

PEOPLE OF THE PHILIPPINES, PETITIONER, VS. COURT OF APPEALS, ISIDORO CONCON AND INOCENCIO CRISOSTOMO, RESPONDENTS.*G.R. No. 54641. November 28, 1980*

Ponente: MELENCIO-HERRERA, J.

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The People of the Philippines, through the Solicitor General, by these Certiorari proceedings, seeks to declare null and void the Resolution, dated 3 July 1980, of respondent Court of Appeals, in CA-G.R. Nos. 10780-82-CR entitled People of the Philippines vs. Melencio Adriano, et al., acquitting on a Fourth Motion for Reconsideration, private respondents, Isidoro Concon and Inocencio Crisostomo, upon the allegation that the judgment of conviction of said Court dated 13 July 1978 had become final on 26 July 1979 so that all proceedings taken and resolutions issued after the latter date are null and void.

By way of prefatory facts, it should be stated that on 20 December 1969, private respondents, together with eight other co-accused, in Criminal Case No. CCC VI-465 of the Circuit Criminal Court of Manila, were convicted in a joint judgment rendered by said Court in Criminal Cases Nos. CCC-VI-464, 465 and 466, of violation of section 3602 of Republic Act No. 1937 (Tariff and Customs Code), as amended by Republic Act No. 4712, and sentenced to an indeterminate penalty of ten (10) years and one (1) day, as minimum, to twelve (12) years, as maximum, and to pay a fine of P10,000.00 each. All the convicted accused in the three criminal cases appealed the said joint judgment of conviction to respondent Court, docketed therein as CA-G.R. Nos. 10780-82-CR. We are here actually concerned only with the appeal of private respondents Concon and Crisostomo in CA- G. R. No. 10781-CR.

Proceedings before the Court of Appeals
(CA-G.R. No. 10781-CR)

On 13 July 1978, the Third Special Division of respondent Court[1] promulgated its Decision in the three appealed criminal cases acquitting three accused and affirming the conviction of the others including private respondents. On 31 July 1978, private respondents moved for an extension of thirty days from 2 August 1978, or up to 1 September 1978, within which to file a Motion for Reconsideration, which was granted by respondent Court. A day before said expiry date, or on 31 August 1978, private respondents filed their first Motion for Reconsideration, which was denied in a Minute Resolution of respondent Court, this time by a majority of a Special Division of Five,[2] on 14 February 1979. Private respondents received said Resolution on 20 February 1979 and on the same day presented a Motion for Leave to file Second Motion to Reconsider within fifteen (15) days therefrom, or up to 7 March 1979. Leave having been granted, the Second Motion for Reconsideration was filed on the latter date. On 27 June 1979, the same Special Division of Five[3] denied the Second Motion for Reconsideration by reiterating the rationale for the judgment of conviction. Private respondents received copy of said Resolution on 11 July 1979. The fifteenth day therefrom was 26 July 1979. On 27 July 1979, or one day late, private respondents, without prior leave of Court (but with leave being requested in the Motion itself) filed a Third Motion for Reconsideration by registered mail. On 8 August 1979, private respondents filed a Supplement

to the Third Motion for Reconsideration. On 20 August 1979, the same Special Division of Five^[4] issued its Resolution treating the Third Motion for Reconsideration as a mere Motion for Leave to file a Third Motion for Reconsideration and denying the same, as well as the Motion for leave to file a supplement thereto. The majority opined that "litigants should not be allowed to iterate identical motions, speculating on the possible change of opinion of the Court or of the judges thereof," and that "to file their separate motions basically on the same grounds and for the same purpose is to trifle with courts."

On 22 August 1979, private respondents received copy of the Resolution of 20 August 1979. Assuming that the Third Motion for Reconsideration was timely filed, and as fifteen days from 22 August 1979 would fall on 6 September 1979, a day before, or on 5 September 1979, private respondents filed a Motion for Leave to file a Fourth Motion for Reconsideration embodying therein said Fourth Motion.

