

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RODOLFO QUIBATE, DEFENDANT-APPELLANT.

G.R. No. 54881. July 31, 1984

Ponente: GUTIERREZ, JR. J.

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GUTIERREZ, JR. J.:

Accused Rodolfo Quibate appeals the decision of the Court of First Instance of Capiz finding him guilty beyond reasonable doubt of the crime of parricide and sentencing him to suffer the penalty of reclusion perpetua and to indemnify the heirs of Prima Baltar-Quibate.

Around 4:00 in the early morning of July 22, 1978, the accused-appellant stabbed his wife Prima Baltar to death in a fit of jealousy. The couple's ten-year old daughter, Imelda Quibate, testified that her father stabbed her mother to death with a knife while the two were quarreling in the balcony of their house at Aranguel, President Roxas, Capiz. The daughter stated that the quarrel arose from her father's jealousy of "Gabi" their neighbor. Imelda ran to the house of her uncle, Alberto Baltar who immediately went to his sister's house. Alberto saw his sister already dead, the accused-appellant drumming the death weapon against the window sill. When the police arrived at the scene, Quibate was still holding the knife. The accused tried to kill himself with the knife pointed at his chest but when Corporal Calixto Morales fired a shot with his revolver, the accused surrendered the knife.

The wounds suffered by the deceased were stated by Dr. Manuel Buenvenida, rural health physician of President Roxas, Capiz, in his autopsy report as follows:

- "1. Incised wound at the left side of the chest above nipple, per-forating, 1" wide.
 - "2. Incised wound at the right side of the chest below the nipple, perforating, 1" wide.
 - "3. Incised wound at the left side of abdomen, at the iliac side, 4" below the navel, perforating, 1" wide.
 - "4. Incised wound at the medial and posterior aspect of the left forearm, 1 cm. wide, gapping, (sic) involving the skin.
 - "5. Abrasions-hematoma at the right arms and forearms.
- "The deceased died of shock secondary to profuse hemorrhage."

The accused-appellant raised two assignments of errors in this appeal, namely -

- "I. THE COURT ERRED IN MOTO PROPRIO CANCELLING THE PROMULGATION OF DECISION OF MARCH 4, 1980.
- "II. THE COURT ERRED IN CONVICTING THE ACCUSED OF THE CRIME OF PARRICIDE."

The trial court promulgated its decision on March 4, 1980 sentencing the accused to an inde-terminate period of imprisonment of 12 years minimum to 17 years maximum. However, immediately after promulgating it on that day, the court had second thoughts and issued the following order:

"After the promulgation of this case, the court *moto proprio* cancels the promulgation upon noting that the regular counsel de oficio, Atty. Antonio Bisnar was not around at the time and the accused refused to sign receipt of a copy of the decision and upon noting that there was a typographical error in the decision consisting of the wrong penalty and the court noting further that the decision have not been filed.

"Notifying accused and counsel of the new date of promulgation which is hereby set for March 20, 1980."

It may be noted that apart from cancelling the promulgation, the court ordered that the accused and his missing counsel be notified of the new date of promulgation which was set for March 20, 1980.

On March 20, 1980, the counsel de oficio was again absent so the court appointed a well-known practitioner in the area, Atty. Jose Alovera, to assist the accused in the promulgation and to coor-dinate with the other counsel Atty. Antonio Bisnar. Promulgation was re-set to April 1, 1980.

On March 27, 1980, Atty. Alovera filed a motion to advance the date of promulgation to March 31, 1980 as counsel had to leave for Iloilo City on April 1, 1980. The motion to advance the date of promulgation was considered on April 1, 1980. Promulgation was re-set to April 11, 1980.

On April 11, 1980, an oral motion to quash promulgation was made. No memorandum in support of the motion was filed and the records fail to indicate the grounds relied upon by counsel. On June 9, 1980, the motion to quash promulgation was denied. The promulgation was reset to June 13, 1980 on which date the questioned decision imposing reclusion perpetua instead of the earlier indeterminate period of imprisonment of 12 years as minimum and 17 years as maximum was rendered.

We resolve the second assignment of error first. The allegation that the marriage of the accused-appellant and the deceased was not established has no merit.

