

**THE CONSOLIDATED BANK AND TRUST CORPORATION
(SOLIDBANK), PETITIONER, VS. HON. INTERMEDIATE APPELLATE
COURT, PHILIPPINE KNITTING MILLS, INC., SPOUSES LUIS CHENG,
SPOUSES TOMAS CH...**

G.R. Nos. 73777-78. September 12, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner is questioning the resolution of the respondent court dated January 10, 1986, setting aside a decision promulgated by one of its divisions after the death of the ponente.

The ponente was the late Justice Simeon M. Gopengco, who passed away on July 20, 1985. The decision was signed by him, with Justices Lino M. Patajo, Jose F. Racela, Jr., and Fidel P. Purisima concurring. The first page of the decision indicated that it had been promulgated on July 19, 1985, the day before Justice Gopengco's death. However, the other records of the respondent court show otherwise.

It appears therefrom that the decision was actually promulgated on July 23, 1985, three days after the ponente's death. The log book in his office carried an entry, that the ponencia was delivered to the office of the Division Clerk of Court only on that date.[1] It was promulgated on that same date by the said official in accordance with the internal rules of the respondent court. This fact was affirmed by her in a certification reading as follows:

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that the Office of the undersigned Division Clerk of Court received on July 23, 1985 from the Office of the late Justice SIMEON M. GOPENGCO the original and copies of decision rendered in cases AC-G.R. SP Nos. 03804 and 05071, Spouses Carlos C. Cruz, et al. and Philippine Knitting Mills, Inc., et al. v. Hon. Antonio Martinez, etc., et al. and that said copies of decision addressed to the parties and/or counsel, were sent to the Mailing Section of this Court on July 23, 1985 at 3:40 p.m., as appearing in our book.

This certification is issued upon the request of Atty. Nardo M. de Guzman, Sr.

Manila, October 15, 1985.

(Sgd.) Antonietta G. Canicula

ANTONIETTA G. CANICULA

Division Clerk of Court

The promulgation was made in accordance with Article V. Section E, Rules of Internal Operating Procedures of the respondent court, reading as follows:

E. Promulgation of Decision. – The promulgation of judgments or resolutions, including resolutions of motions, shall be the direct responsibility of the division clerk of court. The promulgation must be done not later than the next working day after a decision or resolution shall have been signed and filed by all the Justices concerned. The date of promulgation must be annotated on the first page of the decision or resolution and signed or initialed by the division clerk.

On the same date that the decision or resolution shall be promulgated, notice of the same shall be prepared and sent to the Mailing Section for immediate service on the parties. The notice and the copy of the decision or resolution must be contained in a sealed envelope before being sent to the Mailing Section for service on the parties. After service on all the parties have been done, the original copy of the decision or resolution shall be filed with the Reporter's Division. The rollo shall remain with the Office of the Division Clerk while the record of the case shall be sent to the records custodian (Archives Section) until remanded to the court of origin, archived, or forwarded to the Supreme Court in the proper cases.

There is evidence showing that the ponencia was sent by the office of Justice Gopengco to the office of Justice Purisima on July 18, 1985, and was returned by the latter on July 22, 1985.[2] It cannot be determined exactly when Justice Purisima signed the ponencia during the period when it was in his office. The dates when Justices Patajo and Racela affixed their signatures to the decision are not shown either.

What is definite is that when the decision was actually promulgated on July 23, 1985, the ponente was already deceased.

In the questioned resolution, the same division of the respondent court declared the decision void because it had been tardily promulgated. Reference was made to *Marcelino v. Cruz*,[3] where this Court declared:

The judge who wrote the questioned decision has died. It cannot now be promulgated. "It is well-settled that, to be binding, a judgment must be duly signed and promulgated during the incumbency of the judge whose signature appears thereon." (*People v. So*, July 30, 1957, No. L-8732, citing *Lino Luna v. Rodriguez*, 37 Phil. 186; *Garchitorena v. Crescini*, 37 Phil. 675; *Barredo v. The Commission on Elections*, 45 Off. Gaz. 4457; *People v. Court of Appeals*, G.R. No. L-9111-91113). For this reason, petitioner's case has to be declared by another judge.