On 12 November 1979, the Special Division of Five of respondent Court, with a new composition because of the retirement of Justice Luis B. Reyes, voted unanimously^[5] to deny leave to file the Fourth Motion for Reconsideration on the ground that the judgment sought to be reconsidered had become final "on 23 August 1979", or one (1) day after private respondents had received on 22 August 1979 copy of the Resolution of 20 August 1979 denying leave to file their Third Motion for Reconsideration. Respondent Court then believed that the period during which a Motion for Reconsideration is pending should be deducted from the computation of the reglementary period to appeal, and applied the provisions of the last paragraph of section 3, Rule 41. However, in her Separate Opinion to respondent Court's Resolution of 14 March 1980, Justice Corazon Juliano Agrava emphasized that the determination of 23 August 1979 as the date of finality was erroneous,^[6] as in fact, it was. Private respondents received copy of the Resolution of 12 November 1979 on 15 November 1979.

On 19 November 1979, private respondents, ostensibly without benefit of counsel, filed a Manifestation calling attention to the Notice of Judgment, accompanying the 20 August 1979 Resolution, sent by the Division Clerk of Court of respondent Court stating that "upon expiration of fifteen (15) days from receipt hereof with a copy of this Resolution (section 10, Rule 51) final judgment will be entered." Since the 15th day after 22 August 1979 (the date of receipt by private respondents) fell on 6 September, private respondents claimed that, on the basis of said notice, their Motion for Leave to File Fourth Motion for Reconsideration to which was attached said Fourth Motion, having been filed on 5 September 1979, was timely submitted. They also prayed that this "excusable mistake" be considered in their favor. Significant to note are that a mere Manifestation and not a Motion was filed; that private respondents were fully aware of a "mistake"; and that their counsel refrained from filing such a Manifestation, obviously to avoid what could otherwise be a contemptuous "Motion" considering the antecedents.

On 14 March 1980, the same Special Division of Five, voting three-to-two, set aside^[7] its denial of the Motion for Leave to File Fourth Motion for Reconsideration. Accordingly, on 26 March 1980, private respondents, again seemingly without counsel, filed a Motion to Admit the Fourth Motion for Reconsideration which they had submitted on 5 September 1979.

On 18 April 1980, the majority of the same Special Division of Five resolved to admit^[8] private respondents' Fourth Motion for Reconsideration and asked the Solicitor General to submit his Comment. Complying, the Solicitor General contended that respondent Court had lost jurisdiction to act after 26 July 1979, on which date respondent Court's judgment of conviction had become final and, on the merits, argued that private respondents' guilt had been proven beyond reasonable doubt.

On 3 July 1980, the same Special Division of Five, by a vote of three-to-two^[9], issued the questioned Resolution granting the Fourth Motion for Reconsideration and acquitting private respondents.

Proceedings before the Supreme Court

(G. R. No. "L-51113-15")

While the foregoing incidents were transpiring in the Court of Appeals, private respondents filed before this Tribunal (G.R. No. L-51113-15) on 24 July 1979,[10] or three days before private respondents filed their Third Motion for Reconsideration with respondent Court, a "Cautionary Notice of Appeal and Motion for Extension of Time to Appeal", praying:

"WHEREFORE, petitioners respectfully manifest that it is their intention to appeal from the decision of the Honorable Court of Appeals in CA-G.R. Nos. 10780-82-CR dated July 13, 1978, in the event that their third motion for reconsideration is not given due course or denied by the Honorable Court of Appeals and petitioners respectfully pray that in that eventuality to consider this Cautionary Notice of Appeal as the required Notice of Appeal from said decision and further pray for an extension of time of at least thirty (30) days within which to file the necessary petition for review on writ of certiorari, to be counted from receipt of an order denying petitioners' third motion for reconsideration." (italics supplied)

They explained the reason therefor as follows:

"8. That the herein petitioners will file their third motion for reconsideration within the reglementary period but they are, however, apprehensive that their third motion for reconsideration may not be given due course by the Honorable Court of Appeals so that their time to appeal from the decision in CA-G.R. Nos. 10780-82-CR, which is to expire on July 27, 1979 may lapse thereby losing their opportunity of making their appeal on time to this Honorable Supreme Court; (Court of Appeals Rollo, p. 689; Underscoring supplied.)"[11]

