

**JOHN A. IMUTAN, PETITIONER, VS. THE HON. COURT OF APPEALS
(SPECIAL DIVISION OF FIVE COMPOSED OF ACTING PRESIDING
JUSTICE ANTONIO G. LUCERO AND ASSOCIATE JUSTICES RAMON C.
FERNAN...**

G.R. No. L-39310. January 27, 1981

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

Action for Certiorari to annul the resolution promulgated on September 2, 1974 by the respondent Court of Appeals, which denied petitioner's motion for reconsideration dated April 25, 1974 and his motion dated July 5, 1974 to consider the motion for reconsideration in the alternative as a motion for new trial, based on the following

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"GROUNDS

"FIRST GROUND: That the respondent Court of Appeals, thru its Special Division of Five, composed of Acting Presiding Justice Lucero, Justices Fernandez, Santos, Gaviola and de Castro, acted with grave abuse of discretion or in excess of jurisdiction in considering petitioner's motion for reconsideration of the Court's decision of March 13, 1974 as denied and said decision of March 13, 1974 affirmed in spite of the fact that only two Justices voted for outright denial of said motion while two voted for the granting of said motion and for outright acquittal of the accused, while the ponente of the original decision voted to consider said motion for reconsideration as a motion for new trial which should be granted to give an opportunity to petitioner to present in evidence certain documents which, if admitted, would establish the fact that the second marriage was entered into by petitioner under duress and intimidation.

"SECOND GROUND: That assuming that petitioner's motion for reconsideration is properly deemed denied, respondent court nevertheless acted with grave abuse of discretion in not considering the alternative motion of petitioner for the granting of a new trial as deemed approved or granted.

"THIRD GROUND: That the respondent Court acted with grave abuse of discretion in not granting the motion for new trial."

The facts that follow are on record.

The petitioner was found guilty of bigamy by the Court of First Instance of Cavite on the charge that while his first marriage with Aurea Martin whom he married on June 25, 1956 was still valid and subsisting, he contracted a

second marriage with Leonida Limpiada on August 6, 1960. He was sentenced to suffer "an indeterminate penalty of from two (2) years, four (4) months and one (1) day of prision correccional, as minimum, to eight (8) years and one (1) day of prision mayor, as maximum, and to pay the costs." Petitioner appealed to the respondent Court of Appeals and on March 13, 1974 its Special Division of Five^[1] formed after the Division of Three failed to reach a unanimous verdict, affirmed the conviction of petitioner in a 3-2 decision.^[2] Petitioner filed a motion for reconsideration on April 30, 1974 and the Solicitor General thereafter filed his comment thereon. While the motion for reconsideration was pending, petitioner filed on July 8, 1974 a motion to consider his motion for reconsideration in the alternative as a motion for new trial. On September 2, 1974, the respondent Court through its Special Division of Five, in a 3-2 Resolution,^[3] denied petitioner's motion for reconsideration and/or new trial.

The basic premise of the present petition is that, for a judgment finding petitioner guilty beyond reasonable doubt of the crime imputed upon him, there must be a concurrence in the Special Division of Five of three unequivocal, clear-cut votes of conviction without any qualifications or reservations. Thus, so the petitioner postulates, where the polarization of voting in a Special Division of Five is two for conviction, two for acquittal and one for new trial, there is no concurrence of a majority vote for conviction and the accused should be acquitted. Alleging that there was, in reality, no majority vote for his conviction in the case at bar, the petitioner argues that the respondent Court acted with grave abuse of discretion or excess of jurisdiction "in maintaining the judgment of conviction on the basis of an equally divided and inconclusive vote on the motion for reconsideration."^[4] At the very least, it is contended, the motion for new trial should have been granted.

