



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
Quezon City

Third Division

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

-versus-

**YUSOP HUSSIN JIKIRI,
MUSSAH LASA B. JUMSALI,
AMILKADRA T. AMILASAN,
and OSCAR O. PARAWAN**

Accused.

Crim Case No.

SB-18-CRM-0334

*For: Violation of Section
3(e) of Republic Act No.
3019, as amended.*

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

-versus-

**YUSOP HUSSIN JIKIRI,
MUSSAH LASA B. JUMSALI,
AMILKADRA T. AMILASAN,
and OSCAR O. PARAWAN**

Accused.

Crim Case No.

SB-18-CRM-0335

*For: Malversation of
Public Funds or
Property, defined and
penalized under Article
217 of the Revised Penal
Code*

Present:

Cabotaje-Tang, A.M., P.J.,
Chairperson

Fernandez, B.R., J. and
Moreno, R.B., J.

PROMULGATED:

FEBRUARY 18, 2021

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RESOLUTION

Moreno, J.:

For resolution is the *Motion for Reconsideration*,¹ filed by accused Yusop H. Jikiri (Jikiri), through counsel, to which the prosecution filed its *Opposition (To Accused Yusop H. Jikiri's "Motion for Reconsideration" dated December 16, 2020)*.²

To recall, in the *Order*³ of this Court during promulgation, it was stated that accused Jikiri failed to appear despite notice, hence, the judgment of conviction be entered into the criminal docket and that the assailed *Decision*⁴ be served to his counsel or last known address pursuant to Section 6, Rule 120 of the Rules of Criminal Procedure.

Important to note was the presence of accused Jikiri's counsel, Atty. Jose V. Aspiras (Atty. Aspiras) who manifested in open court that his client died. He was directed by the court to file the appropriate motion with the attached copy of accused Jikiri's death certificate clearly indicating the place and date of death of the accused. The prosecution was likewise given thirty (30) days from receipt of the motion to ascertain the alleged fact of death of accused Jikiri and to submit a report within the same period.

The Court is befuddled with accused's submission of a motion for reconsideration through his counsel, Atty. Aspiras, which was received on February 1, 2021 via registered mail (stamped December 16, 2020). In accused Jikiri's *Motion for Reconsideration*, he alleged the timeliness of the filing of the said motion as it was filed within 15 days from receipt of the *Decision* through e-mail by his counsel on December 1, 2020.

We find the procedural lapses of accused Jikiri as fatally flawed.

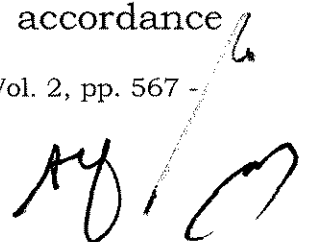
Under Section 5, Rule IX of the 2018 Revised Internal Rules of the Sandiganbayan, a judgment in a criminal case by a Division shall be promulgated within ninety (90) days if rendered in the exercise of its original jurisdiction from the time the case was submitted for decision and in accordance

¹ Received through registered mail on December 16, 2020. *Records*, Vol. 2, pp. 567 - 572.

² Received through e-mail on January 18, 2021. *Id.*, pp. 586 - 594.

³ Dated November 27, 2020. *Id.*, pp. 472 - 473.

⁴ *Id.*, pp. 417 - 471.



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with Section 6, Rule 120 of the Revised Rules of Criminal Procedure. Pertinent portions of Section 6, Rule 120 read:

x x x

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. x x x

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.

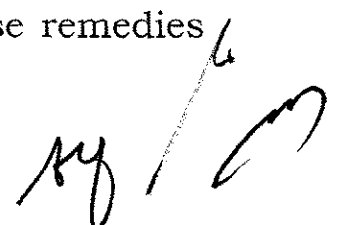
If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.

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. [*Underscoring supplied for emphasis.*]

Accused Jikiri's counsel was present during the promulgation and blatantly misrepresented before the Court that his client already passed away. Contrary to the directives of the Court to submit proof of the fact of accused Jikiri's death, Atty. Aspiras, who also represented him during the promulgation, belatedly filed a motion for reconsideration.

At this stage, the last paragraph of the above-quoted rule already applies in this case, with accused Jikiri having lost the remedies available to him: (1) the filing of a motion for new trial or reconsideration (Rule 121 of the Rules of Criminal Procedure) and (b) and appeal from the judgment of conviction (Rule 122).