We granted, on 10 August 1979, the extension requested "counted from the expiration of the reglementary period", which, as previously explained, should be the fifteen (15) days from 11 July 1979, the date private respondents received copy of the Resolution of respondent Court denying their Second Motion for Reconsideration. On 19 September 1979, private respondents petitioned for another 30 days' extension within which to appeal, "counted from receipt of an order denying petitioners' Fourth Motion for Reconsideration, and to suspend the running of the time to appeal. On 16 November 1979, another Motion for extension of 30 days was filed. On 23 November 1979, we issued another Resolution granting private respondents' petition for 30 days' extension within which to file a Petition to be counted from 16 November 1979, or up to 16 December 1979.

On 17 December 1979, private respondents filed their Petition for Review on Certiorari of respondent Court's main Decision dated 18 July 1978 and its four (4) Resolutions dated 14 February 1979, 27 June 1979, 20 August 1979 and 12 November 1979, respectively, which this Court denied for lack of merit on 16 January 1980. An ex-parte Motion for extension of 30 days within which to file a Motion for Reconsideration was filed on 15 February 1980, which was granted on 25 February 1980. Reconsideration was subsequently denied on 14 April 1980. A Motion for Leave to File 2nd Motion for Reconsideration again met with rejection on 30 May 1980. Private respondents, on 9 July 1980, moved to reconsider the Resolution denying leave to file the 2nd Motion for Reconsideration.

On 10 July 1980, private respondents file a Manifestation before this Court stating:

"5. That in view of the said resolution of the Court of Appeals dated July 3, 1980 granting their fourth Motion for reconsideration, herein Petitioners will no longer pursue their petition with this Honorable Court.

"WHEREFORE, it is most respectfully prayed and with the indulgence of this Honorable Court, that this manifestation be noted and their petition for review be considered withdrawn."[12]

It should be noted that the aforesaid Manifestation made no mention of the fact that the grant by respondent Court of the Fourth Motion for Reconsideration had resulted in the acquittal of private respondents. So that, on 18 August 1980, or subsequent to respondent Court's Resolution of acquittal, dated 3 July 1980, this Court (Second

Division), resolved:

"It appearing that the Court of Appeals granted petitioners' motion for leave to file a fourth motion for reconsideration and that said motion has already been filed, the Court Resolved to RETURN this case to the Court of Appeals for the resolution of the said fourth motion for reconsideration, without prejudice to its consideration later on, if the occasion arises, for the Court to consider the validity of the action of the Court of Appeals in allowing the filing of the third and fourth motions for reconsideration of petitioners." (italics supplied)[13]

This Petition

(G.R. No. L-54641)

On 27 August 1980, the present Petition for Review on Certiorari was filed on the People's behalf by the Solicitor General assailing the validity of respondent Court's Resolution of acquittal dated 3 July 1980 for the reason that its principal Decision of 13 July 1978 had already then become final.

In our Resolution of 9 September 1980, we required "private respondents to answer and the members of respondent Court who voted for acquittal likewise to answer, the pleading to be filed to be signed by each of them." We also issued a temporary restraining Order enjoining respondent Court "from implementing or otherwise enforcing one way or the other the resolution of acquittal dated July 3, 1980."

Justices Ramon G. Gaviola, Jr., Mama D. Busran and Carlos L. Sundiam of respondent Court filed their joint Answer on 29 September 1980 invoking "procedural," "legal," and "equitable" grounds. Private respondents, in turn, submitted their Answer on 9 October 1980 predicated on arguments to be discussed later.

The principal question for resolution is whether respondent Court acted without or in excess of its jurisdiction or with grave abuse of discretion when it entertained and thereafter granted private respondents' Fourth Motion for Reconsideration. In turn, this would depend on the date that the judgment of respondent Court affirming conviction, dated 13 July 1978, attained finality.

The record clearly establishes that the main Decision of respondent Court affirming the trial Court's judgment of conviction had become final on 26 July 1979. Copy of respondent Court's Resolution dated 27 June 1979 denying their Second Motion for Reconsideration was received by private respondents on 11 July 1979. They had fifteen days from said date, or until 26 July 1979, within which to appeal by Certiorari to this Court. However, it was only on 27 July 1979, or one day late, that private respondents filed by registered mail on that date their Third Motion for Reconsideration with respondent Court. And what is more, said Third Motion was filed without prior express leave of Court, in violation of section 15, Rule 124, providing that more than one Motion for Reconsideration shall not be filed in any case without express leave of Court.