It is noteworthy that the resolution was signed by Justices Racela and Purisima, who were in the original division, and Justice Carolina Griño-Aquino.

The petitioner contends that the cited decisions involved single courts only and do not apply to collegiate courts where decisions are made not by one judge alone but by a majority or all of the members. Even with Justice Gopengco's death, the decision still had the support of the three other members, who constituted the rest of the division. The ponencia was after all not the decision of the ponente alone but of the entire division.

It is settled that in single courts like the regional trial courts and the municipal trial courts, a decision may no longer be promulgated after the ponente has vacated his office. The question is whether this rule is also applicable to collegiate courts, as in the case at bar.

The Court has deliberated on this question and finds there is no reason why a different rule should be adopted for collegiate courts.

A decision becomes binding only after it is validly promulgated and not before. As we said only recently in *In re Emiliano Jurado*,[4] "a decision or resolution of the Court becomes such, for all legal intents and purposes, only from the moment of its promulgation." According to Chief Justice Moran in the landmark case of *Araneta v. Dinglasan*: [5]

Accordingly, one who is no longer a member of this Court at the time a decision is signed and promulgated, cannot validly take part in that decision. As above indicated, the true decision of the Court is the decision signed by the Justices and duly promulgated. Before that decision is so signed and promulgated, there is no decision of the Court to speak of. The vote cast by a member of the Court after deliberation is always understood to be subject to confirmation at the time he has to sign the decision that is to be promulgated. That vote is of no value if it is not thus confirmed by the Justice casting it. The purpose of this practice is apparent. Members of this Court, even after they have cast their votes, wish to preserve their freedom of action till the last moment when they have to sign the decision, so that they may take full advantage of what they may believe to be the best fruit of their most mature reflection and deliberation. In consonance with this practice, before a decision is signed and promulgated, all opinions and conclusions stated during and after the deliberation of the Court, remain in the breasts of the Justices, binding upon no one, not even upon the Justice themselves. Of course, they may serve for determining what the opinion of the majority provisionally is and for designating a member to prepare the decision of the Court, but in no way is that decision binding unless and until duly signed and promulgated.

We add that at any time before promulgation, the ponencia may be changed by the ponente. Indeed, if any member of the court who may have already signed it so desires, he may still withdraw his concurrence and register a qualification or dissent as long as the decision has not yet been promulgated. A promulgation signifies that on the date it was made the judge or judges who signed the decision continued to support it.

If at the time of the promulgation, a judge or a member of a collegiate court has already vacated his office, his vote is automatically withdrawn. This was what happened in the Araneta case, where Justice Gregorio Perfecto's signature on the original decision was disregarded when he died before it could be promulgated. The decision remained valid, however, because it was still supported by a majority of the Supreme Court then, and, no less importantly, Justice Perfecto was not the ponente.

The ponente in a collegiate court should remain a member thereof at the time his ponencia is promulgated because, at any time before that, he has the privilege of changing his opinion for the consideration of his colleagues. As a rule, his recommendations are accepted in recognition of the special study he is supposed to have made of the case after his designation as its ponente. It is important that he be incumbent at the time the decision is promulgated, in the event he may want to make last-minute changes therein with the approval of the other members. Obviously, he cannot exercise this privilege if he is no longer in office.

It is on this justification that, as a matter of practice (and of courtesy), this Court defers promulgation of a decision written by a member on official leave until his return. The author is afforded an opportunity to suggest to the rest of the Court any change he may want to make in his ponencia before it is officially pronounced.

Applying the above rules, we hold that the questioned ponencia died with the ponente and consequently could not be promulgated thereafter.

WHEREFORE, the petition is DENIED, with costs against the petitioner.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., on leave.

Griño-Aquino, J., no part.

[1] Rollo, p. 268.

[2] Rollo, p. 258.

[3] 121 SCRA 51.

[4] A.M. No. 90-5-2373, July 12, 1990.

[5] 84 Phil. 368.

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