

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ARMINGOL HANASAN, ACCUSED. EUSTAQUIO TUGADE, NICOLAS
EDIG, AND JOSE BAGION, BONDSMEN AND APPELLANTS.**

G. R. Nos. L-4743-45. February 27, 1953

Ponente: REYES, J.

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REYES, J.:

Two sets of sureties signed a bail bond for the provisional release of Armingol Hanasan who was held on a charge of estafa through falsification of public documents in three criminal complaints filed in the municipal court of the City of Davao. Becoming apprehensive, however, that the accused might jump his bail following his detention for the criminal abduction in another municipality, some of the bondsmen in both sets surrendered him to the court with a petition that, he be committed to custody and the bond for his temporary release cancelled. Acting on the petition, the municipal judge had the accused put in jail, but ordered him released again when a new surety, Teofilo Flores, signed a separate bail bond for P13,000 to take the place of the sureties who had petitioned for the cancellation of their bond, the judge being obviously of the impression that, despite the surrender and incarceration of the accused, the other sureties, i. e., those who did not join the petition for cancellation, continued bound on their undertaking and became co-sureties of the new bondsman.

Once at liberty, the accused jumped his bail, and as the bondsmen (i.e. the new one and those who took no part in the surrender of the accused) were not able to produce him, the Court of First Instance of Davao, to which the cases were forwarded after the accused had waived preliminary investigation, declared the bond forfeited, at the same time denying the bondsmen's petition for discharge from liability, and in a "decision" finally rendered ordered the bond executed. From this "decision", as well as from the order denying their petition for discharge, the sureties Nicolas Edig, Eustaquio Tugade, and Jose Bagion have appealed to this court, alleging that their appeal "is based purely on questions of law."

It is the contention of the appellants that when the accused Armingol Hanasan was surrendered to the court and ordered into custody, the bailment ended so that all of the sureties on the bail bond, themselves included, were discharged from their undertaking. This contention is correct, for the Rules of Court provides that the bail bond shall be cancelled and the sureties discharged from liability where the sureties so request upon surrender of the accused to the court or where he is rearrested or ordered into custody on the same charge or for the same offense. (Section 16 [a] and [b] of Rule 110.) In the present case, the accused was surrendered to the court and forthwith ordered into custody on the same charge. It is immaterial that it was not the appellants themselves but their co-sureties who surrendered the accused. Once the accused was ordered into custody, his bondsmen no longer had control over him so that neither those of them who effected the surrender nor the others who did not, could be held responsible for his appearance for any purpose. Thus, in the case of *State vs. Doyal*, 12 La. Ann. 653, 5 Cent. Dig., 2433, where the accused escaped after he was delivered by two of the three sureties on his bail bond and the State sought to hold the third surety liable, it was held that "when one of several sureties on a single bond avails himself of the privilege of surrendering the prisoner, it must be presumed to be done in the interest of his

co-sureties, as well as of himself, and it absolves all if it absolves one." This obviously sound doctrine is supported by the overwhelming weight of authority. (Nichols vs. United States, 22 Fed. [2nd], 8.)

In the case last cited, bail was fixed at \$5,000 and taken in two separate recognizances for \$2,500 each, one with one surety and the other with another. One of the sureties surrendered the accused and was discharged, whereupon the accused gave a new bond in the sum of \$2,500 with a new surety. The court held that both of the former sureties on separate recognizances were discharged upon substitution of a new surety for the surety surrendering the accused without the other surety's consent.

It should also be noted that, according to the terms of the bail bond, the appellants and their co-sureties were jointly and severally bound. This entitled any one of them who paid to demand contribution from those who did not. This right would be impaired if some of the sureties could be discharged or substituted without the knowledge and consent of the others.

The prosecution, however, alleges that appellants had knowledge of the substitution of their co-sureties by Teofilo Flores, that after the substitution one of them, Jose Bagion, asked the municipal judge to allow him to withdraw from the undertaking and later on even moved for the substitution of his property bond by a cash bond, and that all of the appellants, instead of repudiating their bond as inoperative, moved the court for an alias warrant of arrest when the accused jumped his bail. And construing appellant's behaviour as an indication of their willingness to continue with their undertaking notwithstanding the withdrawal of their co-sureties, the prosecution argues that appellants are by their acquiescence estopped from denying that their bond was still in force.

The argument is based on a wrong premise. Estoppel by acquiescence is founded on knowledge and assent (Oklahoma City vs. Wells, 91 P 2nd 1077, 1084), so it does not lie where knowledge and assent are lacking. The record does not show that appellants had knowledge of the withdrawal of their co-sureties or their alleged substitution by a new surety, Teofilo Flores, who signed a separate bail bond independently of the other sureties. And contrary to the Government's contention that knowledge is not legally to be deduced from the mere fact that all of the parties live in the same town. Not having knowledge of the withdrawal or discharge of their co-sureties or their substitution by a new surety, appellants necessarily had to assume that their undertaking was still in force and to act accordingly. Acts performed on such erroneous assumption cannot serve as a basis for estoppel. And as was said in a case, "one cannot be estopped from a present assertion of his rights because he failed to assert them at some prior time when he had no knowledge of them * * *" (Smith vs. Cross, 140 S. W., 1060, 1065.)

In view of the foregoing, the "decision" and order appealed from are hereby revoked, but only in so far as the appellants herein are concerned, who are hereby declared released from their undertaking as sureties, the said "decision" and order to stand as regards the surety Teofilo Flores. Without costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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