

**ROSALIO L. FLORENDO, PETITIONER, VS. COURT OF APPEALS AND
HON. JOSEFINA D. CEBALLOS, PRESIDING JUDGE, REGIONAL TRIAL
COURT, BRANCH 66, CAPAS, TARLAC, AND CENTRAL BANK OF THE
PHI...**

G.R. No. 110886. December 20, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the decision of the Court of Appeals in CA-G.R. SP No. 29248, which upheld the validity of the orders issued by the Regional Trial Court, Branch 66, Capas, Tarlac, in Criminal Cases Nos. 362 to 365 and 368.

We deny the petition.

I

In a decision dated March 26, 1992, petitioner, together with his co-accused, was found guilty of the crime of falsification of commercial documents by respondent Judge Josephine D. Ceballos of the Regional Trial Court, Branch 66, Capas, Tarlac in Criminal Cases Nos. 362 to 365 and 368. Thereafter, promulgation of judgment was set on June 15, 1992. On the latter date, all the accused, except petitioner, were present. However, petitioner's counsel was present at the promulgation and he moved for the resetting of the promulgation to June 23, 1992. Respondent Judge denied the motion, finding no valid ground therefor. The promulgation then proceeded. Petitioner's counsel was furnished a copy of the Decision on June 15, 1992 as evidenced by his signature acknowledging receipt at the back of the last page of the original copy thereof.

On June 16, 1992, respondent Judge issued an order, modifying her earlier decision dated March 26, 1992 with the deletion of the name of accused Alejandro Dizon from the decision considering that he was never arraigned.

On June 17, 1992, respondent Judge issued warrants of arrest against all the accused, including petitioner, for their failure to renew their bail bonds.

A notice of appeal filed by petitioner on July 6, 1992 was denied by respondent Judge, in an order dated July 11, 1992, for having been filed out of time.

On August 4, 1992, petitioner filed a Motion to Set Promulgation of Judgment but the same was denied by respondent Judge in an order dated August 14, 1992. Likewise, a motion for the reconsideration of said order was denied on September 29, 1992.

On October 24, 1992, petitioner elevated the matter before the Court of Appeals in a petition for certiorari and mandamus to question the orders of respondent Judge. On June 30, 1993, the appellate court dismissed the petition for lack of merit.

Petitioner elevated the matter before this Court and raised the following issues:

- "1. WHETHER OR NOT PROMULGATION OF A DECISION CONVICTING THE ACCUSED ON FOUR COUNTS, EACH A LESS GRAVE FELONY, MAY BE MADE IN ABSENTIA;
2. WHETHER OR NOT THE AMENDED DECISION SHOULD BE PROMULGATED ANEW;
3. WHETHER OR NOT PETITIONER'S APPEAL SHOULD BE GIVEN DUE COURSE" (Rollo, p. 3).

II

The petition is devoid of merit.

The resolution of the instant petition hinges on the proper interpretation of Section 6, Rule 120 of the 1985 Rules on Criminal Procedure, which provides:

"Promulgation of Judgment. - The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.

"If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail pending appeal.

"The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel" (Underscoring supplied).

Under the first paragraph of Section 6 of the Rule, the presence in person of the accused at the promulgation of judgment is mandatory in all cases except where the conviction is for a light offense, in which case the accused may appear through counsel or representative.

Under the third paragraph of Section 6 of the Rule, all the accused, regardless of the gravity of the offense charged against them, must be given notice of the promulgation of judgment and the requirement of their presence. They must appear in person or in the case of those facing a conviction for a light offense, through counsel or representative. If the accused fails to appear at the arraignment, the second and third sentences of paragraph three become operative.

The last paragraph of Section 6 of Rule 120 is a new provision introduced by the 1985 Rules on Criminal Procedure, which provides for the promulgation of judgment in absentia (Gupit Jr., Rules of Criminal Procedure 362-363 [1986]). The amendment was intended to obviate the situation in the past where the judicial process could be subverted by the accused jumping bail to frustrate the promulgation of judgment. In explaining the amendment, Justice Florenz D. Regalado commented:

"xxx Without this amendatory provision, the ends of public justice would be set at naught and, where the civil liability ex delicto was instituted with the criminal action, the offended party could not enforce either the primary liability of the accused or any subsidiary civil liability, where proper and involved in the case, as no judgment could be promulgated. Since both the 1973 and 1987 Constitutions only require prior arraignment as

an indispensable requisite and the trial may thereafter proceed in the absence of the accused, the judgment in the case being merely the procedural culmination of the trial, the promulgation thereof can justifiably be made in absentia in the manner set out in this section" (II Regalado, Remedial Law Compendium 369 [6th ed., 1989]).

The first paragraph of the Rule deals with the personal presence of the accused at the promulgation of judgment and its exception, i.e., in the case of a light offense where his personal presence is dispensed with. The third paragraph of the same Rule deals with the presence of all the accused at the promulgation regardless of the penalty imposed on them. There is no exception under this paragraph. All the accused must be present in person or through counsel or a representative.

In the case at bench, a copy of the judgment was served to the counsel of petitioner on June 15, 1992; therefore, he had only up to June 30, 1992 within which to appeal. The notice of appeal filed on July 6, 1992 was clearly out of time.

It is presumed that official duties are regularly performed and that the proceedings are made of record. This serves as a substantial compliance with the procedural requirement of the recording of the judgment in the criminal docket of the court. At any rate, petitioner does not question the non-compliance of the requirement of the recording of the judgment in the criminal docket.

Anent the issue on the re-promulgation of the amended decision, the Solicitor General, in his comment, correctly observed:

"xxx Petitioner cannot harp on the argument that since the Decision dated March 26, 1992 was amended by an Order dated June 16, 1992 issued by respondent Judge, then the Decision must be re-promulgated.

"The June 16, 1992 Order amending the March 26, 1992 Decision only refers to accused Alejandro Dizon whose name should not have been included in the Decision considering that he was never arraigned. The June 16, 1992 Order does not affect petitioner nor his other co-accused whose conviction had already been validly promulgated on June 15, 1992" (Rollo, p. 34).

WHEREFORE, the petition is DENIED with costs against petitioner.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Bellosillo, and Kapunan, JJ., concur.

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