



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

ROSVEE C. CELESTIAL,
Petitioner,

G.R. No. 214865

Present:

- versus -

VELASCO, JR., *J.*, Chairperson,
LEONARDO-DE CASTRO,*
PERALTA,
PEREZ,** and
JARDELEZA, *JJ.*

**PEOPLE OF THE
PHILIPPINES,**
Respondent.

Promulgated:

August 19, 2015

[Signature]

X-----X

DECISION

VELASCO, JR., *J.*:

Nature of the Case

This treats of the Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court seeking the reversal of the April 28, 2014, July 17, 2014² and October 10, 2014³ Resolutions of the Court of Appeals (CA) in CA-G.R. CR No. 35962, which dismissed petitioner’s appeal for her failure to file the required appellant’s brief. Said dismissal effectively affirmed her conviction by the trial court of six counts of qualified theft through falsification of commercial documents.

The Facts

Petitioner Rosvee Celestial was employed by Glory Philippines as its “Accounting-in-Charge.” As such, she handles the company’s bank transactions and accounting ledgers. She was terminated in 2006 when it was discovered that she made anomalous withdrawals from the company’s dollar account.

* Acting Member per Special Order No. 2144 dated August 10, 2015.

** Acting member per Special Order No. 2084 dated June 29, 2015.

¹ *Rollo*, pp. 3-31.

² *Id.* at 32.

³ *Id.* at 34-37. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda and Eduardo B. Peralta, Jr.

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According to Akihiro Harada, the president of Glory Philippines, petitioner's modus was to prepare and ask him to sign withdrawal slips allegedly to pay for company expenses. Afterwards, petitioner would photocopy the signed slips and submit the said copies for the company's documentation. Later, she would insert additional figures in the originally signed forms to be able to withdraw an amount higher than what was intended, keeping for herself the excess amount and the duplicate original of the form. It was only when Harada noticed the discrepancies between the photocopied slips and the actual amounts withdrawn that he discovered petitioner's criminal acts. As extrapolated from the records, the amounts stated in the withdrawal slips are as follows:⁴

| Date of Withdrawal | June 1, 2006 | June 9, 2006 | June 26, 2006 | June 30, 2006 | June 30, 2006 | July 11, 2006 |
|----------------------------------|--------------------|-------------------|-------------------|--------------------|-------------------|--------------------|
| Photocopy of the Withdrawal Slip | \$39.40 | \$511.00 | \$345.20 | \$8,800.00 | \$103.61 | \$483.00 |
| Duplicate of the Withdrawal Slip | \$10,039.40 | \$5,511.00 | \$8,345.20 | \$18,800.00 | \$3,103.61 | \$15,483.00 |
| Discrepancy | \$10,000.00 | \$5,000.00 | \$8,000.00 | \$10,000.00 | \$3,000.00 | \$15,000.00 |

Thereafter, Glory Philippines lodged a criminal complaint against petitioner for qualified theft. Finding probable cause to file charges against petitioner, the Assistant Provincial Prosecutor of Cavite City then filed six (6) Informations with the Regional Trial Court (RTC), Cavite City, Branch 16, indicting her with six (6) counts of qualified theft through falsification of commercial documents, docketed as Criminal Case Nos. 94-07 up to 99-07.

On June 25, 2013, the RTC rendered a Decision⁵ convicting petitioner, thus:

WHEREFORE, premises considered, the Court finds the accused ROSVEE CELESTIAL y CALDEJON guilty beyond reasonable doubt in Criminal Case Nos. 94-07 to 99-07 of the crime of six (6) counts of Qualified Theft through Falsification of Commercial Documents and is hereby sentenced to suffer the penalty of imprisonment consisting of *TWENTY (20) years of Reclusion Temporal for Each Count.*

SO ORDERED.

Aggrieved, petitioner elevated the case to the CA via notice of appeal.

