

BILLY P. OBUGAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES AND HON. SALVADOR J. VALDEZ, JR., IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH V OF THE RTC, BAGUIO CITY, RESPONDENT.

G.R. Nos. 116506-07. May 22, 1995

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari to set aside the orders of respondent judge of the Regional Trial Court, Branch 5, of Baguio City, denying petitioner's motion for reconsideration and for the recall of the notice of entry of the judgment rendered against him.[1]

Petitioner was accused in two criminal cases of violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act. In Criminal Case No. 11716-R, he was charged with selling 200 grams of dried marijuana on August 1, 1993, in violation of Art. II, §4 of the law. In the second case (Criminal Case No. 12063-R) he was charged with possessing, also on August 1, 1993, 800 grams of suspected marijuana dried leaves, 15 grams of suspected marijuana flowering tops and 3 pieces of suspected marijuana cigarette roaches in violation of Art. II, §8 of Republic Act No. 6425.

After trial, petitioner was found guilty by the trial court, presided over by respondent judge, and sentenced accordingly. The dispositive portion of the decision, dated January 10, 1994, reads:

WHEREFORE, the Court finds and declares the accused BILLY OBUGAN y PACLEB guilty beyond reasonable doubt of the crimes charged and hereby sentences him:

(a) In Crim. Case No. 11716-R, for illegal sale and delivery of marijuana, to suffer life imprisonment and to pay a fine of P20,000.00 plus costs; and

(b) In Crim. Case No. 12063-R, for illegal possession of marijuana, to suffer imprisonment of SIX (6) Years and ONE (1) DAY, as minimum, to SEVEN (7) Years, as maximum; and to pay a fine of P6,000.00, plus costs.

In the service of his sentence, the accused shall be credited with his preventive imprisonment under the terms and conditions prescribed in Article 29 of the Revised Penal Code, as amended.

All the evidence marijuana and cigarette rolling papers are hereby declared forfeited in favor of the Government and upon the finality of this decision, the Branch Clerk of Court is directed to turn over to the Dangerous Drugs Custodian (NBI) for disposition in accordance with law.

On January 26, 1994, i.e., or fourteen days after the date of promulgation of the decision, petitioner filed a motion for reconsideration.

On February 21, 1994, with his motion for reconsideration still pending, petitioner filed an urgent motion for new

trial. His motion was based on "newly discovered evidence," consisting of the affidavit of a certain Glen Hora, who claimed that the drug allegedly found in the possession of petitioner had actually been "planted" in his house on August 1, 1993, the very same day that the Narcotics Command (NARCOM) operatives searched petitioner's house, to justify his arrest.

On March 29, 1994, the trial court denied petitioner's motion for reconsideration but granted his motion for new trial. Accordingly, trials de novo were held on April 11, 1994 and May 25, 1994, during which Glen Hora testified for the defense.

On June 3, 1994, respondent judge issued an order in which, finding no reason to change his decision of January 10, 1994, he affirmed it. This order was received by petitioner on June 6, 1994.

On June 17, 1994, petitioner filed a motion for reconsideration. But on June 20, 1994, he received notice of entry of judgment, declaring the decision dated January 10, 1994 to have become final and executory. This prompted him to file an urgent manifestation for the recall of the notice of entry of judgment.

On the same date, the trial court denied petitioner's motion for reconsideration of the June 3, 1994 order, for the following reason:

The record shows that the decision was promulgated on January 12, 1994. On the 14th day after the promulgation, or on January 26, 1994, the accused filed his Motion for Reconsideration, which was later on followed by an Urgent Motion for New Trial, dated February 19, 1994. In the Order, dated March 29, 1994, the Motion for Reconsideration was denied, while the Urgent Motion for New Trial was granted.

After the new trial, an Order was issued, dated June 3, 1994, upholding the decision. A copy of the Order was served on counsel for the accused on June 6, 1994. The latter, therefore, had only one day left, or until June 7, 1994 within which to appeal or to file his second motion for reconsideration. But his present motion for reconsideration was filed only on June 17, 1994, or long after the decision has become final and executory.