The marriage contract (Exhibit B) evidencing the marriage solemnized on May 16, 1954 was intro-duced in evidence. Father Gaudioso Tropico of the Roman Catholic church testified that he solemnized the marriage of the accused and Prima Baltar and that the newly married couple, the witnesses, and himself signed the said marriage contract in each others presence. True, the contract shows that Prima Baltar was married to "Teodulfo" Quibate but defense witness Atty. Jose Azarraga testified that the accused used the name "Teodulfo" when they were classmates. The accused himself admitted that he used to be called "Teodulfo". On the fact of marriage, Alberto Baltar testified that he was present in church when his sister and the accused were married. Father Gaudioso Tropico, on re-direct examination was asked to go around the courtroom and identify the "Teodulfo Quibate" whose marriage he solemnized. He did so and picked out the accused-appellant. The accused-appellant did not deny the marriage but admitted during trial that he and his late wife were married, that they were married by Father Tropico who testi-fied in the case.

The appellant raises no issue in this appeal regarding his main defense during the trial below that he acted in self-defense. We have nonetheless examined the records on this point because of the serious nature of the crime. We find no error in the court's rejecting this defense. The allegation of self-defense has no basis.

The accused-appellant testified that two months before the fatal incident, he caught his wife having sexual intercourse with their neighbor "Gabi" or "Gabe" and that he called her to come up their house. He was so angry that he boxed her. Gabi was not only bigger than the accused, but he also had a gun. Yet when he wanted to have sexual intercourse with his wife, she refused. When he insisted, she still refused. According to the accused, he begged for almost two hours to have sex with his wife but she refused. Later on, he noticed that she took a knife from a "baul" or clothes trunk by her side and tried to stab him. They grappled for the knife and she was hit. The trial court found the story of self-defense not believable. We agree. The accused-appellant, in a fit of jealousy,

stabbed his wife inflicting the four separate incised wounds described in the autopsy report, which resulted in shock, profuse hemorrhage, and death.

The appellant states in his first assignment of error that the lower court erred in cancelling the March 4, 1980 promulgation because the grounds given by the court do not warrant such a cancellation.

The appellant questions the cancellation and resetting of promulgation stating that the counsel did not have to be present during the promulgation of judgment and that there was no need to nullify a pro-mulgation already effected simply because the accused refused to sign. According to the appellant's brief, the appellant refused to sign because he did not know how to write.

It is not required that counsel for the accused must be present when judgment is promulgated for it to be valid and effective. However, considering the level of intelligence of the accused and the serious nature of the offense, the Court had reason to require counsel's presence during promulgation. The court, however, followed a manifestly strange procedure when it pronounced the sentence of conviction and then immediately afterwards, reconsidered and cancelled the whole thing on the ground, among others, that the lawyer was not present. On noticing that there was no lawyer for the accused, the Court should have deferred the promulgation of the decision if it wanted counsel to be around.

It is obvious from the appealed decision that the presiding Judge had conflicting feelings in his mind when the date for promulgation arrived. If so, he should have resolved them before going ahead.

The decision reads, in part:

"The Court finds in accordance with Art. 13, of the Revised Penal Code, mental weakness, and voluntary surrender. Likewise, the Court considers the history of infidelity of the victim's wife, coupled with her refusal to perform her marital duties, after accused had begged for two (2) hours, immediately preceding the stabbing, as analogous to an aggression and should also be considered mitigating. The Court believes that the attitude and behaviour of the accused, such as the tenderness he showed to his daughter Imelda after the latter's testimony, shows remorse and lack of real malice.

"In view thereof, the Court recommends Executive Clemency, such as would reduce the imprisonment to a lesser period."

The procedure followed by the lower court is not the most appropriate under the circumstances but it does not constitute a ground to nullify the decision later promulgated.

The second reason about the refusal to sign may have been insufficient to warrant postponement of promulgation of judgment but, under the circumstances, it is not a basis to set aside or modify the appealed decision.

Regarding the last ground for the first assignment of error, it is unlikely that the imposition of a sentence of 12 to 17 years imprisonment instead of reclusion perpetua would be a typographical error. It was not. It was an error of hasty judgment based on a misapprehension of the provisions of the Revised Penal Code applicable to the facts of the case. The lower court made a mistake and it should have taken immediate steps to rectify it instead of waiting for more than three months.

