

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HONORABLE
RODOLFO M. BELLAFLOR, ASSISTING JUDGE, BRANCH 28,
REGIONAL TRIAL COURT, MANDAUE CITY, AND REUBEN ALBAÑO,
RESPONDENTS.**

G.R. No. 103275. June 15, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

The instant petition for certiorari under Rule 65 of the Rules of Court seeks to annul the resolution issued by respondent judge Rodolfo M. Bellaflor in Criminal Case No. DU-1805 dated June 26, 1991, containing the following disposition:

"WHEREFORE, the court resolves to grant the motion for reconsideration filed by accused being meritorious and hereby sets aside the decision dated February 6, 1991 and promulgated on May 3, 1991 for being null and void, and finally, to ACQUIT the accused."

Private respondent Reuben Albaño, the accused in Criminal Case No. DU-1805, was charged with the crime of arson before the Regional Trial Court of Mandaue City, Branch 28, then presided by Judge Willelmo C. Fortun as assisting judge. Upon arraignment, private respondent pleaded "not guilty". Thereafter, trial on the merits ensued and the parties rested their case before Judge Fortun.

It appears that on February 4, 1991, Judge Fortun was designated as Assisting Judge for the Regional Trial Court in the National Capital Judicial Region, to hold office in the Office of the Court Administrator of the Supreme Court in Manila (Administrative Order No. 10-91, later amended by AO No. 10--91A dated February 12, 1991, designating Judge Fortun to assist Judge Ricardo Diaz of RTC, Br. 27, NCJR, and to hold office thereat).

On March 13, 1991, respondent judge Rodolfo M. Bellaflor was assigned as replacement of Judge Fortun and assisting judge of the Regional Trial Court of Mandaue, Branch 28, wherein the criminal case against private respondent was pending.

On May 3, 1991, Judge Fortun promulgated his decision dated February 6, 1991, convicting private respondent of the crime of arson. At the time of promulgation of Judge Fortun's decision, respondent judge was already presiding as assisting judge of Branch 28 of the Regional Trial Court in Mandaue City. On May 9, 1991 private respondent moved for the recon-sideration of the said decision.

On June 26, 1991, respondent judge issued a resolution referred to above granting private respondent's motion for reconsideration and acquitted the latter of the crime charged (Rollo, pp. 31-32). In the same resolution, the decision rendered by Judge Fortun was declared null and void for having been promulgated after said judge had vacated his office and after being assigned to the Office of the Court Administrator in Manila.

On August 1, 1991, petitioner filed a motion for reconsideration but the same was denied.

In the instant petition, petitioner claims that respondent judge acted with grave abuse of discretion in granting the motion for reconsideration of private respondent and acquitting the latter. On the other hand, private respondent argues that the resolution acquitting him of the offense charged has become final and executory and a reconsideration thereof would place him under double jeopardy.

Private respondent's reliance on the defense of double jeopardy is misplaced. In order that a defendant may successfully allege former jeopardy, it is necessary that he had previously been (1) convicted or (2) acquitted, or (3) in jeopardy of being convicted of the offense charged, that is, that the former case against him for the same offense has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information, and after the defendant has pleaded to the charge. (*People vs. Asuncion*, 208 SCRA 231 [1992], *People vs. Puno*, 208 SCRA [1992], *Bogo Medellin vs. Son*, 209 SCRA 329 [1992]).

Generally, protection against double jeopardy is not available where the dismissal of the case was effected at the instance of the accused. And there are only two instances where double jeopardy will attach notwithstanding the fact the case was dismissed with the express consent of the accused. The first is where the ground for the dismissal is insufficiency of the evidence for the prosecution and the second is where the criminal proceedings have been unreasonably prolonged in violation of the accused's right to speedy trial (*People v. Quizada*, 160 SCRA 516 [1988]). None exists in the case at bar.

Admittedly, private respondent had moved for the dismissal of the criminal case filed against him and therefore, the protective mantle of double jeopardy does not cover him. As pointed out by the Solicitor General:

"x x x, private respondent's acquittal was upon his motion and with his express consent. In *People v. Villon*, 192 SCRA 521, this Honorable Court likewise stated:

"However, an appeal by the prosecution from the order of dismissal of the criminal case shall not constitute double jeopardy if (1) the dismissal is made upon motion, or with the express consent of the defendant, and (2) the dismissal is not an acquittal or based upon consideration of the evidence or of the merits of the case; and (3) the question to be passed upon by the appellate court is purely legal so that should the dismissal be found incorrect, the case would have to be remanded to the court of origin for further proceedings, to determine the guilt or innocence of the defendant." (Rollo, pp. 142--143)

Secondly, private respondent cannot successfully seek refuge in the assailed resolution of respondent judge. For one thing, it was an empty judgment of acquittal – a bare adjudication that private respondent is not guilty of the offense charged anchored on the mere supposition that the decision rendered by Judge Fortun was a nullity. Indeed, respondent judge acquitted private respondent without expressing the facts and the law on which it is based, as required by Section 14, Article VIII of the Constitution. This can be clearly seen from the resolution issued by respondent judge which we quote in its entirety, to wit:

"RESOLUTION

"This is with reference to the motion for reconsideration filed by the accused from the decision dated February 6, 1991 and promulgated only on May 3, 1991 on the following grounds:

"1. The decision being prepared and signed by the previous Judge Willelmo Fortun but promulgated only after he has ceased or relieved as incumbent judge is null and void and may be set aside or modified;

"2. The sentence is imposed, being based on paragraph 4, Art. 322 of the Revised Penal Code, has no binding force and effect because said law has been repealed by P.D. 1613 and was not revived by P.D. 1744;

"3. The law applicable is P.D. 1615 and as such, the issue of ownership of the shed that was burned which was raised by the accused must be resolved and considered in the new decision.