On November 28, 2013, petitioner received a copy of the CA Notice dated November 20, 2013,⁶ directing her to file an appellant's brief within thirty (30) days from receipt thereof. On December 27, 2013, petitioner's former counsel, Atty. Bernard Paredes, moved for a thirty-day extension, or until January 26, 2014, within which to comply. Counsel would later on inform petitioner that he prayed for another extension of until February 26, 2014 to file the appellant's brief.⁷

⁴ Id. at 88-94.

⁵ Id. at 88-129.

⁶ Id. at 130.

⁷ Id. at 7.

Allegedly unknown to petitioner, the CA, on April 28, 2014, issued a Resolution, which considered petitioner's appeal abandoned and dismissed for failure to file her appellant's brief. The *fallo* of the Resolution reads:

It appearing from the CMIS Verification Report dated April 14, 2014 that accused-appellant and her counsel de parte failed to file the required appellant's brief despite a total extension of 60 days or until February 26, 2014 granted by the Court, pursuant to Section 8 of Rule 124 of the Revised Rules on Criminal Procedure, the instant appeal is considered ABANDONED and accordingly DISMISSED.

SO ORDERED.⁸

Petitioner then claimed that she was surprised to have received, on August 6, 2014, a copy of the CA Resolution dated July 17, 2014⁹ with attached Notice of Entry of Judgment.¹⁰ The Resolution, in part, reads:

Considering the CMIS Verification dated July 11, 2014 that NO Motion for Reconsideration or Supreme Court petition was filed, the Resolution dated April 28, 2014 has attained finality on May 28, 2014. Let said Resolution now be ENTERED in the Book of Entries of Judgments.

This prompted petitioner to file, on August 22, 2014, an Omnibus Motion,¹¹ moving for (1) reconsideration of the July 17, 2014 Resolution, and (2) leave of court for the attached appellant's brief to be admitted. Petitioner averred that she never personally received a copy of the April 28, 2014 Resolution that considered her appeal abandoned and dismissed; that her former counsel, Atty. Paredes, was grossly and inexcusably negligent in handling her case; that the reviewing court may still allow for an extension of time since no motion to dismiss had been filed; that substantial justice demands that she be given another opportunity to file her brief.

Unfortunately for petitioner, the CA, unswayed by her arguments, dismissed the Omnibus Motion through the assailed October 10, 2014 Resolution. Hence, the instant recourse.

The Issue

Petitioner prays that the rulings of the CA be reversed on the following grounds:

- I. IT IS RESPECTFULLY SUBMITTED THAT PETITIONER SHOULD NOT BE BOUND BY THE GROSS AND INEXCUSABLE NEGLIGENCE OF HER COUNSEL. THE ENDS OF JUSTICE WILL BE BEST SERVED IF PETITIONER'S APPEAL BEFORE THE COURT OF APPEALS BE REOPENED AND PETITIONER BE GIVEN THE

⁸ Id. at 33. As cited in the Entry of Judgment.

⁹ Id. at 32.

¹⁰ Id. at 33.

¹¹ Id. at 39-53.

OPPORTUNITY TO VENTILATE HER ARGUMENTS AND EVIDENCE THEREIN, CONSIDERING THAT HER FAILURE TO FILE HER APPELLANT'S BRIEF WAS DUE TO REASONS BEYOND HER CONTROL. TO OUBRIGHT DENY PETITIONER HER RIGHT TO APPEAL WILL RESULT IN THE DEPRIVATION OF PETITIONER'S LIFE AND LIBERTY; AND

II. PETITIONER HAS MERITORIOUS GROUNDS IN HER APPEAL BEFORE THE COURT OF APPEALS THAT SHOULD [HAVE BEEN VENTILATED] AND HEARD DURING THE APPELLATE PROCEEDINGS¹²

Verily, the main issue for consideration herein boils down to whether or not the CA erred in dismissing the case for petitioner's failure to file her appellant's brief.

