

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. FRANCISCO AUSTERO AND SILVANO AUSTERO, DEFENDANTS AND APPELLANTS.*G.R. No. 48530, November 18, 1942*

Ponente: MORAN, J.

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On January 30, 1940, when the case for slight physical injuries filed with the justice of the peace of Siaton, Negros Oriental, was set for hearing, defendants Francisco Austero and Silvano Austero appeared to formally waive their right to be present at the trial and to present there evidence, and manifested their intention to appeal in the event of an adverse judgment against them. On the same date, the justice of the peace court promulgated its oral judgment of conviction; whereupon, defendants immediately filed their notice of appeal and furnished the required appeal bond, and in virtue thereof, the justice of the peace court issued an order setting them at provisional liberty and directed that the records of the case be forwarded to the Court of First Instance. For some reason or another, the written decision was not made and signed until February 1, 1940, but, at any rate, the provincial fiscal filed the corresponding information against the defendants with the Court of First Instance. At the date set for trial, the prosecution moved for the dismissal of the appeal on the ground that as the judgment appeared of record to have been rendered on February 1, 1940, and the appeal therefrom interposed on January 30, 1940, said appeal was made two days before the decision was rendered and was accordingly premature. The Court of First Instance sustained this ground and ordered the case remanded to the justice of the peace court for the execution of the judgment. Defendants interposed the present appeal from this order.

The dismissal of defendants' appeal is erroneous. The law fixes a period of fifteen days within which defendants may appeal. If the appeal is not filed beyond this period, it should not be dismissed. This is similar to a motion for review on grounds of fraud in land registration cases which, according to law, should be filed within one year from the date of the decree. We held that a motion filed before a decree is issued is timely, because it cannot be said to have been presented beyond the one-year period provided by law. (*Rivera vs. Moran*, 48 Phil., 836; *Morales vs. Paredes*, 55 Phil., 565; *Director of Lands vs. Aba*, 38 Off. Gaz., 3186.) Here, it does not seem open to question that defendants' appeal had been taken immediately after the oral judgment was promulgated on January 30, 1940. And the fact that the judgment was written and signed but on February 1, 1940, cannot destroy the validity of the appeal taken. If the accused should be made to wait for the perfection of his appeal until the judgment is written and signed, he would, in the meantime, be taken into custody and, unable to file a bond for his provisional release, he would be detained for so long a time as the judgment is not written and signed.

The Solicitor-General contends, however, that as the judgment of conviction was rendered in the absence of the defendants, said judgment is null and void and the Court of First Instance acquires jurisdiction over the appeal merely to dismiss it. But there is nothing in the record to show affirmatively that the defendants were not present when the oral judgment was promulgated. On the other hand, the regular course of procedure is presumed to have been followed by the justice of the peace court. Besides, while the defendants waived their right to be present at

the trial, they apparently remained in the court building, as evidenced by the fact that immediately after the promulgation of the oral judgment, they personally filed in court their notice of appeal and their appeal bond. There is, therefore, the possibility of their having been called by the justice of the peace for the promulgation of the judgment in their presence, and this possibility being in conformity with the presumption of regularity of judicial proceedings, may rightly be taken as an actual fact.

The order of dismissal is reversed, and the Court of First Instance of Negros Oriental is hereby directed to try and decide the cast: on the merits, with costs de oficio.

Yulo, C. J., Paras, Bacobo, and Lopez Vito, JJ., concur.

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