

MARIA VILLANUEVA AND LINO DIZON, PETITIONERS, VS. THE COURT OF APPEALS AND GERVACIO LUIS QUE, RESPONDENTS.*G.R. No. L-29719. November 28, 1975*

Ponente: ESGUERRA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6c5ff1855670/>**ESGUERRA, J.:**

Petition for certiorari to review the resolution of the Court of Appeals dated September 19, 1968, dismissing petitioners' appeal in C.A.-G.R. No. 36919-R, entitled "Gervacio Luis Que, plaintiff-appellee, versus Maria Villanueva and Lino Dizon, defendants-appellants," as well as the resolution of the same Appellate Court, dated October 15, 1968, which denied petitioners' motion for the reconsideration of the first resolution.

It appears on the record that herein petitioners were the defendants in Civil Case No. 7143 of the Court of First Instance of Rizal. On October 21, 1966, the Court of First Instance of Rizal rendered judgment against herein petitioners and in favor of private respondent Gervacio Luis Que. A copy of the decision was received by petitioners' counsel on October 28, 1966. On November 3, 1966, petitioners filed and served their notice of appeal. On November 25, 1966, petitioners deposited with the clerk of court their cash appeal bond of P120.00. On November 26, 1966, petitioner filed with the lower court a motion for extension often (10) days from November 28, 1966 (the last day, November 27, being a Sunday) within which to submit their Record on Appeal. Before receiving the favorable resolution of the lower court on their motion for extension, petitioner submitted their Record on Appeal, December 8, 1966, the last day of the period asked for. The following day December 9, 1966, the lower court issued its order granting petitioners an extension often (10) days from November 28, 1966, within which to file their Record on Appeal. On March 15, 1967, the lower court issued an order stating that "there being no opposition interposed thereto, the record on appeal is hereby approved" and ordered its clerk of court to certify and elevate the record on appeal, together with the evidence both oral and documentary, to the respondent Court of Appeals. Pursuant to a notice from the respondent Appellate Court, petitioners paid the corresponding docket fee and submitted their printed record on appeal. On July 31, 1967, private respondent Que filed a motion to dismiss petitioners' appeal with respondent Appellate Court on the ground that petitioners' record on appeal does not show on its face that the appeal was perfected on time as the order granting the extension is not included therein. Petitioners opposed the motion, explaining that the order of the court below granting them the extension often (10) days from November 28, 1966, within which to file their Record on Appeal had not yet been received by petitioners' counsel when they filed their record on appeal on December 8, 1966, the last day for so doing pursuant to their petition for extension. Respondent Appellate Court in its resolution of September 19, 1968, dismissed the petitioners' appeal on the ground "that the record on appeal of appellants does not show that the appeal was perfected within the reglementary period." Petitioners filed a motion to reconsider the appellate court's resolution, but it was denied by the respondent Appellate Court in its resolution of October 15, 1968. Hence this petition for review of the dismissal order.

We have no doubt from an examination of the record that the record on appeal in Civil Case No. 7143 was timely filed with the lower Court. It was filed on December 8, 1966, or within the ten (10) day period of extension given

by the lower court, counted from November 28, 1966, the last day for filing of the record on appeal. But said fact is not shown on the face of the record on appeal, hence raising before Us, as it has been done several times in the past, the lone issue of whether or not the failure to show on the face of the record on appeal that the appeal was perfected within the reglementary period would prove fatal to the appeal.

It is true that this Court has repeatedly ruled before that the appellant has the burden of showing that his appeal is timely, and Sec. 6 of Rule 41 of the Rules of Court which explicitly provides that the record on appeal shall include "such data as will show that the appeal was perfected on time" has been held mandatory and jurisdictional. We emphasized this requirement, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case and has power only to dismiss the appeal. The certification in the record on appeal that it was timely filed cannot restore the jurisdiction which has been lost. The principle is confirmed by Sec. 1, sub par. (a), Rule 50, Rules of Court (Govt. of the Phil. vs. Antonio, et al., G. R. No. L-23736, Oct. 19, 1965; Development Bank vs. Santos, et al, G. R. No. L-26387, Sept. 27, 1966, Araneta vs. Madrigal and Co., G. R. No. L-26227-28, Oct. 25, 1966; Atlas Consolidated Mining & Development Corp. vs. Progressive Labor Ass., G. R. No. L-27125, Sept. 15, 1967).

In the case of Tijam, et al. vs. Sibonghanoy, et al, G. R. No. L-21450, April 15, 1968 this Court, speaking through then Associate Justice Arsenio Dizon, ruled that although the requirement that the record on appeal should contain such data as will show that the appeal was perfected on time is mandatory and jurisdictional, under the principle of estoppel and laches, a party may be barred from raising the question of jurisdiction as when it is raised after the parties have filed their brief.

But a stringent rule based on technicality must give way to the demands of substantial justice, so We ruled in the case of Dequito vs. Lopez, G R. No. L-27757, March 20, 1968, that this Court cannot favorably consider a motion to dismiss an appeal on the ground that the record on appeal does not show on its face that the appeal was perfected on time, for the reason that the motion to dismiss was filed much too late, it having been filed after the submission of the brief for the appellee.

The deviation from the rigid rule adopted in the case of Govt. 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.

