates in the law firm should have filed the appropriate pleading to protect the interest of petitioner who is still their client, notwithstanding the death of the handling lawyer, Atty. Barrera. Citing *Bernardo vs. Court of Appeals*,<sup>[21]</sup> the Solicitor General contends that the death of a particular attorney does not extinguish the lawyer-client relationship where the legal representation is by a law firm. Service of a copy of the decision dated April 18, 2001 on petitioner's counsel of record, the Barrera Law Office, is service upon the petitioner. The failure of petitioner's counsel, the Barrera Law Office, to file the necessary motion for reconsideration, binds petitioner in this case.

At the outset, it must be pointed out that Rules 40 and 41 of the Rules of Court, cited by both the Court of Appeals and the Solicitor General, specifically pertain to appeals from decisions of the lower courts. We note that the stage of the proceedings before us pertains to a decision of the Court of Appeals. Thus, the cited Rules 40 and 41 of the Revised Rules of Civil Procedure are inapplicable. Nevertheless, the Court of Appeals is still correct in denying the motion for extension of time to file a motion for reconsideration but the denial should have been anchored on the then existing Revised Internal Rules of the Court of Appeals (RIRCA), as well as on prevailing jurisprudence.

On all fours with the case at bar is the case of *Heirs of Andrea Cristobal vs. Court of Appeals*.<sup>[22]</sup> We stated therein:

We agree with private respondents. Pursuant to Sec. 12 of the Judiciary Reorganization Act of 1980, as amended, the Court of Appeals adopted and promulgated the RIRCA designed to govern the internal operating procedures of the appellate court. Under Sec. 2, Rule 9, of the RIRCA, as amended, a party may file a motion for reconsideration of a decision or resolution within fifteen (15) days from notice thereof, without any extension.

The records show that respondent Court of Appeals promulgated its Decision on 31 August 1998 and copy thereof was received by petitioner's counsel on 9 September 1998. As such, petitioners had until 24 September 1998 within which to file their motion for reconsideration. However, instead of filing the motion, petitioners filed on 17 September 1998, a motion for extension of time to file a motion for reconsideration, obviously in violation of the mandatory provision prohibiting the filing of a motion for extension of time to file a motion for reconsideration. Consequently, the appellate court correctly denied petitioners' motion.

It should be stressed that this Court advocates strict adherence to the rule laid down in *Habaluyas Enterprises, Inc. vs. Japson*<sup>[23]</sup> that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court (now Court of Appeals). Such a motion may be filed only in cases pending with the Supreme Court as a court of last resort which may in its sound discretion either grant or deny the extension requested. An exception therefore cannot be made despite the claim that the lapse was due to the illness of petitioners' counsel. It is claimed that Atty. Policarpio's law office was closed since July 1998 due to her illness. The interval of two (2) months before the promulgation of the Decision should have given her associates ample time to sort out her records, delegate her responsibilities among themselves, and forewarn her clients, specifically herein petitioners, about their counsel's unavailability or incapacity so that they may be given the option to seek another counsel elsewhere.

Even the present 2002 Internal Rules of the Court of Appeals (IRCA) which took effect on August 22, 2002, do not provide for the

extension of the period for filing a motion for reconsideration.<sup>[24]</sup>

In a long line of cases, we have continuously reiterated the Habaluyas doctrine which made two significant pronouncements: (1) that the 15-day period for filing an appeal is non-extendible; and (2) that there is a prohibition against the filing of a motion for extension of time to file a motion for new trial or reconsideration in all courts, except the Supreme Court.<sup>[25]</sup> We pointed out that neither jurisprudence nor the procedural rules provide for an exception.<sup>[26]</sup>

It is also established that Atty. Barrera was part of a law firm and had other partners who could have taken over his cases or settled his professional affairs after he died. The allegation that his partners formed their own law offices after he died, deserves scant consideration. We reiterate that it is not the duty of the courts to inquire during the progress of a case whether the partnership continues to exist lawfully, or whether the partners are still alive or its associates are still connected with the firm.<sup>[27]</sup>

In the case of Villanueva vs. People,<sup>[28]</sup> where counsel for petitioner had actually withdrawn from the case prior to the promulgation of the Court of Appeals decision, and there was some difficulty in finding a new counsel, we ruled that the motion for reconsideration belatedly filed was correctly expunged from the records. New counsel therein had filed a “motion for extension of time to file a motion for reconsideration” on the last day of the reglementary period to file the motion for reconsideration. We laid down the rule that the client was bound by the acts of his counsel, including even the latter’s mistakes and negligence. It was not shown therein that new counsel was so grossly incompetent or so grossly negligent. Moreover, we said that there was no violation of petitioner’s right to counsel as he was represented by a member of the Bar at all stages of the proceedings. In that case, the party himself was even faulted for negligence in belatedly hiring new counsel.

