

DULCISIMO TONGCO JANDAYAN, PETITIONER, VS. THE HONORABLE JUDGE FERNANDO S. RUIZ, AS EXECUTIVE JUDGE, COURT OF FIRST INSTANCE OF BOHOL, THE CHIEF OF POLICE, ANDA, BOHOL AND CANDE...*G.R. No. L-37471. January 28, 1980*

Ponente: FERNANDO, C.J.

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A resort to a habeas corpus proceeding would not have been necessary had there been a little more attention paid to the authoritative doctrine. Petitioner, Dulcisimo Tongco Jandayan, had to be confined in the Bohol provincial jail on July 16, 1973 when respondent Judge Fernando S. Ruiz of the Court of First Instance of Bohol[1] promulgated the sentence in accordance with a decision of the then Judge Paulino Marquez, dated June 22, 1973, notwithstanding the undeniable fact that such judge had retired by reason of age as far back as June 27, 1973. This, then, is essentially a proper case for the invocation of the great writ of liberty, although counsel for petitioner did likewise label his pleading as one for certiorari and mandamus. It is regrettable that respondent Judge failed to yield deference to the authoritative controlling doctrine as to the competence of a judge to continue discharging the functions of his office after retirement. It is commendable of Solicitor General Estelito P. Mendoza[2] then, that when required to comment, he made clear that he was in agreement with petitioner and that the promulgation of the sentence made on July 16, 1973 by respondent Judge on the basis of what purportedly was a decision of the retired Judge Paulino Marquez should be set aside and that petitioner should be released from confinement without prejudice to the proceedings being continued according to law. That, in the opinion of the Court, is likewise the proper disposition of this case.

The facts, as succinctly set forth in the comment of the Solicitor General follows: "On May 10, 1973 petitioner was convicted of Serious Physical Injuries through Reckless Imprudence by the Municipal Court of Loay, Bohol and sentenced to suffer three (3) months of Arresto Mayor. On appeal, the case (Crim. Case No. 706) was raffled to the CFI of Bohol, Branch I, presided over by the Honorable Paulino Marquez. On June 26, 1973, an order was served on petitioner that the promulgation of the decision would take place on July 6, 1973. On June 27, 1973, Judge Paulino Marquez retired from service. * * * Upon motion of counsel for petitioner, the promulgation of decision was postponed from July 6 to July 12. Finally on July 16, 1973, the decision dated June 22, 1973 as prepared and signed by Judge Marquez was promulgated by respondent Judge." [3]

What other conclusion, then, could such facts lead to except the following, as set forth in the above comment of the Solicitor General: "In the light of * * * settled rulings, the promulgation made by respondent judge on July 16, 1973 of the decision dated June 22, 1973, signed and prepared by Judge Marquez who retired on June 27, 1973 is submitted to be null and void." [4] We are in agreement, as earlier noted, and we grant the petition.

There are areas in the juristic sphere where the dividing line is obscure, but certainly not this one, except, it would seem, for respondent Judge. There is no real need to plot it on the legal map for those whose knowledge of the

terrain of the law rises above the superficial. As so tersely put by the then Justice, later Chief Justice, Cesar Bengzon: "We have then that, legally, the decisions of Judge Mañalac were promulgated on July 3, 1954. Wherefore, because he had left the Bench before that date, his decisions have no binding effect." [5] Such a doctrine goes back to a 1917 decision, *Lino Luna v. Rodriguez*. [6] It did cite in support thereof several leading American Supreme Court decisions. [7] A recent case, *Jimenez v. Republic*, [8] applies with even more pertinence. The antecedent facts, as set forth in the opinion of Justice Angeles, follow: "Eduardo Jimenez, herein petitioner, together with others, was charged with homicide in an information, dated May 13, 1960, before the Court of First Instance of Rizal, criminal case No. 9531, of said court. The case was heard and tried before Judge Eulogio Mencias, presiding one of the branches of the court. Admittedly, the decision prepared and signed by Judge Mencias was delivered to the clerk of court on January 16, 1965. On the same date, the clerk of court issued and served notice on the petitioner to appear in court on January 21, 1965 for the promulgation of the sentence. In view that January 21, was declared by the President a special holiday, the promulgation of the decision could not be carried out on that day. On January 21, 1965, Judge Eulogio Mencias had reached the age of 70 and was retired on that day from the bench. Respondent Judge Pedro Navarro was immediately designated to take the place of Judge Mencias. The former judge ordered that the sentence be promulgated on January 29, 1965, but for some reason, it was postponed to March 1, 1965." [9] Petitioner Jimenez filed a motion to set aside the decision as well as its promulgation on the ground of Judge Mencias having retired. Respondent Judge, however, denied the motion, necessitating the filing of a petition for certiorari and prohibition. The concluding paragraph of the opinion reads: "We hold that the decision rendered by the retired Judge Eulogio Mencias cannot be validly promulgated and acquire a binding effect for the same has become null and void under the circumstances." [10]

