

FLORECER GONZALES AND LEON CAJES, JR., PETITIONERS, VS. THE HONORABLE PRESIDING JUDGE OF BRANCH I OF THE REGIONAL TRIAL COURT OF BOHOL, THE HONORABLE PRESIDING JUDGE OF THE 5TH ...*G.R. No. 75856. June 04, 1990*

Ponente: FERNAN, C.J.

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Petitioners Florecer Gonzales and Leon Cajés, Jr. seek: [1] to annul the decision dated 16 May 1986 of the Regional Trial Court (RTC), Branch I, of Tagbilaran City, Bohol, affirming en toto the judgment of the 5th Municipal Circuit Trial Court (MCTC) of Trinidad-San Miguel-Bien Unido, Bohol, in Criminal Case No. 1090 which convicted them of the crime of Less Serious Physical Injuries on the sole basis of the prosecution's evidence in view of their failure to submit counter-affidavits as required under the Rule on Summary Procedure, and [2] to remand the case to the trial court for reception of evidence for the defense and re-promulgation of judgment. Alternatively, petitioners pray for their acquittal.

It appears that on June 5, 1985, petitioners Gonzales and Cajés, together with one Jesus Acuna, were charged with the crime of less serious physical injuries by Juanito A. Yana before the MCTC of Trinidad, Bohol.[1] On July 15, 1985, they were served with copies of the complaint as well as the order of respondent Presiding Judge Abundio T. Payot, notifying them that the case falls and would be tried under the Rule on Summary Procedure.[2] They were directed to appear and submit their counter-affidavits and those of their witnesses on or before July 24, 1985, in accordance with Section 10 of said Rule.[3] Petitioners failed to comply with the directive.

On July 24, 1985, trial proceeded for the reception of the prosecution's evidence. Counsel for accused-petitioners participated by cross-examining the prosecution witnesses.[4] On November 12, 1985, the prosecution rested its case and moved that the case be deemed submitted for decision without evidence for the defense, as the latter failed to comply with paragraph 2 of Section 14 of the Rule on Summary Procedure which requires the submission of the affidavits of witnesses before they may be allowed to testify at the hearing.

Counsel for accused-petitioners opposed the motion and asked that they be allowed to present their evidence. The trial court acceded by setting the case for the reception of evidence for the defense on November 18, 1985. On said date, however, defense counsel Atty. Lord Marapao did not appear, allegedly because his father died four (4) days earlier. Petitioner likewise failed to submit their affidavits or those of their witness, prompting the prosecution to reiterate its motion to consider the case submitted for resolution without evidence for the defense. This motion was granted on November 22, 1985.

The promulgation of the decision was scheduled by the trial court on December 27, 1985 and notice to the parties was sent by registered mail. Notice to the defense counsel was mailed as early as December 13, 1985.[5] On December 27, 1985, only accused-petitioner Gonzales and his co-accused Acuna were present. Co-accused-petitioner Cajés and defense counsel Atty. Marapao were absent. The latter allegedly did not receive

notice of the promulgation date.

To safeguard the rights of the accused, the trial court appointed Atty. Severino Estonia as counsel for the defense. He was, however, unable to enter his appearance due to the objection of accused-petitioner Gonzales. Nevertheless, the MCTC promulgated its decision as scheduled, acquitting Jesus Acuna, but convicting accused-petitioners Gonzales and Cajés, Jr., who were sentenced to suffer two (2) months and one (1) day imprisonment, to pay jointly the offended party Juanito Yana the amount of One Thousand Pesos (P1,000.00) as damages and to pay proportionately the cost of the proceedings.[6] On the same day, accused-petitioner Gonzales filed a notice of appeal which was favorably acted upon by the court.

On the following day, the defense counsel filed an omnibus motion asking for, among others, the reopening of the case to allow the accused to present evidence.[7] The motion was denied by the respondent judge, it being one of the prohibited motions under Section 15(c) of the Rule on Summary Procedure.

On January 3, 1986, the trial court read again the decision in the presence of accused-petitioner Cajés who appeared before the court. The trial court denied the subsequent motion of the defense counsel to re-promulgate the judgment.

On May 16, 1985, the Regional Trial Court rendered judgment on accused-petitioner Gonzales' appeal, affirming the decision of the trial court en toto. Accused-petitioner Gonzales' motion for reconsideration was denied; hence, this petition for certiorari, where Florecer Gonzales is joined by Leon Cajés, Jr. Petitioner contends that they were denied the opportunity to present their evidence; that the promulgation of judgment against them was null and void because the same was made in the absence of their counsel and co-defendant Leon Cajés; and that they are entitled to acquittal since their co-defendant Jesus Acuna was acquitted.[8]

Considering the foregoing factual and procedural antecedents, the Court does not find any jurisdictional error or abuse of discretion on the part of the respondent courts. On the contrary, they acted and proceeded in accordance with the rules of procedure, at times even exercising liberality to accommodate petitioners. Counsel for petitioners should be the last to claim denial of opportunity to present evidence after squandering several opportunities to do so.