To sustain the alleged polarization of voting in the Special Division, the petitioner, quoting extensively from the dissenting opinion of Justice Gaviola, traced the development in the voting - that eventually led to the questioned resolution of the respondent Court dated September 2, 1974 - of the five justices on the petitioner's motion. Thus -

"Acting upon the motion for reconsideration, Justice de Castro, the new ponente, voted that 'the motion for reconsideration may be treated as one for new trial so as to give a chance to appellant to present documentary evidence annexed to the motion, with the close scrutiny of the prosecution.' Amplifying, Justice de Castro, on July 2, 1974, said:

'In proposing to treat the motion for reconsideration as one for new trial, I took into account the following: (a) the Close voting, 3-2, the first vote of the original ponente, Justice Gaviola, followed by that of Justice Fernandez, being for outright acquittal; (b) the documents that may be presented in a new trial would prove not only the doubtful validity of the marriage license, because the license was applied for on the very day the marriage was celebrated, not more than 10 days as found by the trial court, not because the application was not duly notarized, but also the 'rush' celebration of the marriage which would prove a 'gunshot' marriage, which is the main defense of appellant. With the comment, I therefore, pass on the agenda to the Justices named as suggested by Justice Lucero.'

"Acting Presiding Justice Lucero, in an extended opinion voted to deny outright appellant's motion for reconsideration. Justice Fernandez voted as follows: 'Consistent with my dissenting opinion, I vote to grant the motion for reconsideration and acquit the accused-appellant.'"

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"Before a final vote, however, could be taken to resolve the said motion for reconsideration, the appellant submitted a second motion dated July 8, 1974, (herein referred to as the second motion), asking, among other things, that the first motion previously filed be considered, in the alternative, as a motion for new trial. Considering the said second motion, Justice de Castro voted to grant it; Justice Lucero and Justice Santos reiterated their vote to deny outright the first and second motions referred to; and Justices Fernandez and Gaviola, Jr., voted to acquit the accused-appellant."

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"The disposition of the voting, therefore, on the first motion (motion for reconsideration) as well as on the second motion (motion that the first motion be considered in the alternative, as a motion for new trial) is as follows:

- a) Two Justices - for acquittal
- b) Two Justices - for denial of the two motions and, in effect, for sustaining the judgment of conviction; and
- c) One Justice - for treating the first motion as a motion for new trial, and for granting the second motion.

"Interpreting the foregoing disposition of the voting of this Division, as thus crystallized, Justice de Castro the new ponente, in substance observed that, inasmuch as no three justices had voted for or against it, the first motion is impliedly denied because, with his voting to grant a new trial, he had, by implication, denied the first motion, in effect, bringing up to three the member of justices in favor of denying the first motion. This interpretation or observation appears in the remarks of a supplemental agendum which the Deputy Clerk of Court submitted to this Division to find out whether the other members of the Division shared the same."

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"The (aforequoted) 'remarks' were subsequently confirmed by Justice de Castro who, acting on the supplemental agendum, voted: 'as correctly observed in the 'remarks' the result is the motion in either of its alternative prayer is denied; in which vote Justice Lucero concurred along with Justice Santos. Justice Fernandez voted: 'Make it of record that I vote for the acquittal of the accused-appellant'." [5]

Grave abuse of discretion as basis for the issuance of the writ of certiorari is a well-defined concept. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[6] It has been held that abuse of discretion alone is not sufficient to warrant the issuance of the writ, but that the abuse must be so grave, as where the power is exercised in an arbitrary or despotic manner by reason

of passion, prejudice or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined or to act at all, in contemplation of law.[7] For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[8]

The present petition cannot survive the test of these authoritative pronouncements. The resolution dated September 2, 1974 cannot be tainted with grave abuse of discretion and certiorari cannot lie against the respondent Court.

There is no denying the fact that three justices out of the five members of the Special Division of the respondent Court of Appeals voted to deny the petitioner's motion for reconsideration and his motion to consider the motion for reconsideration in the alternative as a motion for new trial. Namely, these were Acting Presiding Justice Lucero who filed an extended opinion reciting his reasons for the outright denial of the petitioner's motion for reconsideration and/or for new trial; Justice Santos who concurred with Justice Lucero and Justice de Castro who likewise concurred with Justice Lucero and who, for the purpose of the resolution, incorporated the opinion of Justice Lucero as an integral part thereof. It is therefore clear that there was compliance with the provisions of Section 33 of the Judiciary Act as amended which provides that "(I)n the event that the three Justices do not reach a unanimous vote, the Presiding Justice shall designate two Justices from among the other members of the Court to sit temporarily with them, forming a division of five Justices, and the concurrence of a majority of such division shall be necessary for the pronouncement of a judgment."