The latest case in point is *Vera v. People*, [11] where it was noted by this Court that a decision of a judge promulgated after his retirement could have been set aside on the authority of the above two cases of *People v. Court of Appeals* [12] and *Jimenez v. Republic*, [13] except for their non-applicability in view of the failure to raise such an objection in the lower court as well as in the Court of Appeals. There was no thought, however, of deviating from the principle that a judge who had retired had no legal authority to promulgate a decision. [14]

That is all then that this case presents, and it is quite obvious that there was no justification, not even a plausible explanation, for the unwarranted action taken by respondent Judge in the face of such compelling juristic norm.

This Court did not feel the need for deciding the petition earlier considering the comment filed by the respondent Chief of Police of Anda, Bohol, in the light of its last two paragraphs. Thus: "That as a municipal prisoner, petitioner Dulcissimo Tongco Jandayan had served the rest of his sentence in the municipal jail of Anda, Bohol from August 14, 1973 to October 5, 1973 when the undersigned respondent in his capacity as and Chief of Police of Anda, Bohol released prisoner Dulcissimo Tongco Jandayan for having fully served out his sentence; and that the undersigned only knew of petitioner's present petition and received the different copies of the pleadings and resolutions from the Honorable Supreme Court [only after] the undersigned has already released petitioner Dulcissimo Tongco Jandayan who had already fully served his sentence as said above." [15] Hence the habeas corpus aspect was rendered moot and academic. Nonetheless, this opinion is handed down to remove any doubt that this Court adheres to the well-settled doctrine on the matter at issue.

WHEREFORE, this petition is dismissed for being moot and academic, petitioner having been released in the meanwhile. No costs.

Barredo, Antonio, Aquino, Concepcion, Jr., and Abad Santos, JJ., concur.

[1] The other respondents are the Chief of Police of Anda, Bohol, and Candelaria Araña, the complaining witness

in the criminal case, out of which this proceeding arose.

[2] He was assisted by Assistant Solicitor General Jaime M. Lantin and Solicitor Reynato S. Puno.

[3] Comment, 1-2.

[4] Ibid, 5.

[5] People v. Court of Appeals, 99 Phil. 787, 790 (1956).

[6] 37 Phil. 186.

[7] Rose v. Himely, 4 Cranch 241 (1808); Hickey v. Stewart, 3 Howard 750 (1845); United States v. Ferreira, 13 Howard 40 (1851); Ex parte Zellner, 9 Wallace 244 (1869); Pennoyer v. Neff, 95 US 714 (1877); In re Sanborn, 148 US 222 (1892); Scott v. McNeal, 154 US 34 (1893).

[8] L-24529, February 17, 1968, 22 SCRA 622.

[9] Ibid, 622-623.

[10] Ibid, 627.

[11] L-31218, February 18, 1970, 31 SCRA 711. The opinion relied mainly on Ong Siu v. Paredes, L-21638, July 26, 1966, 17 SCRA 661.

[12] 99 Phil. 787 (1956).

[13] 22 SCRA 622.

[14] It was explained in the opinion of the Court that having failed to raise such a question in the lower court, in the Court of Appeals, and even in this Court in the original petition for certiorari, petitioners, on the authority of Tijam v. Sibonghanoy, L-21450, April 15, 1968, 23 SCRA 29, were precluded from relying on what otherwise would be a controlling doctrine.

[15] Comment dated February 6, 1974.

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