

BARTOLOME FERNANDEZ, PETITIONER, VS. HON. ROBERTO ZURBANO, AS JUDGE OF THE CFI OF ALBAY, AND DOMINGO LUNAS, RESPONDENTS.

G.R. No. L-23772. November 25, 1967

Ponente: ANGELES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6c8bc86f2bff/>

ANGELES, J.:

An appeal by certiorari to review the decision of the Court of Appeals dismissing the petition for mandamus filed by herein petitioner.

The essential facts pertinent to the law question involved are not disputed.

Atty. Ramon C. Fernandez, counsel for the oppositor Bartolome Fernandez in Land Registration Case No. N-191 of the Court of First Instance of Albay, received copy of the decision rendered in that case on December 7, 1963. On January 3, 1964, he filed a motion to set aside the decision. On January 13, 1964, the motion was denied, and copy of the order was received by him on January 14. On the same date, January 14, he filed, within the period for appeal, a motion for extension of time "to perfect his appeal and that said oppositor be allowed to file a cash bond in the amount of P60.00." On January 15, the court a quo issued the following order:

"Finding the motion filed by Atty. Ramon C. Fernandez merito-rious, he is given an extendible period of 10 days from January 16, 1964 to file the record on appeal of the oppositor Atty. Bartolome Fernandez. Considering that the decision was rendered before the revised Rules of Court took effect, the oppositor Atty. Bartolome Fernandez is hereby allowed to file a cash bond in the sum of P60.00" [Italics Ours.]

On January 22, 1964, Atty. Fernandez filed a notice of appeal and record on appeal and deposited the sum of P60.00 as cash bond. On January 28, upon motion of re-spondent, the court disapproved the record on appeal and dismissed the appeal on the ground that the notice of appeal and appeal bond were filed five (5) days late, the last day for their filing having expired on January 17, 1964.

On February 4, 1964, petitioner's counsel filed a petition for relief and motion to set aside the order dismissing the appeal, on the ground of excusable negligence, but this was denied in an order of February 11, 1964.

Whereupon, Bartolome Fernandez filed a mandamus proceedings before the Court of Appeals praying that re-spondent Judge of the Court of First Instance of Albay be ordered to give due course to his appeal. In dismissing the petition, the Court of Appeals held that while the late filing of the notice of appeal was cured by the timely filing of the record on appeal within the extended period, never-theless, the appeal was not perfected on time because the appeal bond should have been filed within the reglementary period fixed by the Revised Rules of Court.

Section 3, Rule 41 of the Rules of Court requires that for the perfection of an appeal, all three requisites — notice of appeal, appeal bond and record on appeal — must be filed with the trial court within thirty days from notice of order or judgment. There is no question, however, that this period may be extended by the court upon a showing

of a justifiable reason therefor, such as fraud, accident, mistake or excusable negligence, or similar supervening casualty, without fault of the appellant, which the court may deem sufficient reason for relieving him from the consequences of his failure to comply strictly with the law.[1] But the question is, if the extension granted refers only to the period for filing of one of the three requisites — record on appeal as in this case, may such extension apply also to the period for filing the others?

In *Salva vs. Palacio, et al.*[2] it was held:

"... The failure of the petitioner to file the appeal bond within the reglementary period was fatal. Even if the court below should have allowed him to amend his record on appeal to include certain matters omitted or left out, the period for the filing of the appeal bond would not have been extended, because the extension granted to amend a record on appeal did not carry with it the extension of the reglementary period for the filing of the appeal bond." [Italics ours]

In the case at bar, the petitioner pleads excusable negligence, as reason to except his case from the general rule, and offers the following explanation:

"In the morning of January 15, 1964, the counsel for the petitioner happened to mention to the respondent judge the motion for extension, Annex 'A'. The respondent judge told the counsel of the petitioner that by January 18, 1964, the original thirty day period shall have lapsed and the Court would no longer have the jurisdiction to extend the period within which to appeal. The respondent judge then asked for the record of Land Registration Case No. N-191. The counsel of the petitioner got the impression that the respondent judge would grant the motion for extension of the period within which to perfect the appeal. Later in the day of January 15, 1964, in between trials in the different branches of the Court of First Instance of Albay, the counsel for the petitioner was handed a copy of the order dated January 15, 1964, resolving the motion for extension, Annex A. The counsel for the petitioner, who was then busy conferring with witnesses for the trials of seven cases on January 15, 1964, casually glanced at the said order without reading in full the same in the firm belief that said order granted his motion for extension without limiting the said extension to the filing of the record on appeal. . . .

