

FRANCISCO MANIPOL AND LUCIA MANIPOL, PETITIONERS, VS. HON. COURT OF APPEALS AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-27806. April 30, 1979

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Petition for certiorari, to annul and set aside the resolution of the respondent appellate court dismissing the petitioners' appeal upon the ground that the record on appeal does not show on its face that the appeal was perfected on time, as well as the resolution denying their motion for the reconsideration of said resolution.

The petitioners, Francisco Manipol and Lucia Manipol, and the Pacific Builders Co., Inc., Vicente C. Ponce, Nelia C. Ponce, and Victorino Corpus, are the defendants in Civil Case No. 52324 of the Court of First Instance of Manila, entitled: "Republic of the Philippines, plaintiff, versus Pacific Builders Co., Inc., et al., defendants", an action for the collection of percentage tax, and surcharge, plus interests thereon. The petitioners are stockholders of the defendant corporation and were included as party defendants, to pay the tax liability of the corporation to the extent of their obligation to the corporation on account of their unpaid subscription. On September 8, 1965, the Court of First Instance of Manila rendered judgment in the case, a copy of which was received by counsel for the defendants on October 1, 1965, which reads:

"WHEREFORE, judgment is hereby rendered sentencing the Pacific Builders Company, Inc., to pay the plaintiff the sum of 'P40,467.57, plus interest thereon at the legal rate from November 28, 1962, the date of the filing of the complaint.'

"Defendants Francisco M. Manipol, Lucia L. Manipol, Vicente C. Ponce and Nelia G. Ponce are each sentenced to pay plaintiff the sum of P3,550.00 while defendant Victoriano Corpus is sentenced to pay plaintiff the sum of P800.00 both with interest at the legal rate from November 28, 1962, the date of the filing of the complaint, provided, however, that no execution shall issue against the said defendants until after the execution against the Pacific Builders Company, Inc., has been returned unsatisfied." [1]

The defendants filed a motion for the reconsideration of said decision on November 2, 1965,[2] but the trial court denied the motion on November 10, 1965. A copy of the order was received by the defendants on November 27, 1965.[3] Thereafter, the petitioners herein, defendants Francisco Manipol and Lucia Manipol, filed their Notice of Appeal, Appeal Bond, and Record on Appeal. The other defendants, Pacific Builders Co., Inc., Vicente C. Ponce, Nelia G. Ponce, and Victoriano Corpus, however, did not appeal.[4] The trial court approved the Record on Appeal on December 4, 1965.[5] The plaintiff, Republic of the Philippines, however, filed a motion for the reconsideration of the order approving the record on appeal upon the following grounds:

"(a) The full names of all the parties to the proceedings were not stated in the caption thereof, as required under Rule 41, Sec. 6 of the Rules of Court;

"(b) The annexes to the complaint marked 'A', 'B', 'C', 'D', 'E', 'F', 'G', and 'H' were inserted in the defendants'

motion to dismiss when actually they were part of the complaints;

"(c) Paragraph 4 does not indicate the year the answer was filed;

"(d) The Amended Complaint filed on February 7, 1964 and the corresponding annexes thereto were not included in the record." [6]

Accordingly, the record on appeal was amended, after which the trial court approved the same on January 15, 1966. [7] The records of the case were consequently elevated to the respondent Court of Appeals, where the case was docketed as case CA-G.R. No. 37232-R.

While the appeal was pending in the appellate court, and soon after the appellants had filed their brief, or on February 20, 1967, the appellee filed a motion to dismiss the appeal on the grounds that (a) the appellants failed to serve and file their brief within the time provided by the rules; (b) the appellants' brief does not specify the pages of the records or the typewritten stenographic notes cited to substantiate the allegations in their statement of facts; and (c) the appeal herein appears to be frivolous and without merit per se. [8] On February 23, 1967, the appellee filed a supplemental motion to dismiss the appeal for the reason that the record on appeal does not contain such data as will show on its face that the appeal was perfected on time, more particularly, that the Notice of Appeal is not dated and the Record on Appeal does not show when it was filed with the trial court. [9] The appellants filed an opposition to both motions on March 15, 1967, disputing the claim of the appellee. [10]

