

MEYNARDO JAMILANO Y QUIZON, PETITIONER, VS. HON. SERAFIN B. CUEVAS, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.

G.R. No. L-33654. July 23, 1987

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Meynardo Jamilano y Quizon was charged in the Court of First Instance of Manila, Branch IV, presided over by respondent judge, with the crime of parricide for having stabbed his father to death in their house in Tondo, Manila on October 13, 1968. Upon arraignment which took place on October 18, 1968, petitioner (then accused) pleaded not guilty and was thereafter accordingly tried and finally convicted in a decision promulgated on October 5, 1970, a copy of which was served on and duly received by his counsel on October 13, 1970. On October 28, 1970 or 23 days after promulgation but only 15 days from service of the aforesaid decision upon counsel, petitioner filed a Motion for New Trial, alleging that "errors of law and irregularities have been committed during the trial prejudicial to the substantial rights of the accused." The said errors or irregularities consist of the alleged failure of respondent judge to consider the defense of insanity in favor of the petitioner. On November 13, 1970, petitioner filed a Supplemental Motion wherein he emphasized the alleged irregularities attendant to the promulgation of the decision. He claims that the decision having been promulgated to him in the absence of his counsel, said promulgation is irregular.

On November 18, 1970, respondent judge denied the Motion for New Trial. A copy of this order of denial was received by petitioner's counsel on November 30, 1970. The following day, December 1, 1970, petitioner filed a motion for reconsideration reiterating the same grounds in the Motion for New Trial — failure of respondent judge to consider insanity in favor of the accused and alleged irregularities in the promulgation of the decision. Respondent judge denied the motion for reconsideration and a copy of this order of denial was served on petitioner's counsel on December 16, 1970. On the same day, December 16, 1970, petitioner appealed by filing a notice of appeal, which appeal was dismissed by respondent Judge, for having been filed out of time.

Hence, petitioner filed the present petition for mandamus seeking to compel respondent court to approve and give due course to his appeal.

The issues raised in this case are —

1. whether or not the promulgation of the judgment on October 5, 1970 in the absence of petitioner's counsel was valid; and
2. whether or not the notice of appeal on December 16, 1970, was seasonably interposed.

On the first issue raised, We rule that the promulgation was valid and legal.

Rule 120, Section 6 of the Rules of Court provides:

"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)

Insofar as the case of petitioner is concerned, a valid promulgation would be a reading of the sentence or judgment in the presence of the defendant (accused) and any Judge of the Court of First Instance of Manila. The aforecited provision does not require the presence of counsel for the validity of the promulgation.

This Court in the early case of *U.S. v. Pantaleon Gimeno* (3 Phil. 233-234) categorically held that the absence of defendant's counsel at the reading of the sentence would not affect the validity of the promulgation.

"No substantial right of the defendant on the merits was prejudiced by the failure to state these details in the complaint. Even if the complaint was defective in this respect we cannot reverse the judgment. The same thing can be said of the claim that the defendant's lawyer was not present when the sentence was pronounced." (Italics supplied) Anent the second issue raised, Rule 122, Section 6 of the Rules of Court provides:

"When appeal to be taken — An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney."

In this case, since the decision was validly promulgated on October 5, 1970, when petitioner's counsel filed a Motion for New Trial on October 28, 1970, the period for perfecting the appeal had already expired, the last day being October 20, 1970, the 15th day from promulgation. Even if we are to count the period of fifteen days to appeal from the date when petitioner's counsel received a copy of the decision (October 13, 1970) the last day of the fifteen-day period was October 28, 1970. His notice of appeal filed on December 16, 1970 was out of time. The filing of the Motion for New Trial on October 28, 1970, suspended the running of the appeal period. This left petitioner's counsel only one (1) day to perfect appeal in the event his Motion for New Trial was denied. On November 30, 1970, petitioner's counsel received the order denying his Motion for New Trial. Therefore, he had only up to December 1, 1970 within which to perfect his appeal. Needless to state, the motion for reconsideration filed on December 1, 1970 being merely pro-forma, did not suspend the running of the period of appeal.

Significantly, the pleadings filed after the promulgation of the judgment seem to indicate merely an intent to delay the execution of the judgment in this case. The Motion for New Trial was filed on the last day (assuming that counsel for petitioner honestly believed that the running of the period for the appeal started from his receipt of the copy of the decision); and secondly, upon receipt of the order denying the Motion for New Trial, he could have immediately filed a Notice of Appeal had he so desired.

The promulgation of the decision being valid and the assailed order dismissing the appeal being in conformity with the rules and the jurisprudence on the matter, petitioner is not entitled to a writ of mandamus to compel the respondent judge to give due course to his appeal.

On certain occasions, this Court has allowed the filing of an appeal outside the period prescribed by law in the interest of justice. But emphatic in these said decisions are strong considerations of substantial justice. Where the interest of justice would not be served by a policy of liberality, however, we cannot cite a lower court as having acted with grave abuse of discretion simply because it has correctly but strictly applied the rules. (*Vda. de Crisologo vs. Court of Appeals*, 137 SCRA 231; *Castro vs. Court of Appeals*, 123 SCRA 787).

In the instant case, We find that the decision of the lower court is satisfactorily supported by the records. A remand for further proceedings, therefore, would only result in needless delay.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

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