

ONG TIAO SENG, PETITIONER, VS. HON. COURT OF APPEALS, HON. VICTORINO A. SAVELLANO, ALBERTO SAN PEDRO, GLORIA SAN PEDRO, VERNIE FORTES, JAMES R. YAP AND ESPERANZA GADDI, RESPONDE...

G.R. Nos. L-41192-93. January 31, 1978

Ponente: MUÑOZ PALMA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b88e17d76b13/>

MUÑOZ PALMA, J.:

The point in controversy is the denial of the appeal of petitioner Ong Tiao Seng by Hon. Judge Victorino A. Savellano of the Court of First Instance of Manila from the latter's decision in Civil Cases Nos. 70182 entitled "Ong Tiao Seng, et al. vs. Gloria San Pedro, et al." and 73572 entitled "James R. Yap, et al. vs. Ong Tiao Seng" which denial was affirmed by now respondent Court of Appeals in a Resolution promulgated on July 21, 1975.[1]

Petitioner Ong Tiao Seng received a copy of the aforesaid decision of the Court of First Instance of Manila on January 16, 1975. The decision was subsequently amended and copy of the amended decision was received by petitioner's counsel on February 7, 1975. On March 6, 1975, petitioner through counsel filed a notice of appeal. On March 14, one Atty. Mariano B. Remo in behalf of petitioner's counsel of record, Atty. Macario J. Fernandez, filed a motion for extension of time to file the record on appeal by reason of the illness of the latter, and on March 18, petitioner's typewritten record on appeal was filed.

On April 3, 1975, Judge Savellano issued an order denying admission of petitioner's record on appeal on the ground that the same was filed out of time inasmuch as petitioner's motion for extension of time to file record on appeal was filed beyond the 30-day reglementary period. A motion for reconsideration was filed by petitioner represented this time by another counsel but said motion for reconsideration was denied by the trial judge in his order of May 22, 1975.

Petitioner elevated the matter to the Court of Appeals on a Petition for Certiorari but the Petition was dismissed.

Respondent court reasoned out inter alia that assuming that the perfection of petitioner's appeal was to be reckoned from receipt of the amendatory order which was on February 7, 1975, it was obvious that petitioner's motion for extension of time to submit his record on appeal was filed out of time, and consequently the trial court was justified in denying the admission of the record on appeal following existing jurisprudence that any motion for extension of time to perfect the appeal should be filed prior to the expiration of the original record.[2] Respondent court further stated that the motion for extension of time was not substantiated with a medical certificate, while the motion for reconsideration of the order denying the record on appeal was not supported by an affidavit of merit as required under Rule 38 of the Rules of Court.

It is a fact that petitioner's counsel of record, below, Atty. Macario Fernandez, was taken ill and had to be confined at the University of Sto. Tomas Hospital on February 21 and that he died on March 19, 1975. That notwithstanding, We agree with respondent court that the denial of petitioner's appeal by the trial court was in

order and no grave abuse of discretion was committed under the circumstances obtaining.

It is true as petitioner contends that Sec. 2, Rule 38 of the Rules of Court provides a remedy in a situation such as that of petitioner herein.[3]

Section 2, Rule 38 of the Rules of Court:

"When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside."

In order that relief may be granted under Rule 38 the following must be shown to the satisfaction of the trial court: (a) fraud, accident, mistake or excusable negligence; (b) presence of good and substantial cause of action or defense as the case may be; and (c) filing of the petition for relief within the period provided for in Section 3 of the Rule.[4]

Petitioner submits that the illness of his counsel, Atty. Fernandez, constituted accident sufficient to justify the granting of the motion for extension and the admission of the record on appeal.

We cannot view the matter however in that light.

Although Atty. Fernandez entered the hospital on February 21, nonetheless he prepared and caused to be filed a notice of appeal on March 6, meaning to say, that he was mentally fit and in fact was aware that the period to appeal from the adverse decision in his client's case was about to expire. There was no valid cause or reason therefore why on that same date and occasion, March 6, a motion for extension to perfect the appeal could not have been filed in court. In other words, the illness of Atty. Fernandez did not constitute an insurmountable obstacle or impediment to the filing of the motion for extension on or before March 9, the last day of the 30-day reglementary period, as shown by the very fact that Atty. Fernandez was able to cause the preparation and filing of a notice of appeal on March 6.

In *Bello vs. Fernando*, this Court stated through Justice J.B.L. Reyes that while the trial court may in its discretion extend the time for appeal beyond the period fixed by law, it must be satisfactorily shown that there is justifiable reason for such action, like fraud, accident, mistake or excusable negligence or similar supervening casualty without fault on the part of the appellant.[5] Here, there was no satisfactory showing that the delay could not have been avoided without fault on the part of petitioner.

