401 Phil. 350

THIRD DIVISION

[G.R. No. 140243, December 14, 2000]

MARILYN C. PASCUA, *PETITIONER, VS.* HON. COURT OF APPEALS, THE PEOPLE OF THE PHILIPPINES, *RESPONDENTS.*

D E C I S I O N

MELO, J.:

What constitutes a valid promulgation *in absentia?* In case of such promulgation, when does the accused's right to appeal accrue?

Before us is a petition that calls for a ruling on the aforestated issues, particularly seeking the reversal of the decision of the Court of Appeals dated June 17, 1999 and its order dated September 28, 1999 denying reconsideration. The Court of Appeals dismissed the petition for *certiorari* under Rule 65 filed by petitioner which questioned the legality of the orders dated June 22, 1998 and October 8, 1998 issued by Branch 153 of the Regional Trial Court of the National Capital Judicial Region stationed in Pasig City.

The antecedent facts may be briefly chronicled as follows:

Petitioner was charged under 26 Informations for violation of Batas Pambansa Blg. 22. The Informations alleged that in 1989, petitioner issued 26 Philippine National Bank (PNB) checks to apply on account or for value in favor of Lucita Lopez with the knowledge that at the time of issue, petitioner did not have sufficient funds in or credit with the drawee bank for the payment of the face value of the checks in full. Upon presentment of the subject checks, they were dishonored by the drawee bank for having been drawn against insufficient funds and against a closed account.

After trial, a judgment of conviction was rendered on February 17, 1998, disposing:

> WHEREFORE, the Court finds the accused, MARILYN C. PASCUA, GUILTY beyond reasonable doubt of twenty six (26) counts of Violation of Batas Pambansa Bilang 22, and hereby sentences her to suffer ONE (1) YEAR imprisonment in each case and to pay the private complainant, LUCITA LOPEZ in the sum of SIX HUNDRED FIVE THOUSAND PESOS (P605,000.00), Philippine Currency without subsidiary imprisonment in case of insolvency.
>
> SO ORDERED.
>
> (p. 41, Rollo.)

The judgment was initially scheduled for promulgation on March 31, 1998.

However, considering that the presiding judge was on leave, the promulgation was reset to May 5, 1998.

When the case was called on May 5, 1998, Public Prosecutor Rogelio C. Sescon and defense counsel Atty. Marcelino Arias appeared and manifested their readiness for the promulgation of judgment, although the latter intimated that petitioner would be late. Hence, the case was set for second call. After the lapse of two hours, petitioner still had not appeared. The trial court again asked the public prosecutor and the defense counsel if they were ready for the promulgation of judgment. Both responded in the affirmative. The dispositive portion of the decision was thus read in open court. Afterwards, the public prosecutor, the defense counsel, and private complainant Lucita Lopez, acknowledged receipt of their respective copies of the subject decision by signing at the back of the original copy of the decision on file with the record of the case.

Forthwith, the public prosecutor moved for the forfeiture of the cash bond posted by petitioner as well as for the issuance of a warrant for her arrest. Acting on the motion, the trial court issued, also on May 5, 1998, the following order:

> When this case was called for the promulgation of judgment, the accused failed to appear despite due notice. Upon motion of the Public Prosecutor, that the cash bond posted for her provisional liberty be forfeited in favor of the government, being well-taken, the same is hereby granted. Likewise, let a warrant of arrest be issued against her.
>
> SO ORDERED.
>
> (p. 42, Rollo.)

No motion for reconsideration or notice of appeal was filed by petitioner within 15 days from May 5, 1998.

On June 8, 1998, a notice of change of address was filed by petitioner with the trial court, sent through a private messengerial firm. On the same date, without terminating the services of her counsel of record, Atty. Marcelino Arias, the one who received the copy of the judgment of conviction, petitioner, assisted by another counsel, Atty. Rolando Bernardo, filed an urgent omnibus motion to lift warrant of arrest and confiscation of bail bond, as well as to set anew the promulgation of the subject decision on the following allegations: that petitioner failed to appear before the trial court on the scheduled date of promulgation (May 5, 1998) because she failed to get the notices sent to her former address at No. 21 La Felonila St., Quezon City; that she had no intention of evading the processes of the trial court; that in February 1998, she transferred residence to Olongapo City by reason of an ejectment case filed against her by her landlord concerning her former residence in Quezon City; and that due to the abrupt dislocation of their family life as a result of the transfer of their residence to Olongapo City, there were important matters that she overlooked such as the filing of a notice of change of address to inform the trial court of her new place of residence.

The motion was set for hearing on June 11, 1998 but on said date, neither petitioner

nor assisting counsel was present. On June 22, 1998, petitioner filed a notice of appeal. The Office of the City Prosecutor of Pasig filed its comment on the motion for reconsideration arguing that: the promulgation of the subject decision was made by the trial court on May 5, 1998 in the presence of the accused's (herein petitioner's) counsel; that the subject decision is already final and executory, there having been no appeal interposed by the accused within the reglementary period; that there is no such thing as repromulgation of a decision; that before the accused could ask for relief from the trial court, she, being a convict, should submit herself first to the lawful order thereof, that is, to surrender to the police authorities.