The petitioner cannot turn his back to the reality of a 3-2 vote against his motion for reconsideration and/or new trial and insist that the "vote of Justice de Castro, the fifth member, is really for the granting of a new trial and not an unconditional vote for conviction."

First and most evident, Justice de Castro declared in no uncertain terms in the resolution under litigation that his vote was for an outright denial of the motions presented by the petitioner before the respondent Court. He stated that:

"Doubt now seems to have been generated by the vote of writer for the granting of a new trial, Justice Gaviola expressing the view that the stand taken by the five members constituting this Special Division is much too equivocal to permit a clear-cut disposition of the motion which would result, according to him, in a judgment of acquittal on the theory that the votes are evenly divided - two for conviction, two for acquittal - and one for new trial, the doubt to be resolved in favor of the accused since the vote for a new trial of the writer tends, likewise, to favor the said accused.

"If the writer has correctly stated Justice Gaviola's position, it need only be stated that as Justice Lucero has observed:

'Accordingly to the dissenting opinion of Justice Gaviola, Jr., there is no clear-cut vote of three Justices. I believe that no one can interpret Justice de Castro's vote better than himself. When he says that, by voting for new trial, the Reconsideration of defendant- appellant is deemed denied, we have absolutely no justification at all to question the meaning he (Justice de Castro) wanted to convey by his vote.

'Accordingly, I am of the opinion that the reconsideration was denied by a vote of three.'

"There can be no equivocation in the import of the vote of the writer (Justice de Castro) who hereby affirms categorically that he is for an outright denial of the motions now before us, revising his original vote for new trial since it counts with no support even from Justices Fernandez and Gaviola who insist on acquittal, refusing to vote in the alternative, if acquittal is not obtainable, to grant a new trial." [9]

Against this definitive contrary statement of Justice de Castro made after the respondent Court had thoroughly deliberated on the motions, the petitioner's insistence on the nature of Justice de Castro's vote, based largely on the configuration of and the explanations accompanying the preliminary voting on his motions, cannot stand. Petitioner should not harp upon the notations written by Justice de Castro during the time when his motions were passing hands for evaluation by the members of the respondent Court. Positions initially taken when issues are yet under study and consideration do not decide cases. They are exploratory in nature, formulated to elicit a full commentary on all the aspects of the issues presented by a cause. Rather than being constitutive of the final word on the matter at hand, they are merely the means by which a well considered conclusion can be reached. Indeed they must, if discussions are to be truly productive of the results intended by a judicial inquiry, change when so dictated by the entire body of reasons and arguments tabled at the end of the study. And so it was in this case, Justice de Castro wholly adopting the opinion of then Acting Presiding Justice Lucero which detailed the reasons why the motions of petitioner should be denied. Thus:

"The reasons for denial of the motions are stated in the extended opinion of Justice Lucero, set forth separately, in which the writer concurs, together with Justice Santos. For the purpose of this Resolution, the opinion of Justice Lucero is, therefore, deemed incorporated herein as integral part thereof.

"WHEREFORE, the motion for reconsideration dated April 30, 1974, as well as the motion dated July 8, 1974, is hereby denied."

This is, as it should be, the determinative statement that should finally dispose of the petitioner's motions. In the end, Justice de Castro clearly voted for "an outright denial of the motion, the reasons being those stated in the opinion of Justice Lucero, "incorporated as an integral part" of the resolution of September 2, 1974. And there is no reason for petitioner to hang on to what has been said when the issues were yet on the balance and to persist on his observation that the majority of the Special Division of Five considered "that because only two (Justices Fernandez and Gaviola) are in favor of granting the motion for reconsideration, the vote of Justice de Castro for the granting of a new trial should be deemed impliedly as a vote for the denial of the motion for reconsideration."

