

**ELENA O. ESCUTIN AND RODOLFO ESCUTIN, PETITIONERS, VS.
COURT OF APPEALS, SALUD S. MAKASIAR AND ZACARIAS
TUMAMBO, RESPONDENTS.**

G.R. No. 52804. July 20, 1984

Ponente: AQUINO, J.

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AQUINO, J.:

Elena O. Escutin questions the resolution of the Court of Appeals, admitting the tardy record on appeal of Zacarias Tumambo and Salud S. Makasiar and allowing them to file an appellants' brief.

Defendants Tumambo and Makasiar seasonably appealed from the decision of the Court of First Instance of Manila dated December 26, 1978, ordering them to pay solidarity to Doctor Elena O. Escutin P31,000 as damages in a vehicular accident.

Leven S. Puno, appellants' counsel, received on July 24, 1979 from the Court of Appeals a notice to pay the docket and legal research fees and to submit within 60 days from notice forty printed copies of his record on appeal. He failed to comply with that requirement. The Appellate Court in its resolution of November 28, 1979 dismissed petitioners' appeal.

Puno filed a motion for reconsideration on December 27, 1979, attaching to said motion mimeographed copies of the record on appeal. He alleged that the case was assigned to an assistant, who suffered a nervous breakdown, who was later confined in the mental hospital and who had not been able to return to his law office.

An opposition was filed to the motion on January 11, 1980 but the Appellate Court granted it in its resolution of that same date and admitted the record on appeal (pp. 42-44, CA Rollo). A notice to file brief was sent to the appellants.

The appellees filed a motion for reconsideration. It was denied in the resolution of February 14, 1980. They assailed in this Court the reinstatement of the appeal.

They imputed inexcusable negligence to appellants' counsel in not filing the printed record on appeal. They cited *P.J. Kiener Co., Ltd., et al. vs. Republic of the Philippines*, 128 Phil. 647, where the Republic's failure to file the printed record on appeal, allegedly due to the fact that the receiving clerk misplaced the notice for that purpose, was characterized as a habitual subter-fuge resorted to by litigants.

Considering the surrounding circumstances showing that the appellants had no intention of abandoning their appeal and that the delay was excusable, we hold that the Appellate Court did not commit a grave abuse of discretion in admitting the tardy record on appeal of respondents Tumambo and Makasiar. It is not mandatory for an appellate court, under Section 1, Rule 50 of the Rules of Court, to dismiss an appeal by reason of the late filing of the mimeographed record on appeal (*Catindig vs. Court of Appeals*, L-33063, February 28, 1979, 88 SCRA 675; *Lazarte vs. Court of Appeals*, L-45995, August 31, 1977, 78 SCRA 543).

WHEREFORE, the resolution of the Court of Appeals is affirmed. No costs.

SO ORDERED.

Concepcion Jr., Guerrero, Abad Santos, and Cuevas, JJ., concur.

Makasiar (Chairman), and Escolin, JJ., took no part.

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