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WHEREFORE, the lower court's decision of September 14, 1972 finding appellant guilty beyond reasonable doubt of the crime of rape, is modified to reduce the death penalty to one of *reclusion perpetua* and affirmed in all other respects.

Teehankee, Barredo, Antonio, Aquino, Concepcion Jr., Fernandez, Guerrero, and *Melencio-Herrera, JJ.,* concur.

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

Santos and *Abad Santos, JJ.,* on leave.

SECOND DIVISION

[G.R. No. L-35858. August 21, 1979]

LIBRADA N. FIRME and FLORENCIO FIRME, *petitioners, vs.* **ARSENIO REYES, HON. SIMEON M. GOPENGCO, as Presiding Judge of Branch XXV of the Court of First Instance of Manila, G. A. MACHINERIES, INC., SHERIFF OF MANILA and GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondents.*

SYLLABUS

1. *REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR* **RECONSIDERATION; DOES NOT INTERRUPT THE PERIOD FOR APPEALING FROM THE LOWER COURT'S JUDGMENT.**— We find that the trial court and the Court of Appeals correctly held that the motion for reconsideration of the Firme spouses did not interrupt the period for appealing from the lower court's judgment. Consequently, that judgment became executory. The trial court rightly ignored that motion.

2. **ID.; ID.; NEW TRIAL; A MOTION FOR NEW TRIAL, SANS NOTICE OF HEARING, DID NOT MERIT ANY**

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CONSIDERATION.— In the leading case of *Manakil and Tison vs. Revilla and Tuaño*, 42 Phil. 81, 84, it was held that a motion for new trial, sans notice of hearing, did not merit any consideration. "It was nothing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without a compliance" with Rule 15. "It was not, in fact, a motion. It did not comply with the rules of the court."

3. **ID.; ID.; ID.; NOTICE OF HEARING; PURPOSE.**— The provision in Section 6 of Rule 15 that no motion shall be acted upon by the court without proof of service of such notice is intended to enable the court to find out whether or not the adverse party is in conformity with the motion and, if he objects to it, to give him an opportunity to file his opposition.

4. **ID.; ID.; ID.; ID.; ABSENCE; EFFECT THEREOF.**— The trial court may properly decline to act on a motion for the reconsideration of its decision when such motion lacks the notice of the time and place of hearing.

5. **ID.; ID.; ID.; ID.; ABSENT A NOTICE OF HEARING, THE MOTION TO SET ASIDE THE JUDGMENT DOES NOT SUSPEND THE RUNNING OF THE PERIOD WITHIN WHICH TO PERFECT AN APPEAL.**— Without such a notice of hearing, the motion to set aside the judgment does not suspend the running of the period within which to perfect an appeal.

APPEARANCES OF COUNSEL

Silvestre Br. Bello for petitioners.

Fernando F. Manas, Jr. for respondents Arsenio Reyes & Simeon M. Gopengco.

Florencio L. Dimanlig for respondent GSIS.

Bengzon Villegas Zarraga Narciso & Cudala for respondent G. A. Machineries, Inc.

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DECISION

AQUINO, *J.*:

The procedural issue in this case, which had already been resolved by the Court of Appeals in a decision from which the petitioners did not appeal, is whether the petitioners' motion for the reconsideration of the lower court's adverse judgment against them was a mere scrap of paper because it had no notice of hearing and, hence, the said judgment had become executory.

In Civil Case No. 62906 the Court of First Instance of Manila rendered a decision dated March 1, 1971, declaring Arsenio Reyes the owner of a 165-square-meter lot and the house standing thereon located at 2371 Del Pan Street, Sta. Ana, Manila and ordering the spouses, Librada N. Firme and Doctor Florencio Firme, to pay Reyes rentals for the use and occupation of the house plus ₱1,000 as attorney's fees.

The Firme spouses received on March 27, 1971 a copy of that decision. On April 13, they filed a motion for reconsideration which did not contain any notice of hearing. Copies of that motion were furnished the adverse parties.

Reyes, the winning party, filed a motion dated May 3, 1971, praying that the decision be declared executory and that a writ of execution be issued. He contended that the motion for reconsideration was a mere scrap of paper because it was not set for hearing. The Firme spouses opposed the motion for execution.

The trial court in its order of June 28, 1971 sustained the stand of Reyes, ordered that the motion for reconsideration be stricken out of the record and directed the issuance of a writ of execution.

The motion for the reconsideration of that order was denied on August 30, 1971 by the trial court. It relied on the ruling that a motion for reconsideration without the proper notice of hearing does not interrupt the reglementary thirty-day period for

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perfecting an appeal (*Cledera vs. Sarmiento*, L-32450-51, June 10, 1971, 39 SCRA 552).

Hence, the lower court's judgment was regarded as executory and a writ of execution was issued on October 7, 1972.

