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modifying circumstance in the commission of the crime of Murder, the penalty to be imposed against the accused-appellant should be in the medium period.

IN VIEW OF THE FOREGOING, accused-appellant is hereby sentenced to life imprisonment, to indemnify the heirs of the deceased Honofre Cabaltierra in the sum of ₱12,000.00[33] and to pay the costs.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Teehankee, Barredo, Makasiar, Esguerra, Muñoz Palma, Aquino, and *Concepcion Jr., JJ.*, concur.

Antonio, J., on leave.

SECOND DIVISION

[G.R. No. L-32534. August 29, 1975]

ASSOCIATED LABOR UNION-AFL-VIMCONTU, *petitioner, vs.* **HON. JUDGE ANTONIO D. CINCO, and FREE WORKERS ASSOCIATION (FREEWAS),** *respondents.*

RESOLUTION

FERNANDO, *J.*:

Petitioner instituted on September 16, 1970 this *certiorari* and prohibition proceeding against respondent Judge Antonio D. Cinco who assumed jurisdiction over an action for annulment

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[33] *People vs. Pantoja,* 25 SCRA 468.

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of two collective bargaining contracts filed by respondent Free Workers Association, after a strike had been declared and picket lines established against the employer, likewise charged with an unfair labor practice then pending in the Court of Industrial Relations. There was a motion to dismiss filed by petitioner Labor Union on the ground that it is the now-defunct Court of Industrial Relations that had exclusive jurisdiction over the subject matter of the action. It was, however, denied by respondent Judge. Hence this suit for *certiorari* and prohibition. Thereafter, on September 21, 1970 this Court issued the following resolution: "L-32534 (*Associated Labor Union-AFL-VIMCONTU v. Hon. Judge Antonio D. Cinco, et al.*) — The respondent are required to file an answer to the petition for *certiorari* and prohibition with preliminary injunction within 10 days from notice hereof, and not to move to dismiss the petition. Upon petitioner's posting a bond of one thousand pesos (₱1,000.00), let preliminary injunction issue."[1] Respondent Union filed the answer with the submission that since what was involved was the annulment of a collective bargaining contract, an ordinary court had competence to act. This Court duly scheduled for hearing or oral argument this petition on February 15, 1971, but on said date, neither party appeared.

Thereafter, on February 14, 1973, there was a motion to dismiss the petition filed by petitioner, worded as follows: "[Comes now] the petitioner through undersigned counsel, to this Honorable Court most respectfully moves for the dismissal of the above-entitled petition on the following ground: That the petition has become moot and academic — The purpose for which the above-entitled petition was filed was to enjoin respondent Judge Antonio D. Cinco or any one taking his place from proceeding with Civil Case No. R-11721 of the Court of First Instance of Cebu entitled, '*Free Workers Association v. Associated Labor Union et al.*; That the said civil case had already been dismissed at the instance of the parties, hence the above-entitled petition has become moot and academic. *** [Wherefore], premises considered, it is most respectfully

[1] Resolution dated September 21, 1970.

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prayed of this Honorable Court that the above-entitled petition be dismissed without pronouncement as to costs."[2] Attached was the order of respondent Judge Antonio D. Cinco, which reads thus: "Submitted for resolution are two motions. One is a joint motion of the parties asking for a dismissal of the complaint, cross-claim and counter-claim of the defendants. The other motion is a motion for dismissal by the plaintiff. Both motions have for their purpose the dismissal of this case on the ground stated therein. Both motions being tenable, the Court accedes and orders the dismissal of the complaint as well as the cross-claim and counterclaims filed by the defendant Vergara and Associated Labor Union. Without costs. [So ordered]. Given in open court this 19th day of January, 1973, at Cebu City, Philippines."[3] The comment of respondent Labor Union was sought as early as the resolution of February 19, 1973, but it was not forthcoming. It thus appears clearly that nothing stands in the way of granting the aforesaid motion to dismiss the petition.

WHEREFORE, this petition for *certiorari* and prohibition with preliminary injunction is dismissed for being moot and academic. The preliminary injunction issued in the resolution of September 21, 1970 is declared *functus oficio.*

Makalintal, C.J., Barredo, Aquino, and *Martin, JJ.*, concur.

Antonio and *Concepcion Jr. JJ.,* are on official leave.

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[2] Motion to Dismiss Petition, 1-2.

[3] Order of Respondent Judge dated January 19, 1973.