

**NAPOLEON LANDICHO, PETITIONER, VS. BEINVENIDO A. TAN,
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, PASAY CITY
BRANCH, RESPONDENT.**

G.R. No. L-4117. November 16, 1950

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition to compel respondent to admit the appeal interposed by petitioner and to enjoin the former from executing the judgment he rendered against the latter on January 9, 1950.

Napoleon Landicho was charged in the Court of First Instance of Rizal with the crime of estafa. After trial, the respondent Judge, Hon. Bienvenido A. Tan, then presiding the court, then and there found the defendant guilty and sentenced him to one (1) year, eight (8) months and one (1) day of imprisonment, to indemnify the offended party in the amount of P435 and to pay the costs, without prejudice to writing a more detailed decision, thereafter, counsel for the defendant manifested in open court that he was appealing from the decision, and requested the Court to fix the appeal bond for his temporary release. The respondent judge fixed the bond at P5,000, which was reduced to P3,000 upon request of counsel. The bond having been perfected, the defendant was released on January 10, 1950.

On January 24, 1950, the fifteenth day from the promulgation of the oral judgment, defense counsel caused a written notice of appeal to be filed with the Clerk of Court, through one Jovencio Alfaro, When Alfaro reached the office of the clerk of court at 3:30 o'clock in the afternoon, he found the office closed, and so he went to the Office of the City Attorney, which is just adjacent, to serve the copy corresponding to this official, entrusting the original to a clerk who gave him (Alfaro) the assurance that it would be filed with the clerk of court the next morning. In the meantime, copy of the written decision was sent to the defendant by registered mail and was received by the latter on January 26, 1950. On August 25, 1950, the defendant was notified through his bondsman to appear In court on September 9, 1950 for the promulgation of the decision, and it was then that he learned for the first time that his written notice of appeal was never filed with the Clerk of Court. Believing that the steps he had taken are sufficient to perfect his appeal, defendant filed this petition praying that he be granted the relief already pointed out above.

The only question to be determined in this case is whether the petitioner has perfected his appeal as required by the Rules of Court, or whether he has already lost his right to appeal as claimed by respondent.

It appears that right after trial on January 9, 1950, the respondent judge passed judgment upon the defendant in open court without prejudice to writing a detailed decision. This he did and a copy of the decision was served upon the defendant. This copy was received on January 26, 1950. On January 24, 1950, the fifteenth day from the promulgation of the oral judgment, defendant caused a written notice of appeal to be filed with the clerk of court, which he failed to do, because at about 3:30 o'clock in the afternoon, his office was already closed. Although this was denied by the clerk of court, however, we are inclined to believe the statement of Jovencio Alfaro, the

messenger, because of the undisputed fact that he served the copy for the City Attorney at 3:55 in the afternoon of the same day, whose office is just adjacent to that of the clerk of court. If Alfaro was able to serve that copy on time, and he went there with the only purpose of filing the notice of appeal, there is no valid reason why he could not file on time the notice of appeal with the clerk of court. Considering that the Inability of the defendant to file the notice of appeal cannot be attributed to his fault, and the fact that right after the promulgation of the oral judgment he manifested in open court, through his counsel, his desire to appeal from the decision, and in fact he put up the necessary bond on appeal for his provisional liberty, we hold that, in the light of the concurring circumstances, the defendant should be considered as having perfected his appeal within the reglementary period. (Section 6, Rule 118, of the Rules of Court). The attention of the Clerk of Court of Rizal should be called to the necessity of observing office hours more scrupulously in order that the rights of the litigants may not be prejudiced and the incident that has given rise to this petition may be avoided.

We have noticed that a copy of the written decision of the respondent judge was sent to the defendant by registered mail and was received by him on January 26, 1950, and subsequently, or on February 7, 1950, defendant filed a motion for a new trial which was denied by the court for lack of jurisdiction. Undoubtedly this step was taken by the defendant on the belief that the period of fifteen days within which he may appeal from the decision should be counted from the date he received copy of the decision. We believe it to be opportune to clarify this matter so as to avoid misinterpretation of the rule regarding the manner of how an appeal should be taken.

According to section 6, rule 118, of the Rules of Court, an appeal must be taken within fifteen days from the rendition of the judgment or order appealed from. The words "rendition of the judgment" have given rise to some misunderstanding which should be clarified. Do those words mean that the period of fifteen days should be computed from the date the decision is signed by the judge, or from the date copy of the decision is served on the defendant, or from the date the decision is announced or promulgated? The words under consideration have a legal meaning of their own. These words appear in many remedial statutes of the states of America and they have been interpreted in a number of cases. Thus, in one case, it was held that 'rendition' of judgment means the annunciation or declaring of the decision of the court, and not the entry of the judgment on the record." (The Washington, C.C.A.N.Y., 16 F. 2d 206, 208.) In another case, it was held that "rendering judgment, as used in a statute requiring a writ of error to be brought within two years after rendering judgment, in its more obvious and national import means the announcing or declaring of the decision of the court, indicated by the rule for judgment." (Fleet vs. Youngs, N.Y. 11 Wend, 522, 527, 528.) And, still in another case, it was held that "under Civil Code 1913, par. 1233, providing that appeal may be taken from a final judgment of the superior court in the civil action within 'six months after rendition of such judgment' means by the term 'rendering judgment' the court's announcement of its final determination of the rights of the parties, and not formal written judgment signed by the judge and filed." (Moulton vs. Smith, 203 P. 562, 563, 23 Ariz. 319). (See also authorities on the matter cited in "Words and Phrases", Permanent Edition, Vol. 36, pp. 872-874). These authorities have persuasive force in this jurisdiction because of the origin of our remedial statute.

It may, therefore, be stated that one who desires to appeal in a criminal case must file a notice to that effect within fifteen days from the date the decision is announced or promulgated to the defendant. And this can be done by the court either by announcing the judgment in open court as was done in this case, or by promulgating the Judgment in the manner set forth in section 6, Rule 116 of the Rules of Court. This we have impliedly indicated in *Agustin Dayoan vs. Manuel Blanco*, 77 Phil., 1085. The above rule does not require that a copy of the decision be served on the parties in criminal cases. This is only required in cases decided by the Court of Appeals and the Supreme Court. (Sec. 7, Rule 53, id).

Wherefore, petition is hereby granted. Respondent is required to give course to the appeal interposed by petitioner.

Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, and Jugo, JJ., concur.

Reyes, J., in the result.

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