"On January 15, 1964, apart from being busy with his trials, the counsel for the petitioner was very much worried about what might have happened to his law office at the Bank of the Philippine Island Building. When he took the PAL plane from Manila to Legaspi City at 1:50 o'clock in the afternoon of January 14, 1964, he had not yet been able to go inside the building because the firemen were still working the place over. He had to rush back on January 16, 1964 to Manila to see if his law office had been damaged by fire or water. It was only in the afternoon of January 21, 1964, which had been declared a public holiday, that he was able to go back to his law office at Legaspi City. On the following business day, January 22, 1964, the counsel for the petitioner perfected the appeal to the Court of Appeals from the decision in Land Registration Case No. 191 dated December 5, 1963, by filing the notice of appeal, the record on appeal and depositing a cash appeal bond in the amount of P60.00."

We perceive from the foregoing explanation that what really made petitioner's counsel believe that his motion had been granted by the court in toto was the opening statement of the order - "Finding the motion filed by Atty. Ramon C. Fernandez meritorious" - and his belief may not be said to be unfounded under the circumstances, considering that his motion for an extension of time embraces a prayer not only "to perfect his appeal," which necessarily includes and comprehends the filing of a notice of appeal, record on appeal and appeal bond, but also to allow the petitioner to post a cash bond of P60.00 in lieu of P120.00 as provided in the Revised Rules of Court, for the very reason stated in the order in question. The petition, undoubtedly, was due to an uncertainty in the mind of counsel as to whether the correct amount of cash bond to be filed was P60.00 or P120.00 and to dissipate whatever doubt there was, the petitioner filed the motion seeking a clarification thereof from the court. In this posture of the situation, it could not reasonably be expected of the petitioner to post an appeal bond pending his

motion for clarification. In ruling that the motion was meritorious and allowing the petitioner to file a cash bond of P60.00 instead of P120.00, without fixing any period within which said cash bond of P60.00 should be filed, the court implicitly also granted the extension to file the cash bond within the period for the filing of the record on appeal, for if the court did not intend to grant such an extension of time for the filing of the cash bond of P60.00, either it would have denied it or it would have said that the bond should be filed within the original period.

Section 2 of Rule 1 of the Revised Rules of Court provides that the rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding. In the spirit of the provision of the law, We believe, that under the facts obtaining in the case, petitioner's right to appeal must not be defeated by a mere procedural technicality as long as the appealing party or his counsel has not displayed gross negligence in the prosecution of his case.

The circumstances in the cases cited[3] are not exactly similar to those obtaining here for unlike in the present case, there was no showing of any justifiable reason or reasons for the delay in the submission of the requirements under sections 3 of Rule 41, as to have excused the appellants therein from compliance with the provisions of the law.

Wherefore, the decision appealed from is reversed, and the Court of First Instance is hereby ordered to give due course to petitioner's appeal. No pronouncement as to costs.

Dizon, Actg. C.J., Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.

Judgment reversed.

[1] Santiago & Flores vs. Valenzuela & Pardo, 78 Phil. 397, 401; citing Alvero vs. de la Rosa, 76 Phil. 428; Moya vs. Barton, 76 Phil. 831; Lopez vs. Lopez, 77 Phil. 133; and Peralta vs. Solon, 77 Phil. 610.

[2] 90 Phil. 731; 735; See also Conlu vs. Court of Appeals, 106 Phil. 940.

[3] Salva vs. Palacio, et al., supra, and Conlu vs. Court of Appeals, supra.

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.