

THE PEOPLE OF THE PHILIPPINES, DEFENDANT AND APPELLEE, VS. GUILLERMO SUMILANG, PETITIONER AND APPELLANT.*G.R. No. 49187. December 18, 1946*

Ponente: FERIA, J.

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The petitioner in this case was convicted by the Court of First Instance of Laguna of the crime of arson and sentenced to the indeterminate penalty of from 5 years 4 months and 21 days of presidio correccional to 10 years and 1 day of prision mayor. On appeal, the Court of Appeals affirmed the sentence of the lower court. The petitioner filed on June 14, 1944, a petition for certiorari with the Supreme Court for the review of the decision of the Court of Appeals, and the petition was denied on July 5, 1944. A motion for reconsideration of the order denying the petition for certiorari was filed by the petitioner on July 17, 1944, and also denied.

From the records it appears that a copy of the resolution of this Court denying the motion for reconsideration was mailed to the petitioner's attorney at his address 307 Palma, Quiapo, Manila, on July 17, 1944. But the attorney for the petitioner alleges now, in his petition, that he did not receive the notice because then "he was already hiding in the mountains of Laguna as a guerrilla officer of the Markings guerrilla," and "prays this Court that the reading of the sentence of the accused be suspended and that said accused be permitted or allowed to file whatever pleading that may be allowed by this Honorable Tribunal necessary for the protection of the rights of the accused." And the petition is based on the resolution of this Court of October 1, 1945, which suspends, until further notice, section 8 of Rule 53, and provides that judgment shall be entered, not upon the expiration of fifteen days after the promulgation thereof, but upon the expiration of fifteen days from notice of such judgment to the parties in accordance with the Rules of Court.

It is a well established rule of statutory construction that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retrospective in that sense and to that extent. As the resolution of October 1, 1945, relates to the mode of procedure, it is applicable to cases pending in courts at the time of its adoption; but it can not be invoked in and applied to the present case in which the decision had become final before said resolution became effective. In this case, the motion for reconsideration filed by the defendant was denied on July 17, 1944, and a second motion for rehearing or consideration could not be filed after the expiration of the period of fifteen days from promulgation of the order or judgment deducting the time in which the first motion had been pending in this Court (section 1, Rule 54) ; for said period had already expired before the adoption of the resolution on October 1, 1945. Therefore the Court cannot now permit or allow the petitioner to file any pleading or motion in the present case.

As to the suspension of the reading of the sentence of the Court of Appeals affirming that of the Court of First Instance, prayed for in the petition, we have noted that, after receiving the record of the case remanded by the clerk of the appellate court for execution of the latter's decision in accordance with section 9, Rule 53, made applicable to criminal cases by section 17 of Rule 120, it is generally the practice followed by the clerks of Court of First Instance to require the accused to appear, or his bondsmen to produce the body of the defendant to the

court, for the reading of the sentence. Such a practice is not in accordance with law. The judgment or sentence which, according to section 6, Rule 116, must be promulgated in the presence of the defendant, is the sentence rendered by the Court of First Instance after the trial of the case by said court; and the right of a defendant to be present at the promulgation of the judgment granted by section 1, Rule 111, refers also to said sentence or judgment of the Court of First Instance.

The certified copy of the judgment is sent by the clerk of the appellate court to the lower court under section 9 of Rule 53, not for the promulgation or reading thereof to the defendant, but for execution of the judgment against him. It is not necessary to promulgate or read it to the defendant, because it is to be presumed that the accused or his attorney had already been notified thereof in accordance with sections 7 and 8, as amended, of the same Rule 53.

If the accused desires to have the execution of the judgment in this case temporarily suspended for some justifiable reason, the petition must be filed with the proper Court of First Instance.

Moran, C. J., Paras, Pablo, Bengzon, Padilla, and Tuason, JJ., concur.

DISSENTING

PERFECTO, J.:

Guillermo Sumilang was sentenced by the Court of First Instance of Laguna to imprisonment, ranging from more than 5 years to more than 10 years, for the crime of arson allegedly committed in Pila, Laguna, on May 23, 1941.

On October 8, 1943, the Court of Appeals, with a strong dissenting opinion of Mr. Justice Jose P. Melencio, affirmed the lower court's decision.

Sumilang filed a petition for a writ of certiorari to the Supreme Court on April 20, 1944, impugning the decision of the Court of Appeals. On June 14, 1944, the Supreme Court, without stating any reason, summarily denied the petition for review on certiorari. On July 5, 1944, the attorney for appellant filed a motion praying for the reconsideration of the said order of denial. On July 17, 1944, the Supreme Court, also without alleging any reason, denied the motion.

On July 21, 1944, the cleric of the Supreme Court issued notice of the order of July 17, addressed to Jose F. Fernandez, attorney of Sumilang, at 307 Palma, Quiapo, Manila. The notice was never received by said attorney who, at the time, was already hiding in the mountains of Laguna as an officer of the Markings Guerrillas.