The more serious questions arising from the facts of this case are not raised in the appellant's brief but the Court has decided to resolve them considering that a man's liberty is at stake and the lower court itself has recommended executive clemency for the appellant.

What was the effect of the cancellation of promulgation on March 4, 1980? Did the decision whose promulgation was cancelled become final and executory fifteen days later on March 19, 1980? Did the court have jurisdiction to

impose the penalty of reclusion perpetua on June 13, 1980?

Under Section 7 of Rule 120 of the Rules of Court, a judgment of conviction may be modified or set aside by the court rendering it before the judgment becomes final or an appeal is perfected. In the instant case, no appeal had been perfected when the trial court set aside its judgment and cancelled its promulgation. But had the judgment become final? The cited section provides:

"A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal."

In the case at bar, the judgment of conviction and its promulgation were set aside on the very day that the judgment was promulgated. At that time, the period for perfecting an appeal had not lapsed; and the accused had not waived his right to appeal. Only if he were deemed to have commenced service of his sentence could the judgment be deemed final.

The law gives the accused 15 days after promulgation of a judgment of conviction within which to decide whether he will take an appeal or not; and unless he has expressly waived in writing his right to appeal or has voluntarily commenced service of his sentence, the accused may yet take an appeal within the 15-day period. (See *People vs. Valle*, 7 SCRA 1025; *Mabuhay Insurance and Guaranty, Inc. vs. Court of Appeals*, 32 SCRA 245). The accused was returned to the same detention cell where he was confined pending trial. He never intimated acceptance of the judgment or that he would no longer appeal.

From the above considerations, it follows that when the trial court cancelled the promulgation it had just concluded, it were as if no decision had been rendered and no judgment had been imposed. The promulgation or the entire process had been set aside to be effected on a future date. The decision promulgated on June 13, 1980 would not merely be an amendment of the sentence imposed earlier but would be the decision itself being promulgated in the case. Consequently, there was no judgment to become final and executory except from June 13, 1980. If the court had decided to commit the accused to jail on March 19, 1980, there would have been no basis for the execution of judgment and the commitment as the decision promulgated earlier had been cancelled and set aside. The accused could not have accepted a judgment or commenced to serve a sentence based on a cancelled and, therefore, non-existent promulgation.

We find in this case an opportune occasion to remind all trial courts to devote a little more time to the study of the penalty provisions of the Revised Penal Code immediately before promulgating each decision, to obviate the necessity of issuing amended or "repromulgated" decisions increasing sentences of imprisonment. Trial courts should likewise note the dictum in *Flores v. Dalisay* (84 SCRA 46, 48).

"What the trial court should have done was to have categorically asked the counsel de oficio of the accused (who was not the counsel de oficio who handled the defense of the accused) whether or not he would appeal. Because the accused did not file any notice of appeal immediately after the judgment was promulgated, the trial court jumped to the conclusion that he had no intention of taking an appeal. x x x x x x x x."

Considering the factual circumstances of this case, the low intelligence of the accused, and the gravity of the offense of parricide, it was the duty of the lower court on March 4, 1980 to ascertain whether or not the detention prisoner whose sentence of conviction had just been read intended to appeal. Upon the answer would have defended its power to modify the decision but within the period for the taking of an appeal.

WHEREFORE, the judgment of the Court of First Instance of Capiz finding the accused-appellant guilty beyond reasonable doubt of the crime of parricide and sentencing him to suffer the penalty of reclusion perpetua is

hereby AFFIRMED. The accused-appellant is also ordered to indemnify the heirs of Prima Baltar Quibate in the sum of THIRTY THOUSAND (P30,000.00) PESOS.

SO ORDERED.

Fernando, C.J., Concepcion, Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Relova, De La Fuente, and Cuevas, JJ., concur.

Teehankee, J., joins JJ. Makasiar and Escolin in their dissenting opinion.

Aquino, J., see concurrence.

Makasiar and Escolin, JJ., dissent.