The record further discloses that private respondents conceded such finality except that their computation was erroneous. Thus, in their Cautionary Notice of Appeal filed before this Court, they stated, and we reiterate:

"8. That the herein petitioners will file their third motion for re-consideration within the reglementary period but they are, however, apprehensive that their third motion for reconsideration may not be given due course by the Honorable Court of Appeals so that their time to appeal from the decision in CA-G.R. Nos. 10780-82-CR, which is to expire on July 27, 1979 may lapse thereby losing their opportunity of making their appeal on time to this Honorable Supreme Court; (Court of Appeals Rollo, p. 689; Underscoring supplied)."[14]

The statement in the covering Notice of respondent Court's Resolution of 20 August 1979 sent by its Division Clerk of Court that

"Upon expiration of FIFTEEN (15) DAYS from receipt hereof with a copy of this RESOLUTION (Section 10, Rule 51 of the Rules of Court) final judgment will be entered"

cannot be held binding on respondent Court, the same being merely a covering letter sent by one of its personnel, besides the fact that in their Manifestation dated 19 November 1979, private respondents acknowledged that there was an 'excusable mistake and prayed that the same be resolved in their favor. And we quote:

"WHEREFORE, appellants most respectfully pray that if this Honorable Court should recognize the presence of an excusable mistake which has caused a prejudicial error occasioned by its Notice of Judgement dated August 20, 1979, and which is injurious to the substantial rights of the appellants, in the interest of justice and also to uphold the consistency and stability of judicial processes, this Honorable Court, we humbly plead, should rectify that mistake and to resolve the same in favor of the appellants otherwise, appellants further pray for this Honorable Court to consider their Cautionary Notice of Appeal filed on July 24, 1979, with the Honorable Supreme Court as the required Notice of Appeal from its decision and to suspend the date of entry of its judgment to await the final entry of the resolution or decision of the Supreme Court." (Italics supplied)[15]

The rationale for respondent Court's Resolution, dated 14 March 1980 reconsidering the denial of private respondents' Motion for Leave to File Fourth Motion for Reconsideration, penned by Justice Mama Busran and concurred in by Justices Gaviola and Sundiam, is as follows:

"The record shows that on July 24, 1979, or three days before the filing of the Third Motion For Reconsideration, the movants [herein private respondents] filed with the Supreme Court a Cautionary Notice of Appeal and Motion For Extension Of Time To Appeal praying therein 'for an extension of time of at least thirty (30) days within which to file the necessary petitions for review on writ of certiorari, to be counted from receipt of an order denying petitioners' third motion for reconsideration.' (p. 690, Ibid.) Acting on the motion, the Supreme Court issued a Resolution, dated July 30, 1979, on August 10, 1979, stating therein that 'The motion of counsel for petitioners for an extension of thirty (30) days from the expiration of the reglementary period, within which to file petition for review on certiorari, is GRANTED' (p. 735, Id.).

"The record further shows that our resolution denying the Third Motion For Reconsideration, issued on August 20, 1979, was received by the movants on August 22, 1979. Our holding in the resolution of November 12, 1979, and our statement in the proposed entry of judgment - that the judgment attained finality on August 23, 1979 - are another way of saying that on August 22, 1979, or a day before the finality of the judgment, the movants could have appealed by certiorari to the Supreme Court. Under the Rules of Court, they would have had fifteen (15) days from said date to perfect their appeal. The reglementary period, for the movants to file a petition for review on certiorari, could not have started earlier than the date of August 22, 1979, when the denial of their third motion was actually served upon them. Upon the facts, then, the said reglementary period began on August 23, 1979, and would have ended on September 6, 1979, had not the Supreme Court issued its resolution of August 10, 1979. The Supreme Court, however, issued that resolution and granted the movants 'an extension of thirty (30) days from the expiration of the reglementary period to file petition for review on certiorari' thereby preserving until October 6, 1979 the movants' right of appeal.