On August 2, 1946, more than two years later, the bondsmen of the accused received an order to produce the person of the same in the Court of First Instance of Laguna on August 16, 1946, for the reading of the sentence. On August 12, Sumilang filed a petition before us, praying that the reading of the sentence be suspended and accused permitted to file whatever pleadings necessary for the proper protection of his rights and that he be granted such other relief, just and equitable, in the premises, invoking at the same time the resolution of this Court dated October 1, 1945.

Sumilang did not specify what pleadings he intends to file or what just and equitable relief he seeks to obtain from this Court in case his petition is favorably acted upon; but it is evident that he may (a) ask permission to file a second motion for reconsideration and, if granted, to file thereafter said motion; or (b) attack the validity, not only of the order of denial of his petition for a writ of certiorari, but also the decision of the Court of Appeals, because they were issued and rendered by tribunals set up by the enemy during Japanese occupation.

The first question we are called upon to consider concerns the effect of the second order of denial, the one issued on July 17, 1944, of which neither Sumilang nor his attorney was ever notified. In our opinion, unless and until notified of said order of denial, the same, for all legal purposes, must be considered as nonexistent as regards accused Sumilang and, therefore, he is entitled to enjoy the legal benefits resulting from the nonexistence of said order of denial.

At this stage, we are constrained to analyse and refute the majority position regarding the interpretation of the word "promulgation" as used in section 8 of Rule 53, which reads as follows:

"SEC. 8. Entry of judgment.—The judgment shall be entered upon the expiration of fifteen days after promulgation thereof. The entry shall be in the same for as is provided in section 2 of Rule 35."

Promulgation means publication, official announcement, to make known to the public. That is the etymological meaning of the word, which came from the Latin *promulgare*, which in turn came from the word *provulgare*, composed of the words *pro* (forth) and *vulgus* (the people). Promulgate means "1. To make known by open declaration, as a law, decree, or esp., a dogma; to proclaim; to publish abroad. 2. Late (a) To make known or public the terms of (a proposed law), (b) To issue or give out (a law) by way of putting it into execution." (Webster's New International Dictionary of the English Language, 2d Ed., 1938.)

"Promulgate. To publish; to announce officially; to make public as important or obligatory." (50 C. J., 720.)

"The word 'promulgate' is defined as to make known; to publish; to announce officially; to make public as important or obligatory. *Drown vs. Democratic Parish Committee of St. Bernard Parish*, 1(15 So., 167, 168; 183 La., 967." (34 W. & P., Perm., 329.)

"In regard to the necessity of a railway company formulating and promulgating rules, 'promulgate' means to make known; that the rules shall be brought to the attention of the service affected thereby, or that it be given such publicity as that the servant, in the proper discharge of his duties, is bound to take notice of it" *Wooden vs. Western New York & P. R. Co.*, 18 N. Y. S., 768, 769. (34 W. & P., Perm., 329.)

"Since Acts 1915, p. 338, creating a distinct, or area for the eradication of cattle ticks, etc., prescribes no particular form for the promulgation of regulations by the board of control of the Agricultural Experiment Station, any public act of the board promulgating or declaring, in a manner calculated to convey information to the public generally, the existence of its regulations, constitute promulgation thereof. *Cazort vs. State*, 198 S. W., 103, 104; 130 Ark., 453." (34 W. & P., Perm., 329.)

"In Act Cong. March 3, 1905, c. 1496, sec. 3, 33 Stat. 1265, 21 U. S. C. A. sec. 125, requiring the Secretary of Agriculture to 'make and 'promulgate' rules governing the inspection, delivery, and shipment of cattle from a quarantined state into any other suite, and section 1 requiring publication of notice of quarantine and the giving of notice to the proper officers of carriers doing business in any quarantined state, the words 'make' and 'promulgate' are not synonymous, and the duty to "make" rules was sufficiently accomplished by writing them and signing them officially, but to 'promulgate' them required the giving notice thereof to the officers of carriers, etc., and their publication in the selected newspapers within the affected district. *United States vs. Louisville & N. R. Co.*, 165 F. 936, 939." (34 W. & P., Perm., 329.)

The majority maintain that when the resolution of October 1, 1945, was adopted, the decision of the Court of Appeals, sought by the accused to be revoked, had already become final, this conclusion being premised on the assumption that the order of July 17, 1944, denying the motion for reconsideration filed by accused, notwithstanding that it was never notified to the accused or to his attorney, produced its legal effects against the accused in the same manner as if the latter had been duly notified of said order on the very day of its issuance, July 17, 1944, upon the erroneous and absurd theory that its entry by the clerk constituted its promulgation in accordance with section 8 of Rule 53, above quoted, which refers to section 2 of Rule 35, providing that—

"SEC. 2. When and how judgments and orders entered.—If no appeal or motion for new trial is filed within the time provided in these rules, the judgment or order shall be entered by the clerk. The notation of the judgment or order in the book of entries of judgments shall constitute its entry. The notation shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory."

