96 Phil. 131

[G.R. No. L-7075. November 18, 1954]

HON. SULPICIO V. CEA, ETC., ET. AL., PETITIONERS-APPELLANTS, VS. CIRIACO. N. CINCO, ET AL., RESPONDENTS-APPELLEES.

D E C I S I O N

PARAS, C.J.:

The herein respondents, with others were charged with malversation of public funds in four information's docketed as criminal cases Nos. 3896., 5897, 3898 and 5899 of the Court of First Instance of Leyte. After a joint hearing, during which numerous witnesses were presented both by the prosecution and by the defense, Judge Jose B. Rodriguez rendered a decision dated June 28, 1951, consisting of 152, pages, acquitting all the accused, except Treasurer Francisco Martinez who was found guilty of malversation through negligence and given only one penalty. Judge Rodriguez transmitted his decision from Laoang, Samar, to the clerk of the Court of First Instance of Leyte who, on July 5, 1951, made the following entry in the criminal docket:

> "July 3.1951, Court decided; Francisco Martinez convicted from 8 years, 1 day to 16 years, 5 months and 11 days, to suffer perpetual disqualification and to pay P655,965.69 and proportionate costs. The rest are acquitted. This decision includes criminal cases Nos. 3896, 3897, 3898 to 5899,"

The clerk of court issued a notice for the accused. Francisco Martinez to appear on July 7, 1951, for the reading of the sentence in the four criminal cases, out the latter asked for postponement until July 14, 1951, when only the dispositive part of the decision was

actually read to him, as he waived the reading of its full text, although copy of the decision was received by Martinez and the fiscal. Upon the other hand, no requirement was made for the appearance of the respondents and other accused who were acquitted, but copies of the decision were served upon each of them. Counsel for respondents Ildefonso Tierra and Delfin M. Reyes actually received a copy from the clerk of court on July 20, 1951.

The prosecution filed in the four cases (1) a motion for reconsideration dated July 19, 1951, seeking to modify the decision of Judge Rodriguez of June 28, 1951, so as to condemn those acquitted to pay jointly and severally, by way of indemnity and reparation, the amount involved; and (2) a motion for reconsideration praying that all the accused toe convicted except Baldomero Perez. Respondents Ildefonso Tierra and Delfin M. Reyes, through counsel, filed the corresponding opposition. Accused Francisco Martinez in turn filed a notion for new trial. The prosecution subsequently- filed a memorandum in support of its two motions for reconsideration, assailing the decision of June 28, 1951, on the grounds that four separate judgments should have been rendered; that the result does not conform to the findings contained in the decision; and that said decision was not validly promulgated. On December 26, 1951, counsel for the respondents received a notice from the clerk of court to the effect that the reading of the decision in the four criminal cases would take place on January 10, 1952. Upon inquiry, the respondents were informed by telegram by the clerk of court that the promulgation of the new decision rendered by, Judge Sulpicio V. Cea, scheduled for January 10, referred to the same four cases against all the accused. On January 4, 1952, counsel for respondents accordingly filed a manifestation and motion, alleging that Judge Cea had no jurisdiction or authority to render a new decision. This was overruled by Judge Cea on January 9, 1952, at the same time setting the promulgation of his new decision for January 16 and later for February 7, 1952.

The respondents thereupon filed with This Court a petition for prohibition (G-. R. No. L-5389), seeking to restrain Judge Cea from further proceedings in the four criminal cases, but said petition was

dismissed, this Court pointing out that respondents" remedy was appeal if convicted. On February 19, 1951, Judge Sulpicio V. Cea issued an order setting the reading of his decision for March 4, 1952, with the warning that failure on the part of the accused to appear would result, in the confiscation of their bonds and their arrest. On this latter date, Judge Cea issued (1) an order denying the motions for new trial dated July 25, 1951, on the ground that no decision had as yet been legally rendered; (2) an order disallowing the appeal of respondent Nicolas Ybañez on the ground that the appealed order dated March 6, 1952 was interlocutory; and (3) an order denying the motion of attorney for respondent Ildefonso Tierra, praying that the promulgation of a new decision be suspended.

The respondents filed on March 20, 1952, a petition for certiorari in the Court of Appeals against Judge Sulpicio V. Cea and Fiscal Alberto Jimenez of Leyte, praying that the orders of Judge Cea in the four criminal cases, particularly those dated January 9, February 27 and 29, and March 4, 1952, and till his proceedings subsequent to the decision of Judge Rodriguez of June 28, 1951, be declared null and void; and that Judge Cea be restrained from rendering a new decision in derogation or modification of the decision of acquittal already rendered by Judge Rodriguez, after proper proceedings, the Court of Appeals rendered on August 51, 1953, a decision the dispositive part of which reads as follows: "In the light of the foregoing, we hereby grant the petition. He declare all the orders of the respondent Judge issued in said four criminal cases Nos. 3396, 3897, 3898 and 5399, Court of First Instance of Leyte, particularly the order dated January 9, 1952, February 27, 1952 and March 4, 1952, and any acts of said respondent Judge in the proceedings subsequent to the decision of June 28, 1951, null and void; ordering said respondent Judge or any Judge in his place to desist from rendering and promulgating tiny new decision in said criminal cases, in derogation or in modification of the said decision of June 28, 1951; and making the writ of preliminary injunction issued in these proceedings, definite and permanent; without pronouncement as to costs." From this decision the present appeal by certiorari was taken in behalf of Judge Cea, Fiscal Jimenez, and the People of the

Philippines.

