

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLANT, VS. KUSAIN SAIK AND GUIAMA AKAN, DEFENDANTS, LUZON SURETY COMPANY, INC., BONDSMAN-APPELLEE.

G.R. No. L-17060. May 30, 1963

Ponente: PADILLA, J.

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PADILLA, J.:

Appeal taken by the Government from an order entered on 9 February, 1960 by the Court of First Instance of Cotabato reducing the amount of liability of the bondsman on an appeal bond.

On 7 March 1951 Kusain Saik and Guiama Akan were charged with the crime of murder with physical injuries in the Court of First Instance of Cotabato (crim. case No. 1066). After trial, on 29 September 1952 they were convicted as charged, the first as principal and the second as accomplice. They appealed to this Court (G. R. No. L-6406). For his provisional release during the pendency of his appeal, appellant Guiama Akan and the Luzon Surety Company, Inc. filed a bond in the sum of P14,000. By a resolution adopted on 20 June 1956, this Court dismissed the appeal as regards Guiama Akan.

Thereafter, the trial court set the date for the promulgation of its judgment or reading of its sentence to Guiama Akan on 20 February 1957. Twice, the Luzon Surety Company, Inc. moved for extension of time to produce Guiama Akan in court; the first, on 19 February 1957, of 30 days, on the ground that Guiama Akan "has moved out of his residence to the other bank of Liguasan Marsh" and it failed to contact Congressman Luminog Mangelen, guarantor in the bail on appeal, who was then confined in a hospital; the second, on 18 March 1957, also of 30 days, because "Guiama Akan went to Lanao to peddle some Moro jewelry" and Congressman Mangelen had "lost track of Guiama Akan while he was confined in the Manila Sanitarium last month." On 20 February and 20 March 1957 both motions were granted. On 21 March, it filed an ex- parte motion for the issuance of a warrant of arrest, on the ground that Guiama Akan was sojourning in Lanao province, far from its reach, and that "there is reasonable ground to suspect that said accused might jump his bail and evade the process of the Court." On 17 April, it filed a motion stating that several months ago Guiama Akan had died in a skirmish with PC soldiers in Lanao and praying that it be relieved from producing his person in court and from any liability on the bail. On 9 May, the Assistant Provincial Fiscal moved for the forfeiture of the bail. On 30 July, the court ordered the Luzon Surety Company, Inc. to pay the Government the full amount of its bond filed for the provisional release of Guiama Akan, or the sum of P14,000, within 20 days from receipt of a copy of the order and to pay all expenses incurred in the collection thereof. On 6 September, the Provincial Fiscal moved for a writ of execution to enforce the judgment. On 12 September, the bonding company moved that the judgment and issuance of writ of execution be suspended, on the ground that it had brought in the same court an action to collect from Congressman Datu Luminog Mangelen, as guarantor in the bail on appeal, the sum of P14,000 plus damages, and had spent much in trying to bring about the arrest of Guiama Akan, and that under section 5, paragraph g, Rule 124, Rules of Court, the court has an inherent power to amend and control its process and orders so as to make them conformable to law and justice. On 13 December 1957, finding the motion meritorious

the court granted it. On 14 April 1958 the Assistant Provincial Fiscal moved that a writ of execution be issued, contending that the pendency of another action could not stay the execution of judgment already rendered against the bonding company, as such action was separate and independent. On 17 July, the court ordered the issuance of a writ of execution and issued it the following day. On 13 October 1959 the Luzon Surety Company, Inc. moved that the order entered on 17 July 1958 directing the issuance of a writ of execution be set aside and that it (the bonding company) be declared relieved from any liability on the bail, reiterating that Guiama Akan died on 15 November 1956 in a battle with a PC patrol in Bualan, Tubod, Lanao, and attaching to the motion a copy of a letter dated 16 April 1957 of Hadji Datu Samad Mangelen, mayor of Buluan, Cotabato; an Arabic letter of bandit leader Mote Arba where he stated that on 15 November 1956 Guiama Akan had died from a gunshot wound; and a joint affidavit executed on 26 January 1959 by Katip Muscad and Daya Gundalangan of Tubod, Lanao province. On 9 February 1960 the court entered an order, the dispositive part of which reads, as follows:

IN VIEW OF THE FOREGOING, and considering that the inability of the Luzon Surety Co., Inc., to produce the body of the accused was due to circumstances beyond its control, the latter is hereby ordered to pay P500.00 instead of P14,000.00 to the Republic of the Philippines within twenty (20) days from receipt of a copy of this order.

From this order the Assistant Provincial Fiscal of Cotabato has appealed.

In the record on appeal of the case the letter of the Mayor of Buluan, the Arabic letter of bandit leader Mote Arba and the joint affidavit executed on 26 January 1959 by Katip Muscad and Daya Gundalangan are not copied. In the order appealed from, the trial court states that the three documents recite the fact that Guiama Akan had died on 15 November 1956. The death of the bailed accused cannot be deemed established by such hearsay evidence. The Mayor of Buluan, the bandit leader Mote and Arba and the two affiants should have been examined under oath by the Court.

The order appealed from is set aside and the case remanded to the court whence it came for it to determine by admissible and competent evidence the fact of the death of the bailed defendant, as alleged and claimed by the appellee surety or bonding company, and render judgment on the motion of the appellee bonding company as the circumstances and the law on the matter warrant, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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