

THE PEOPLE OF THE PHILIPPINES, PETITIONER AND APPELLANT, VS. THE COUKT OF APPEALS AND SILVESTRE DOMALAON, RESPONDENTS AND APPELLEES.

G.R. Nos. L-9111-13. August 28, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

Petitioner asks for review of the Court of Appeals' resolution annulling the decisions signed by Judge Anatolio C. Mafialac in three criminal cases of the Sorsogon court of first instance. Ground for the annulment was its finding that said decisions had been promulgated on July 3, 1954 when Judge Maiialac no longer presided said district, the Hon. Genaro Tan Torres having qualified as judge thereof on the first day of the same month.

The facts are the following: "It appears that on February 5 and 7, 1954, the provincial fiscal of Sorsogon filed in each of the above-entitled cases an information charging the accused, Silvestre Domalaon, with the violation of Republic Act No. 145. The accused having entered the plea of not guilty on arraignment, hearings on the merits were had in said cases before the Honorable Anatolio Manalac, then the judge presiding over the Court of First Instance of Sorsogon, who, after the cases were submitted, reserved his decisions.

"Shortly after these cases had been submitted for decision, Judge Manalac, who since March 4, 1954 had filed an application for retirement under the provisions of Republic Act No. 660, went on terminal leave of absence. He was, however, duly authorized by the Honorable, the Secretary of Justice, to decide in the City of Manila the cases he had tried in Sorsogon which were pending decision.

"In the meantime, Judge Maiialae wrote the Honorable, the Secretary of Justice, a letter asking that favorable action be taken in his application for retirement, and that it be made effective on September 13, 1954. The Secretary of Justice indorsed this letter to the Government Service Insurance System with a favorable recommendation.

"On June 21, 1954, His Excellency, the President of the Philippines, appointed the Honorable Genaro Tan Torres ad interim Judge of the 10th Judicial District, to preside over the Court of First Instance of Sorsogon. Judge Tan Torres accepted the appointment and on July 1, 1954, qualified and assumed office as judge of the Court of First Instance of said province.

"Under the authority granted him to decide in Manila the cases he had pending decision, Judge Manalac drafted his judgments in these cases, placed them in an envelope addressed to the Clerk of Court of Sorsogon, and deposited said envelope in the Manila Post Office on July 1, 1954. This envelope was received in the office of the clerk of court of Sorsogon on July 3, 1954, and the judgments therein contained bearing date of June 12, 1954, duly signed by Judge Manalac, were promulgated in said court on the same date. the accused appealed from said judgment of conviction."

Speaking thru Justice Natividad, the appellate court declared that the authority of Judge Manalac to decide those three cases ended on July 1, 1954, i.e., upon the qualification of the new judge, and that as the judgments were

promulgated on July 3, 1954 they were not valid nor binding, in line with several decisions of this Supreme Tribunal.[1]

Questioning this resolution, the Solicitor General points out that according to *Rodriguez vs. Commission on Election*,[2] promulgation of the judgment "means delivery of the decision to the clerk of court for filing and publication", and that when on July 1 Judge Manalac deposited his decisions in the Manila Post Office, addressed to the clerk of court of Sorsogon, the judgments were thereby promulgated on said date and should be considered valid, indulging of course, the presumption that Judge Manalac forwarded them before Judge Torres' assumption of the office. The argument must be held to be without juridical foundation. As appellee's counsel maintain, according to specific legal provisions (section 9 Rule 124), the decision signed by Judge Manalac was "to be filed in the court as of the day the same was received by the clerk" namely, as of July 3, 1954. The receipt, not the sending, constitutes the filing. Now then, if in the eyes of the law the decisions were filed on July 3, they could not have been promulgated on July 1. Promulgation takes place after the clerk receives the decision and enters it in the criminal docket. (*Cea vs. Cinco*, 50 Off. Gaz., 5254). It must be remembered that in courts of first instance, the promulgation of judgments in criminal proceedings does not necessarily coincide with the day they were delivered by the judge to the clerk for promulgation. The accused or his attorney must be notified first; and then

"SE. 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 court." (Rule 116).

Accordingly, the principles, of construction would be unduly strained, were we to hold that Judge Manalac's decisions have been promulgated on July 1, upon being mailed to the clerk of court.

The doctrine in *Barredo vs. Commission on Elections*, invoked by appellant, is not persuasive, because it refers to promulgation of decisions of this court, wherein Rule 116 above-quoted has no application.

We have then that, legally, the decisions of Judge Manalac were promulgated on July 3, 1954.[3] Wherefore, because he had left the Bench before that date, his decisions have no binding effect.[4]

The possibility has been explored of upholding Judge Manalac's authority by adopting the theory that, as he had applied for retirement "effective September 1954", he could not have been replaced before that date, therefore Judge Torres had been appointed and qualified prematurely, and he was still judge, at least on July 3, 1954. Such line of approach would expedite judicial business except that it would imply illegality of Judge Torres' appointment and qualification, which the prosecution does not suggest, perhaps because Judge Manalac did not object to his earlier retirement, having urged approval of his resignation "as soon as convenient". Here is part of his letter (Annex C) to the Secretary of Justice:

"After a survey of the opportunities open to a private endeavor in Manila even under limited circumstances, I beg to reiterate my request for optional retirement under the provisions of Republic Act No. 660 and to insist that it be acted upon favorably as soon as convenient, so that my said retirement may take effect immediately after the exhaustion of all the leave I am at present enjoying and which will expire on September 14, 1954." * *

This leads to another objection to the theory of premature qualification: It was not debated in the lower court; and defendants might claim that if it had been so debated they could have proved Judge Manalac's consent to his earlier release. Anyway, the presumption is against illegality of the appointment.

In consequence of the foregoing considerations, the appellate court's ruling on the validity of the decisions must be, as it is hereby affirmed.

These cases will be returned to the Court of First Instance of Sorsogon for adjudication. No new trial shall be held; the judge presiding that court will decide on the strength of the evidence already introduced. So ordered.

Paras, C. J., Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1]Luis Luna vs. Rodriguez, 37 Phil. 186; Garchitorena vs. Crescini, 37 Phil. 675; Rodriguez vs. Commission, 45 Off, Gaz. 4457.

[2] See supra.

[3] The Court of Appeals said so. They must have been read to defendants and/or their attorneys, on said date.

[4] See cases under footnote 1.

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