The second requisite for a meritorious petition for relief is also wanting. It is essential that there be a showing of a good and substantial cause of action and/or defense or, in this case, that there are valid reasons for pursuing the appeal, otherwise, the trial court is not bound to set aside its order or judgment.[6] In fact, what is significant and decisive of the issue raised by petitioner before Us is his failure in his present Petition for Certiorari and the accompanying documents to present and show his defenses and/or causes of action in the civil cases decided against him which could lead the Court to consider the possible merits of his appeal. All that can be gathered from the records is that the cases involve claims and counter-claims for damages arising presumably from a motor vehicle accident or collision.[7] Nothing however is stated as to the circumstances surrounding the accident which would indicate that an appeal would not be a "mere empty and useless gesture."[8]

In fact, because the Petition herein is silent on the defenses or causes of action of petitioner in the cases below, We caused the elevation of the records of the Court of Appeals and of the Court of First Instance of Manila in Our desire to see the possible merits of the appeal of petitioner. The record shows that Ong Tiao Seng is the owner of

a taxi cab driven by Cecilio Pascua which featured in a collision on December 22, 1966, with a Ford vehicle owned by Gloria San Pedro and a Pontiac car owned and driven by James Yap. As a result of the collision, the two cars were damaged and James Yap and his passenger Marissa Gaddi sustained serious physical injuries. In holding Ong Tiao Seng and his driver liable for damages, the trial court found:

"the vehicular accident happened at the intersection of the streets - Roxas Boulevard - Bonifacio Drive and P. Burgos - Katigbak Drive (T)he place of impact, the damaged portions of the cars and the resultant positions of the cars after the impact lend credence and belief to the testimonies of James Yap and Marissa Gaddi, driver and passenger of the Pontiac and Alberto San Pedro, Jr., passenger of the Ford, that the light towards P. Burgos Street and Katigbak Drive had already turned green and the two cars were moving forward when the taxi coming from Roxas Boulevard hit both - one after the other. The failure of Ong Tiao Seng to present either the driver, Cecilio Pascua, or any of the passengers listed (supra) militates heavily against the Taxi Driver and its owner-operator, who failed to establish diligence in the selection and supervision of his drivers" (pp. 6-8, Original of CFI Decision)

On the basis of the above findings of the court a quo, We find no possible advantage from an appeal even if we were to allow the same.

In those cases where the Court justified a suspension of the Rules to afford a litigant an opportunity to prosecute his appeal, emphasis was stressed on the presence of particular circumstances in the litigation which merited consideration from the appellate tribunal;^[9] in the instant case, those particular circumstances are absent.

IN VIEW OF THE FOREGOING, this Petition for Certiorari is denied for lack of merit with costs against Petitioner.

So Ordered.

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

[1] M.V. Agcaoili, J. ponente, C. Pascual & P. de Castro, JJ. concurring

[2] See p. 5 of Resolution found at pp. 36-37, rollo which cites Galima et al. vs. Court of Appeals, et al., L-21046, February 21, 1966; Alvero vs. de la Rosa, 76 Phil. 428; Vivo vs. Arca, L-21589, April 30, 1965; Caisip vs. Cabangon, L-14684, August 26, 1960; Sy It vs. Tiangco, L-16376, February 27, 1962

[3] De Luna, et al. vs. Hon. Palacio, et al., 1969, 30 SCRA 912, 914

[4] Sec. 3, Rule 38 of the Rules of Court. - Time for filing petition; contents and verification. - A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty (60) days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be.

[5] 1962, 4 SCRA 135, 140

[6] Moran on the Rules of Court, 1970 Ed., Vol. 2, p. 240

[7] The dispositive portion of the decision of the trial court as quoted in p. 2 of the Petition for Certiorari reads:

"WHEREFORE, premises considered, judgment is hereby rendered, ordering Ong Tiao Seng and Cecilio Pascua, jointly and severally -

"1. to pay James R. Yap the amount of P2,137.00 representing actual hospital bills for hospitalization and medical treatment; the amount of P4,000.00 as moral damages and P2,000.00 as and for attorney's fees;

"2. to pay Marissa Gaddi, thru Esperanza Gaddi, the amount of P3,357.30 as actual damages for hospitalization and medical fees; the amount of P8,000.00 as moral damages; the amount of P2,000.00 as and for attorney's fees;

"3. to pay P2,000.00 as and for attorney's fees to Gloria San Pedro and Alberto San Pedro who were forced to litigate and whose car suffered damages but which damages were borne by the insurance company;

"4. to pay the costs of this suit."

[8] Carreon, et al. v. Valenzuela, et al., 1968, 24 SCRA 80

[9] Cucio v. Court of Appeals, et al., 1974, 57 SCRA 68, per Teehankee, J.; Obut v. Court of Appeals, et al., 1976, 70 SCRA 546, per Muñoz Palma, J., citing Ordoveza v. Raymundo, 63 Phil. 275; PNB & DBP v. Phil. Milling Co., Inc., et al., 26 SCRA 712; Tiglao v. COMELEC, et al., 43 SCRA 535; Lorenzo Jose v. Court of Appeals, et al., 70 SCRA 257; Sollorano v. Court of Appeals, 62 SCRA 478; Rodriguez v. Court of Appeals, 68 SCRA 262.

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.