On November 23, 1972, or more than one year after the lower court ordered the expunging from the record of the motion to set aside the judgment, the Firme spouses filed in this Court their petition for *certiorari*, prohibition and *mandamus*.

They prayed that the orders of June 28 and August 30, 1971 be reversed and that the trial court be ordered to act on their motion for reconsideration. The petition was given due course. A restraining order was issued.

At this juncture, it should be stressed that the Firme spouses suppressed in their petition the fact that in 1971 they had filed in the Court of Appeals a similar petition for *certiorari*, prohibition and *mandamus* which was *dismissed for lack of merit* (*Florencio Firme, et al. vs. Judge Simeon M. Gopengco, et al.*, CA-G. R. No. SP-00530, November 11, 1971).

The Court of Appeals sustained the lower court's orders of June 28 and August 30, 1971 (the same orders being assailed in this Court) and affirmed its ruling that the motion of the Firme spouses to set aside the judgment was a mere scrap of paper which did not interrupt the period within which to appeal, citing *Bautista Angelo vs. Alfaro*, 95 Phil. 622, 626; *Lampa vs. Ramirez and Guila*, 100 Phil. 219; *San Pedro vs. Dionisio*, 105 Phil. 1273; *J. M. Tuason & Co., Inc. vs. Magdangal*, 114 Phil. 42; *Tan vs. Dimayuga*, 115 Phil. 687; *Manila Surety and Fidelity Co., Inc. vs. Batu Construction & Co.*, 121 Phil. 1221; *Fulton Insurance Co. vs. Manila Railroad Company*, L-24263, November 18, 1967, 21 SCRA 974, 982; *Ferrer vs. Golez*, L-23370-71, September 28, 1968, 25 SCRA 331, 335 and *Magno vs. Ortiz*, L-22670, January 31, 1969, 26 SCRA 692, 697.

The Firme spouses did not appeal from that decision of the Court of Appeals. As already stated, they filed another petition in this Court which gave the erroneous impression that they

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were assailing for the first time in the appellate court the lower court's orders of June 28 and August 30, 1971 when the truth was that the matter was already *res judicata*.

Had the Firme spouses disclosed in their 1972 petition in this Court that in 1971 they had filed a similar petition in the Court of Appeals, that it was dismissed and that the decision therein had become final and unappealable, then this Court would not have entertained their petition in this case.

We can stop at this point and dismiss the petition herein on the grounds that it was filed in bad faith and is barred by *res judicata*. Nevertheless, in the interest of justice, we have looked into the merits of the petition. We find that the trial court and the Court of Appeals correctly held that the motion for reconsideration of the Firme spouses did not interrupt the period for appealing from the lower court's judgment. Consequently, that judgment became executory. The trial court rightly ignored that motion.

Section 2, Rule 37 of the Rules of Court provides that a motion for new trial or reconsideration should contain "a written notice" which should be served on the adverse party. "Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof." The notice shall state the time and place for the hearing of the motion. "*No motion shall be acted upon by the court, without proof of service of the notice thereof,* except when the court is satisfied that the rights of the adverse party or parties are not affected." (Secs. 4, 5 and 6, Rule 15, Rules of Court).

In the leading case of *Manakil and Tison vs. Revilla and Tuaño*, 42 Phil. 81, 84, it was held that a motion for new trial, sans notice of hearing, did not merit any consideration. "It was nothing but a piece of paper filed with the court. It presented no question which the court could decide. The court had no right to consider it, nor had the clerk any right to receive it without a compliance" with Rule 15. "It was not, in fact, a motion. It did not comply with the rules of the court." (See *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866 and *Director of Lands vs. Sanz*, 45 Phil. 117).

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The written notice referred to in Section 2 of Rule 37 is that prescribed in Sections 4 and 5 of Rule 15. The provision in Section 6 of Rule 15 that no motion shall be acted upon by the court without proof of service of such notice is intended to enable the court to find out whether or not the adverse party is in conformity with the motion and, if he objects to it, to give him an opportunity to file his opposition (*Fulton Insurance Co. vs. Manila Railroad Company*, L-24263, November 18, 1967, 21 SCRA 974, 982-983).

The trial court may properly decline to act on a motion for the reconsideration of its decision when such motion lacks the notice of the time and place of hearing (*Manila Surety and Fidelity Co., Inc. vs. Batu Construction & Co.*, 121 Phil. 1221).

Without such a notice of hearing, the motion to set aside the judgment does not suspend the running of the period within which to perfect an appeal (*Philippine Advertising Counselors, Inc. vs. Revilla,* L-31869, August 8, 1973, 52 SCRA 246, 257-8).

The petition herein, which is clearly devoid of merit, is dismissed with costs against the petitioners.

SO ORDERED.

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

Guerrero, J., was designated to sit in the Second Division.

Santos and *Abad Santos, JJ.,* are abroad.