



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
QUEZON CITY

SEVENTH DIVISION

MINUTES of the proceedings held on June 21, 2018.

Present:

ZALDY V. TRESPESES ----- Acting Chairperson
KARL B. MIRANDA* ----- Associate Justice
KEVIN NARCE B. VIVERO** ----- Associate Justice

The following resolution was adopted:

SB-16-CRM-0272 to 0309 – People v. Feliciano Palad Legaspi, Sr.

We resolve the *Motion for Reconsideration and to Recall Forfeiture of Bond and Warrant of Arrest* dated May 28, 2018 filed by accused Feliciano Palad Legaspi, Sr. [“accused”].

Material Antecedents

Despite due notice to accused and his counsel of the setting of the promulgation of judgment on May 11, 2018, they failed to appear on said date. Thus, promulgation *in absentia* proceeded of this Court’s Decision¹ which convicted accused of the crime of *Usurpation of Official Functions* and sentenced him to suffer in each case the indeterminate penalty of three (3) months and eleven (11) days of arresto mayor in its medium and maximum periods as *minimum* to one (1) year, eight (8) months and twenty-one (21) days of prision correccional in its minimum and medium periods as *maximum*. Considering further that the non-appearance of accused was found to be inexcusable, this Court ordered forfeited the cash bond for the thirty-eight (38) counts of Usurpation, and issued a warrant for his arrest.²

* Per Admin Order No. 076-2018 dated February 2, 2018

** Per Admin Order No. 301-2018 dated May 31, 2018

¹ Records, Vol. 4, pp. 339-366

² Order dated May 11, 2018 (Records, Vol. 4, p. 373)

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The Motion for Reconsideration of the Accused

In his *Motion* filed on May 28, 2018, accused, offering apologies, states that his non-appearance was inadvertent as his counsel had mistakenly thought that the promulgation was calendared for May 30, 2018, not on May 11, 2018. Accused now seeks the indulgence of this Court in the reconsideration of the forfeiture of his cash bond on the ground that there should be a hearing requiring him to show cause for such purpose.³

In further support of his Motion, accused filed a *Supplement to Motion for Reconsideration and to Recall Forfeiture of Bond and Warrant of Arrest and Leave to Avail Remedies*⁴ dated May 29, 2018. In explaining his non-appearance at the scheduled promulgation and his non-surrender thereafter, accused invoked medical and/or health reasons, as follows: he had just been discharged from St. Luke's Medical Center following surgery and confinement of twenty-four (24) days or from April 16 to May 9, 2018;⁵ despite his discharge from said hospital, due to the lingering effects of the surgery performed on him, he has not yet fully recovered his mobility; and recently on May 28, 2018 at 1:30 p.m., he was scheduled to appear in a hearing as a witness in another case pending before the Sixth Division of this Court, but was excused therefrom as he was found "lying in the MEDFORCE Ambulance with plate no. VH 4046 park (sic) at the Sandiganbayan parking area."⁶

For these reasons, accused thus prays for: reconsideration of the forfeiture of his cash bond; that the warrant of arrest be recalled; and for leave to avail of the remedies available in the rules against judgment.

The Opposition of the Prosecution

For its part, the prosecution states that accused lost the remedies of filing a motion for reconsideration and appeal from the judgment of conviction due to his failure to: appear at the promulgation held on May 11, 2018, despite due notice; and the subsequent recording of the judgment in the criminal docket and serving upon accused a copy of said judgment. In order to regain his standing in court, it behooves upon accused to both surrender, and file a motion for leave of court to avail of remedies stating the reason for his absence within fifteen (15) days from the date of the promulgation of the judgment. Accused, however, failed to do so. His appearance before the Sixth Division of this Court cannot be considered as an act of surrender because there is no connection between the case pending before said Division and the

³ 2000 RULES OF CRIMINAL PROCEDURE, rule 114, § 21

⁴ Records, Vol. 4, pp. 379-381

⁵ Notarized Medical Certificate dated May 9, 2018 (Records, Vol. 4, p. 383)

⁶ Certified copy of Appearance/Notice of Settings Sheet in Criminal Case Nos. SB-17-CRM-1424 to 1425 pending before the Sixth Division of this Court (Records, Vol. 4, p. 382)

instant case. Furthermore, the excuses given by accused are flimsy and undeserving of weight. The certificate presented by accused showed that he was already discharged on May 9, 2018, and as such, he should have been able to present himself to the Court on the scheduled promulgation on May 11, 2018. The prosecution thus prays that the *Motions* of accused be denied.