The theory that by the entry made by the clerk, that is, by the notation of the order in the book of entries of judgments made by the clerk, the order was promulgated, as maintained by the majority, is premised on a completely mistaken concept of the idea of promulgation, which is appulse of logic.

Before proceeding further, the majority must be reminded, in the first place, that section 8 of Rule 53 does not and can not apply to the order of denial of July 17, 1944, because said order is not a "judgment," the word used in said section, which does not, for any purposes, mention the word "order." Any law student knows that there is a world of difference between "judgment" and "order."

But, even if we do violence to the rule meaning of the two words and, by adroit logodaedaly, should accept both as reciprocally interchangeable, it does not attenuate or minimize the error in giving to the word "promulgation" a definition which, etymologically and philosophically, is repugnant to reason and common sense, besides leading to repellent iniquity.

What principle of justice may justify this Court in giving a party litigant, an accused, a person who is fighting for his honor, property, liberty, or life, time within which he may ask relief by asking for reconsideration, or otherwise, of an order or judgment which will jeopardize his fundamental rights, but at the same time deprives him of the opportunity of availing himself of that time, because the promulgation of the judgment or order is made, not by notice to him, but by an official routine undertaken at his back, without his knowledge, the entry made by the clerk? Conscience revolts against such a mockery in legal procedure, such farcical, pharisaical, hypocritical gesture within the administration of justice.

The rules of court, fortunately, do not offer any ground for such a farfetched and absurd interpretation. Section 7 of Rule 53, which must be taken into consideration jointly with section 8 thereof, provides:

"SEC. 7. Filing and notice of judgment.—After the judgment and dissenting opinions, if any, are signed by the justices taking part, they shall be delivered for filing to the clerk who shall cause true copies thereof to be served upon the parties or their counsel."

The above provision determines the true procedure of how promulgation is to be accomplished. The judgment not only shall be delivered for filing to the clerk, but must be notified to the parties or their counsel, who will be served by the clerk with true copies thereof. A judicial promulgation accomplished without actual notice to the litigants or their attorneys is mere twaddle which necessarily will strobilate and proliferate into unending judicial errors, absurdities and injustices.

In the case at bar, no true copies of the order of denial of July 17, 1944, having been served by the clerk upon accused Sumilang or his attorney, no promulgation has been legally accomplished and, therefore, Sumilang is entitled to take all the legal steps to protect his rights under and within the legal situation resulting from the fact that with respect to him said order, for all legal purposes, is nonexistent.

Coming to a different order of ideas, the decision of the Court of Appeals dated October 8, 1943, having been rendered by a tribunal created and organized by the enemy during Japanese occupation, whose judicial processes have been declared null and void and without effect by proclamation of General Douglas MacArthur, as we have explained in our dissenting opinion in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (75 Phil., 113), Sumilang is entitled to all the legal remedies available to one who is convicted by a decision which is null and void ab initio.

For all the foregoing, we dissent from the resolution denying Sumilang's petition dated August 12, 1946.

HILADO, J.:

I concur in the above dissent of Mr. Justice Perfecto for the reasons stated in its penultimate paragraph and those expressed in my own dissents in *Co Kim Cham vs. Valdez Tan Keh and Dizon*, supra, as well from the main majority decision as from the majority resolution on the motion for reconsideration.

DISIDENTE

BRIONES, M.:

No estoy conforme con la resolucio[n] de la mayoria; creo que el apelante, Guillermo Sumilang, todavia tiene su apelacion pendiente ante esta Corte Suprema y, por tanto, puede valerse de cualesquier recursos que por ley todavia le asistan como tal apelante.

Consta en autos, sin valida y eficaz contradiccion que la resolucio[n] de esta Corte de fecha 17 de Julio, 1944, ya no se pudo notificar a Jose F. Fernandez, abogado del apelante, en su domicilio en 307 calle de Palma, Quiapo, Manila, porque entonces dicho abogado ya estaba remontado en las espesuras de la provincia de Laguna coma oficial de guerrilleros bajo el mando del famoso jefe guerrillero Marking. Sostengo que desde aquel momento la causa, del apelante, sin culpa suya, quedo desplazada del llamado gobierno de facto y todo plazo legal contra el quedo suspendido hasta despues de la liberation. A este efecto,. estimo oportuno roproducir y reafirriar a continuation las apreciaciones y conclusiones de mi disidencia en el asunto basico de *Co Kim Cham* contra *Valdez Tan Keh* y *Dizon*, a saber:

"Al interpretar la proclama del General MacArthur de 23 de Octubre de 1944 que anula todas las actuaciones del gobierno esta-blecido en estas islas bajo la ocupacion militar japonesa, creo que la inteleccion mas apropiada cs que, como regla general, esa proclama anula todo, incluso las actuaciones judiciales (judicial processes), sobre todo aquellas cuya entidad y cuyos efectos rebasan el periodo de la esclavitud forzosa y trascienden y repercuten en la postliberacion. En otras palabras, la nulidad, la ineficacia debe ser la regla general; y la validez, la eficacia, la excepcion, la salvedad.

