"So," THAT'S IT

By
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On July 30, 1957, the Supreme Court promulgated its decision in the case of *People v. So*[1] and thereby enunciated a doctrine in the promulgation of judgments rendered by trial courts. The *So* case so affected a case pending in our court that upon reading its digest in one of the metropolitan newspapers we had to send a telegraphic request to the Department of Justice for a copy of the decision.

In *People v. So,* Judge Demetrio Encarnacion signed on June 4, 1954 a decision absolving the accused and delivered said decision to the clerk of court on June 18, 1954. By operation of Republic Act No. 1186 which abolished his office, Judge Encarnacion ceased to be a judge on June 19, 1954. Judge Encarnacion's decision was read to the accused on November 12, 1954 despite the objection of the provincial fiscal who contended that it could not be validly promulgated because the judge who had penned it had already vacated his post.

Resolving the appeal of the provincial fiscal, the Supreme Court observed that "it is well-settled that, to be binding, a judgment must be duly signed, and promulgated during the incumbency of the judge who signed it."[2] The Supreme Court also said:

> "In criminal proceedings the Rules are more explicit. They require the judgment to be 'promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it' (Rule 116, sec. 6); and although it is true that it may be read by the clerk 'when the judge is absent or outside the province', it is implied that it may be read, provided he is still the judge therein."

Accordingly, the Supreme Court held that no judgment was validly entered and ordered the return of the case to the trial court for adjudication by the presiding judge therein, in accordance with the evidence already introduced, and for further proceedings.

There is much that may be said against the *So* case on practical and legal considerations.

It is well-known that in courts of first instance, unless the decision in a criminal case is dictated in open court upon a plea of guilty, there is almost always an interval between the rendition of the decision and its promulgation.[3] There are several reasons for this time gap which sometimes become extended. To mention but a few of the obvious reasons:

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1 G.R. No. L-8732, July 30, 1957.

2 Lino Luna v. Rodriguez, 37 Phil. 186 (1917); Garchitorena v. Crescini, 37 Phil. 675 (1918); Barredo v. Commission on Elections, 45 O.G. 4457 (1949); People v. Domalon, 52 O.G. 5725 (1952).

3 Even where testimonial evidence is introduced some judges pronounce sentence immediately after trial, reserving a written decision. See Landicho v. Tan, 48 O.G. 1007 (1952).

(1) Notices of the promulgation have to be sent. There is no difficulty with regard to the fiscal who generally occupies an office adjacent to the court. There is no difficulty also with regard to the accused if he is a detention prisoner. But in any event the lawyer of the accused has to be notified and if the accused is on bail, his bondsmen too. The preparation of notices takes time; so also their delivery; and the addressees must be given ample time to comply. In our court where distances and means of communication have to be considered, the date of promulgation is generally set ten days after the sending of the notices. Sometimes we set a longer period.

(2) The notices may not have been received in due time (our postal service being what it is) so another date has to be set for promulgation.

(3) Assuming that the accused, his lawyer and his bondsmen had been duly notified, the accused, for one, may not come to court as stipulated in the notice. He may have fallen sick; missed his transportation; decided to jump his bail. Similarly, and for practically the same reasons, the lawyer of the accused may not come to court. Again, another date has to be set for promulgation. And where the accused has jumped his bail, the date of promulgation cannot be fixed until after he has been arrested.

(4) The accused may be in prison — in Muntinglupa, in any of the national penal colonies, or in the jail of another province — serving a previous sentence. In such a case it would not be easy to bring him to court.[4] We have such a case in our court. A decision was penned in 1955 by a judge who retired early in 1957. The decision could not be promulgated immediately because the accused had been sent to Muntinglupa and later to the Zamboanga Penal Farm by virtue of a previous sentence. It may be mentioned, however, that there was considerable delay in the penning of the unpromulgated decision. The case had been submitted for decision as early as 1953. So the accused was sent, in the meantime, to Muntinglupa. At any rate, when the decision was finally penned, its promulgation was not pressed. It was thought that the decision could be promulgated in good time.

In the meantime, i.e. between the signing and/or filing of the decision and the date set for its promulgation, several things may happen. The judge who penned the decision may suddenly die (not an unlikely event considering the tremendous pressure of work); he may be legislated out of office; he may retire or resign; he may be promoted to a higher court; he may be appointed to an executive position. In all these cases, according to the *So* case, a new decision has to be made by the judge incumbent — a task which is not always easy to accomplish. For he has to know the evidence taken by the former judge. This in itself is not so difficult if the stenographer who had assisted in the case is still with the same court or the new judge. In such a case the judge can have the stenographer transcribe the notes or have said notes read to him.[5] But supposing the steno-

4 On September 29, 1955, the Department of Justice requested the Supreme Court to amend Section 6 of Rule 116 so that the judgment may be read to the accused by the warden or custodian of the jail. Nothing has been done so far on the request.