On June 22, 1998, the trial court issued an order denying petitioner's urgent omnibus motion and notice of appeal for lack of merit, mentioning that its February 17, 1998 decision had already become final and executory. Petitioner moved for reconsideration, this time assisted by another lawyer, Atty. Romulo San Juan. The motion was set for hearing on July 8, 1998 but on said hearing date, neither petitioner nor Atty. San Juan appeared. Instead, Atty. Porfirio Bautista appeared as collaborating counsel of Atty. San Juan. When asked if he knew petitioner's counsel of record, Atty. Bautista could not answer.

On July 17, 1998, Attys. San Juan and Bautista as counsel for petitioner, filed a motion for inhibition of the presiding judge. The motion was set for hearing on July 28, 1998. Once again, petitioner failed to appear although Atty. Bautista did. On October 8, 1998, the trial court denied petitioner's motion for reconsideration and inhibition.

On December 14, 1998, petitioner filed a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure with the Court of Appeals praying for the nullification of the June 22, 1998 and October 8, 1998 orders of the trial court. At first, the Court of Appeals issued a resolution dated December 29, 1998 dismissing the petition for *certiorari*, for failure to contain an explanation why the respondent therein was not personally served a copy of the petition. However, upon reconsideration, said petition was reinstated.

After an exchange of pleadings, on June 17, 1999, the Court of Appeals issued the decision assailed herein. Petitioner moved for reconsideration, but to no avail.

Hence, the instant petition on the basis of the following grounds: (1) that petitioner was not properly notified of the date of promulgation and therefore, there was no valid promulgation; hence petitioner's period to appeal has not commenced; (2) that the promulgation *in absentia* of the judgment against petitioner was not made in the manner set out in the last paragraph of Section 6, Rule 120 of the 1985 Rules on Criminal Procedure which then provided that promulgation *in absentia* shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel; (3) that the decision of the trial court is contrary to applicable laws and that it disregarded factual evidence and instead resorted to make a conclusion based on conjectures, presumptions, and misapprehension of facts.

The resolution of the instant petition is dependent on the proper interpretation of Section 6, Rule 120 of the 1985 Rules on Criminal Procedure, which provides:

> Section 6. *Promulgation of judgment* --The judgment is promulgated by reading the same in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside of the province or city, the judgment may be promulgated by the clerk of court.
>
> If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal.
>
> The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. *In case the accused fails to appear thereat the promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused or counsel. If the judgment is for conviction and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused, who may appeal within fifteen (15) days from notice of the decision to him or his counsel.* (Italics supplied)

Incidentally, Section 6, Rule 120 of the Revised Rules of Criminal Procedure which took effect December 1, 2000 adds more requirements but retains the essence of the former Section 6, to wit:

> Section 6. *Promulgation of judgment.* -The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.
>
> If the accused is confined or detained in another province or city the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.
>
> The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to

him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (Italics supplied)

Promulgation of judgment is an official proclamation or announcement of the decision of the court *(Jacinto, Sr.,* Commentaries and Jurisprudence on the Revised Rules of Court [Criminal Procedure], 1994 ed., p. 521). In a criminal case, promulgation of the decision cannot take place until after the clerk receives it and enters it into the criminal docket. It follows that when the judge mails a decision through the clerk of court, it is not promulgated on the date of mailing but after the clerk of court enters the same in the criminal docket *(Ibid.,* citing *People v. Court of Appeals,* 52 O.G. 5825 [1956]).

According to the first paragraph of Section 6 of the aforesaid Rule (of both the 1985 and 2000 versions), the presence in person of the accused at the promulgation of judgment is mandatory in all cases except where the conviction is for a light offense, in which case the accused may appear through counsel or representative. Under the third paragraph of the former and present Section 6, any accused, regardless of the gravity of the offense charged against him, must be given notice of the promulgation of judgment and the requirement of his presence. He must appear in person or in the case of one facing a conviction for a light offense, through counsel or representative. The present Section 6 adds that if the accused was tried *in absentia* because he jumped bail or escaped from prison, notice of promulgation shall be served at his last known address.

Significantly, both versions of said section set forth the rules that become operative if the accused fails to appear at the promulgation despite due notice: (a) promulgation shall consist in the recording of the judgment in the criminal docket and a copy thereof shall be served upon the accused at his last known address or through his counsel; and (b) if the judgment is for conviction, and the accused's failure to appear was without justifiable cause, the court shall further order the arrest of the accused.

Here lies the difference in the two versions of the section. The old rule automatically gives the accused 15 days from notice (of the decision) to him or his counsel within which to appeal. In the new rule, the accused who failed to appear without justifiable cause shall lose the remedies available in the Rules against the judgment. However, within 15 days from promulgation of judgment, the accused