There is now no dispute that the new decision rendered and sought to be promulgated by Judge Sulpicio V. Cea is one of Conviction; and the principal question that arises is whether it can validly replace the decision of Judge Rodriguez in the manner and under the facts already above related. While the herein petitioners contend that the decision of Judge Rodriguez of June 23, 1951, had not been duly promulgated because it was not read to the respondents and other accused acquitted, the respondents argue that the actual reading in the presence of the accused is an indispensable requisite only in case of conviction. The provision necessarily involved is section 6 of Mule 116 of the Rules of Court which reads as follows:

> "SEC. 6. *Promulgation of judgment.*—The judgment, is promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it. The defendant must be personally present if the conviction is for a grave:, or less grave offense; if for light offense, the judgment may be pronounced in the presence of his attorney or representative. And when the judge is absent or outside of the province, his presence is not necessary and the judgment may be promulgated or read to the defendant by the clerk of the court,"

It is noteworthy that this rule makes the general statement that a judgment is promulgated by reading it in the presence of the defendant. This is followed by a more specific mandate that the defendant must be personally present in case of conviction for a grave or less grave offense, and that the presence of his attorney or representative is sufficient in case of conviction for a light offense. As the rule has to be construed in its entirety, the phrase "in the presence of the defendant" appearing in the first sentence should be deemed o. s having reference only to the specific cases mentioned in the second sentence. Otherwise this second sentence would have been worded in such a way as to order the presence of the defendant in case of conviction for

acquittal of a grave or less grave offense, and the presence of his attorney or representative in case of conviction fox or acquittal of a light offense. By the same token, it cannot be pretended that the presence of the judge is necessary in all cases; because the phrase "in the presence" of the judge appearing in the first sentence of section 6 should be considered in relation to the third sentence which dispenses with such presence when he is absent or outside of the province.

The reasons for requiring the attendance of the accused in case of conviction for grave or less grave offense have already been enumerated by this Court in the case of U.S. *vs.* Beecham, 28 Phil. 258, as follows: "The common law required, when any corporal punishment was to be inflicted on the defendant, that he should be personally present before the court at the time of pronouncing the sentence. (1 Chitty's Crim. Law [5th Am. ed.], 693, 696) Seasons given for this are, that the defendant may be identified by the court as the real party adjudged to be punished (Holt, 599); that the defendant may have a chance to plead or move in arrest of judgment (King *vs.* Speke, 3 Salk, 358); that he may have an opportunity to say what he can say why judgment should not be given against him (2 Bale's Pleas of the Crown, 4C1, 402); and that the example of the defendants, who have been guilty of misdemeanors of a gross and public kind, being brought up far the animadversion of the court and the open denunciation of punishment, may tend to deter others from the commission of similar offenses (Chitty's Crim. Law [5th ed.], 693, 696). * * *." It is needless to state that none of these reasons is applicable to an accused who is acquitted.

Section 6 of Rule 116 provides that a judgment is promulgated by "reading" it in the presence of defendant. Since the presence of the defendant is, as already stated, required only in case of conviction for a grave or less grave offense, and "to read a writing or a document means to make known its contents" (Valentine's Law Dictionary, 48th Ed.), there had been due promulgation of the decision of Judge Rodriguez of June 28, 1951, after the clerk of the Court of First Instance of Leyte entered it in the criminal docket and after the respondents were served with copies of said decision. Indeed, "a statute providing that accused must be present for purpose or judgment,

‘if the conviction be for an offense punishable by imprisonment,’ applies only where he is found guilty and in case of an acquittal his presence is not necessary,” (24 C. J. S. 79); and “under a statute which by implication requires accused’s presence only in case of conviction, the voluntary absence of accused at the time that the jury are ready to return their verdict does not deprive him of his right to have a judgment of acquittal entered on a verdict of not guilty after its rendition and publication,” (24 C.J.S. 80).

The other point raised by the petitioners is that, the petition for certiorari filed in die Court of Appeals by the respondents, was barred by our resolution in G.R. No. L-5389, dismissing respondents’ petition for prohibition on the ground that their remedy was appeal if convicted. It being now conceded that the new decision of Judge Sulpicio V. Cea, intended to be promulgated by him is one of conviction, the resolution invoked is no longer controlling, since appeal was suggested in the absence of any conclusive allegation that Judge Cea would convict the respondents. Said resolution did not exclude any other remedy, more adequate and speedy, for preventing the promulgation of a new decision of conviction, if and when already certain.

In view of our conclusion that the judgment of acquittal rendered by Judge Rodriguez had already been validly promulgated, no other decision, much less that of Judge Cea convicting the respondents, may be promulgated without violating the rule against double jeopardy. As a matter of fact, the position of the petitioners is that Judge Cea could either modify or change entirely the decision of Judge Rodriguez only if it be conceded that the latter decision was not duly promulgated. In commenting upon section 7 of Rule 115 of the Rules of Court, with respect to the modification of judgment, former Chief Justice Moran in his Comments on the Rules of Court, 1952 ed., Vol. 2, page 867, stated that “the provision refers to a judgment of conviction, because if it is one of acquittal, it becomes final immediately after promulgation and cannot thus be recalled thereafter for correction or amendment .”

Wherefore, the appealed decision of the Court of appeals is hereby affirmed. So ordered

without costs.

Pablo, Bengzon, Montemayor, Reyes A., Jugo, Bautista, Concepcion and *Reyes J.B.L., JJ.* concur.

Mr. Justice Padilla took no part.

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