

LORENZO SALVADOR, PETITIONER, VS. JOSE B. L. REYES, ALEX REYES, AND JOSE GUTIERREZ DAVID, JUSTICES OF COURT OF APPEALS, AND RAFAEL DINGLASAN, JUDGE OF THE COURT OF FIRST INSTANC...

G.R. No. L-2606. November 19, 1949

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/85917067ce28/>

TORRES, J.:

Lorenzo Salvador, one of the defendants in criminal case No. 73348 of the Court of First Instance of Manila, was convicted by Judge Rafael Dinglasan, one of the respondents herein, of the crime charged against him. He appealed from said judgment, and the Court of Appeals, on September 30, 1947, duly notified the petitioner to file his brief within the reglementary period. The notice was coursed through his bondsmen, the Central Surety.

On November 15, 1947, Atty. Luis M. Villaseran entered his appearance as counsel for petitioner, and at the same time filed a petition manifesting that on October 20, 1947, his client received from the clerk of the Court of Appeals a notice to file his brief and prayed that counsel be granted an extension of 15 days from November 20, 1947, within which to file the petitioner's brief.

On December 5, 1947, after the extension prayed for had been granted by the Court of Appeals, counsel asked for a second extension of 15 days within which to file his brief. The Court of Appeals granted him a period of 10 days only, which expired on December 15, 1947.

On December 15, 1947, counsel for petitioner filed a motion for reconsideration praying that he be given an additional period of 5 days, until December 20, 1947, within which to file his brief. The Court of Appeals in its resolution of December 17, 1947, granted said motion.

It appears that, upon the failure of petitioner to file his brief within the extended period granted him, the Court of Appeals, on January 5, 1948, adopted the following resolution:

"It appearing in case CA—G.R. No. 1283-R, People vs. Rosendo San Diego et al., that the appellant Lorenzo Salvador failed to file his brief within the extended period which expired on December 20, 1947, the appeal of said appellant is hereby DISMISSED, without prejudice to the appeal of the other appellant Rosendo San Diego. The Solicitor General is, therefore, required to file the appellee's brief in said case within thirty (30) days from notice hereof."

The record shows that counsel for petitioner received a copy of the above-quoted resolution on January 7, 1948. No motion for reconsideration of said resolution was, however, submitted by counsel for appellant and, on January 23, 1948, pursuant to the Rules of Court, final judgment was entered in the record of the Court of Appeals.

On October 8, 1948, counsel for petitioner received a copy of the decision of the Court of Appeals, with respect to petitioner's co-appellant, Rosendo San Diego, which affirmed the judgment of the Court of First Instance of

Manila in said criminal case No. 73348.

On November 14, 1948, the records of the case were remanded to the lower court.

Since January 7, 1948—the date of the receipt by counsel for petitioner of the resolution of the Court of Appeals of January 5, 1948, dismissing the appeal of this petitioner—no steps have been taken by petitioner or his counsel looking toward the reinstatement of his appeal.

Now petitioner prays this Court that a writ of preliminary injunction be issued to restrain respondent Judge Rafael Dinglasan of the Court of First Instance of Manila from promulgating and enforcing the judgment of conviction in said criminal case No. 73348, entitled *People of the Philippines vs. Rosendo San Diego y Alcaraz, Lorenzo Salvador, et al.*; and that the other respondents Justices of the Court of Appeals, by a writ of mandamus be commanded to allow the petitioner "to file his appeal brief and to have his day in court."

In the light of the above, it clearly appears, therefore, that petitioner questions the legality and reasonableness of the resolution of January 5, 1948, whereby the Court of Appeals, through the Justices named respondents herein, dismissed the appeal of said petitioner because of his failure to file his brief notwithstanding the extensions given him.

Section 1(e) of Rule 52 of the Rules of Court says:

"Grounds for dismissal of appeal.—An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

"(e) Failure of the appellant to serve and file his brief within the time provided by these rules;"

and Rule 120 in Sections 3 and 8, likewise provides that:

"SEC. 3. When brief for appellant to be filed.—Within thirty (30) days from the time notice of receipt of the record of appeal is received from the clerk of the appellate court by attorney for the appellant, the latter shall file fifty (50) copies of his brief with the clerk which shall be accompanied by proof of service of five (5) copies thereof upon the appellee."

"SEC. 8. Dismissal of appeal for abandonment or failure to prosecute.—The appellate court may, upon motion of the appellee or on its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this rule, except in case the defendant is represented by an attorney de oficio.

"The court may also, upon motion of the appellee or on its own motion, dismiss the appeal if the appellant escapes from prison or confinement or flees to a foreign country during the pendency of the appeal."

It must be noted that the above-quoted provisions of Sections 3 and 8 of Rule, 120 are found in Part III of the Rules of Court regarding Criminal Procedure, and the same considered in conjunction with the power of the Court of Appeals, under said Section of Rule 52, to dismiss an appeal, clearly state the law in a case where, like the one before Us, the appellant in a criminal case has failed to file the necessary brief to prosecute his appeal before the Court of Appeals.

Under the set of facts related herein, it is undeniable that this petitioner, represented by private counsel, notwithstanding the several extensions granted him for the filing of his brief, failed to file and submit his brief within the period prescribed in Section 3 of Rule 120, and the extensions granted him accordingly; for which reason, the Court of Appeals, in the exercise of its power under Section 1(e) of Rule 52 and Section 8 of Rule 120, *motu proprio* dismissed his appeal, and entered final judgment therein accordingly.

In a similar case entitled, *People of the Philippines vs. Epifanio Baradi et al.* (G. R. No. L-2658,[1] decided by this Court on December 9, 1948), petitioner appealed by certiorari from an order of the Court of Appeals which dismissed his appeal from a judgment of the Court of First Instance of Manila, "because of the failure of the appellant to file his brief on time." This Court applying the above-quoted provisions of Section 8 of Rule 120, denied this petition for certiorari on the ground that the Court of Appeals has discretion to dismiss *motu proprio* an appeal "for failure on the part of the appellant to file his brief on time." But it also stated that the Court of Appeals must have served a notice upon the defendant-appellant of the action to be taken by said court before dismissing *motu proprio* the appeal. The purpose of such notice is to give the appellant opportunity to state the reason, if any, why the appeal should not be dismissed because of such failure, in order that the Court of Appeals may determine whether or not the reasons, if given, are satisfactory.

In the case under consideration, while it does not appear from the petition that the Court of Appeals had given the appellant, petitioner herein such notice before dismissing his appeal, the omission of such requirement has, in Our opinion, been cured by the fact that according to the record, since January 7, 1948, when petitioner received a copy of the resolution of dismissal of his appeal, until October 8, 1948, when he received a copy of the decision of the Court of Appeals which affirmed the judgment of the Court of First Instance of Manila with respect to his co-defendant Rosendo San Diego, he has taken no steps, either by himself or through his counsel, to have his appeal reinstated by the Court of Appeals, and it was only on November 12, 1948, when he filed with this Court his petition for mandamus to compel the Justices of the Court of Appeals who passed the resolution of dismissal of January 5, 1948, to allow him to file his brief in this case.

Such attitude of indifference and inaction shown by petitioner in the premises amount to his abandonment and renunciation of the right granted him by law to prosecute his appeal, and shows that he was spurred into action only when he received a copy of the decision of the Court of Appeals affirming the judgment of conviction rendered by the Court of First Instance of Manila against his co-defendant.

The petition is denied with costs.

Moran, C.J., Ozaeta, Paras, Bengzon, Padilla, and Tuason, JJ., concur.

[1] 82 Phil., 297.

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.