Supreme Court E-Library

SECOND DIVISION

[G.R. No. L-48934. January 16, 1979]

ANTONIO A. GUNAY, *petitioner*, *vs.* **COURT OF APPEALS**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; ENTRY OF JUDGMENT; SHALL BE CANCELLED IF THERE IS PENDING MOTION FOR RECONSIDERATION. — Where the Court of Appeals mistakenly made an entry of judgment although there was a pending motion for reconsideration which was misplaced and attached to the record of another case, said court was ordered to cancel the entry of judgment and to pass upon the motion for reconsideration.

RESOLUTION

AQUINO, *J.*:

The Court of Appeals in its decision in CA-G.R. No. 19873-Cr., *People vs. Antonio Gunay y Andreda*, promulgated on May 10, 1978, affirmed the trial court's judgment convicting him of homicide and damage to property through reckless imprudence. A copy of that decision was served on defendant-appellant's counsel on May 12, 1978.

On May 19, 1978, his counsel sent by registered mail to the Court of Appeals a motion for the reconsideration of the said decision. That fact was certified to by the postmaster at the provincial capitol of Pasig, Rizal (Annex C of petition). Copies of that motion, also sent by registered mail, were received by the Solicitor General's Office and the Citizens Legal Assistance Office (Annexes D and E of the petition).

However, the original motion was not attached to the record of the case or could not be found in the Court of Appeals. On the assumption that the judgment had become final and executory,

Supreme Court E-Library

entry of judgment was made in that case on May 27, 1978. The record was remanded to the court of origin on July 18, 1978.

The Court of Appeals in its resolution of August 28, 1978 (copy received by appellant on September 4, 1978) denied the motion of appellant Gunay for the setting aside of the entry of judgment. The denial was based on the ground that "no motion for reconsideration has been filed" by the appellant.

On September 15, 1978, Gunay filed in this Court a petition praying that the Court of Appeals' resolution of August 28, 1978 be set aside and that, after a review of the Appellate Court's decision, he be acquitted.

It appears that Gunay's motion for reconsideration is now attached to the record of CA-G.R. No. 198730, having been received in the docket section only on September 28, 1978. The Solicitor General recommends that Gunay's motion should be resolved.

We find that the entry of judgment in the Court of Appeals was made under an honest mistake of fact or under the erroneous assumption that Gunay did not file a motion for reconsideration.

WHEREFORE, in the interest of justice, the resolution of the Court of Appeals dated August 28, 1978, denying Gunay's motion to set aside the entry of judgment, is hereby reversed. The Court of Appeals is directed to cancel the entry of judgment and to pass upon Gunay's motion for reconsideration. The clerk of court Branch II of the city court of Quezon City is directed to elevate to the Court of Appeals within three days from notice the record of *People vs. Gunay*, Criminal Case No. II-112036. No costs.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Concepcion Jr. and *Santos, JJ.*, concur.