"There was no opposition filed thereto by the prosecution in spite of due notice.

"Considering the three grounds invoked by the accused in his motion for reconsideration, the Court is more engrossed in the 1st ground.

"It is undisputed that when the decision was promulgated on May 3, 1991, Judge Willelmo A. Fortun who rendered the decision was no longer sitting in this Court as he has been transferred and was relieved as incumbent judge of this court.

"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 (Lino Luna vs. Rodriguez, 37 Phil. 186); or when the term of office of the judge has ended (Garchitorena vs. Crescini, 37 Phil. 675); or when he has left the bench (People vs. C.G. et al. 99 Phil. 786); or after the judge had vacated his post in view of the abolition of his position as Judge-at-large under Rep. Act 1186 (People vs. Bonifacio So, 101 Phil. 1257 unrep.); or after the cessation or termination of his incumbency as judge; or a sentence has been set aside where the judge who presided in the Court of First Instance of Nueva Ecija had been extended on 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 Court of the former Court (People vs. Soria, 22 SCRA 948).

"The case of bar falls squarely in the legion of cases quoted above. The judge who rendered the decision ceased to be the judge of that court when the decision was promulgated. On this score alone, the decision in the above-entitled case which was promulgated in (sic) null and void.

"The rest of the grounds are denied for lack of merit as these were considered in the decision sought to be set aside or reconsidered.

"WHEREFORE, the Court resolves to grant the motion for reconsideration filed by the accused being meritorious and hereby sets aside the decision dated February 6, 1991 and promulgated on May 3, 1991 for being null and void and finally, to acquit the accused.

x x x

"SO ORDERED." (pp. 31-32, Rollo)

It is indubitable that the acquittal of private respondent was not based upon consideration of the evidence or of the merits of the case. Furthermore, it is a requirement of due process that the parties to a litigation be informed of how it was decided, with an explanation of the factual findings and legal justifications that led to the conclusions of the court (Nicos Industrial Corp., vs. CA, 206 SCRA 127 [1992]).

Granting, *ex gratia argumenti*, that the decision of Judge Fortun was not validly promulgated, such invalidity, *per se*, does not necessarily operate for the acquittal of the accused. In such instances, the case should have been subjected for new adjudication based on the evidence already submitted by the parties and for further proceedings conformably with law (Solis v. Court of Appeals, 38 SCRA 53 [1971]). If at all, it was the precipitate order of respondent judge acquitting private respondent which should be voided.

Coming now to the main issue, petitioner claims that Section 9, Rule 135 of the Rules of Court allows the promulgation of a judgment by a judge who has been transferred or assigned to another court of equal jurisdiction. In this regard, it is the submission of petitioner that even though Judge Fortun had been assigned to the Office of

the Court Administrator in Manila, he still retained the position of judge of the Regional Trial Court. It is petitioner's contention that this is all that is required for a judge who has been re-assigned and transferred to a court of equal jurisdiction to be able to prepare and sign a decision in a case totally heard by him and which was argued prior to such transfer or reassignment.

There is merit in the above submission. Section 9 of Rule 135 of the Rules of Court provides that:

"Section 9. Signing judgment out of the province. Whenever a judge appointed or assigned in any province or branch of a Court of First Instance (now Regional Trial Court) in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. If the case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case, if no other judge had heard the case in part, to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction." (Underscoring supplied)

From the above provision, it is clear that the signing or writing of an order or judgment outside the territorial jurisdiction of the court wherein the case is pending is authorized only when the judge leaves the province "by transfer or assignment to another court of equal jurisdiction" or by "expiration of his temporary assignment".

Thus, decisions promulgated after the judge who penned the same had been appointed to and qualified in another office are null and void (*Lino Luna v. Rodriguez*, 37 Phil. 186 [1917]). It is settled that to be binding a judgment must be duly signed and promulgated during the incumbency of the judge whose signature appears thereon (*Jimenez vs. Republic*, 22 SCRA 622 [1968], *Jandayan vs. Ruiz*, 95 SCRA 563 [1980]). In single courts like the regional trial courts and the municipal trial courts, a decision may no longer be promulgated after the ponente has vacated his office (*Consolidated Bank and Trust Co. vs. IAC*, 189 SCRA 433 [1990]).

In the case of Judge Fortun's assignment, however, he was merely transferred from the Regional Trial Court of Mandaue to act as Assisting judge of another Regional Trial Court, specifically RTC Br. 27, NCJR, Manila. Judge Fortun did not vacate his office as judge of a Regional Trial Court which would have otherwise nullified his decision rendered in Criminal Case No. DU-1805. On the contrary, Judge Fortun was merely temporarily assigned to a court of equal jurisdiction, during which time the decision convicting private respondent was promulgated. Under Section 9, Rule 35 of the Rules of Court, Judge Fortun still possessed the judicial authority and competence to decide a case fully heard by him and to promulgate a decision thereon while on temporary assignment to a court of equal jurisdiction in Manila.

In view of the foregoing, we hold that respondent judge committed grave abuse of discretion amounting to lack of jurisdiction in nullifying the decision rendered by Judge Fortun.

WHEREFORE, the petition is GRANTED. The resolution of respondent judge acquitting private respondent Reuben Albaño is hereby SET ASIDE for being null and void and the decision of Judge Willelmo Fortun convicting accused Albaño is hereby REINSTATED.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Vitug, JJ., concur.

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