"Whatever rights the movants were allowed to exercise in the Supreme Court could be exercised by them in the Court of Appeals to the end that all remedies available in the appellate court could be exhausted. From the facts recounted in the paragraph immediately preceding, the Supreme Court gave the movants the right to appeal on certiorari until October 6, 1979. Instead of immediately appealing, they filed a Fourth Motion For Reconsideration in this Court on September 5, 1979. Clearly, the filing of said motion was done seasonably."

In other words, the answering Justices were of the opinion that since the Resolution denying private respondents' Third Motion for Reconsideration was received by the latter on 22 August 1979, the reglementary period commenced to run on 23 August 1979 and would have ended on 6 September 1979 had not this Court granted

private respondents an extension of thirty days or until 6 October 1979 within which to file a Petition for Review. Since private respondents filed their Motion for leave to file a Fourth Motion for Reconsideration on 5 September 1979, that Motion was, allegedly, filed on time.

We are constrained to disagree. Firstly, the grant in G. R. Nos. L-51113-15 by this Court on 10 August 1979 to private respondents of an extension of 30 days with-in which to file a Petition for Review was not a grant of a similar period within which to file a Fourth Motion for Reconsideration with respondent Court in CA-G. R. No. 10781-CR. Neither could it confer upon respondent Court jurisdiction to entertain such Motion, when, in fact, it had already lost such jurisdiction. Secondly, the grant on 10 August 1979 by this Court of the 30 days' extension was to be counted from the "expiration of the reglementary period" and not from the denial of the 3rd Motion for Reconsideration as prayed for by petitioners. It was clear that thereby, this Court was respecting the processes and procedures governing respondent Court. Consequently, with the finality of the main Decision of respondent Court having accrued on 26 July 1979, the 30-day extension should be reckoned from said date or up to 25 August 1979. Their Motion before this Court for another 30 days' extension was filed only on 19 September 1979, or 25 days late. Plainly, therefore, counting from the expiration of the reglementary period, even the Petition for Review presented before this Court was filed late. Thirdly, the statement that "whatever rights the movants were allowed to exercise in the Supreme Court could be exercised by them in the Court of Appeals" is clearly misplaced. It implies concurrence of jurisdiction between this Tribunal and respondent Court, which is totally unacceptable. It would lead to the absurd situation where within the reglementary period from finality of a Decision or Resolution, a party can simultaneously file a Petition for Review before this Tribunal as well as a Motion for Reconsideration before respondent Court. This interpretation does havoc to the rules on orderly procedure. A party should not be allowed to pursue simultaneous remedies in two different forums.

"In its broad sense, 'election of remedies' refers to the choice by a party to an action of one of two or more co-existing remedial rights, where several such rights arise out of the same facts, but the term has been generally limited to a choice by a party between inconsistent remedial rights, the assertion of one being necessarily repugnant to, or a repudiation of, the other.[16]

"In its technical and more restricted sense, election of remedies 'is the adoption of one of two or more coexisting remedies, with the effect of precluding a resort to the others'. "[17]

The return to respondent Court of the records, ordered in our Resolution of 18 August 1980, did not resurrect the jurisdiction that respondent Court had lost. For explicit therein is the statement that it was "without prejudice to its consideration later on, if the occasion arises, for the Court to consider the validity of the action of the Court of Appeals in allowing the filing of the third and fourth motions for reconsideration of petitioners." For, as pointed out above, this Court, by virtue alone of private respondents' Manifestation of 10 July 1980, could not have known that respondent Court's grant of the Fourth Motion for Reconsideration resulted in the acquittal of private respondents. This is evident from the tenor of the Second Division Resolution of 18 August 1980.

