

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ARNALDO CORDERO, ACCUSED, MANILA SURETY AND FIDELITY CO., INC., MOVANT APPELLANT.

G.R. No. L-19363. December 19, 1963

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of the Court of First Instance of Iloilo, dated October 11, 1961, refusing to quash a writ of execution to enforce forfeiture of appellant's bond in a criminal case.

The facts are shown by the record to be as follows:

On September 28, 1954, the accused, Arnaldo Cordero was charged by the City Fiscal of Iloilo for violation of Section 2692 of Act No. 2711 as amended by Commonwealth Act No. 56 and Republic Act No. 4. On the same date, the herein movant-appellant Manila Surety & Fidelity Co., Inc., posted the requisite bail bond in his behalf in the amount of Two Thousand Pesos (2,000.00), Philippine Currency, for his provincial liberty.; (pp. 1—5, Record on Appeal).

On February 3, 1955, for failure of Arnaldo Cordero to appear at the arraignment, the Court upon motion of the City Fiscal issued an order on the same date for the confiscation of the aforesaid bond and ordered the arrest of the accused, (p. 6, Record on Appeal).

On May 20, 1958, the City Fiscal of Iloilo filed a motion for judgment against the Manila Surety & Fidelity Co., Inc. for the amount of the bond of Two Thousand Pesos (P2,000.00) posted by it for the provisional release of the accused, (pp. 6-9, Record on Appeal).

On May 27, 1958, the Court rendered judgment against the Manila Surety & Fidelity Co., Inc., in the amount of Two Thousand Pesos (P2,000.00). (pp. 9-10, Record on Appeal).

On July 25, 1961, the City Fiscal of Iloilo filed a motion for execution of the said judgment. (pp. 10-12, Record on Appeal).

On August 12, 1961, the Court ordered the issuance of a writ of execution (p. 12, Record on Appeal), which was thereafter issued and served upon appellant on August 15, 1961. (pp. 13-14, Record on Appeal).

On September 16, 1961, appellant Manila Surety & Fidelity Co., Inc., filed an urgent motion to set aside the writ of execution issued on August 15, 1961 principally on the following grounds: (1) that the order of confiscation issued in this case was issued on May 27, 1958, more than one year after the death of the accused, Arnaldo Cordero, who died and was buried in the Roman Catholic Cemetery of Palanguia, Pototan, Iloilo, on May 20, 1957; and (2) that the death of the said accused means the extinction of his criminal liability and the consequent dismissal of the case against him in accordance with par. 1, Art. 89 of the Revised Penal Code. (pp. 14-18, Record on Appeal).

On October 2, 1961, the movant-appellant Manila Surety & Fidelity Co., Inc., filed a brief memorandum in

support of its aforesaid motion to set aside the writ of execution, alleging among others: (1) that the movant's principal, died sometime in May, 1957, long before August 15, 1961, when judgment was rendered against the bond; (2) that, as shown by the order of confiscation dated February 3, 1955, the movant was not directed to produce the accused and to show cause why judgment should not be rendered against it for the amount of the bond, in the manner provided by Section 15, Rule 110, Rules of Court; (3) that a personal bail bond shall be cancelled and the sureties discharged from liability when the defendant dies during the pendency of the action, which is a fact in this case; and (4) that the accused having died during the pendency of his case, his criminal liability was thereby extinguished in accordance with par. 1, Art. 89 of the Revised Penal Code. (pp. 18-25, Record on Appeal).

On October 14, 1961, the Court issued an order, (received by appellant on October 17), denying the motion to set aside the writ of execution, (p. 30, Record on Appeal).

On October 26, 1961, appellant filed its notice of appeal. vee

The main argument of appellant is that under Rule 110, section 15, after declaration of forfeiture, the bondsman should be given 30 days to produce their principal and show cause why judgment should not be rendered against them; but that the court below, on 3 February 1955, merely ordered the accused arrested and the forfeiture of his bond; then three (3) years later, still without ordering the surety to show cause, the court rendered judgment against the surety.

While the lower court did not act in strict conformity with the Rules of Court, it is well to note that on 20 May 1958, the appellant surety was served copy of the Fiscal's motion for judgment against it, and made no move to counter it or to plead the violation of the Rules of which it now complains. 'It was only on 16 September 1961, almost three (3) years and four (4) months, after judgment was entered (on 27 May 1958) and execution was subsequently issued, that the surety for the first time asked, to be released, on the ground that the accused had died on 20 May 1957, a week before the judgment against the surety was entered. All the facts pleaded in its motion of 15 September 1961 to set aside the execution, and in its supplemental petition of 22 September 1961, occurred before the judgment of 27 May 1958 was rendered, and could have been (but were not) pleaded within a reasonable time thereafter. This laches of appellant cured whatever irregularity arose from the court's failure to give it opportunity to show cause.

The bail bond having been broken when the appellant surety failed to make the accused appear in court for arraignment on 3 February 1955, the subsequent illness and death of said accused three years later could not excuse the breach of the conditions of the bond (U.S. vs. Babasa, 19 Phil. 198; U. S. vs. Paginada, 27 Phil. 18; U.S. vs. Sunico, 40 Phil. 286; Peo. vs. Tuising, 61 Phil. 404; Peo. vs. Kantong AH, 53 Off. Gaz., 1439). Particularly should this be the rule where, as in the case before us, the bondman's own motions show that no proper supervision had been maintained over the accused, to the extent that the bondsman (who, in law, is the jailer of the accused) never found out the whereabouts of the accused or the fact of his death, until 1961, six (6) years after the default. It is manifest that after putting up bail, the surety Company took no steps to keep in touch with the. accused, as it was its bounded duty to do, resting (in all probability) on the counter guarantors to protect it from any prejudice.

Finally, counting from the time the writ of execution was issued and served on appellant (15 August 1961) until it filed its notice of appeal on 26 October 1961, a period of seventy-one (71) days had elapsed. Deducting the thirty-one (31) days that passed between the filing of its motion to set aside the writ of execution (16 September 1961) and the receipt of notice of its denial, (17 October 1961) leaves a remainder of forty (40) days, a period far in excess of the time allowed for perfecting appeal, that is only fifteen (15) days from notice of the order directing the execution of the judgment of forfeiture (Peo. vs. Loredo, 50 Phil. 209; Peo. vs. Go, 57 Off. Gaz., 1391), So

that the order of execution of this case had become final, and was no longer appealable.

IN VIEW OF THE FOREGOING, the order of execution of the bond is hereby affirmed. Costs against appellants, Manila Surety and Fidelity Company.

Bengzon, C J., Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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