The extended concurring opinion of Justice Lucero, which Justice de Castro incorporated into the questioned resolution as an integral part thereof cannot itself be faulted for having been issued in grave abuse of discretion. As priorly pointed out, it detailed the reasons why the petitioner's motions should be denied outright. The main points raised in the petitioner's motions were discussed and the conclusions made were amply supported by existing jurisprudence. The opinion, as written, best manifests that there was no grave abuse of discretion on the part of the respondent Court correctible by certiorari. It reads:

"My stand is to deny outright the defendant-appellant's Motion for Reconsideration for lack of merit. It will be a waste of time to remand the case to the lower court for new trial which, in the first place, the defendant-appellant himself, please note, is not demanding from this tribunal. Under Revised Rule 121, Sections 1 and 2, the grounds for new trial are: (a) that new and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced at the trial, and which if

introduced and admitted, would probably change the judgment.

"In the trial of this case in the lower court, defendant-appellant's main reliance is that he was coerced or intimidated into contracting a second marriage with Leonida Limpiada. This story, the Lower Court, as well as this Court, had refused to believe for reasons well discussed in the majority opinion. In defendant-appellant's brief, two (2) errors were assigned, namely, (1) the Lower Court's not giving full faith and credit to the testimonies of the defendant-appellant and his witnesses; and (2) in assuming that the dismissal of defendant-appellant's complaint for annulment of the second marriage before the Juvenile and Domestic Relations Court of Manila, which was filed on August 12, 1963, after he had already been charged with bigamy on February 4, 1963, constitutes an adjudication on the merits of said case. Please take notice that the validity of the marriage applications, signed by defendant-appellant John Imutan, Exh. 2, and by Leonida Limpiada, the second wife, Exh. 2-A, was not raised at all in the Lower Court.

"In defendant-appellant's lengthy Reconsideration, the main thrust of his arguments is that 'Exhibits 2 and 2-A, marriage applications, cannot be considered public documents. At most they are merely private documents whose genuineness and due execution must be established before they can be received in evidence' (Reconsideration, page 3). Besides, the said documents, according to defendant-appellant, carried no notarial number of Notary Public Magin Dones, the brother of Cavite City Mayor Fidel Dones. In the language of defendant-appellant, 'the requirement of the placing of the document and page numbers is therefore, not a mere formality for it is an insurance against false certifications and antedating of documents, and the failure to comply with said requirement affects the integrity of the document as a public document' (Reconsideration, page 5). Likewise, it is claimed that said marriage applications do not bear the seal of the Notary Public. Replying to this argument, the Solicitor General said: 'We respectfully submit that Exhibits 2 and 2-A were correctly admitted in evidence, irrespective of their characterization as public or private writings. The attempt to discredit Exhs. 2 and 2-A as not public documents because of their alleged defective jurats must fail. These objections do not appear to have been raised in the Lower Court. They cannot be raised for the first time on appeal, let alone in a motion for reconsideration. In any event, appellant John Imutan does not deny his signature in Exhs. 2 and 2-A. So with Leonida Limpiada. The documents therefore were properly identified even if we were to characterize them in arguendo as private writings' (Roll 189). As shown from the foregoing, there is nothing to be gained by directing a new trial which defendant-appellant himself had not even asked for.

"Squarely on point is the case of Eduardo Eigenman vs. Marydeen Guerra and Froilan Guerra, 61 O.G. (31) 4722:

'MARRIAGE; VALIDITY; LICENSE WRONGFULLY OBTAINED DOES NOT INVALIDATE MARRIAGE; REASON. - A marriage under a license is not invalidated by the fact that the license was wrongfully obtained (I Tolentino on the Civil Code, 1960 ed., pp. 215-216, citing Melchor vs. Melchor, 102 Neb. 790, 169 NW 720). Lack of authority on the part of the subscribing officer would not render the marriage void where the essential requirements for its validity were present. This irregularity is primarily the lookout of the subscribing officer or his superior (San Gabriel, et al. vs. San Gabriel, Jr., CA-G.R. No. 23729-R, Nov. 27, 1959). This must be so, for the local civil registrar who issues the marriage license is not required to inquire into the authority of the officer administering the oath, and neither is the person solemnizing the marriage required to investigate as to whether or not a marriage license, which appears to have been issued by a competent official, was legally obtained.'

"What the law declares as null and void are marriages solemnized without a marriage license (Art. 80, NCC)."

