

ONG SIU, ET AL., PETITIONERS AND APPELLANTS, VS. HON. ANTONIO P. PAREDES, IN HIS CAPACITY AS JUDGE OF BRANCH II OF THE MUNICIPAL COURT OF MANILA, CHARLIE FUNG AND BENJAMIN LU, R...

G.R. No. L-21638. July 26, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal from the decision of the Court of First Instance of Manila (in Civ. Case No. 53280) dismissing the petition for certiorari and prohibition filed by Ong Siu, Sy So Ty, Francisco Ong, and Lucio Ong, to restrain respondent Judge Antonio P. Paredes of the Municipal Court of Manila from retrying Criminal Cases Nos. F-038479 and F-038480 of the latter court.

The undisputed facts of this case are as follows:

In August, 1961, petitioners-appellants Ong Siu and Sy So Ty were charged in the Municipal Court of Manila with slight physical injuries (Crim. Case No. F-038479), while petitioners-appellants Francisco Ong and Lucio Ong were charged with light threats (Crim. Case No. F-038480). On the other hand, respondents-appellees Charlie Fung and Benjamin Lu were accused of the crime of serious physical injuries and slight physical injuries in Criminal Cases Nos. F-038477 and F-038478 of the same Court.

These four cases were jointly tried by Judge Andres Sta. Maria of Branch II of the Municipal Court, and a single decision was rendered under date of July 7, 1962. On July 9, 1962, and before the decision could be promulgated, Judge Sta. Maria was appointed to and assumed the position of Judge of the Court of First Instance of Mindoro. Judge Milagros German succeeded him as Municipal Judge of Manila. Charlie Fung and Benjamin Lu, the accused in Criminal Cases Nos. F-038477 and F-038478 petitioned the court that the unpromulgated decision of Judge Sta. Maria be declared null and void. In her order of August 14, 1962, Judge German granted the petition and the unpromulgated decision of Judge Sta. Maria was declared a nullity, as if no trial was had before. But before a retrial of the cases could be held, Judge German resigned from the position. Solicitor Lauro C. Maiquez of the Solicitor General's Office, was temporarily assigned to preside over Branch II of the Municipal Court.

Upon petition of herein appellants, the accused in Criminal Cases Nos. F-038479 and F-038480, Acting Judge Maiquez in his order of August 22, 1962, directed the promulgation of the decision of Judge Sta. Maria, for August 29, 1962. However, on August 23, 1962, respondent Judge Antonio P. Paredes was appointed to the vacant position of Municipal Judge. In his order of even date, Judge Paredes also scheduled the promulgation of the decision of Judge Sta. Maria. This was done with respect to appellants, the accused in Criminal Cases Nos. F-038479 and F-038480, but not with regard to Charlie Fung and Benjamin Lu who did not appear during the promulgation of the judgment. Defendants Fung and Lu, who were ordered arrested for their non-appearance, thereupon instituted certiorari and prohibition proceeding in the Court of First Instance of Manila to restrain the promulgation of the decision (Civ. Case No. 51468).

In its decision of November 5, 1962, the Court of First Instance of Manila (Judge Jose N. Leuterio presiding) granted the writ, on the ground that since Judge Sta. Maria was no longer a judge of the Municipal Court, the decision written by him could no longer be validly promulgated. Upon the decision of Judge Leuterio becoming final, Judge Antonio Paredes of the Municipal Court ordered a retrial of the four criminal cases (Nos. F-038477, F-038478, F-038479, and F-038480), which was set for March 15, 1963. Herein appellants now in turn went to the Court of First Instance of Manila and applied for a writ to restrain the Municipal Judge from retrying the four cases. It was alleged that, as the decision acquitting them had already been promulgated with respect to them, a retrial of the cases would subject them to double jeopardy for the same offenses.

On June 20, 1963, the Court of First Instance of Manila (Judge Arsenio Santos, presiding) dismissed the petition, for the reason that the decision of Judge Sta. Maria being invalid because its promulgation was effected when the judge had already ceased to be a municipal judge, the same cannot place the defendants twice in jeopardy for the same offense. This is the decision that is the subject of the present appeal.

The appellants in effect contend that since the decision of Judge Sta. Maria was signed by him while he was still the judge of the Municipal Court of Manila where they were tried, its promulgation, although made in his absence, was valid. In support of this contention, they cite Section 6 of Rule 116 (now Rule 120) of the Rules of Court, which reads:

"SEC. 6. Promulgation of judgment.—The judgment is promulgated by reading the judgment or sentence in the presence of the defendant and any judge of the court in which it was rendered. The defendant must be personally present if the conviction is for a grave offense; if for a 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 or city, his presence is not necessary and the judgment may be promulgated, or read to the defendant by the clerk of court. (*Italics supplied*)

* * * * *

Pursuant to the above-quoted provisions, the petitioners-appellants argue, the decision of Judge Sta. Maria was promulgated in the presence of Judge Paredes, another judge of the Municipal Court. They claim that the absence of Judge Sta. Maria during the promulgation does not render the decision he penned prior to his appointment to the position of judge of the Court of First Instance null and void. Thus, it is alleged, the promulgation thereof, upon order of Judge Paredes, was valid and could be the basis of the defense of double jeopardy.

