

ISRAEL ANTONIO, PETITIONER, VS. HON. COURT OF APPEALS, RESPONDENT.

G.R. No. L-35434. November 09, 1988

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/79126981b434/>

CRUZ, J.:

The basic issue raised in this petition is the validity of the order of the respondent court dismissing the petitioner's appeal for failure to file the appellant's brief on time.

The petitioner had been convicted of qualified theft in the Court of First Instance of Quezon City* on February 26, 1968.[1] He seasonably elevated his conviction to the Court of Appeals which in due time sent him notices to file his brief, thus:

On September 17, 1971, the notice was sent by registered mail to his counsel of record, Atty. Nicanor Lapuz, at Room 410, EMA Building, 111 Evangelista, Quiapo, Manila, the address indicated in his pleadings. The notice was returned unclaimed, after the third registry notice to the addressee.[2]

On October 16, 1971, another notice to file brief was sent, this time directly to the petitioner himself, at his given address at 1958, Interior 2, Daang-Bakal, Tayuman, Tondo, Manila. This notice was also returned unclaimed.[3]

On November 18, 1971, a third notice was sent to the petitioner, now through his bondsman, the Philippine Motor Assurance Corporation, at its address at the 3rd Floor, Cardinal Building, Herran corner F. Agoncillo St., Ermita, Manila. Again the notice was returned unclaimed.[4]

In view of the above developments, the respondent court issued a resolution* on December 9, 1971, reading as follows:

"It appearing that the Notice of this Court requiring accused-appellant to file his brief, although correctly addressed to his counsel and then to his bondsman, Phil. Motors Assurance Corporation, was returned unclaimed, the Court RESOLVED to REQUIRE the accused-appellant to SHOW CAUSE, within ten (10) days from receipt of copy hereof, why his appeal should not be dismissed." (Original Records, p. 60)

This was followed by a resolution dated February 1, 1972, in which the Court of Appeals declared:

"It appearing that the copies of the Resolution of this court of December 9, 1971, requiring accused-appellant to show cause why his appeal should not be dismissed for failure to file his brief, although correctly addressed to the accused-appellant himself and to appellant's counsel, was returned unclaimed, the Court, RESOLVED to DISMISS the appeal interposed by the accused-appellant." (Original Records, p. 63)

On March 4, 1972, the order of dismissal became final and executory.[5] On August 11, 1972, the Court of First Instance issued an order for the execution of the judgment against the petitioner.[6]

It was only then that the petitioner suddenly surfaced, out of the blue, as it were.

On August 21, 1972, after his long absence and silence, the petitioner appeared by a new counsel and filed an urgent ex parte motion to reinstate the appeal and recall the records.[7] His reason was that he had not received the notices to file brief and so was denied due process when his appeal was dismissed. Not surprisingly, the motion was denied.[8]

The petitioner now asks us to rectify what he submits was a serious error of the Court of Appeals.

According to him, the first notice to file brief sent to his original counsel was never delivered because Atty. Lapuz had closed his office and retired due to old age and an hernia condition. The petitioner claims he was unaware of these facts then.[9]

The second notice, sent to him this time, was also not received because the postman could not locate his address in the squatter area. The gate in front of the railroad tracks leading to his house was closed by the Philippine National Railway, making it necessary for the letter-carrier to take the longer route from the opposite direction.[10]

No explanation was offered for the alleged non-receipt of the notice sent to the petitioner's bonding company.

It is the petitioner's contention that the notices sent by the Court of Appeals should not be considered as having been received by the addressees under Rule 13, Section 8, of the Rules of Court because that rule requires actual receipt of the registry notice. The said section provides as follows:

"SEC. 8. Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect at the expiration of such time."

The petitioner argues that, not having actually received the registry notice, he could not possibly have claimed the notice to file the appellant's brief. Hence, service thereof could not have taken effect after the five-day period mentioned in the rule.

We do not think so.

Ordinarily, the petitioner's interpretation of the above rule would be acceptable. In fact, the presumption that official duty has been regularly performed[11] and that a letter duly directed and mailed was received in the regular course of the mails[12] are not applicable here. As we held in *Santos v. Tuazon*,[13] it is necessary under this rule to present conclusive proof that the registry notice was received by or at least served on the addressee before the 5-day period can begin to run.

However, this requirement presupposes that the notice is sent to the correct address as indicated in the records of the court. It does not apply where, as in the case at bar, the notice was sent to the lawyer's given address but did not reach him because he had moved therefrom without informing the court of his new location. The service at the old address should be considered valid. Otherwise, no process can be served on the client through his lawyer if the latter has simply disappeared without leaving a forwarding address. There is no need to stress that service on the lawyer, if valid, is also valid service on the client he represents.[14] The rule in fact is that it is on the lawyer and not the client that the service should first be made.[15]

Moreover, it appears from the particular circumstances of this case that the petitioner himself, as the vanishing lawyer's client, exhibited an exceptional lack of interest in his own appeal, an absence of diligence in prosecuting it that clearly smacks of bad faith. The doctrine announced in *Santos* will apply only when good faith can be

presumed and not when the addressee, like the herein petitioner, is obviously hiding from the mails.

The petitioner also invokes the case of *Espiritu v. Valero*,^[16] where service was also made at the old address of the lawyer who had not informed the other party or the Court that he had moved to another office.

That case is not exactly in point either. In the first place, the appeal therein had not yet been dismissed unlike in the present case. Secondly, and more importantly, what was not filed in that case was the appellee's brief, because the petitioner had not received the appellant's brief. The Court allowed the appellee to file his brief just the same as no substantial prejudice would be caused the appellant. At the same time, the petitioner's counsel was warned against repetition of his negligence in not informing the Court of his change of address.