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"ADDENDUM:

"After my dissenting opinion was submitted to the Division of Five on July 2, 1974, defense counsel apparently got knowledge of the grounds for the dissent and immediately adjusted his stand by filing on July 8, 1974 a 'Motion to Consider as Motion for Reconsideration. In the Alternative, as Motion for new Trial' (Roll 200-202), putting emphasis on the fact that Atty. Magin Dones, the notary public before whom the marriage applications, Exhibits 2 and 2-A, were sworn to, was not a notary public on the date he acted as such. This fact, even if proven in the new trial, will not alter my conclusion that the Motion for Reconsideration and/or New Trial is without merit because a marriage under a license is not invalidated by the fact that the license was wrongfully obtained, let alone the point that his new issue was not raised in the lower court nor before this Court on the appeal of the bigamy case." [10]

Still and all, the petitioner insists on a finding of grave abuse of discretion on the part of the respondent Court for having denied his alternative motion for new trial. He states that his position is "not that as a legal proposition the marriage was null and void because the marriage license that was issued was based on a defective marriage application." He contends that "since the respondent Court's as well as the trial court's principal basis in considering petitioner and those of his witnesses' testimonies as not credible, which is the fact that on July 13, 1960, petitioner and Leonida subscribed and swore to their marriage applications before Atty. Dones as notary public, is shown to be false, then there exists no ground for the Court's not believing petitioner and his witnesses." Again, he alludes to the preliminary voting on his motions stating that "even Justice de Castro when voting to consider the motion for reconsideration as a motion for new trial believed that the admission of the newly discovered evidence would prove the rush marriage and his contention that the second marriage was a "gunshot marriage." [11] Without ruling on the decision rendered by the respondent Court on March 13, 1974 since this has not been placed squarely before Us, apart from the rule that We are bound by the findings and conclusions of fact made by the respondent Court, [12] We hereby quote a portion of the said decision if only to show that petitioner does not stand on solid ground and to demonstrate that he cannot thereby force the conclusion that there has been no clear vote for his conviction. The pertinent portion of the decision of March 13, 1974 states that:

"The version of the defense by which it attempts to make out what it terms as a 'gunshot marriage' is inherently weak and improbable, from facts and circumstances established not only the State evidence but also by that of the defense itself. Thus, aside from the fact that the marriage license was applied for long before the marriage, which discounts the employment of force, threat or intimidation as already noted, appellant got all his clothes from his first wife a few months after the second marriage.

"According to Aurea, the second wife, Leonida was living with her mother-in-law, appellant's mother, when she called up by phone Leonida for a heart-to-heart talk about the matter of their marriage to a common husband.

"The action for annulment of the second marriage was filed only on August 13, 1963 after the recent charge for bigamy had already been filed on February 4, 1963, long after the supposed shotgun marriage on August 6, 1960.

"Appellant would rely mainly on the testimony of Leonida as her star witness, to give corroboration to his claim of force or intimidation having been employed to get him to enter into marriage with her. But from his story that he left and abandoned her practically from the first day following their marriage, Leonida could not have consented to take the witness stand in defense of one who virtually spurned her. She would be almost that woman scorned who knows no fury against the man who humiliated her, instead of showing cordiality to, much less, taking pity on him, as is evident from how she testified in his favor.

"Unwittingly, however, by her story of how she was abducted and assaulted against her will by appellant, Leonida made it plain to see that the force that impelled appellant to marry her is his fear of being prosecuted for the serious offense imputed to him by Leonida. In other words, he himself could have offered marriage or willingly accepted a proposal for it to avoid conviction and punishment under the law. As the Solicitor General stated in appellee's brief: 'In a desperate move to exculpate himself, appellant contends that marriage was the only solution to prevent scandal to the family of Limpiada. This is indeed an admission that the accused committed bigamy to prevent scandal. That reason is not exculpatory of the offense.'" (Emphasis supplied).[13]

WHEREFORE, the petition should be, as it is hereby dismissed. With costs against the petitioner.

SO ORDERED.

Barredo, (Chairman), Guerrero[*], and Abad Santos, JJ., concur.

Aquino, J., see concurring opinion.