CONCURRING OPINION

AQUINO, J.:

Judge Oscar Leviste's decision dated March 3, 1980 was promulgated on the following day, March 4, in the absence of accused's counsel, Antonio Bisnar. The accused (a registered voter who studied at the Elizalde Academy) refused to sign on the original copy of the decision as proof that he received a copy of the decision.

It is stated in the handwritten minutes of the incident that "when this case was called for promulgation of decision, the court interpreter read the whole decision and after which the dispositive part of the decision was translated to the accused. The Court sentences the accused (to) 12 years to 17 years. Later, the Court discovered that Atty. Bisnar, counsel de oficio for the accused, was not present in court. The Court appointed Atty. Jose Brotario as counsel de oficio for the purpose of promulgation. The dispositive portion of the decision was read to the accused."

The said minutes were signed by the court interpreter. The deputy clerk of court executed a certification as to the promulgation and the refusal of the accused to affix his signature on the original copy.

A few hours later on that same day, March 4, 1980, Judge Leviste issued an order cancelling the promulgation (1) due to the absence of Bisnar, the regular counsel de oficio, (2) the refusal of accused to sign as proof that he received a copy of the decision, (3) the imposition of the wrong penalty and (4) the fact "that the decision has not been filed".

In fact, the said decision is in the record but it contains numerous handwritten corrections made by Judge Leviste. It was retyped. The retyped decision, imposing reclusion perpetua, dated March 5, 1980, and the original decision of March 3, 1980 (with corrections) were both refiled in court at 4:30 p.m. on March 5, 1980.

Later, or on April 11, 1980, there was an oral motion to quash the second promulgation. It was denied by Judge Leviste in his order of June 9, 1980.

The corrected decision of March 5, 1980 was promulgated on June 13, 1980. The accused and his counsel signed the original copy of the said decision. The clerk of court certified to the promulgation on June 13, 1980. This was also signed by the accused (pp. 126-7, Record).

Written notices of the decision were sent to the fiscal, the warden and Bisnar on June 16, 1980. Bisnar filed his notice of appeal to the Court of Appeals.

The minutes of the proceeding on June 13, 1980 show that Bisnar objected to the promulgation of the corrected

decision and insisted that the promulgation of the first decision was valid.

Judge Leviste had the power and jurisdiction to correct his decision of March 3, 1980 which was not yet officially filed. He corrected it on the same day and filed the corrected copy on March 5, 1980 together with the original decision of March 3, 1980.

"A judgment of conviction may be modified or set aside by the court rendering it before the judgment has become final or appeal has been perfected. A judgment in a criminal case becomes final after the lapse of the period for perfecting an appeal, or when the sentence has been partially or totally satisfied or served, or the defendant has expressly waived in writing his right to appeal." (Sec. 7, Rule 120, Rules of Court.)

The accused or his counsel should expressly inform the court that he does not want to appeal or is going to start serving his sentence. In the absence of such manifestation, the judge can change his decision within the reglementary fifteen-day period. It is not right to conjecture from the silence of the accused-detainee in the absence of his counsel that he started to serve his sentence. (People vs. Español, G. R. No. 57597-99, June 29, 1982, 114 SCRA 911.)

In this case, counsel de oficio's absence during the first promulgation rendered it uncertain whether or not the accused was going to appeal. The fact that he was a detention prisoner does not justify the conjecture that he did not appeal and that he had started the service of his sentence on March 4, 1980.

DISSENTING OPINION

ESCOLIN, J.:

I dissent. The records disclose that after the promulgation of the first decision on March 4, 1980, petitioner did not manifest his desire to appeal and was therefore committed to jail; that the 15-day period to appeal lapsed without petitioner having perfected his appeal; and that before the promulgation of the new decision on June 30, 1980, he vehemently objected to the cancellation of the March 4, 1980 promulgation as well as the promulgation of the new judgment. Surely, any doubt as to the conclusion to be drawn from this factual setting should be resolved in favor of the petitioner's posture that he immediately commenced service of sentence after the promulgation of the first decision, and that therefore the same became final in accordance with the rule that a judgment in a criminal case becomes final when the sentence has been partially served. [Section 7, Rule 120 of the Rules of Court].

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