The judgment affirming conviction having attained finality on 26 July 1979, respondent Court had no more power to alter or modify the same, and when it did, it had acted with grave abuse of discretion, specially so because the modification that it had made was substantial. Public policy and sound practice demand that, at the risk of occasional errors, judgments of the Courts should become final at some definite date fixed by law.[18]

It should also be recalled that private respondents' Petition for Review on Certiorari before this Tribunal was denied for lack of merit as early as 16 January 1980, and reconsideration thereof was also denied on 14 April 1980. A Motion for Leave to File a Second Motion for Reconsideration was denied on 30 May 1980. To have acquitted private respondents in the Resolution of 3 July 1980 notwithstanding said decisive and conclusive action by this Tribunal is unmistakably a very grave abuse of discretion. It was tantamount to overruling a judicial

pronouncement of the highest Court of the land affirming the judgment of conviction of respondent Court. It cannot be said that the answering Justices were unaware of this Tribunal's aforesaid Resolution as their attention thereto had been expressly called by Justice Agrava in her "Separate Statements" to the majority opinion of 3 July 1980 and even as early as in her "Separate Opinion" to respondent Court's Resolution dated 14 March 1980. If, as they allege in their Answer[19] her observations were not available when they granted private respondents' Motion for Leave to File Fourth Motion for Reconsideration on 14 March 1980, prudence would have dictated that the statements in said observations, at the very least, should have been verified.

The Solicitor General cannot be faulted for being "less than fair" in not calling attention to the Petition for Review filed before this Court by private respondents, considering that in his Comment, he had already argued that respondent Court was bereft of jurisdiction to act on the Third and Fourth Motions for Reconsideration filed by private respondents before it. That was an argument sufficiently forceful in itself. It cannot be said that it was made "half-heartedly" notwithstanding the fact that the Comment also discussed the Fourth Motion for Reconsideration on the merits. Having called attention to the lack of jurisdiction, neither can it be successfully argued that the Solicitor General is estopped from challenging respondent Court's jurisdiction upon the theory that a party cannot invoke the jurisdiction of a Court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.

Neither from the "procedural" nor from the "legal" standpoints, therefore, can the judicial actuations of respondent Court be sustained. The role of "equitableness", on the other hand, cannot be seriously invoked in criminal proceedings where a hard assessment of the evidence is called for.

For their part, private respondents, on their own behalf, contend that Certiorari is not the proper remedy and that even if it were, it was filed out of time; that the Petition is, in effect, an appeal from a judgment of acquittal and would, therefore, place private respondents in double jeopardy; that the filing of the Fourth Motion for Reconsideration was within the reglementary period; that the end justifies the means if it results in the triumph of justice for the innocent; and finally, that the authorities cited by the Solicitor General do not support his position.

We find the foregoing without merit. The Writ of Certiorari is intended to keep a tribunal within the limits of its jurisdiction.[20] As explained above, respondent Court acted without or in excess of its jurisdiction and with grave abuse of discretion when it passed upon private respondents' Fourth Motion for Reconsideration considering that its judgment of conviction had already become final. And what is even more glaring, respondent Court acted on said Fourth Motion for Reconsideration after this Tribunal had already denied private respondents' Petition for Review on Certiorari, as well as the reconsideration thereof. The attention of respondent Court, as explained heretofore, was called to such development. It paid no heed. Although now, it is claimed that "had it known, it would have stopped action or desisted from taking any at any stage in which the fourth (4th) motion for reconsideration was found".[21]

The filing of this Petition on 27 August 1980, or a period of 43 days from receipt on 14 July 1980, may be said to be within the reasonable period required in proceedings of this nature.

Private respondents further argue that a judgment of acquittal ends the case which cannot be appealed nor reopened, otherwise, they would be put twice in jeopardy for the same offense. That is the general rule and presupposes a valid judgment. As earlier pointed out, however, respondent Court's Resolution of acquittal was a void judgment for having been issued without jurisdiction. No double jeopardy attaches, therefore. Avoid judgment is, in legal effect, no judgment at all.[22] By it no rights are divested. Through it, no rights can be attained. Being worthless, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void.[23] That the records may have already been

remanded to the Court of origin is no deterrent to a pronouncement of the nullity of a judgment.

In respect of the filing not only of the Third but also of the Fourth Motions for Reconsideration, we have already found above that they were both filed beyond the reglementary period.