Our Ruling

Promulgation of judgment *in absentia* is governed by Section 6, Rule 120 of the *2000 Rules of Criminal Procedure*, which reads:

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.

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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. (Emphasis supplied)

If the accused has been notified of the date of promulgation, but does not appear, the promulgation of judgment *in absentia* is warranted.⁷ The reason therefor is to obviate a repetition of the situation in the past when the judicial process could be subverted by the accused by jumping bail to frustrate the promulgation of judgment.⁸ Significantly, *Pascua v. Court Appeals* explains the effect if an accused is absent during promulgation of judgment, viz:⁹

It thus appears that the judgment in a criminal case must be promulgated in the presence of the accused, except where it is for a light offense, in which case it may be pronounced in the presence of his counsel

⁷ Javier v. Gonzales, G.R. No. 193150, January 23, 2017

⁸ Ibid

⁹ G.R. No. 140243, December 14, 2000

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or representative (*Dimson v. Elepaño*, 99 Phil. 733 [1956]), and except where the judgment is for acquittal, in which case the presence of the accused is not necessary (*Cea, etc., et al. v. Cinco, et al.*, 96 Phil. 31 [1954]). Notably, one of the conditions of the bail given for the provisional liberty of an accused in a criminal case is that he shall surrender himself (or the bondsman shall surrender the accused) for execution of the final judgment (Section 2[d], Rule 114, Revised Rules of Criminal Procedure). Thus, it follows that it is the responsibility of the accused to make himself available to the court upon promulgation of a judgment of conviction, and such presence is secured by his bail bond. This amplifies the need for the presence of the accused during the promulgation of a judgment of conviction, especially if it is for a grave offense. Obviously, a judgment of conviction cannot be executed — and the sentence meted to the accused cannot be served — without his presence. Besides, where there is no promulgation of the judgment, the right to appeal does not accrue (*People v. Jaranilla*, 55 SCRA 565 [1974]).

Jurisprudence further dictates that the absence of counsel during the promulgation will not result in a violation of any substantial right of the accused, and will not affect the validity of the promulgation of the judgment (*Bernardo v. Abeto*, CA-G.R. No. 6076, 31 January 1940; *Gonzales v. Judge*, 186 SCRA 101 [1990]).

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Nevertheless, as mentioned above, regardless of the gravity of the offense, promulgation of judgment in absentia is allowed under the Rules. The only essential elements for its validity are: (a) that the judgment be recorded in the criminal docket; and (b) that a copy thereof shall be served upon the accused or counsel.

Here, considering that the promulgation of judgment was held on May 11, 2018, accused had **fifteen (15) days** therefrom or until **May 28, 2018**¹⁰ within which to file a motion for leave of court to avail of the remedies as per Section 6, Rule 120 of the *2000 Rules of Criminal Procedure*. Indubitably, accused's *Motion* was seasonably filed on May 28, 2018, which date is within said 15-day period. Moreover, for herein accused, it appears that his non-appearance was not caused by a desire to undermine the judicial processes, but due to bonafide health and/medical reasons.

Accused had presented a notarized Medical Certificate dated May 9, 2018, the acknowledgment of which serves as *prima facie* evidence of the execution of the instrument or document involved.¹¹ A reading of said Certificate reveals that accused had undergone surgery of "L3 (partial) L3L4L5 laminectomy, foraminotomies, decompression; L3L4 discectomy, debridement (4/19/2018),"¹² for which he was confined at St. Luke's Medical Center, Quezon City for several weeks from April 16 to May 9, 2018.