[1] The Members of the Special Division of Five were then Acting Presiding Justice Antonio Lucero; Justice Ramon C. Fernandez, now Associate Justice of the Supreme Court; Justice Pacifico P. de Castro, now Associate Justice of the Supreme Court; Justice Guillermo S. Santos, later appointed Associate Justice of the Supreme Court who retired as such on January 23, 1980; and Justice Ramon Gaviola, Jr.

[2] Justice de Castro wrote the majority opinion. Justice Lucero and Justice Santos each filed a separate concurring opinion. Justice Gaviola dissented in an extended opinion, concurred in by Justice Fernandez.

[3] Justice de Castro penned the resolution, incorporating thereby the concurring opinion of Justice Lucero which was, in turn, concurred in by Justice Santos. Justice Gaviola filed an extended dissent and Justice Fernandez likewise dissented from the majority resolution "consistent with (my) dissenting opinion."

[4] Rollo, pp. 3-4.

[5] Id., pp. 9-13.

[6] Liwanag, et al. vs. Castillo, 106 Phil. 375 citing Abad Santos vs. Province of Tarlac, 67 Phil. 480; Tan vs. People, 88 Phil. 609; Rueda vs. Court of Agrarian Relations, 106 Phil. 300.

[7] Ibid., citing Talavera-Luna, Inc. vs. Nable, 67 Phil. 340; Alafriz vs. Nable, 72 Phil. 278. The same cases on grave abuse of discretion were also cited in People vs. Marave, No. L-19023, July 31, 1964, 11 SCRA 618.

[8] *People vs. Vallarta*, No. L-32728, June 30, 1977, 77 SCRA 476 citing, on this point, *Panaligan vs. Adolfo*, L-24100, September 30, 1975, 67 SCRA 176.

[9] *Rollo*, pp. 35-37.

[10] *Id.*, pp. 39-43.

[11] *Id.*, p. 27.

[12] *Associated Realty Development Co., Inc. vs. Court of Appeals*, L-18056, January 30, 1965, 13 SCRA 152; *Goduco vs. Court of Appeals*, L-17647, June 26, 1965, 14 SCRA 282; *Philippine Refining Co., Inc. vs. Garcia*, L-21871, Sept. 27, 1966, 18 SCRA 107; *Sta. Ana, Jr. vs. Hernandez*, L-16396, Dec. 17, 1966, 18 SCRA 973; *State Bonding Insurance Co., Inc. vs. Manila Port Service*, L-22395, Dec. 17, 1966, 18 SCRA 1139; *Haw Pia vs. Court of Appeals*, L-20047, June 30, 1967, 20 SCRA 536; *Monroy vs. CA*, L-23258, July 1, 1967, 20 SCRA 620.

[13] *Rollo*, pp. 64-66.

[*] Mr. Justice Juvenal K. Guerrero, a member of the First Division, was designated to sit in the Second Division.

CONCURRING OPINION

AQUINO, J.:

The trial court's judgment convicting the petitioner of bigamy was affirmed in the decision dated March 13, 1974 of a Special Division of Five Justices of the Court of Appeals. Justice De Castro penned the decision, Justices Lucero and Santos concurred in the judgment of conviction. Justices Gaviola and Fernandez dissented.

The petitioner filed a motion for reconsideration dated April 30, 1974. In a supplemental motion dated July 8, 1974, he asked that his motion for reconsideration be considered as an alternative motion for new trial.

Justice De Castro in a resolution dated September 2, 1974 denied the two motions. Justices Lucero and Santos concurred in that denial in a separate opinion. Justices Gaviola and Fernandez dissented from the resolution denying the motions.

The petitioner assailed that denial resolution in his instant petition for certiorari. He relies on the fact that during the deliberation on the motion for reconsideration, Justice De Castro voted to grant a new trial. He also allegedly voted to grant the alternative motion for the granting of a new trial.

But that was only his tentative vote. What is controlling and conclusive is the final and indubitable vote of Justice De Castro in the resolution of September 2, 1974, which he penned, categorically denying the motion for reconsideration and the alternative motion and reaffirming the judgment of conviction set forth in the decision of March 13, 1974.

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