On March 20, 1967, the respondent appellate court dismissed the petitioners' appeal, saying:

"Upon the consideration of the motion filed by plaintiff-appellee praying that the appeal be dismissed, of the supplemental motion to dismiss appeal, and of the opposition thereto filed by appellants, the Court RESOLVED TO DISMISS, as it HEREBY DISMISSES, the appeal, for the reason that the record on appeal does not show on its face that the appeal was perfected on time, i.e., it does not state when the notice of appeal was filed. (Gov't. vs. Antonio, L-23736, October 19, 1965.)" [11]

The appellants filed a motion for the reconsideration of said resolution, [12] but the appellate court denied the motion. [13] Hence, the present recourse.

Recent jurisprudence has construed liberally the material data rule requiring that the record on appeal shall contain "such data as will show that the appeal was perfected on time," [14] whenever circumstances and substantial justice warrant. The Court expressed its reason for adopting the more liberal attitude thusly:

"The deviation from the rigid rule adopted in the case of Gov't. of the Philippines vs. Antonio, et al., G.R. No. L-23736, Oct. 19, 1965, is due to Our realization that after all what is of vital importance in the requirement of Sec. 6, Rule 41, of the Rules of Court is that the record on appeal shall show that the appeal was really perfected within the reglementary period. If it could be ascertained from the record of the case that the appeal was perfected within the reglementary period, although such fact did not evidently appear on the face of the record on appeal, the defect or deficiency is not fatal (Berkenkotter vs. Court of Appeals, 53 SCRA 228; Atlas Timber, et al. vs. First Western Bank and Trust Co., 64 SCRA 217). If the appellate court is convinced that the appeal was perfected on time, it should not throw it out but assume jurisdiction over it. After all, that procedural requirement is only intended to enable the appellate court to determine if the appeal is still within its jurisdiction, and nothing more." [15]

The Court, as a result, has consistently held that where the trial court finds and declares in its order of approval of a record on appeal that it was filed on time or within the reglementary period and the correctness, accuracy and veracity of such findings are not impugned, questioned or disputed by the adverse party, the order of approval of the record on appeal is for all intents and purposes a finding of the timeliness of the appeal and substantial compliance with the rule. [16]

Considering that the petitioners' amended record on appeal in the instant case was approved on January 15, 1966, and that the adverse party does not dispute the correctness, accuracy and veracity of such findings, the respondent Court of Appeals committed a grave abuse of discretion in dismissing the appeal.

WHEREFORE, the resolutions of the Court of Appeals dated March 20, 1967 and June 27, 1967 are hereby set aside and the petitioners' appeal in CA-G.R. No. 37232-R is hereby reinstated and should be given due course.

SO ORDERED.

Fernando, Acting C.J., Antonio, Aquino, and Santos, JJ., concur.
Barredo, (Acting Chairman), and Abad Santos, JJ., did not take part.

[1] Par. 1 of Petition.

[2] Par. 2 of Petition; See also rollo, p. 15.

[3] Par. 3 of Petition; See also rollo, p. 15.

[4] Par. 4 of Petition; See also rollo, p. 15.

[5] Par. 5 of Petition; See also rollo, p. 15.

[6] Par. 6 of Petition.

[7] Par. 7 of Petition.

[8] Rollo, p. 11.

[9] Id., p. 14.

[10] Id., p. 18.

[11] Par. 11, Petition.

[12] Rollo, p. 21.

[13] Par. 15, Petition.

[14] Sec. 6, Rule 41, Revised Rules of Court.

[15] Villanueva vs. Court of Appeals, L-29719, Nov. 28, 1975, 68 SCRA 216, 220.

[16] Del Rosario vs. Conanan, L-37903, March 30, 1977, 76 SCRA 136, and cases cited therein; Garcia vs. Court of Appeals, L-34620, April 29, 1977, 76 SCRA 609, and cases cited therein; Garcia vs. Court of Appeals, L-35234, March 26, 1977, 77 SCRA 148, and cases cited therein; Leuterio vs. Court of Appeals, L-35146, Sept. 30, 1977, 79 SCRA 264, and cases cited therein; Aznar vs. Court of Appeals, L-38134, Sept. 30, 1978, and cases cited therein.

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