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[G.R. No. L-23761. September 4, 1979]

JESUS LAVA, *petitioner, vs.* **JESUS DE VEYRA, as Presiding Judge of Branch XIV of the Court of First Instance of Manila; FLORENTINO N. VILLANUEVA, as Second Assistant City Fiscal of Manila; BUENAVENTURA FERNANDEZ, as Special Prosecutor, Philippine Constabulary, Camp Crame, Quezon City; SANTIAGO TAN, as Special Prosecutor, Philippine Constabulary, Camp Crame, Quezon City; PEDRO S. DAVID, as Assistant Fiscal of Manila, City Hall, Manila; and ERNESTO R. OXCIANO, as Assistant Fiscal of Manila, City Hall, Manila,** *respondents.*

SYLLABUS

CRIMINAL LAW; ANTI-SUBVERSION LAW; VALIDITY THEREOF, SUSTAINED IN CASE AT BAR.— It is apparent that the principal question raised is the validity of the Anti-Subversion Law. Accordingly, in a resolution of June 20, 1979, this Court issued a resolution requiring the parties, more specifically the petitioners, to state by appropriate pleadings whether the petition has become moot and academic in the light of the decision in *People v. Ferrer* sustaining the validity of the Anti-Subversion Act and the fact that petitioner Jesus Lava is no longer under detention. Petitioner, as of this date, has not filed such manifestation. It is understandable why. He has been released, and is now free. The threat of loss of liberty no longer exists. His prosecution has ceased. As to him, the issue of the validity of the Anti-Subversion Act and the alleged denial of due process, equal protection, and freedom of association no longer possess any significance. The legal points raised are merely of academic interest now, insofar as he is concerned. It only remains to be added that the validity of the Anti-Subversion Law was sustained by this Court, as noted in *People v. Ferrer*, the extensive and scholarly opinion being penned by the late Chief Justice Castro, with only one dissent coming from the writer of this resolution.

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TEEHANKEE, *J., concurring:*

CRIMINAL LAW; ANTI-SUBVERSION LAW; ELEMENTS.— "I dissent from the resolution insofar as it denies the motion for reconsideration of respondent Nilo Tayag praying in essence not for reconsideration but for a clarification of the guidelines on page 32 of the Court's decision (which really forms an integral part of the judgment) so as to incorporate therein the Court's own rationale expressed on pages 15-16 of its decision that the Anti-Subversion Act is not to be construed 'as punishing *mere membership devoid* of any specific *intent* to further the unlawful goals of the [Communist] Party' since section 4 thereof '*requires* that membership, to be unlawful, must be shown to have been acquired *'knowingly, willfully* and by *overt acts.*' The ingredient of *specific intent* to pursue the unlawful goals of the Party must be shown by '*overt acts.*' This constitutes an *element* of *'membership' distinct* from the ingredient of *guilty knowledge.* The *former requires* proof of *direct participation* in the *organization's unlawful activities*, while the *latter* requires proof of mere *adherence* to the organization's illegal objectives.'"

RESOLUTION

FERNANDO, *C.J.*:

In this *certiorari* and prohibition proceeding, petitioner Jesus Lava sought to set aside and nullify an order of respondent Judge Jesus de Veyra, now retired, denying his motion to dismiss for lack of merit. It is his contention that the act under which he was prosecuted for anti-subversion, Republic Act No. 1700, is unconstitutional, primarily on the ground of its being an *ex post facto* law and a bill of attainder, but including likewise the allegation that it constituted as to the petitioner a denial of due process, equal protection, and his freedom of association. This Court required respondents[1] to answer. Accordingly, such

[1] Outside of the then Judge de Veyra, the other respondents named are the following: Florentino N. Villanueva, Second Assistant City Fiscal of Manila; Buenaventura Fernandez, Special Prosecutor, Philippine Constabulary;

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responsive pleading was filed[2] wherein the alleged infirmities imputed to the Anti-Subversion Law were refuted and the assertion that petitioner was likewise denied due process, equal protection and his freedom of association were characterized as devoid of merit. The case was orally argued. Thereafter, respondents were given a period of ten days to submit an additional *memorandum, and petitioner,* the same period to reply.

It is apparent that the principal question raised is the validity of the Anti-Subversion Law. Accordingly, in a resolution of June 20, 1979, this Court issued a resolution requiring the parties, more specifically the petitioners, to state by appropriate pleadings whether the petition has become moot and academic in the light of the decision in *People v. Ferrer*[3] sustaining the validity of the Anti-Subversion Act and the fact that petitioner Jesus Lava is no longer under detention. Petitioner, as of this date, has not filed such manifestation. It is understandable why. He has been released, and is now free. The threat of loss of liberty no longer exists. His prosecution has ceased. As to him, the issue of the validity of the Anti-Subversion Act and the alleged denial of due process, equal protection, and freedom of association no longer possess any significance. The legal points raised are merely of academic interest now, insofar as he is concerned.

It only remains to be added that the validity of the Anti-Subversion Law was sustained by this Court, as noted in *People v. Ferrer*, the extensive and scholarly opinion being penned by the late Chief Justice Castro, with only one dissent coming from the writer of this resolution.

WHEREFORE, this petition is dismissed for being moot *and academic.*

Santiago Tan, Special Prosecutor, Philippine Constabulary; Pedro S. David, Assistant Fiscal of Manila; and Ernesto Oxciano, Assistant Fiscal of Manila, occupying the respective offices mentioned as of the date of the filing of the petition.

[2] One of the counsel for respondents is the then Assistant Solicitor General Pacifico de Castro, who is now a member of this Court.

[3] L-32613-14, December 27, 1972, 48 SCRA 382.

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Barredo, Antonio, Aquino, Concepcion Jr., Guerrero, Abad Santos, and *Melencio-Herrera, JJ.*, concur.

Teehankee, J., adds brief remarks in a separate concurrence.

Fernandez and *De Castro, JJ.*, took no part.

Makasiar and *Santos, JJ.*, are on official leave.

TEEHANKEE, *J., concurring:*

I concur. I only wish to add that when the Court in its Resolution of April 30, 1974 denied respondents-accused's motions for reconsideration of the decision of December 27, 1972 in *People vs. Ferrer* (48 SCRA 382), I filed a concurring and dissenting opinion, in which I stressed that the very rationale of the decision in saving the Anti-Subversion Act from the fatal stigma of the bill of attainder is that the Act be *not* construed "as punishing *mere membership* devoid of any specific intent to further the unlawful goals of the [Communist] Party," as follows:

"I dissent from the resolution insofar as it denies the motion for reconsideration of respondent Nilo Tayag praying in essence not for reconsideration but for a clarification of the guidelines on page 32 of the Court's decision (which really forms an integral part of the judgment) so as to incorporate therein the Court's own rationale expressed on pages 15-16 of its decision that the Anti-Subversion Act is not to be construed 'as punishing *mere membership devoid* of any specific *intent* to further the unlawful goals of the [Communist] Party' since section 4 thereof '*requires* that membership, to be unlawful, must be shown to have been acquired *'knowingly, willfully* and by *overt acts.*' The ingredient of *specific intent* to pursue the unlawful goals of the Party must be shown by '*overt acts.*' This constitutes an *element* of *'membership' distinct* from the ingredient of *guilty knowledge.* The *former requires* proof of *direct participation* in the *organization's unlawful activities*, while the *latter* requires proof of mere *adherence* to the organization's illegal objectives.'" (Resolution on motion for reconsideration in *People vs. Ferrer,* April 30, 1974, reported in 56 SCRA 793, 803-816; italics copied)