In the first place, petitioners through their counsel failed to comply with the July 10, 1985 order of the trial court to submit their counter-affidavits and those of their witnesses, apparently failing to appreciate the implication of such failure despite notice that the case would be tried under the Rule on Summary Procedure, Section 14 of which expressly prohibits any witness from testifying during trial without previously submitting his affidavit. They continued to fail to submit the required affidavits even as their counsel actively cross-examined the witnesses of the prosecution from the initial hearing on July 24, 1985 until the prosecution rested its case on November 16, 1985, or for a period close to five (5) months.

To the credit of the trial court, it gave the defense another chance to present evidence when it set the reception of evidence for the defense on November 18, 1985 even if accused-petitioners failed to submit their affidavits as ordered earlier. On the scheduled date, however, counsel for the defense at whose instance the hearing was set, did not even appear or inform the court of his inability to do so as scheduled. While defense counsel may have had a valid reason to ask for a resetting of the hearing, the court was never formally notified thereof, and it would be too much to charge the court of judicial notice of counsel's personal circumstance.

The case having dragged on for several months, the trial court cannot be faulted in considering the case submitted for decision on November 22, 1985, because Section 17 of the Rule requires that hearing in summary cases, when still ordered, must be finished on the same date set therefor. Furthermore, petitioners had another chance to

present their arguments when the trial court required the parties to submit their respective memoranda; but again the defense failed to comply.

It would not be amiss to say that the chronicled reluctance of petitioners' counsel to present simple affidavits and other defensive evidence betrays absence of real and substantial defense if not a deliberate attempt to prolong and delay the otherwise expeditious and summary procedure mandated by the Rule in simple cases of this nature.

The Court similarly finds unmeritorious the contention of petitioners that the promulgation of the judgment on December 27, 1985 was invalid because they were not assisted by their counsel. It has been categorically held that the absence of defendant's counsel during the reading of the judgment does not affect the validity of the promulgation.[9] There is a valid promulgation of judgment if the decision is read in the presence of the presiding judge and the defendant, or the latter's attorney or representative if the conviction is for a light offense.[10]

In the instant case, two of the defendants were present during the December 27, 1985 promulgation of judgment. The trial court read again the decision on January 3, 1986 to accused-petitioner Leon Cajés, Jr. when the latter appeared before the court. While the presence of counsel for the accused is desirable, the proceedings need not be delayed to suit the whim of counsel who did not show up despite due notice. Besides, the trial court took steps to secure the rights of the accused when it provided petitioners with a counsel whose services they refused.

As far as petitioner Gonzales is concerned, he has effectively waived any objection to the validity of the promulgation when he appealed the decision to the regional trial court. With regard to Leon Cajés, the record shows that the court read the judgment to him on January 3, 1986 which is sufficient compliance with the rules. At any rate, as correctly noted by the Solicitor General, there is no point in remanding the case to the trial court just for the purpose of reading again the judgment which is already known to the petitioners.

Anent petitioners' final contention that they are entitled to acquittal because their co-accused Jesus Acuna was acquitted by the same evidence against them, the Court can only state that such reasoning is plainly non sequitur. It does not necessarily follow under our rules of criminal procedure that once a co-accused is acquitted the other accused should also be exculpated because precisely the purpose of trial is to determine the liability of each of the accused. More fundamentally, the task of reviewing the sufficiency of evidence of conviction of the petitioners in cases of this nature properly belongs to the Court of Appeals in an ordinary appeal, not to this Court in the instant special civil action for certiorari.

Finally, the Court notes with disapproval the lackadaisical handling by Atty. Lord Marapao of his clients' defense in the case at bar. He was lukewarm and less than vigilant in the performance of his duties as defense counsel. He took too much for granted, in the process forfeiting his clients' opportunities to present evidence in their own behalf. Having wasted several chances to present evidence for the defense due to his own neglect and omission, he vainly tried to shift to the trial court the blame for the prejudice caused thereby to his clients. For this deplorable conduct and attitude towards his clients' welfare and the dignity of the court, Atty. Lord Marapao is hereby ADMONISHED and WARNED that a repetition of the same or similar act in the future will be dealt with more severely.

WHEREFORE, finding the questioned decision to be in accordance with law, the Rules and jurisprudence, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Gutierrez, Jr. and Bidin, JJ., concur.

Feliciano and Cortes JJ., on leave.

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- [1] Criminal Case No. 1090.
- [2] Sec. 1.B (4).
- [3] Annex “4”, Comment of Judge Payot; p. 26, Rollo.
- [4] Annex "5", Comment; p. 27, Rollo.
- [5] p. 2, Comment of Judge Payot, citing p. 122 of the Records; p. 20, Rollo.
- [6] p. 8, Rollo.
- [7] Comment of Judge Payot; p. 20, Rollo, citing p. 127 of the Records.
- [8] pp. 2-3, Petition; pp. 3-4, Rollo.
- [9] Jamilano v. Judge Cuevas, 152 SCRA 158, citing U.S. v. Pantaleon Gimeno, 3 Phil. 233-234; People v. Quibete, 131 SCRA 81.
- [10] Section 6, Rule 120, Rules of Court; Jamilano v. Judge Cuevas, *ibid*.

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