In its Comment,¹³ the Office of the Solicitor General (OSG), for the People, countered that the right to appeal is a statutory privilege that may be lost if the party who seeks to avail the same does not comply with the requirements of the rules. Citing Section 8, Rule 124 of the Rules of Court, the OSG further argued that the CA is granted the discretion to dismiss an appeal for failure to prosecute, such as when the appellant fails to file the required brief.¹⁴ Finally, the OSG invoked the doctrine of immutability of judgments and averred that the dismissal of petitioner's appeal had already attained finality and may no longer be recalled or modified.¹⁵

The Court's Ruling

The petition is unmeritorious.

The CA's dismissal of the appeal for failure to prosecute was in order

Section 8, Rule 124 of the Rules of Court pertinently provides:

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 where the appellant is represented by a counsel *de officio*.

As aptly observed by the CA, petitioner's claim that she was not personally informed of the dismissal of the appeal deserves scant consideration. Fundamental is the rule that notice to counsel is notice to the client.¹⁶ When a party is represented by a counsel in an action in court,

¹² Id. at 9.

¹³ Id. at 147-156.

¹⁴ Id. at 150.

¹⁵ Id. at 152.

¹⁶ *Balgami vs. Court of Appeals*, G.R. No. 131287, December 9, 2004, 445 SCRA 591, 600.

notices of all kinds, including motions and pleadings of all parties and all orders of the court must be served on his counsel.¹⁷

In the case at bar, it cannot be disputed that Atty. Paredes represented petitioner in the proceedings before the CA. And based on the registry return receipt, counsel received a copy of the April 28, 2014 Resolution on May 12, 2014.¹⁸ Thus, the CA complied with the procedural requirement under Section 8, Rule 124 and no violation of petitioner's right to notice of the dismissal can be attributed to the appellate court.

Furthermore, the oft-cited doctrine is that the negligence of counsel binds his client.¹⁹ This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of his client. While, truly, there are situations where the Court can relax procedural rules, such exceptions do not obtain in the extant case.

Under the factual backdrop of this case, We find the failure to file the appeal brief inexcusable. *First*, the handling lawyer, Atty. Paredes, was undoubtedly at fault. Even with the benefit of two (2) thirty-day (30-day) extensions, counsel, nevertheless, still failed to comply with the CA's directive. *Second*, petitioner herself was likewise negligent since, as she admitted, Atty. Paredes informed her that the deadline for the second extension was until February 26, 2014.²⁰ It is then baffling why petitioner took no action to ensure compliance with the CA Notice to file her appellant's brief from the time she followed up the case to the date of the deadline, and even thereafter until the April 28, 2014 Resolution was promulgated. Absolutely nothing appeared to have been done in the interim, not even in terms of noting that no appeal brief had been filed. Thus, the petitioner simply took too long to rectify its mistake; by the time that she acted, it was simply too late.²¹ From these circumstances, the CA cannot in any way be said to have erred in dismissing the appeal.

The proper penalty

Notwithstanding the denial of the petition, We find cogent reason to lift the Entry of Judgment issued by the CA and modify the penalty imposed by the trial court. The demand of substantive justice calls for this approach. Pertinently, Arts. 309 and 310 of the Revised Penal Code (RPC) provide:

Article 309. Penalties. - Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos, but if the value of the thing stolen exceeds the latter amount

¹⁷ Id. at 599.

¹⁸ Supra note 1 at 36.

¹⁹ *Victory Liner vs. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 361.

²⁰ Supra note 1 at 7.

²¹ *Bachrach Corporation vs. Philippine Ports Authority*, G.R. No. 159915, March 12, 2009, 580 SCRA 659, 665-666.

the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provision of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Article 310. *Qualified theft.* - The crime of theft shall be punished by the **penalties next higher by two degrees** than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (emphasis added)

In ascertaining the proper penalty, We are guided by Our pronouncement in *People v. Mercado*:²²

First, We get the value of the property stolen as determined by the trial court, to wit:

²² G.R. No. 143676, February 19, 2003, 397 SCRA 746,758.