"La razon de esto es sencilla. El gobierno de ocupacion repre-sentaba en nuestra vida un parentesis anomalo, de obligada ilegitimidad, y es nada mas que natural que el gobierno legitimo, de jure, al restaurarse, no transigiese con los actos y procesos da aquel gobierno, excepto en lo que fuera absolutamente necesario e iireme-diable. Caerian, por ejemplo, bajo esta excepcion solamente aquellos actos y procesos resultantes del hecho de que formabamos una comunidad civilizada con necesidades e intereses individuales y sociales complejos; y de que por instinto de conservacion y para vivir con cierto orden y relativa tranquilidad y no precipitarnos en la anarquia y en el caos habiamos menester la egida de un gobierno, sin hnportar que este no fuese hechura de nuestra voluntad y que inclusive nos fuera repulsive, Mas alia del minimum de esta forzosidad, no puede haber transaction con los actos y procesos de aquel regimen.

"Como corolario de esta inteleccion es obvio que por mucho quo nos tienten y atraigan ciertas doctrinas y principios conocidos de derecho internacional sobre gobiernos dc facto, no es conveniente y es hasta p&ligroso sentar reglas absolutas que a lo mejor no cuadran con las circunstancias peculiares de cada caso. Lo mas seguro es enjuiciar por SUS propios meritos cada acto o proceso que se plantee.

"En la determinacion judicial dc esta clase de asuntos nunca se deben perder de vista, entre otras, las sigmentes circunstancias: (1) que la invasion japonesa, aun en el apogeo de su fuerza, jamas pudo quebrantar la lealtad fundamental del pueblo filipmo a su go-hierno y al gobierno de los Estados Unidos de America; (2) que en casi todas partes de Filipinas esta lealtad hizo posible la articulacion y organizacion soterranea de fterzas de

resistencia contra el enemigo; (3) que si bien el control japonés era por lo general efectivo en las ciudades y grandes poblaciones, era, sin embargo, precario en muchos pueblos y barrios, sobre todo en aquellos que no tenían valor estratégico o eran poco propicios a la confiscación y rapina, dominando prácticamente en dichos sitios las guerrillas; (4) que en algunas regiones el gobierno del Commonwealth seguía funcionando, trasladándose de un sitio a otro para burlar la persecución de enemigos acuartelándose en zonas a donde no alcanzaba la acción de las guarniciones japonesas; (5) que muchos habitantes de los llanos y poblados se sustrajeron a la jurisdicción del gobierno de fuerza pre-dominante (paramount force), refugiándose en las montañas y lugares dominados por las guerrillas y colocándose bajo la protección y salvaguardia de estas, o bien en sitios donde no había ni japoneses ni guerrillas; (6) y por último, que después del desembarco del General MacArthur y de sus fuerzas libertadoras en Leyte el 20 de Octubre de 1944, la lealtad filipina y el espíritu de resistencia llegaron a su máxima tensión y la ocupación japonesa se fue desmoronando rápidamente a pedazos hasta sufrir finalmente un colapso total." (75 Phil., 403, 404.)

Se arguye que bajo las reglas a la sazón vigentes la citada resolución de 17 de Julio, 1944, quedó firme, sin necesidad de notificación a las partes, 15 días después de su promulgación, entendiéndose por tal el simple hecho de su expedición y registro en los autos. Creo que esto es un error. Esa regla ya era discutible, aun bajo circunstancias normales; pero se podía tolerar en virtud de la presunción de que en 15 días cabía notificar a las partes bajo un sistema postal eficiente y con servicios de transporte y comunicaciones en normal, ordenado y expedito funcionamiento. Como pretender, sin embargo, que esa regla rigiera en una situación de guerra, cuando todos los serquidad, la seguridad, la libertad, a lo mejor la vida misma pendía de un hilo? Y, sobre todo como ponerla en vigor contra partes litigantes y abogados que, sin prueba válida en contra, se sumaron patridticamente al movimiento de resistencia contra el enemigo?

Por lo expuesto, juzgo que el apelante tiene derecho a que se conceda su moción. Por de pronto, tiene derecho a presentar una segunda moción de reconsideración, desde luego con nuestra venia, que creo debe serle concedida en justicia y equidad.

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