

**OCTAVIO INFANTADO, PETITIONER, VS. FELIPE LIWANAG &
THE COURT OF APPEALS, RESPONDENTS.***G.R. No. L-23697. December 28, 1968*

Ponente: ZALDIVAR, J.

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Petitioner Octavio Infantado was defendant in Civil Case No. 43903 of the Court of First Instance of Manila, while respondent Felipe Liwanag was the plaintiff. A judgment was rendered by the Court of First Instance of Manila dismissing respondent Liwanag's complaint. Said respondent appealed to the Court of Appeals. The 45-day period within which respondent Liwanag should file his brief expired on July 26, 1963, without his having filed the brief, and neither did he ask for extension of time to file the brief. On August 23, 1963, the Court of Appeals dismissed the appeal for failure on the part of respondent Liwanag to file his brief. On August 26, 1963, respondent Liwanag received notice of the resolution of the Court of Appeals dismissing the appeal. On August 27, 1963, said respondent filed a motion for reconsideration of the resolution dismissing his appeal, and at the same time he prayed that he be granted a period of 25 days within which to file his brief. The record does not show what was the ground for the motion for reconsideration and for the prayer for a grant of 25 days within which to file the brief. On September 2, 1963, herein petitioner filed an opposition to the motion for reconsideration. On September 4, 1963, the Court of Appeals granted the motion for reconsideration, thereby reinstating the appeal, and at the same time granted respondent Liwanag a period of 25 days, counting from August 27, 1963, within which to file his brief. The record shows that respondent Liwanag filed a printed brief, dated August 30, 1963. Herein petitioner, as appellee, filed his printed brief under date of October 20, 1963. In his brief petitioner did not raise any ques-tion regarding the action of the Court of Appeals in recon-sidering the previous resolution of August 23, 1963, dismis-sing the appeal, and granting the respondent a period of 25 days within which to file his brief.

On September 11, 1964, the Court of Appeals rendered a decision reversing the decision of the Court of First Instance of Manila. On October 2, 1964, petitioner filed with the Court of Appeals a motion for reconsideration of the decision alleging, as reason therefor, that the Court of Appeals had already lost jurisdiction over the case when the decision was rendered "because the period provided by the Rules of Court for plaintiff-appellant had already expired when he did file his brief".[1] Upon said motion for reconsideration having been denied by the Court of Appeals, herein petitioner has come up to this Court on a petition for certiorari, contending that the Court of Appeals erred and gravely abused its discretion when it reconsidered the resolution dismissing respondent's appeal and granted respondent a period of 25 days within which to file his brief. Petitioner further contends that the Court of Appeals no longer had jurisdiction to decide the case because "when the appellant failed to file his brief within the legal period, the decision of the court of origin has become final and executory".[2]

The instant petition has no merit.

It is noteworthy that petitioner does not question the correctness of the decision of the Court of Appeals on the merits of the case. The petitioner simply makes the belated plea before this Court that the Court of Appeals had

gravely abused its discretion when it reconsidered the resolution dismissing the appeal on the ground that respondent Liwanag had not filed his brief within the reglementary period and when it granted respondent Liwanag a period of 25 days within which to file his brief. The petitioner, if at all, should have raised this question in a petition for certiorari before this Court right after the Court of Appeals had reconsidered its previous resolution dismissing the appeal and when it granted the new period of 25 days. What the petitioner did was to leave respondent Liwanag to file his brief within the period granted him by the Court of Appeals, and then filed his brief in answer to respondent Liwanag's brief. The petitioner waited until the Court of Appeals had decided the case against him on the merits, and then brought the present petition before this Court. As we have adverted to, the petitioner does not question the correctness of the decision of the Court of Appeals, but he simply claims that the Court of Appeals no longer had jurisdiction to decide the case.

We do not agree with the petitioner's contention that the Court of Appeals lost jurisdiction to decide the case. The mere lapse of the period to file appellant's brief does not automatically result in the dismissal of the appeal and the loss of jurisdiction by the appellate court over the appeal. After the expiration of the period to file appellant's brief, there is still need for the appellate court to act -- that is, to order the dismissal of the appeal upon motion by the appellee, or to order the dismissal *motu proprio*. After the dismissal of the appeal by the court the party adversely affected by the dismissal still has a period of fifteen days from notice of the order of dismissal within which to file a motion for reconsideration, and the court can still reinstate the appeal if the motion for reconsideration is timely filed.

The record shows that the resolution of the Court of Appeals dismissing respondent Liwanag's appeal was received by the said respondent on August 26, 1963. On August 27, 1963, respondent Liwanag filed his motion for reconsideration of the resolution dismissing the appeal. Certainly, the motion for reconsideration was filed by respondent Liwanag on time. The Court of Appeals, therefore, still had jurisdiction to reconsider the resolution dismissing the appeal and to grant, if it considers justifiable, respondent Liwanag the 25-day period within which to file the brief. It is within the inherent power and discretion of the Court of Appeals to amend whatever order it had made in order to render substantial justice.^[3] We presume that the Court of Appeals found the motion for reconsideration filed by respondent Liwanag to be meritorious and that there was justification for granting him a period of 25 days to file his brief. This Court will not control the discretion of the Court of Appeals in this regard. We hold that the Court of Appeals has jurisdiction, and it did not abuse its discretion, when it reinstated the appeal and granted respondent Liwanag a period to file his appeal brief.

The Court, therefore, resolves to dismiss the instant petition, without costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Castro, J., did not take part.

[1] As quoted from the motion for reconsideration.

[2] As quoted from the petition for certiorari.

[3] Rule 135, par. (g), Rules of Court; *Veluz vs. Justice of the Peace of Sariaya*, 42 Phil. 557, 563.

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