WHEREFORE, the Court reiterates its denial of the accused's present Motion for Reconsideration.

On June 21, 1994, petitioner filed a motion to set his manifestation for hearing. But, in an order dated June 27, 1994, the trial court denied petitioner's motion for hearing, along with his earlier urgent manifestation.

On June 30, 1994, petitioner was transferred from the Baguio City Jail to the Bureau of Corrections at Muntinlupa.

Hence, this petition.

The sole issue before us is whether, given the facts above stated, the fifteen-day period for appealing should be counted from the date of promulgation of the original decision subject of the motion for new trial, deducting the time the motion was pending, or from the time a new judgment was rendered.

Petitioner's contention is that when a motion for new trial is granted, the original judgment is set aside and, therefore, the fifteen-day period begins to run anew from notice of the judgment rendered after the trial de novo.

On the other hand, respondent judge contends that, for purposes of computing the appeal period, a motion for new trial based on newly discovered evidence should be considered "granted" only when it results in a new or modified or amended judgment, in which case the fifteen-day period for appealing should be counted from notice of the new, modified or amended judgment, unless it is one of acquittal in which event it becomes immediately final. Otherwise, he argues, the motion for new trial should be deemed "overruled," even if initially it is granted or given due course, so that the period for appealing should be reckoned from the promulgation of the decision

subject of the motion for new trial but deducting therefrom the time during which the motion was filed to the date when notice of the order sustaining the said decision was served on the movant.

We find the petitioner's contention to be meritorious.

I.

Rule 121, §6 of the 1985 Rules on Criminal Procedure, as amended, provides:

SEC. 6. Effects of granting a new trial or reconsideration. ? The effects of granting a new trial or reconsideration are the following:

(a) When a new trial is granted on the ground of errors of law or irregularities committed during the trial, all the proceedings and evidence not affected by the commission of such errors and irregularities shall stand, but those affected thereby shall be set aside and taken anew. The court may, in the interest of justice, allow the introduction of additional evidence.

(b) When a new trial is granted on the ground of newly discovered evidence, the evidence already taken shall stand, and the newly discovered and such other evidence as the court may, in the interest of justice, allow to be introduced, shall be taken and considered together with the evidence already in the record.

(c) In all cases, when the court grants new trial or reconsideration, the original judgment shall be set aside and a new judgment rendered accordingly.

Thus, once a new trial is granted the original judgment is vacated. The nullification of the original judgment is not dependent on whether or not the new trial results in a new or modified judgment. The mere grant of the motion for new trial operates to vacate the original judgment.

The effect of granting a new trial is not to acquit the accused of the crime of which the judgment finds him guilty, but, precisely, to set aside the judgment so that the case may be tried de novo as if no trial had been had before, for the purpose of rendering a judgment in accordance with the law, taking into consideration the evidence to be presented during the second trial. While evidence already taken in the original trial is not disregarded but is to be taken into account together with the new evidence, original judgment is automatically set aside and the case is reverted to its original status before judgment, upon the granting of a motion for new trial.[2]

In the case at bar, when respondent judge, in his order dated March 29, 1994, granted petitioner's motion for new trial, the decision dated January 10, 1994 was automatically vacated. It was immaterial that the same judgment was subsequently affirmed on June 3, 1994 after the new trial. The fact is that it was set aside upon the granting of a motion for new trial and a new judgment had to be rendered according to Rule 122, §6(c). Whatever the decision after trial de novo was, the original judgment was vacated and the one rendered on June 3, 1994 became the new judgment, albeit it was to uphold the January 10, 1994 original decision.[3]

Consequently it is from petitioner's receipt of this new judgment that his period of appeal should be counted. Thus, Rule 122, §6 of the 1985 Rules on Criminal Procedure, as amended, provides:

When Appeal to be Taken. ? An appeal must be taken within fifteen days from promulgation or notice of the judgment or order appeared from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion shall have been served upon the accused or his counsel.

Thus the rule provides for the interruption of the appeal period in the event the motion for new trial or reconsideration is overruled. The implication is that if the motion for new trial is granted, as in the case at bar, and

a new judgment is rendered after the new trial was conducted, the period within which to perfect an appeal is fifteen days from receipt of the new judgment.