| Crim. Case No. | 99-07 | 98-07 | 95-07 | 97-07 | 94-07 | 96-07 |
|-------------------------------|--------------|--------------|---------------|---------------|---------------|---------------|
| Withdrawal Date | June 1, 2006 | June 9, 2006 | June 26, 2006 | June 30, 2006 | June 30, 2006 | July 11, 2006 |
| Stolen Amount | \$10,000.00 | \$5,000.00 | \$8,000.00 | \$10,000.00 | \$3,000.00 | \$15,000.00 |
| Amount in Pesos ²³ | □531,570.00 | □265,785.00 | □425,256.00 | □531,570.00 | □159,471.00 | □785,970.00 |

Second, We determine the imposable base penalty under Art. 309 of the RPC. Here, since the totality of the stolen amounts for each case exceeds □22,000.00, the imposable base penalty for each count, as per Art. 309 (1), is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, which is eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*, had the crime charged been simple theft.²⁴

Third, since the value of the stolen goods exceeds □22,000.00, We compute for the additional years of maximum imprisonment under Art. 309 (1) by deducting □22,000.00 from each case, and by subsequently dividing each difference by □10,000.00, disregarding any remainder amount. This would yield the following results:

| Crim. Case No. | 99-07 | 98-07 | 95-07 | 97-07 | 94-07 | 96-07 |
|------------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Stolen Amount in Pesos | □531,570.00 | □265,785.00 | □425,256.00 | □531,570.00 | □159,471.00 | □785,970.00 |
| Less P22,000.00 | 509,570.00 | 243,785.00 | 403,256.00 | 509,570.00 | 137,471.00 | 763,970.00 |
| Divided By P10,000.00 | 50 | 24 | 40 | 50 | 13 | 76 |

Fourth, We add the maximum of the base penalty to the above-determined quotient to arrive at the maximum imprisonment term imposable had the crime committed been simple theft:

| Crim. Case No. | 99-07 | 98-07 | 95-07 | 97-07 | 94-07 | 96-07 |
|---|----------|----------|----------|----------|----------|----------|
| Maximum of Base Penalty | 10 years | 10 years | 10 years | 10 years | 10 years | 10 years |
| Additional Years to the Maximum Penalty | 50 | 24 | 40 | 50 | 13 | 76 |
| Maximum Penalty | 60 years | 34 years | 50 years | 60 years | 23 years | 86 years |

Fifth, the maximum imprisonment term should not exceed the 20-year cap under Art. 309 (1), and any imprisonment term in excess of the cap should be disregarded. In this case, since all sums exceeded 20 years, the proper penalty – the maximum period adverted to in Art. 309 (1) – would have been 20 years of *reclusion temporal*, before the application of the

²³ Based on June 2006 average foreign currency exchange rate of P53.157 = \$1.00, and July 2006 average of P52.398 = \$1.00 as per <http://www.nscb.gov.ph/stats/pesodollar.asp>, last accessed on August 7, 2015.

²⁴ *People vs. Mirto*, G.R. No. 193479, October 19, 2011, 659 SCRA 796, 815.

indeterminate sentence law, for each count, had petitioner been convicted of simple theft.

Sixth, the penalty for qualified theft is two degrees higher than that for simple theft. Under Art. 25 of the RPC, two (2) degrees higher than *reclusion temporal* – the penalty following *reclusion perpetua* - is *death*.²⁵ Be that as it may, Art. 74 of the RPC, provides:

ART. 74. Penalty higher than *reclusion perpetua* in certain cases. -- In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, **if such higher penalty should be that of death, the same penalty and the accessory penalties of Article 40, shall be considered as the next higher penalty.**

Applying the aforequoted provision, the penalty of death cannot be meted on herein petitioner, regardless of whether or not the imposition of capital punishment has been suspended. This is so because the penalty of death was not specifically prescribed as an imposable penalty under Art. 309 (1) of the RPC. Two degrees higher than *reclusion temporal*, the next higher penalty than *reclusion perpetua*, would then still be *reclusion perpetua*, with the accessory penalties of *death* under Art. 40 of the RPC.²⁶

²⁵**Article 25. Penalties which may be imposed.** - The penalties which may be imposed according to this Code, and their different classes, are those included in the following:

Scale
Principal Penalties
Capital punishment:
Death.
Afflictive penalties:
Reclusion perpetua,
Reclusion temporal,
Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Prision mayor.
Correctional penalties:
Prision correccional,
Arresto mayor,
Suspension,
Destierro.
Light penalties:
Arrestomenor,
Public censure.
Penalties common to the three preceding classes:
Fine, and
Bond to keep the peace.
Accessory Penalties
Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and be voted for, the profession or calling.
Civil interdiction,
Indemnification,
Forfeiture or confiscation of instruments and proceeds of the offense,
Payment of costs.

