

[G.R. No. L-9245. October 11, 1956]

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. DOMINADOR PANIS, DEFENDANT, ALLIANCE INSURANCE & SURETY CO., INC., PETITIONER AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

Dominador Panis was accused of illegal possession of firearm in the Municipal Court of the City of Legaspi. He was given provisional liberty on a bond fi by the Visayan Surety and Insurance Corporation. Because of his failure to appear when required by the court, an order was issued for the confiscation his bond. Subsequently, another bail bond was filed by the World Wide Insure & Surety Co., Inc. also for his provisional release. On September 17, 1952 Municipal Court forwarded the case to the Court of First Instance of Albay trial on the merits, "it appearing that this case had been pending trial si 17, 1950, and every time that this ease was set for hearing for 8 times now, the trial had been postponed all at the request of the accused."

On September 19, 1952, the city attorney filed an information against the accused for same offense, and, thereafter, upon petition of the city attorney, the court ordered on September 3, 1953, the confiscation of the bonds filed for the accused on account of h failure to appear on the date of the hearing, giving the bondsmen 30 days Within which to produce their principal and to show the cause why judgment should not be rendered against them for the amount of their bonds. On December 23, 1953, "the Visayan Surety & Insurance Corporation and the World Wide Insurance & Surety Co., Inc., filed motions (1) to surrender the accuse to lift the order of confiscation, and, (3) to have their bonds cancelled. same date, the accused filed a motion to file a new bond promising "that he will always appear in the future hearing to be scheduled by this Honorable and will never jump up his Jail." This motion having been favorably acted the herein, appellant, Alliance Insurance & Surety Co., Inc., filed a, bond amount of P2,000 for the provisional release of the accused.

On January 29, 1964, appellant was duly notified that the case would be heard on February 10, 1954. On account of the failure of the accused to appear on said date, the court ordered the confiscation of the bond and gave appellant 30 days within which to produce the person of the accused and to explain its reasons if any, why judgment should not be rendered against it for the amount of the bond. Copy of this order was received by appellant on February 16, On February 23, 1954, the city attorney filed a motion to dismiss the case alleging that, upon reinvestigation, it was belatedly shown that on July 13 the date when the accused was found in possession of a firearm, the Philippine Constabulary had issued in his favor a temporary permit to possess a firearm for a period of 30 days from June 30, 1950.

Upon petition of the provincial fiscal filed on July 6, 1954, the court issued order of execution of the order of forfeiture entered on February 10, 1954 only of the bonds filed by the original bondsmen, but also of the bond of P2,000 filed by appellant and, on July 29, 1954, acting upon the motion to dismiss filed by the government the court dismissed the case against the accused; On September 24, 1954, appellant filed a motion to set aside the order of execution in so far as its bond is concerned, praying at the same time that the same be cancelled which motion was denied for lack of merit on September 25, 1954. Its motion for reconsideration having been denied, appellant interposed the present appeal.

It appears that appellant, Alliance Insurance & Surety Co., Inc., is the third bonding company that was secured by the accused when he was surrendered to the court by his previous bondsmen because of his several failures to appear when his presence was required by the court, and appellant only came in on December 22, 1953. It also appears that on January 29, 1954, the accused was notified that the case would be heard on February 10, 1954, and when he again failed to appear, the court ordered the confiscation of the bond and gave appellant 30 days within which to produce the person of the accused and to explain its reasons, if any, why judgment should not be rendered against it for the amount of the bond. Copy of the order was received by the appellant on February 16, 1954. On February 23, 1954, the government filed a motion to dismiss because it was found that the accused had a temporary permit to possess the firearm involved, but before acting on said motion to dismiss, court, on petition of the provincial fiscal, issued on July 7, 1954, an order execution of the order of forfeiture of the bonds entered on February 10, 1954 It was only on July 29, 1954 that the court dismissed the case against the accused.

It therefore, appears that the motion to dismiss the case was filed by the attorney only 13 days after the order of confiscation of the bond and within the period of 30 days given to appellant within which to show cause why judgment should not be rendered against it for

the amount of the bond. But the court instead of acting on the motion to dismiss immediately, it first the execution of the order of confiscation even if the same was done upon the petition of the city attorney. Considering that the motion to dismiss the case was filed before the expiration of the 30-day period granted to appellant the explain its reasons why judgment should not be rendered against it for the amount of the bond, we are of the opinion that the court has acted somewhat harshly against appellant even if the explanation of the latter for failure to produce the accused came months after. Said motion to dismiss having been filed before the expiration of the 30-day period, appellant had reason to expect that the same would be acted upon before considering the motion for execution, which circumstance has apparently, induced it to believe that the production of the accused was unnecessary. And when the order of execution came, appellant lost no time in filing a motion for reconsideration wherein it explained the steps it had taken leading to the arrest of the ac Thus, in the affidavit submitted by the arresting officer employed by appellant to produce the accused, the officer stated that the reason why he was not able to arrest and bring the accused before the court was that the accused told him that' he could only be brought "a dead body", and when confronted with this attitude, he sought the assistance of the local police of Guimba, Nueva Ecija, but the assistance was denied him unless he could present a warrant of arrest issued by the court. Pertinent portions of the affidavit are quoted hereunder:

"5. Upon my arrival at Guimba, Nueva Ecija, I informed the accused of my, mission to arrest him because of his failure to appear at the trial of his case in court and because of the order of confiscation issued by this Honorable Court.

"6. I was informed by him that he is duly authorized to possess the firearm by virtue of a permit issued by the Executive Officer, Capt. Fermin Peralta the Philippine Constabulary, Firearm and Explosive Section. He also intimate to me that if inspite of the fact that he has supporting documents showing that he is legally authorized to handle firearms, *and should I insist he will ha alternative but to resist, and can only bring him, to court a dead body*" (Annex "B" pp. 1 & 2, paragraphs 5 and 6; Italics supplied.)

While it has been held that "That fact that a criminal prosecution is final dismissed on the motion of the fiscal does not relieve the bondsmen of the accused from the effects of a previous forfeiture of the bond consequent upon non-appearance of the accused at the time

originally set for hearing” (People vs. Vy Eng Hui, 49 Phil., 954), however, it has also been held that question whether a bondsman may be relieved of the effects of an order of confiscation and of his liability under the bond is a matter that is address the sound discretion of the court and it may be given favorable consideration if there are good reasons that justify it. (People vs. Alamada, 89 Phil., 1; vs. Calabon, 53 Phil., 945.) The explanation given by appellant of the efforts it has made in securing the arrest of the accused, plus the fact that a motion to dismiss filed within the period of 30 days granted said appellant to give such explanation, constitute in our opinion sufficient justification for the rel appellant.

Wherefore, the order appealed from dated July 27, 1954 ordering the execution of the order of confiscation of the bond of appellant is hereby set aside a regards appellant, without pronouncement as to costs. The bail bond put up appellant is hereby cancelled.

Paras, C. J., Padilla, Montemayor, Labrador, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.