The Court was disposed to be lenient in that case because it was the appellee and not the appellant who was negligent. The appellee plays only a passive part in any appeal because the decision sought to be reversed is in his favor anyway. Since he is not interested in disturbing the judgment, the appellee is naturally not expected to be as vigilant as the appellant in the prosecution of the appeal.

By contrast, what was allegedly not served in the case at bar was the notice to file the appellant's brief. It was through this pleading that the petitioner as appellant was expected to demonstrate the errors of the trial court and so persuade the Court of Appeals to reverse his conviction. Obviously, the sooner this was done, the better for the appellant's liberty and reputation and his peace of mind as well. Hence, it was incumbent upon him, if his appeal was really sincere, to see to it that it was proceeding in due course, and, if not, to take the needed steps to expedite it.

But what the petitioner did was exactly nothing. After entrusting to his lawyer the appeal of his conviction on February 28, 1968, he apparently forgot all about the matter. It does not appear that he even occasionally checked with his lawyer about the progress of the case; indeed, he claims now that he was not even aware that the latter had retired.

Neither has it been shown that during the period his appeal was pending, the petitioner made inquiries with the respondent court about any development in his case. In fact, it was only after all of 170 days from the time the dismissal of his appeal became final and executory that it occurred to him to make his appearance at last. At last. This was on August 21, 1972. Suspiciously, he re-emerged only ten days after the issuance by the trial court of the order for the execution of the judgment against him.

The petitioner now invokes due process and complains that the dismissal of his appeal has deprived him of his day in court. Even assuming his negligence, he argues, the ground for the dismissal was merely procedural and therefore should be waived to afford him substantial justice.

There is no denial of due process as long as the person has been given an opportunity to be heard,^[17] which was done in this case. If it is true that the notices were never actually received by him or his lawyer, the omission was due to their own carelessness. The lawyer never informed the respondent court of his change of address. The petitioner himself never followed up his appeal with the respondent court or with his lawyer. Surely, he cannot now seriously argue that the respondent court has acted arbitrarily against him. The simple fact is that he was given the chance to file his brief but he did not do so, negligently, or perhaps even deliberately.

It is the common practice of litigants who have no excuse for not observing the procedural rules to minimize the same as mere technicalities. Then they cry for due process. These procedural rules are in fact intended to ensure an orderly administration of justice precisely to guarantee the enjoyment of substantive rights.

Notably, the petitioner's indifference to his own appeal was also demonstrated quite clearly in the proceedings

before this Court. After receiving on December 16, 1972, the notice to file the appellant's brief, he finally did so only on April 28, 1973, after five extensions covering more than four months.[18] He did not file a reply brief. Required to manifest if the petitioner was still interested in prosecuting this case, his lawyer declared he had lost contact with his client and did not know where to find him.[19] The Court then sent the same inquiry directly to the petitioner after ascertaining his present address, where it was served but not received.[20] No word has been heard from him since his last pleading nor has he indicated any further interest in these proceedings.

The petitioner's conduct in this case strongly suggests that he filed his appeal only for dilatory reasons, to prevent the enforcement of the judgment against him as long as he could. Absent here is an earnest desire to question the decision, which was left pending in the Court of Appeals while the appellant and his lawyer unaccountably disappeared. What is especially intriguing is that it was only when the order for the execution of the judgment was issued by the trial court that he finally showed up - after all the while ignoring the processes of the respondent court - to plaintively voice his wounded protests.

We see no blood or bruises here. The Court is not persuaded by the sham injury or the crocodile tears. The petitioner's deception is as patent as it is reprehensible and will not relieve him now of the sentence he would challenge.

As the appeal was correctly dismissed by the respondent court, it is not necessary to deal with the other issues raised.

WHEREFORE, the petition is DISMISSED, with cost against the petitioner. The temporary restraining order dated December 12, 1972, is LIFTED. This decision is immediately executory.

SO ORDERED.

Narvasa, (Chairman), Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[*] Judge Wilfrido de los Angeles, CFI of Rizal, Branch IV.

[1] Original Records, Decision, p. 12.

[2] Ibid., pp. 52 and 62.

[3] Id., pp. 55 and 63.

[4] Id., pp. 57 and 62.

[*] Special Seventh Division, Justices Jesus Y. Perez, chairman, and Jose N. Leuterio & Juan O. Reyes, members.

[5] Original Records, p. 147.

[6] Ibid., Petition, p. 105.

[7] Id., p. 68.

[8] Id., p. 99.

[9] Rollo, p. 17.

[10] Ibid., p. 18.

[11] Section 5(m), Rule 131, Revised Rules of Court in the Philippines.

[12] Section 5(v), Rule 131, Revised Rules of Court in the Philippines.

[13] 78 SCRA 6.

[14] Juan v. Musngi, 155 SCRA 133; Francisco v. Puno, 108 SCRA 472; PLDT v. NLRC, 128 SCRA 402; Cubar v. Mendoza, 120 SCRA 768.

[15] Section 2, Rule 13, Revised Rules of Court.

[16] 3 SCRA 108.

[17] Caoile v. Vivo, 125 SCRA 87; Marvel Bldg. Corp. v. Ople, 122 SCRA 405; Ablaza v. CAR, 126 SCRA 246; Cruz v. RCBC, 120 SCRA 15; Romero v. CA, G.R. No. 59606, January 8, 1987.

[18] Rollo, pp. 69, 91, 70, 74, 80, 84, 87.

[19] Ibid., p. 126.

[20] Id., pp. 134 and 136-137.

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.