Since petitioner's counsel received a copy of the June 3, 1994 order on June 6, 1994, he had until June 21, 1994 within which to perfect his appeal. It was only on June 22, 1994 that the trial court's decision could have become final, assuming petitioner did not file any motion for reconsideration. Consequently, it was not correct for respondent judge to say that petitioner "had only one day left, or until June 7, 1994 within which to appeal or to file his second motion for reconsideration." [4] There was no basis for the denial on June 20, 1994 of petitioner's motion for reconsideration on the ground that the decision sought to be reconsidered had already become final and executory.

II.

Petitioner prays for his temporary detention at the Baguio City Jail on the ground that since his motion for reconsideration has yet to be heard, his transfer to the Bureau of Corrections was premature.

The transfer of national prisoners to the National Penitentiary at Muntinlupa is provided for in Circular No. 4-92-A. [5] The circular was the Court's response to the problem "that some judges refuse to issue mittimus for the transfer of prisoners sentenced to imprisonment for more than three (3) years to the Bureau of Corrections in Muntinlupa, Metro Manila, for the reason that their cases are on appeal." Under the circular, judges are required to immediately issue orders of commitment only after the conviction of national prisoners.

In other words the transfer of national prisoners to the Bureau of Corrections is ordered only when their cases are on appeal. In the case at bar, with petitioner's motion for reconsideration still to be heard, the transfer of petitioner to the Bureau of Corrections was premature.

III.

Petitioner also prays to be allowed bail, on the ground that since his prosecution in Criminal Case No. 11716-R is for selling and delivering 200 grams of marijuana, the imposable penalty is only prison correctional pursuant to Republic Act No. 7659, which amends Republic Act No. 6425.

Conformably with our ruling that the decision of the trial court has not yet become final, the application for bail must be addressed to the trial court.

WHEREFORE, the petition is GRANTED and the Orders dated June 20, 1994 and June 27, 1994 are SET ASIDE.

Respondent court is hereby ORDERED to recall the transfer of petitioner to the National Penitentiary and direct his detention at the Baguio City Jail pending disposition of his motion for reconsideration.

SO ORDERED.

Narvasa, C.J., (Chairman), Regalado, and Puno, JJ., concur.

[1] Orders dated June 20, 1994 and June 27, 1994, respectively, issued in Criminal Case Nos. 11716-R and 12063-R.

[2] Santos v. People, 64 Phil 10 (1937); People v. Bocar, 97 Phil. 398 (1955).

[3] Strictly speaking, there should be a new judgment which should contain a discussion of the evidence presented

during the new trial and the reason why in the opinion of the court the evidence did not warrant the acquittal of the accused. This is necessary so that in the event of an appeal, the accused can make an assignment of errors based on the content of the new judgment.

[4] Order, June 20, 1994, Rollo, p. 58.

[5] The Circular, "Transfer of National Prisoners to the Bureau of Corrections in Muntinlupa, Metro Manila," states:

It has come to the attention of the Supreme Court that some judges refuse to issue mittimuses for the transfer of prisoners sentenced to imprisonment for more than three (3) years to the Bureau of Corrections in Muntinlupa, Metro Manila, for the reason that their cases are on appeal.

For this purpose, prisoners detained at provincial and municipal jails and sentenced by lower courts to prison terms exceeding three (3) years, whether or not they have appealed, are considered national prisoners (P.D. 29). (NOTE: Under Presidential Decree No. 29, prisoners sentenced to not more than one (1) year are classified as municipal prisoners; those sentenced to one (1) year and one (1) day to not more than three (3) years are classified as city/provincial prisoners; those sentenced for three (3) years and one (1) day and above are classified as national prisoners.)

In order to decongest provincial, city and municipal jails, and to effect better control and supervision over national prisoners, all trial judges concerned are hereby directed to issue the corresponding mittimuses or commitment orders of national prisoners immediately after their conviction so that they may be remitted or transferred to the Bureau of Corrections in Muntinlupa, Metro Manila.

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