5 People v. Pardales, G.R. No. L-5611, May 21, 1957.

grapher had transferred to another court? Supposing that, like the former judge, he had resigned, retired or died? It is then obvious that the new judge cannot prepare a new decision immediately. He may even have to try the case anew. And where the accused is a detention prisoner, he has to languish in jail until something can be done about his case — always with the possibility that he may be acquitted. In the case in our court which we have already mentioned, the stenographer who assisted in the trial is no longer in the service.

We have attempted to show how the *So* case will work hardship on trial judges, stenographers and others in criminal cases. This hardship was apparently overlooked in the decision of the case. And since we have a personal interest, we might mention that judges of first instance are the work horses of the judiciary. Their work is hectic and demanding. Unlike appellate judges, they don't have all the time they may want to decide their cases; they seldom have stenographic transcripts and never briefs; they do not have the benefits and advantages of mutual consultation.

But on legal grounds too, the *So* case is vulnerable.

In *People v. Nicandro*,[6] "the judgment appealed from was signed by Honorable Alex Reyes as judge of the Court of First Instance of Manila, on December 27, 1938. At the bottom of the last page of said decision the following annotation in ink appeared: 'Received Jan. 5/39 at 9:30 a.m.' According to the affidavit of the clerk of court Macario L. Ofilada the annotation indicated the date and hour when he received said decision. It appears that on the same day at 11:00 a.m., the Honorable Alex Reyes took his oath as judge of the Court of Appeals. According to the affidavit of Honorable Alex Reyes on the date and time indicated in the annotation he ordered the clerk of court to promulgate the judgment. Pursuant to said order, the clerk of court sent a notice to the accused setting the reading of the sentence for January 7, 1939. The validity of the judgment is impugned on the ground that at the time of its promulgation the judge who rendered the same was no longer judge of the Court of First Instance of Manila. *Held*: It is therefore clear that when the decision was delivered to the Deputy Clerk, the Honorable Alex Reyes continued to be judge of First Instance with full authority for all legal purposes, *equivalent to the date of promulgating the judgment*, because it was only incumbent upon the Deputy Clerk to comply with his ministerial duty of reading the judgment to the accused."

To be sure, the *Nicandro* case was decided only by the Court of Appeals.[7] To be sure also, the *Nicandro* case was not decided in the light of the provisions of the Rules of Court but under the old Code of Criminal Procedure. Nonetheless, its *ratio* sits better with the practical considerations which we have pointed out above. And it may be mentioned in this connection that there is no contrariety between the *Nicandro* case and the *Domalaon* case, cited in the *So* case,

6 Court of Appeals, G.R. No. 4552, September 20, 1940; Padilla, Criminal Procedure, 1955 ed., 615-616.

7 It would be interesting to find out if any of the justices who signed the So case, especially Justice Bengzon who penned the decision, had taken part in the Nicandro case.

for both of them hold that the decisive factor is the time of receipt by the clerk of court of the questioned decision.

There is nothing fundamentally objectionable to giving effect to a judgment penned by a judge who is no longer incumbent. Thus, Section 51, paragraph 2, of the Judiciary Act as amended, stipulates that "whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment."

Of course this provision, an express statutory sanction, is not directly applicable to the *So* case but it does point the way to an alternative solution.

Finally, we believe that the Supreme Court indulged in too much grammar in the *So* case. It gave too much emphasis on the pronoun *who* — making it stand for the *person* of the judge. But we believe that the Supreme Court could have made it stand for the *office* of the judge (the court) without doing violence to its meaning. Inasmuch as the office of the judge (the court) continues to exist until it is legally abolished, it would seem that that fact alone should be sufficient for purpose of promulgation. It may be mentioned in this connection that one of the standing jokes in statutory construction (no levity or flippancy intended) is that a rule can always be found to support a desired result. There is no difficulty in finding a rule to oppose another rule. Thus as against the rule *index animi sermo est* — speech is the indication of intent — we have the rule *verba intentioni non e contra debet inservire* — words ought to be more subservient to intent and not the intent to the words. And, we might add, we also have a rule against a construction that would lead to hardship or mischievous results. In fine, the rules of construction can always be worked towards an objective predetermined to be sound. Of course the rules of construction should not be so used as to provide a cloak for judicial legislation.

We believe in deciding cases in accordance with law. This is the obligation we assumed in our oath of office. But at the same time and to a certain extent, the law is what we judges say it is. *So*, that's it.

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