Similarly, in the case of petitioner herein, his motion for extension of time to file a motion for reconsideration was filed only on August 17, 2001, way beyond the 15-day period for filing the motion for reconsideration and more than three months from the receipt by the Barrera Law Office of the decision sought to be reconsidered.

Consequently, the period for filing an appeal or a motion for reconsideration has indeed lapsed. As found by the Court of Appeals, the decision dated April 18, 2001 has become final and executory.

In addition, petitioner was also guilty of negligence. As pointed out by the Solicitor General, he failed to coordinate with his counsel on the progress of his case, when such is his duty as a party. It is not surprising, therefore, that he came to know of Atty. Barrera's death only in August 2001. A party cannot blame his counsel for negligence when he himself was guilty of neglect.<sup>[29]</sup>

For the foregoing reasons, we are constrained to agree with the Court of Appeals. It is a settled rule that relief will not be granted to a party who seeks to be relieved from the effects of the judgment when the loss of the remedy at law was due to his own negligence, or to a mistaken mode of procedure.<sup>[30]</sup>

**WHEREFORE**, the petition is **DENIED**. No pronouncement as to costs.

**SO ORDERED.**

**Davide, Jr., C.J., Vitug, Ynares-Santiago and Carpio, JJ., concur.**

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- [1] Rollo, p. 11.  
[2] Entitled People of the Philippines vs. Rafael Amatorio.  
[3] Rollo, pp. 3-4.  
[4] Id. at 5.  
[5] Death Certificate, Rollo, p. 29.  
[6] Rollo, pp. 14-26.  
[7] Id. at 25.  
[8] Id. at 5.  
[9] Section 2, Rule 45, Rules of Court.  
[10] Rollo, p. 5.  
[11] Id. at 27-28.  
[12] Rollo, p. 11.  
[13] Id. at 3-9.  
[14] Id. at 3.  
[15] Rollo, pp. 52-54.

[16] Section 4. Content of petition. — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner, and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment, or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons and arguments relied on for the allowance of the petition; (d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court a quo and the requisite number of plain copies thereof, and such material portions of the record as would support the petition; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42.

[17] When the facts are undisputed, the question of whether or not the conclusion drawn therefrom by the Court of Appeals is correct is a question of law cognizable by the Supreme Court. (*Commissioner of Immigration vs. Garcia*, 57 SCRA 603, 610 [1974]).

There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts. (*Ramos, et al. vs. Pepsi-Cola Bottling Co.*, 19 SCRA 289, 292 [1967]).

[18] *Riviera Filipina vs. CA*, G.R. No. 117355, April, 5, 2002; *San Miguel Corp. vs. CA, et al.*, G.R. No. 146775, January 30, 2002, p. 4.

[19] *Rollo*, p. 5.

[20] *Ibid.*

[21] 275 SCRA 413 (1997).

[22] 331 SCRA 707, 711 (2000).

[23] 142 SCRA 208, 212 (1986).

[24] Rule VII, Entry of Judgment and Remand of Cases.

Section 1. Entry of Judgment. — Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

Section 5. Entry of Judgment and Final Resolution. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or resolution has become final and executory.

[25] *Argel vs. Court of Appeals*, 316 SCRA 511, 518–519 (1999).

[26] *Ibid.*

[27] *Bernardo vs. Court of Appeals*, *supra*, at 428.

[28] 330 SCRA 695, 702–703 (2000).

- [29] Villanueva vs. People, 330 SCRA 695, 703 (2000); citing Macapagal vs. Court of Appeals, 271 SCRA 491, 502 (1997).
- [30] See Spouses Mesina vs. Meer, G.R. No. 146845, July 2, 2002, p. 10.

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