

**DEMETRIO JAUGAN, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, AND THE HON. COURT OF APPEALS, RESPONDENTS.***G.R. No. L-29729. January 31, 1969*

Ponente: DIZON, J.

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The matter before the Court is a motion for leave to file a second motion for reconsideration which, in truth, is already a motion for reconsideration because it prays "that the two resolutions of this Honorable Court dated November 5 and December 2, 1968 be corrected and that the petition for certiorari be given due course".

On October 29, 1968 petitioner filed a petition for the review, by way of certiorari, of the decision of the Court of Appeals in G. R. No. CA-02912-CR finding him guilty of homicide, with two aggravating circumstances and one mitigating circumstance, and sentencing him accordingly, and praying, as a consequence, that said case "be ordered re-opened and that a new trial be granted with the end in view of allowing the introduction of Annexes A, B and C, as evidence, so that they could be considered by the court before rendering a final judgment on the merits of the criminal case". By our resolution of November 5, 1968 We denied said petition "for being late". Petitioner's counsel received notice of this resolution by registered mail on November 11, 1968. Ten (10) days thereafter, or more, specifically, on November 21 he filed a motion for reconsideration which we denied in our resolution of December 2, both dates of the year 1968. Petitioner received notice of this last resolution on December 6, 1968. Eleven (11) days thereafter, or on December 17, 1968 he filed the motion for leave etc. under consideration.

Under Section 1, Rule 52 of the Rules of Court, the motion for leave etc. was filed out of time.

On the question of whether or not the petition for certiorari was filed on time, the record shows the following:

Petitioner received notice of the decision of the Court of Appeals on June 20, 1968. Therefore, the fifteen-day period for the filing of a petition for certiorari by way of appeal to the Supreme Court, or for the filing of a motion for rehearing was to expire on July 5, 1968. As petitioner was granted by the Court of Appeals thirty days extension for the filing of a motion for reconsideration and/or new trial, the period therefore to appeal by certiorari was extended up to August 4, 1968. He filed his motion for reconsideration and/or new trial on July 23, 1968 – admittedly within the extended period.

Petitioner's motion for reconsideration and/or new trial mentioned above was denied by the Court of Appeals in its resolution of August 6, 1968, notice of which was received by petitioner on August 22, 1968. Consequently, in accordance with the provisions of Section 1, Rule 45 of the Rules of Court, he had fifteen days from August 23, 1968 (inclusive) within which to appeal by certiorari from the decision of the Court of Appeals. Said period expired on September 6, 1968.

On August 23, 1968 petitioner filed with the Court of Appeals again a motion for permission to file a second motion for reconsideration and/or new trial, which said Court denied in its resolution of September 3, 1968, notice

of which was received by petitioner either on the 10th or 11th of September of the same year.

The abovementioned motion for leave to file a second motion for reconsideration and/or new trial – contrary to the belief apparently entertained by petitioner's counsel – did not suspend the running of the period of fifteen days provided for in Section 1 of Rule 45. Neither, of course, did the subsequent motions for reconsideration filed by him. Consequently, when he filed his petition for certiorari with Us on October 29, 1968, the period provided for in Section 1, Rule 45, had long expired. This is the reason why We denied the same in our resolution of November 5, 1968.

WHEREFORE, petitioner's motion for leave to file a second motion for reconsideration dated December 16, 1968 is hereby denied.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Sanchez, Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

Barredo, J., did not take part.

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