Private respondents invoke "justice for the innocent". For justice to prevail, the scales must balance. It is not to be dispensed for the accused alone. The interests of the society, which they have wronged must also be equally considered. A judgment of conviction is not necessarily a denial of justice. A verdict of acquittal neither necessarily spells a triumph of justice. To the party wronged, to the society offended, it could also mean injustice. This is where the Courts play a vital role. They render justice where justice is due.

WHEREFORE, granting Certiorari, the Resolution of acquittal dated 3 July 1980 of respondent Court of Appeals in "CA-G.R. Nos. 10781-10782-CR", in respect of private respondents Isidoro Concon and Inocencio Crisostomo, is hereby declared null and void, as well as all proceedings had and Resolutions issued by said Court subsequent to 26 July 1979, the date that its judgment affirming conviction dated 13 July 1978 had become final and executory.

Respondent Court of Appeals is hereby ordered to remand the records of said appealed criminal cases to the Court of origin for the execution of the former Court's final judgment of affirmance of conviction against private respondents Isidoro Concon and Inocencio Crisostomo.

Costs against private respondents.

SO ORDERED.

Fernando, C.J., Teehankee, Barredo, Makasiar, Concepcion, Jr., Fernandez, Guerrero, Abad Santos, and De Castro, JJ., concur.

Barredo, J., concurred. It is clear to him that the judgment of conviction of private respondents because final on July 26, 1979. Further discussion of the third and fourth motions for reconsideration is superfluous.

Aquino, J., in the result.

[1] Composed of JJ. L. B. Reyes (ponente), with JJ. Busran and Agrava, concurring.

[2] Constituted by JJ. L. B. Reyes, Agrava and Sundiam, who voted to deny; while JJ. Busran and S. F. Reyes voted to acquit.

[3] JJ. L. B. Reyes, Agrava and S. F. Reyes voted to deny; J. Busran voted to acquit; J. Sundiam reserved his vote.

[4] JJ. L. B. Reyes (ponente), S. F. Reyes and Agrava voted to deny; JJ. Busran and Sundiam voted to grant.

[5] Justice Agrava became the ponente, concurred in by JJ. R. G. Gaviola, Jr. (Chairman), Busran, S. F. Reyes and Sundiam.

[6] p. 120, Rollo.

[7] J. Busran (ponente) voted to set aside, with JJ. Gaviola and Sundiam concurring in individual Separate Opinions; J. Agrava, prepared a Separate Opinion, neither concurring nor dissenting, on the ground that private respondents' Manifestation filed on 19 November 1979 need not have been acted upon. J. S. F. Reyes concurred with J. Agrava.

[8] JJ. Gaviola, Busran and Sundiam, voted affirmatively; JJ. S. F. Reyes and Agrava voted to deny.

[9] JJ. Gaviola, Busran and Sundiam voted to acquit; JJ. S. F. Reyes and Agrava dissented.

[10] Raffled to Second Division.

[11] p.121, Rollo.

[12] p. 15, Rollo.

[13] p. 15, Rollo.

[14] p. 121, Rollo.

[15] p. 124, Rollo.

[16] *Whitney v. Vernon*, [Tex. Civ. A] 154 SW 264, 267, cited in 20 C.J., pp. 2-3.

[17] *Southern R. Co. v. Attalla*, 147 Ala. 653, 41 S 664; *Crittenden v. St. Hill*, 34 Cal. A. 107, 166 P 1016, and a host of cases cited in 20 C.J., p. 3.

[18] *Ferinion vs. Sta. Romana, et al.*, 16 SCRA 370 (1966); *King vs. Joe*, 20 SCRA 1117 (1967); *Miranda vs. Court of Appeals*, 71 SCRA 295, 298 (1976).

[19] p. 167, Rollo.

[20] *Pacis vs. Averia*, 18 SCRA 907, 915 (1966); *Aguilar vs. Tan*, 31 SCRA 205 (1970).

[21] p. 19, Answer, p. 167, Rollo.

[22] *Comia vs. Nicolas*, 29 SCRA 492 (1969).

[23] *Gomez vs. Concepcion*, 47 Phil. 717, 722 (1925); *Chavez vs. Court of Appeals*, 24 SCRA 663, 685 (1968); *Paredes vs. Moya*, 61 SCRA 526, 528 (1974).

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