

GREGORIO SOLIS, PETITIONER, VS. THE COURT OF APPEALS AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. Nos. L-29777-83. March 26, 1971

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition of Gregorio Solis for review on certiorari of the decision and orders rendered by respondent Court of Appeals, in its Cases CA-G.R. Nos. 14811-R to 14817-R entitled, "People of the Philippines vs. Gregorio Solis, et al.," affirming his conviction by former judge Jose N. Leuterio of the Court of First Instance of Camarines Sur.

Petitioner Gregorio Solis and several other co-accused were in-dicted, tried and found guilty of malversation of public funds in Criminal Cases Nos. 2510-2516 of the Court of First Instance of Camarines Sur. The judgment was penned and signed on 19 June 1954 by the Honorable Jose N. Leuterio, then Judge-at-Large assigned to Camarines Sur.

All the accused were summoned to appear for promulgation of the judgment on 19 June 1954, but no court proceeding was had on that day, as the President of the Philippines had declared it a special public holiday.

On 20 June 1954, Republic Act No. 1186, which abolished all existing positions of Judges-at-Large, took effect without Executive approval.

On 21 June 1954, the defendants appeared before the court; this time, the court was presided over by Honorable Perfecto R. Palacio, judge of another sala of the court. Judge Palacio promulgated the judgment of judge Leuterio, against the objections of herein petitioner.

Petitioner Solis appealed the judgment to the Court of Appeals and the cases were docketed therein as CA-G. R. Nos. 14811-R to 14817-R. In said appellate court, he raised in issue and attacked the validity of the promulgation of the judgment of the lower court, for having been made by another judge after the incumbency of the judge who rendered it had ceased.

The Solicitor-General's brief, in the Court of Appeals, agreed that the promulgation was illegal and void.

Nevertheless, on 20 November 1965, the Court of Appeals promulgated its decision, modifying petitioner's sentence in CA-G. R. No. 14811-R, acquitting him in CA-G.R. No. 14812-R and CA-G. R. No. 14813-R, and affirming the lower court's decision in CA-G. R. Nos. 14814-R to 14817-R; but petitioner's new counsel were not served a copy of the appellate court's decision. What they received was a notification, almost three (3) years later, that is, on 25 August 1968, from the bondsman of petitioner, informing them that the Court of First Instance of Camarines Sur had issued an order for petitioner Solis to appear therein for execution of judgment in the criminal cases.

It was only on 5 September 1968 that petitioner's counsel received a copy of the Court of Appeals decision.

On 29 August 1968, petitioner filed an urgent motion with the Court of Appeals asking it to restrain the lower

court from executing the de-cision, to order the recall of the records, and to cause the service of the decision of the Court of Appeals on petitioner's counsel. Acting thereon, the Court of Appeals directed its Deputy Clerk of Court to send a telegram to the lower court to suspend execution of sentence, required its Judgment Section to immediately serve a copy of the de-cision, and to explain within ten (10) days why no copy had been served on petitioner's counsel; but the Court of Appeals did not order the recall of the records.

On 21 September, the Court of Appeals denied petitioner's motion for the recall of the records but granted him a period of twenty (20) days to file his motion for reconsideration of the decision. Thereupon, notwithstanding the absence of the records in the Court of Appeals, pe-titioner submitted his motion for reconsideration. It was denied on 28 October 1968.

Hence, on 11 November 1968, appellant Solis interposed in this Court the present petition for review, squarely presenting the issue of the invalidity of the decision of the Court of First Instance and of the legality of the actuations of the Court of Appeals in remanding the records even before service of copy of its decision on petitioner's counsel and in arbitrarily refusing to have the records recalled while the case was still pending before it.