²⁶**Article 40. Death; Its accessory penalties.** - The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date sentence, unless such accessory penalties have been expressly remitted in the pardon.

Jurisprudence, moreover, teaches that when the penalty of death cannot be imposed pursuant to Art. 74, the period of imprisonment should be fixed at forty (40) years of *reclusion perpetua*. Otherwise, there would be no difference at all between *reclusion perpetua* imposed as the penalty next higher in degree and *reclusion perpetua* imposed as the penalty fixed by law.²⁷ The proper penalty to be imposed in this case, therefore, is forty (40) years of *reclusion perpetua*, with the accessory penalties of *death*, for each count of qualified theft.²⁸

Lastly, since petitioner is convicted of six (6) counts of qualified theft through falsification of commercial documents with corresponding six (6) penalties of forty (40) years of *reclusion perpetua*, Art. 70 of the RPC on successive service of sentences shall apply. As provided:

Article 70. *Successive service of sentence.* –

xxx

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period.

Such maximum period shall in no case exceed forty years.

Therefore, in spite of the six (6) penalties of forty (40) years of *reclusion perpetua*, petitioner shall only suffer imprisonment for a period not exceeding 40 years. A downward modification of the penalty imposed by the RTC is then in order.

WHEREFORE, in light of the foregoing, the Court rules as follows:


- a. The instant petition is hereby **DENIED** for lack of merit, and;
- b. The Entry of Judgment in CA-G.R CR No. 35962 is **LIFTED**. The June 25, 2013 Decision of the Regional Trial Court, Cavite City, Branch 16 in Criminal Case Nos. 94-07 up to 99-07, as effectively confirmed by the Court of Appeals, is hereby **AFFIRMED with MODIFICATION** to read as follows:

WHEREFORE, premises considered, the Court finds the accused **ROSVEE CELESTIAL y CALDEJON** *guilty* beyond reasonable doubt in Criminal Case Nos. 94-07 to 99-07 of the crime of six (6) counts of Qualified Theft through Falsification of Commercial Documents and is hereby sentenced to suffer the penalty of imprisonment consisting of six (6) penalties of *reclusion perpetua*, with the accessory penalties provided in Art. 40 of the RPC. But with the application of Art. 70 of the RPC, accused-appellant shall suffer the penalty of imprisonment for a period not exceeding 40 years.

²⁷*People vs. Cañales*, G.R. No. 126319, October 12, 1998, 297 SCRA 667, 671.

²⁸*People vs. Bago*, G.R. No. 122290, April 6, 2000, 330 SCRA 115, 144.

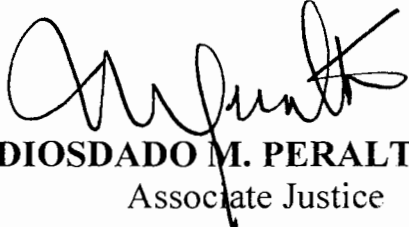
SO ORDERED.



PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


Teresita Leonardo de Castro
TÉRESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



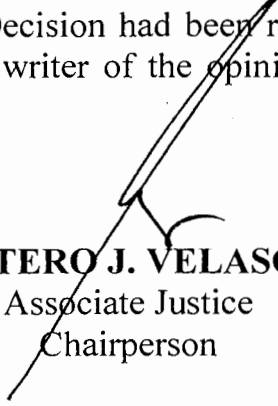
JOSE PORTUGAL PÉREZ
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

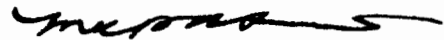
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