In the present case, accused Jikiri failed to appear during the promulgation of judgment wherein he was convicted of violation of Section 3(e) of R.A. 3019 and Article 217 of the Revised Penal Code for malversation of public funds. His absence during the promulgation was without justifiable cause, therefore, his recourse should have been to surrender and file a motion for leave of court to avail of these remedies

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within fifteen (15) days from promulgation of judgment—these the accused failed to do.

Accused Jikiri did not surrender and file a motion for leave to file a motion for reconsideration within fifteen (15) days from the promulgation of judgment, hence, the *Decision* already became final and executory. ‘Surrender’ as defined in the case of *Villena and Doroja v. People, et al*⁵ “contemplates an act whereby a convicted accused physically and voluntarily submits himself to the jurisdiction of the court to suffer the consequences of the verdict against him.” The mere filing of the extant *Motion for Reconsideration* by accused Jikiri, through counsel, is obviously not in keeping with the Rules of Criminal Procedure.

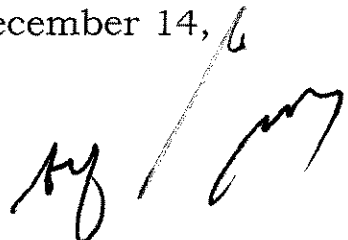
It is only when the Court finds that his absence was for a justifiable cause that he will be allowed to avail of said remedies within fifteen (15) days from notice, which includes the filing of a motion for reconsideration. As a consequence, the filing of a motion for reconsideration is not an available remedy to accused Jikiri nor does he have the legal standing before the Court to file the same.

Even if a reconsideration of this Court’s judgment was still available to accused Jikiri, the same was already filed out of time. Section 1, Rule X of the 2018 Revised Internal Rules of the Sandiganbayan provides:

Sec. 1. Period to File Motion for New Trial or Reconsideration.-- A Motion for New Trial or Reconsideration of a decision or final order shall be filed **within fifteen (15) calendar days from promulgation of the judgment or from notice of the final order or judgment.** The motion shall be decided within thirty (30) calendar days from the date of submission for resolution.
[Underscoring supplied for emphasis.]

It is not the receipt of the final judgment which determines the running of the period within which to file a motion for new trial or reconsideration but the date of promulgation or notice of judgment. Promulgation was set on November 27, 2020 and accused Jikiri’s counsel attended the same while accused Jikiri was not present since he was purportedly deceased. The presence of accused Jikiri’s counsel during the promulgation also served as notice of the decision. As such, accused Jikiri only had until December 14,

⁵ G.R. No. 184091, January 31, 2011.



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2020 (since December 12 falls on a Saturday) to file his Motion for Reconsideration. Indubitably, the motion for reconsideration sent by registered mail on December 16, 2020 was already filed out of time.

The case of *Jaylo, et al v. Sandiganbayan (1st Division), et al*⁶ summarizes the importance of abiding by the Rules of Procedure, especially in the promulgation of judgment *in absentia* and its consequences, to wit:

The promulgation of judgment shall proceed even in the absence of the accused despite notice. The promulgation in absentia shall be made by recording the judgment in the criminal docket and serving a copy thereof to the accused at their last known address or through counsel. The court shall also order the arrest of the accused if the judgment is for conviction and the failure to appear was without justifiable cause.

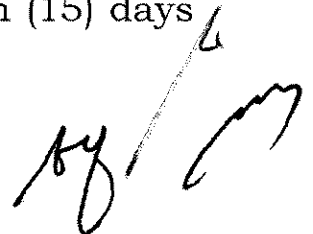
If the judgment is for conviction and the failure to appear was without justifiable cause, the accused shall lose the remedies available in the Rules of Court against the judgment. **Thus, it is incumbent upon the accused to appear on the scheduled date of promulgation, because it determines the availability of their possible remedies against the judgment of conviction.** When the accused fail to present themselves at the promulgation of the judgment of conviction, they lose the remedies of filing a motion for a new trial or reconsideration (Rule 121) and an appeal from the judgment of conviction (Rule 122).

The reason is simple. When the accused on bail fail to present themselves at the promulgation of a judgment of conviction, they are considered to have lost their standing in court. Without any standing in court, the accused cannot invoke its jurisdiction to seek relief.

