

**MANUEL R. L. LUNA, PETITIONER, VS. COURT OF APPEALS,
GERARDO G. CAPATI AND ARACELI ADRIATICO LUNA,
RESPONDENTS.**

G.R. No. L-37123. October 30, 1975

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court herein reiterates its recent rulings 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.

From the adverse judgment dated March 20, 1972 rendered by the Oriental Mindoro Court of First Instance, herein petitioner as defendant-appellant filed his appeal to the Court of Appeals.

Paragraph 17 of the Second Amended Record on Appeal states the following material data to show that the appeal was duly perfected on time, as follows:

"17. That within the 30-day reglementary period from April 4, 1972, the date that defendant Manuel R. L. Luna received a copy of the Decision promulgated on March 20, 1972, herein defendant filed the corresponding Notice of Appeal on April 17, 1972 and deposited with the Clerk of Court the corresponding Cash Appeal Bond on April 17, 1972, as evidenced by O.R. No. 2835880. Finally, this Second Amended Record on Appeal is being filed within the 20-day period fixed by this Honorable Court in its latest Order." [1]

The record shows, and it is not disputed by private respondents, that petitioner had filed via registered mail (from Manila for Calapan, Mindoro Oriental) with the trial court the original Record on Appeal on April 26, 1972, well within the original thirty-day reglementary period. Due to certain deficiencies, he was required by the trial court to file two additional Records on Appeal, a First Record on Appeal and then a Second Record on Appeal. Petitioner as appellant complied therewith and expressly stated in his third Record on Appeal dated October 4, 1972 that "this Second Amended Record on Appeal is being filed within the 20-day period fixed by this Honorable Court in its latest Order."

No opposition to the appeal was filed by respondents and the trial court issued its Order of October 27, 1972 approving the same and ordered the elevation of the records and evidence to the Court of Appeals after expressly finding therein that.

"The notice of appeal, the second amended record on appeal, and the appeal bond (have) been filed within the reglementary period provided for by law, and there (is) no opposition to the approval of the same; x x x."

The appeal was duly docketed in the Court of Appeals [2] upon petitioner's payment of the docket fees and

petitioner filed within the sixty-day reglementary period the required number of printed copies of the Second Amended Record on Appeal.

Upon respondents' motion to dismiss the appeal for petitioner's alleged "failure to make the record on appeal show on its face that the appeal was perfected within the period fixed by the Rules," and notwithstanding petitioner's opposition, respondent Court of Appeals in its Resolution of June 4, 1973 ordered the dismissal of the appeal on the ground of failure of the Second Amended Record on Appeal to state "all the data to indicate that the appeal was perfected within the reglementary period," viz, the date of filing of the original record on appeal (which is generally stamped thereon after its filing), and by implication, the motions for and orders granting extension of time to file the same.

Hence, the petition at bar. Respondents in their comment, as required by the Court, do not question or impugn the accuracy and truth of the trial court's finding in its Order approving the second amended record on appeal that the appeal was "filed within the reglementary period provided for by law."

The Court has resolved to treat the petition as a special civil action and to decide the case upon the pleadings, since the issue involved has already been foreclosed and resolved in the recent case of *Pimentel vs. Court of Appeals*[3] and reiterated in *Republic of the Philippines vs. Court of Appeals*[4] and *Morales vs. Court of Appeals*.^[5]

Applying what we said in *Republic*, supra, to the case at bar, mutatis mutandis, respondent court's dismissal of the appeal must be set aside "by virtue of the more liberal ruling that has been now adopted by the Court in the recent case of *Pimentel vs. Court of Appeals* that where the trial court finds and declares in its Order approving the Record on Appeal that it was filed 'on time' or 'within the reglementary period' and the correctness and veracity of such finding are not questioned, impugned or disputed by the adverse party, then even though the Record on Appeal may not have included the motion for extension of time to file the same nor the trial court's order granting the extension, the dismissal of the appeal is not warranted and constitutes a grave abuse of discretion, for there has been a substantial compliance with the material data requirement of Rule 41, section 6, and the appellate court may properly rely on the trial court's order of approval and could determine therefrom without sending for or examining any other records that the appeal was perfected on time as expressly found by the trial court."^[6]

Like in *Pimentel*, supra, where the approved Record on Appeal did not include the motion and order for a 30-day extension and a further order granting five days to finalize the amended record on appeal, the non-inclusion in the second amended record on appeal herein involved of a motion and/ or order for extension or fixing a period to finalize the amended records on appeal is not fatal to petitioner's appeal.

Here, petitioner expressly stated in his record on appeal that "this Second Amended Record on Appeal is being filed within the 20-day period fixed by this Honorable Court in its latest Order." The trial court in its approval order expressly determined and declared that the appeal was perfected "within the reglementary period provided for by law." The correctness, accuracy and veracity of these factual statements and determination of timeliness of the appeal have not been impugned, questioned or disputed by respondents, and, therefore, as stressed in *Pimentel*, "respondent appellate court should have relied on the same and could have determined therefrom that the appeal ..., was perfected on time" (as declared by the trial court) — and thereby dispensed with the need of sending for, and of any further examination of, the original records of the case" (which is the *raison d'être* of the material data rule).

The Court thus held in *Pimentel* that with the existence of the trial court's order approving the record on appeal "because the trial court found that the notice of appeal, the records on appeal and appeal bonds were all filed within the reglementary period and because of the absence of further objections to the corrected records on

appeal, the veracity of the grounds stated in said order not being disputed by herein private respondents, the reason for the rule ceases."

ACCORDINGLY, respondent court's dismissal of petitioner's appeal is hereby set aside and the same is remanded to respondent court for further proceedings and disposition on the merits. Without costs.

SO ORDERED.

Barredo, Makasiar, Antonio, Muñoz Palma, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Castro, Acting C.J., took no part.

Makalintal, C.J., Fernando, and Esguerra, JJ., on official leave.

[1] Emphasis supplied.

[2] As Case CA-GR No. 51678-R.

[3] G.R. No. L-39423 and L-39684, prom. June 27, 1975, per Makasiar, J.

[4] G.R. No. L-40495-96, prom. Oct. 21, 1975.

[5] G.R. No. L-37229, prom. Oct. 21, 1975.

[6] Emphasis copied.

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