Under the facts of this case, We prefer to uphold substantial compliance with the requirement of Sec. 6, of Rule 41, of the Rules of Court, as more in consonance with the requirement of a fair dispensation of justice, considering petitioners' explanation that they could not have included the lower Court's order giving them ten days extension of time to file the record on appeal counted from November 28, 1968, in the record on appeal because the court order was released on December 9, 1966, or one day after petitioners filed their record on appeal on December 8, 1966, the last day of the extension period which was approved. Whatever mistake might have been committed here pales into insignificance when viewed in the light of the incontrovertible fact that the record on appeal was filed within the approved extension period. The respondent Appellate Court did lawfully acquire jurisdiction over Civil Case No. 7143 because the petitioners fulfilled all the requirements of appeal

(notice of appeal, appeal bond, and record on appeal) within the reglementary period. It was, therefore, grave abuse of discretion for the Appellate Court to have dismissed the appeal.

WHEREFORE, the respondent Appellate Court's resolutions dated September 19, 1968 and October 15, 1968, are hereby set aside, and the petitioners' appeal in C.A.-G.R. No. 36919-R is hereby reinstated and should be given due course.

Costs against private respondent Gervacio Luis Que.

SO ORDERED.

Makasiar, Muñoz Pulma and Martin, JJ., concur.

Teehankee, J., concurs in a separate opinion.

Castro, J., did not take part.

CONCURRING OPINION

TEEHANKEE, J., :

I concur and hail the Court's pronouncements through Mr. Justice Esguerra that a stringent procedural rule based on technicality must yield to the demands of substantial justice and that substantial compliance with the material data rule (Rule 41, Section 6) as against a rigid literal application is more in consonance with the requirement of a fair dispensation of justice and the intent and purpose of the Rules of Court that there be a proper and just determination of litigation.[1]

In the comparatively recent case of *People vs. Degara*,[2] the Court, impelled by the imperative norm of substantial justice, "resolved to consider the appeal of accused Cornelio Degara ... to have been duly and opportunely perfected" notwithstanding that no notice of appeal was filed, since the accused had been misled by the clerk of court's erroneous "honest belief that review of the life sentence imposed (from which the accused had informally expressed his intention to appeal) was "automatic."

In the case at bar, the Record on Appeal shows that petitioners-appellants' Record on Appeal was filed on December 8, 1966 on the tenth day after the expiration of the original 30-day period for filing the appeal. This was within the first and only ten-day extension for doing so as granted by the trial court, save that their motion for such 10-day extension was not included in the Record on Appeal nor could the trial court's order of December 9, 1966 granting the extension be included therein by reason of physical impossibility, since such order was issued and released only after the filing on December 8, 1966 (the tenth and last day of the extended period) of their Record on Appeal.

The Record on Appeal shows furthermore that it was much later under date of March 15, 1967 that the trial court issued its order inter alia approving the Record on Appeal, with the statement that "(D)efendants having filed a Notice of Appeal and a Record on Appeal, as well as cash bond in the sum of P120.00, there being no opposition interposed thereto, the Record on Appeal is hereby APPROVED." [3]

This was for all intents and purposes a finding of timeliness of the appeal and that the same was in order and this is borne out by the utter lack of any contrary pretense or objection of respondent-appellee that the Record on Appeal was not filed on time. As stated in *Berkenkotter vs. Court of Appeals*,[4] "the mere absence of a formal order granting the motion for extension of time to file the record on appeal should not be fatal to the petitioner if

the record on appeal filed within the requested extension period was approved by the Court a quo. x x x No trial Judge in his right mind and who is aware of the serious responsibilities of his office, would approve a record on appeal that was not timely filed."

The timeliness of filing of the Record on Appeal becomes indisputable if it is taken into account that the said Order of approval of March 15, 1967 also directed the issuance of a writ of execution pending appeal upon the filing by respondent-appellee of a bond in the sum of P130,000.00 (as prayed for in respondent's motion of November 8, 1966 and over petitioners' opposition of November 12, 1966, both of which pleadings are duly included in the Record on Appeal).[5]

It is obvious that the issuance of the said order of March 15, 1967 for execution pending appeal was "before the expiration of the time, to appeal" as expressly provided in Rule 39, Section 2.[6] Otherwise, respondent need not have applied for execution pending appeal but for execution as a matter of right of a judgment that has become final and executory if the appeal has not been duly and timely perfected under Rule 39, Section 1.[7]

Under such circumstances, there can be no doubt that the Record on Appeal was timely filed, as aptly stated in the main opinion. The Court's recent liberal rulings on this score, as last restated en banc in Luna vs. Court of Appeals[8] 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 finding are not impugned, questioned or disputed by the adverse party, the non-inclusion in the record on appeal of a motion and order for extension of time for the filing of the same is not fatal and does not warrant dismissal of the appeal — since the appellate court may properly rely on the trial court's order of approval and determination of timeliness of the appeal," therefore find in full application in the case at bar.

[1] Berkenkotter vs. Court of Appeals, 53 SCRA 228. See writer's separate opinions in Sison vs. Gatchalian, 51 SCRA 262, 276, and Velasco vs. Court of Appeals, 51 SCRA 439, 454.

[2] UDK-1672, Resolution of August 20, 1974.

[3] Record on Appeal, pp. 42-43.

[4] 53 SCRA at p. 236.

[5] The pertinent portion of the Order of March 15, 1967 reads: "For reasons stated in the Motion for Execution Pending Appeal dated November 8, 1966, and considering that the plaintiff is wilting to post a bond in the sum of P130,000.00 in favor of the defendants to answer whatever damages the latter might sustain should the judgment be reversed or modified let the writ of execution issue pending appeal upon the filing by the plaintiff of a bond in the sum of P130,000.00."

[6] The cited Rule provides: "SEC. 2. Execution pending appeal. — On motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein."

[7] The cited Rule provides: "SECTION 1. Execution upon final judgments or orders. — Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom no appeal has been duly perfected"

[8] L-37123, Oct. 30, 1975 and cases cited.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.