Like an appeal, the right to file a motion for reconsideration is a statutory grant or privilege. As a statutory right, the filing of a motion for reconsideration is to be exercised in accordance with and in the manner provided by law. Thus, a party filing a motion for reconsideration must strictly comply with the requisites laid down in the Rules of Court. [Citations omitted. Underscoring supplied for emphasis.]

Moreover, the judgment of conviction against accused Jikiri already acquired finality. Under Section 6, Rule 120 of the Rules of Criminal Procedure, he only had fifteen (15) days

⁶ G.R. Nos. 183152-54, January 21, 2015.



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from the date of promulgation within which to surrender and to file the required motion for leave of court to avail of the remedies against the judgment. As borne by the records, the Decision was promulgated on November 27, 2020, accused Jikiri only had until December 14, 2020 to comply with the mandatory procedural rules to regain his standing before the Court.

Section 2, Rule 36 and Section 8, Rule 120 of the Rules of Court provide:

Rule 36. x x x

Sec. 2. *Entry of judgments and final orders.* - **If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments.** The date of finality of the judgment or final order shall be deemed to be the date of its entry. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory.

x x x

Rule 120. x x x

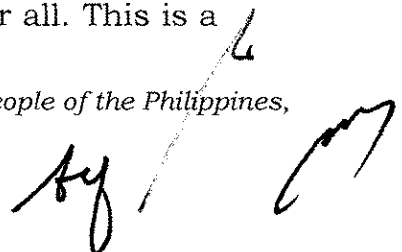
Sec. 8. *Entry of judgment.* - After a judgment has become final, it shall be entered in accordance with Rule 36. [*Underscoring supplied for emphasis.*]

The Supreme Court consistently ruled that once a decision already attains finality, it can no longer be modified, attacked indirectly or indirectly, even by the highest court of the land.⁷ This was also reiterated in *People of the Philippines v. Alapan*,⁸ wherein it was held that:

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write finis to dispute once and for all. This is a

⁷ *Bernardo v. Hon. Court of Appeals (former 4th Division) and People of the Philippines*, G.R. No. 189077, November 16, 2016.

⁸ G.R. No. 199527, January 10, 2018.



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fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication.

Considering that accused Jikiri's judgment of conviction already attained finality and in view of his failure to comply with the required procedures under Section 6 of Rule 120, the Court hereby orders his immediate arrest and his bond cancelled.

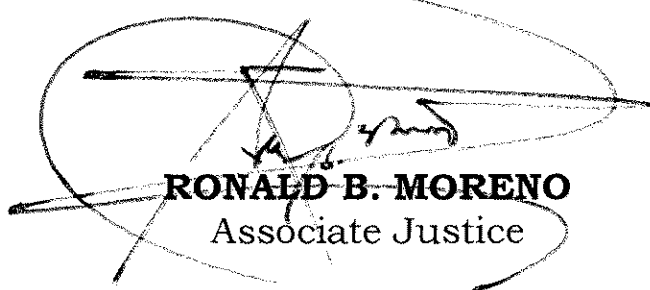
The Court is hereby giving Atty. Jose V. Aspiras five (5) days from receipt of this *Resolution* to explain why no sanction shall be imposed upon him for making a manifestation with the Court regarding the death of accused Yusop Hussin Jikiri when the truth is said accused is still very much alive.

Let a copy of this *Resolution* be sent to the Integrated Bar of the Philippines (IBP) and the Supreme Court for appropriate action.

WHEREFORE, in light of all the foregoing, the Court **DENIES** the *Motion for Reconsideration* filed by accused Yusop H. Jikiri for lack of merit and being filed out of time.

SO ORDERED.

Quezon City, Metro Manila.

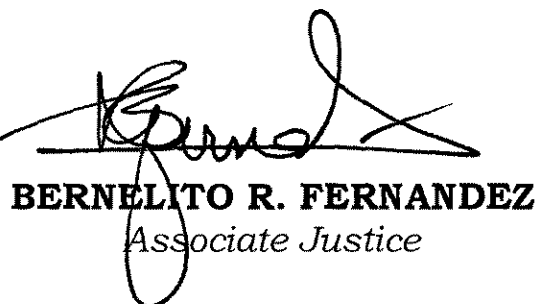


RONALD B. MORENO
Associate Justice

WE CONCUR:



AMPARO M. CABOTAJE-TANG
Presiding Justice, Chairperson



BERNELITO R. FERNANDEZ
Associate Justice