The above-quoted Section 6 of Rule 116 (now Rule 120) of the Rules of Court, allowing the dispensability of the presence of the judge in the reading of a sentence refers only to the physical absence of the judge, and not to his inability to be present during the promulgation of the judgment because of the cessation of or his removal from office. This is clear from the use of the disjunctive clause absent or outside of the province or city" in the provision. In other words, the decision of the judge may be promulgated even without his presence, as long as he is still a judge of that court.[1]

In the present case, what we have is not merely physical absence of the judge who penned the decision, but the cessation or termination of his incumbency as such judge. In the case of *People vs. Bonifacio So y Ortega*,[2] this Court ruled:

"It is well-settled that, to be binding a judgment must be duly signed, and promulgated during the incumbency of the judge who signed it.

"In *Lino Luna vs. Rodriguez*, supra, Judge Barretto signed his decision on January 14; two days later (January 16), he qualified as Secretary of Finance thereby retiring from the judiciary; and on January 17 his decision was promulgated. This Court held such decision to be void, because at the time of the promulgation the judge

who prepared it was no longer a judicial officer.

"In criminal proceedings the Rules are more explicit. They require the judgment to be 'promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it' (Rule 116 sec. 6); and although it is true that it may be read by the clerk 'when the judge is absent or outside the province', it is implied that it may be read, provided he is still the judge therein.

"It is contended that herein decision was promulgated, to all intents and purposes, when it was delivered to the clerk for promulgation—June 18. That contention was however, indirectly overruled in *People vs. Court of Appeals*, a case similar to this wherein we regarded compliance with sec. 6 Rule 116 as essential to promulgation, and held that as the judgment was promulgated after the judge who penned it had ceased to be judge, it was not legally binding.

"It is true that in *Cea vs. Cinco* (50 Off. Gaz. 5254) this section was interpreted to mean that where judgment is one of acquittal, 'reading in the presence of the defendant' may be substituted by giving a copy of the decision to him. We declared that such act—delivery of copy—amounted to promulgation. In the case before us, notice that the decision would be read (on June 30) was sent out, while Judge Encarnacion was still a judge. Yet no copy of such decision was given the accused, and he was not informed thereof during said judge's incumbency. No judgment was therefore validly entered. (Cf. *Landicho vs. Tan*, 37 Phil. 601; 48 Off. Gaz. 1007)."

Here, in the present Case, when the notice for the promulgation of the decision was sent out, the judge who signed the decision was no longer the judge of the court, and no copy of the judgment of acquittal was delivered to the appellants. With more reason, therefore, there is no judgment validly entered in this case.

It may also be stated that pursuant to Section 9, Rule 117 of the Rules of Court, for the defense of double jeopardy to be invoked, there must be either previous acquittal, or conviction, or the case against the accused was dismissed or otherwise terminated without his express consent or that there is another pending charge against him involving the same offense, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information. In the case at bar, while it is true that there was a valid information, the accused had been arraigned, and the cases were heard by a competent court, there is, however, no valid judgment acquitting or convicting the accused or terminating the cases without their express consent. And neither is there any other criminal charge pending against the accused. In the rehearing being ordered by the respondent judge, no new information is filed. This hearing is made necessary only because of the nullity of the judgment rendered by the judge who heard the cases and by the fact that the trial court is not a court of record. The rehearing thus ordered actually is nothing more than a continuation of the trial of the charges against the accused for the Purpose of enabling the respondent Judge to properly render the decision in the cases. It is similar to a proceeding for the reconstitution of lost evidence. As this Court had said in the case of *United States vs. Laguna* (17 Phil. 532, 540) quoted with approval in the case of *People vs. Dagatan*:^[3]

In the present case, there might have been a delay that has worked hardship or disadvantage on the accused but the same cannot be attributed solely to the Government, since reconstitution is as much the duty of the prosecution as of the defense (*Gunabe vs. Director of Prisons*, 44 Off. Gaz., 1244). * * *.

"* * *. Every person who finds himself in a court of justice, in whatever capacity, must hold himself while there subject to those unforeseen events which suddenly and unavoidably intervene and change the whole aspect of things. The sickness or death of the judge, or of counsel for the prosecution, the destruction by fire or flood of the court-house and all the records and evidence of the pending trial—any of these things are sufficient to interrupt the course of the proceedings and to require that they be begun anew. Such events weigh equally against all. As no one can be charged with their occurrence, so no one can legally lose or profit by their results. While the law protects persons charge with crime from unjust and arbitrary acts of man, there is no shield

which may be interposed against the tyranny of unforeseen events. Until the proceedings which, under the system which the law provides, constitute his trial are terminated, the happening of an unforeseen event which renders the continuance of his trial for the time impossible, as it can not be used for his conviction, can not be urged for his absolution."

Wherefore, finding no error in the decision appealed from, the same is hereby affirmed, with costs against the appellants. So ordered.

Concepción, C. J., Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar and Sanches JJ., concur.

Judgment affirmed.

[1] Luna vs. Rodriguez, 37 Phil. 186; Garchitorena vs. Crescini, 37 Phil., 675; Barredo vs. Commission on Elections, 84 Phil. 368; 45 Off. Gaz., 4457; People vs. Court of Appeals, 99 Phil. 706; People vs. So, G.R. No. L-8732, July 30, 1957.

[2] G. R. No. L-8732, supra.

[3] G. R. No. L-4396 ,Oct. 30, 1951.

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