The present case of certiorari was considered submitted for de-cision without respondents' brief,[1] as the Office of the Solicitor General manifested that "the only consistent stand that the People can adopt is to agree with petitioner's posture." [2]

Upon the facts heretofore stated, the judgment of trial judge Jose N. Leuterio was promulgated (on 21 June 1954) one (1) day after his posi-tion as Judge-at-Large was abolished (on 20 June 1954) by Republic Act 1186. The judgment is, therefore, void, for it is now firmly established in our jurisprudence that a decision is void if promulgated after the judge who rendered it had permanently ceased to be a judge of the court where he sat in judgment. Thus, a judgment is a nullity if it had been promulgated after the judge had actually vacated the office and accepted another office[3]; or when the term of office of the judge has ended[4]; or when he has left the Bench[5] or after the judge had vacated his post in view of the abolition of his position as Judge-at-Large under Republic Act 1186;[6]; or after the cessation or termination of his incumbency as such judge. Section 6 of Rule 116 of the old Rules of Court, allowing the dispensing with the presence of the judge in the reading of a sentence, applies only to the physical absence of the judge, being construed to mean that the decision of the judge may be promulgated even without his presence, as long as he is still a judge of that court.[7] A sentence has been set aside where the judge who presided in the Court of First Instance of Nueva Ecija had been extended an ad interim appointment to the Court of First Instance of Manila, to which position he qualified before the judgment was filed with the Clerk of the former court.[8] Nullity likewise attached to a dismissal order when the temporary assignment of the judge that rendered it had been terminated before the order was issued, because a new judge for the same court qualified.[9]

The main ground upon which the Court of Appeals held the contested judgment of the Court of First Instance to be valid is that "since the approval of Republic Act 1186, effective 20 June 1954, was not yet publicly or generally known on 21 June 1954, judge Leuterio should be considered as a judge de facto of said court and the promulgation of his appealed decision on said date is valid and legally effective".[10] This is a misapplication of the doctrine laid down in the very case cited by the Court of Appeals. In *Lino Luna vs. Rodriguez*, supra, a judge de facto was defined as one who has the reputation of being the officer he assumes to be and yet is not a good officer in point of law because there exists some defect in his appointment or his right to exercise judicial functions at the particular time (37 Phil. on page 192); but it is "essential to the validity of the acts of a de facto judge, that he is actually acting under some color of right" (case cit. on page 190). In the present case, Judge Leuterio did not actually act or perform or exercise the duties of judge when his decision was promulgated, as he

had ceased to be one, and the decision was promulgated under another presiding judge. The other cases cited by the Court of Appeals (Regala v. Judge of the Court of First Instance of Bataan, 77 Phil. 684; U. S. v. Abalos, 1 Phil. 73) were similarly misapplied, as said decisions refer to the acts of a de facto judge, not to a case where he did not act.

It follows that the Court of Appeals' decision can not stand, there being no validly promulgated judgment of the trial court from which an appeal could be taken. This conclusion renders it unnecessary to pass upon the alleged error of the Court of Appeals in prematurely remanding the records to the court of origin and later refusing to recall the same.

FOR THE FOREGOING REASONS, the decision of the respondent Court of Appeals and the decision of the Court of First Instance of Camarines Sur are hereby voided and set aside. The records of the criminal cases are hereby ordered returned to the Court of First Instance of Camarines Sur, for new adjudication by the judge presiding therein, in accordance with the evidence already introduced, and for further proceeding conformable to law. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Resolution, 12 November 1970, Rollo, page 206.

[2] Manifestation, 9 February 1971, Rollo, pages 209-210.

[3] Lino Luna v. Rodriguez, 37 Phil. 186.

[4] Garchitorena v. Crescini, 37 Phil. 675.

[5] People v. CA & Domalaon, 99 Phil. 786.

[6] People v. Bonifacio So, 101 Phil. 1257, unrep.

[7] Ong Siu v. Paredes, L-21638, 26 July 1966, 17 SCRA 661.

[8] People v. Soria, L-25175, 1 March 1968, 22 SCRA 948.

[9] Siazon v. CFI of Cotabato, L-29354, 27 January 1969, 26 SCRA 664.

[10] Decision of the Court of Appeals, Annex "B" to Petition, page 56, Rollo, page 100.

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