

TEODORA V. PALISOC, PETITIONER, VS. COURT OF APPEALS, RESPONDENT.*G.R. No. 21889. July 26, 1966*

Ponente: BENGZON, J.P., J.

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Teodora V. Palisoc was convicted of estafa in the Court of First Instance of Manila and she appealed to the Court of Appeals. Her case was assigned to the Sixth Division of said appellate Court composed of Justices Emilio Peña, Fernando Hernandez and Rafael Amparo before whom the case was submitted for decision after oral argument.

On April 20, 1961, Justice Peña died. Five days thereafter, that is, on April 25, 1961, accused's counsel wrote the Clerk of Court of the Court of Appeals expressing his client's desire to orally argue the case anew before the division to which it may be reassigned. Despite said manifestation, the Fifth Division of said Court composed of Justices Juan Lanting, Eugenio Angeles and Gustavo Victoriano, to which the case was subsequently assigned, rendered on May 25, 1963, a decision affirming the judgment of the Court of First Instance of Manila without previously hearing accused's oral arguments. She received a copy of such decision on June 4, 1963 and on the same date she filed a motion to set aside the decision and to calendar the case for hearing, alleging that she was deprived of her day in court. This motion was denied.

On July 2, 1963 she filed a motion to reconsider the Court's resolution dated June 13, 1963, denying her petition to set aside its judgment, alleging that she was denied her right to be heard and at the same time questioning the authority of Justices Juan Lanting, Eugenio Angeles and Gustavo Victoriano, none of whom was present when the case was orally argued and finally submitted for decision. After said motion was also denied, the accused filed the present action for certiorari.

In this case the main issue is whether or not the Justices of the Fifth Division of the Court of Appeals could render a valid decision on the case although they were not present during its hearing and they were not the very members of the Division to which the case was submitted for decision.

Accused maintains that only those Justices before whom her case was orally argued could participate in the consideration and final decision of the case. And since she manifested in writing her desire to be heard anew in oral argument before the Justices of the Fifth Division, the decision rendered by said Justices without prior hearing is allegedly null and void.

Section 1 of Rule 53 of the Old Rules of Court, states:

"SECTION 1. Judges; who may take part.—All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission; however, only those members present when any matter is submitted on oral argument will

take part in its consideration and adjudication, if the parties, or either of them, express a desire to that effect in writing filed with the clerk at the date of submission."

It is evident under said Rules that the Justices present when the case was orally argued and submitted for decision, do not have the exclusive authority or power to decide the case. Any and all of the Justices who were members of the Court of Appeals at the time the case was taken up for consideration and adjudication, regardless of whether or not such Justices were members of the Court and whether or not they were present on the date of, submission, could participate in such consideration and adjudication. [1] The Rules allow only one exception, that is, where the parties or either of them files at the date of submission, a written motion or manifestation expressing a desire that only those Justices present during the oral argument and in whose presence the case was submitted for decision may participate in the consideration and adjudication thereof. In this case no such manifestation or request was filed by the accused.

Neither did the denial of accused's prayer for a second hearing amount to deprivation of her right to due process. Firstly she had already been afforded the right to argue her case orally through counsel in an appropriate hearing, after which she submitted the case for decision. Secondly, Commonwealth Act No. 3, as amended by Commonwealth Act No. 259, creating the Court of Appeals, contains no provision defining the hearing required to be granted to parties in appealed cases submitted to the Court of Appeals for decision. Thus, she can lay no claim on a statutory right from which will proceed her right to a second hearing. In *Domingo vs. David*, 68 Phil., 134 the procedural facts of which are similar to the case at bar, this Court held that a denial of a motion for a second oral argument does not constitute denial of due process.

Wherefore, the petition for certiorari is hereby denied. No costs. So ordered.

Concepción, C. J., Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

Petition denied.

[1] *Faypon vs. Quirino*, 96 Phil., 294, 296.

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