¹⁰ Since the actual last day of filing, May 26, 2018, fell on a *Saturday*, accused thus had until the *next working day*: Monday, May 28, 2018

¹¹ REVISED RULES ON EVIDENCE, rule 132, § 30

¹² Records, Vol. 4, p. 383

Laminectomy refers to back surgery to relieve compression on the spinal cord, in which the lamina (part of the bone that forms the vertebral arch in the spine) and bone spurs (which can put pressure on the spinal cord) are removed.¹³ In the same vein, discectomy involves the removal of damaged discs which pinch the nerves in the spine.¹⁴ While accused had already been discharged from said hospital on May 9, 2018, which date was prior to the scheduled promulgation of judgment, the mere fact of his discharge is not a certification that he has fully recovered from his surgical operation(s). In fact, medical research discloses that following laminectomy or discectomy, it takes several weeks (two to six weeks for discectomy) before the patient may return to normal activities depending on the amount of lifting, walking, and sitting involved in said patient's job.¹⁵ That herein accused has not yet completely recovered, and likely even suffers from poor physical health, is bolstered by the fact that he had appeared before the Sixth Division of this Court, but was subsequently found "lying in the MEDFORCE Ambulance with plate no. VH 4046 park (sic) at the Sandiganbayan parking area,"¹⁶ as shown by the certified true copy of the Appearance/Notice of Settings Sheet. Under these circumstances, it can be concluded that his absence on the date of promulgation was motivated by legitimate medical concerns, and thus, excusable.

Section 6, Rule 1 of the *Rules of Court* provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.¹⁷ Conformably therewith, the unique circumstances of the present case warrant the reconsideration of this Court's Order dated May 11, 2018 which declared forfeited the cash bond for the thirty-eight (38) counts of Usurpation, and issued a warrant for his arrest.

WHEREFORE, solely in the higher interest of substantial justice, the *Motion for Reconsideration and to Recall Forfeiture Bond and Warrant of Arrest* dated May 28, 2018 filed by accused Feliciano Palad Legaspi, Sr. is **GRANTED**. The cash bond issued for the thirty-eight (38) counts of Usurpation is **REINSTATED** and the warrant of arrest is **RECALLED**. Having shown that his absence from promulgation of judgment was for a justifiable cause, and that he had seasonably filed his motion, accused is given a period of fifteen (15) days from notice hereof within which he may avail of

¹³ Natalie Phillips, Laminectomy, available at <https://www.healthline.com/health/laminectomy> (last accessed June 13, 2018)

¹⁴ Discectomy, Icahn School of Medicine at Mount Sinai, available at <https://www.mountsinai.org/locations/spine-hospital/treatments/discectomy> (last accessed June 13, 2018)

¹⁵ Discectomy, Mayo Foundation for Medical Education and Research, available at <https://www.mayoclinic.org/tests-procedures/discectomy/about/pac-20393837> (last accessed June 13, 2018)

¹⁶ Records, Vol. 4, p. 382

¹⁷ Cobarrubias v. People, G.R. No. 160610, August 14, 2009



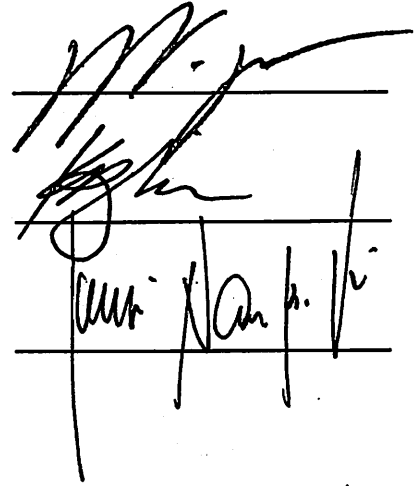
the remedies provided for in the *Rules of Court* against his judgment of conviction.

SO ORDERED.

TRESPESES, J., *Acting Chairperson*

MIRANDA, J.

VIVERO, J.



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