

**GIMENO V. VALLANGCA, MARIA TOMANENG, BLAS VILLASIN,  
DOLORES AYONAYON, FLAVIANA RENON, PETRA GOROSPE, PEDRO  
TORRIDA AND HONORATO LANIA, PETITIONERS-APPELLANTS, VS.  
HON. CRISPIN G...**

*G.R. No. L-29226. September 28, 1973*

Ponente: FERNANDO, J.

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**FERNANDO, J.:**

In this appeal from a lower court decision denying a petition for certiorari with preliminary writ of injunction to annul a municipal court judgment ordering the confiscation of a bail bond, there is a reiteration of what had been unsuccessfully pleaded below, namely, the alleged dismissal of the case against the accused whose non-appearance brought grief to the bondsmen.[1] Such a claim would have sufficed had there really been such an order, but unfortunately for appellants, they were unable to produce a shred of evidence in support of such a plea. How else could the lower court act then, except as it did, considering that the accused failed to appear not only at the trial but all the while this suit was pending? We have to affirm.

The facts are not open to dispute. *People v. Honorato Lania*, a criminal case for illegal possession of firearms,[2] was set for hearing on July 21, 1964. As far back as July 7 of that year, a subpoena was issued by such court to notify the bondsmen to produce the person of the accused at the scheduled trial. The bondsmen did not accept service of such subpoena. Moreover, they did not produce the accused in court on the scheduled date of July 21. Neither were they present. Then came an order of such court on July 30, 1964, requiring such bondsmen to explain within fifteen days why bail should not be forfeited. There was such a memorandum of explanation or a motion for reconsideration of August 19, 1964, which the municipal court of Buguey, Cagayan considered unsatisfactory. Nonetheless, they were given an additional period of fifteen days to produce the person of the accused. Again, the bondsmen were unable to do so. On September 23, 1964, the aforesaid Vallangca filed a motion asking a period of thirty days within which to comply with the obligation to have the accused appear before the court. It was granted but with the same negative result. The municipal court therefore had no choice except to decree the forfeiture, as set forth in an order of October 27, 1964, the dispositive portion of which reads: "[In view of all the foregoing premises], and the period given by this court to all the bondsmen to produce the person of the accused to court and to make explanations for the non-production of the said accused, and to show cause why their properties given as bail-bond for the accused should not be declared forfeited in favor of the government, having lapsed; with the further lapsing of 30-day period extension of time within which to bring the accused to court as contained in counsel's motion dated September 21, 1964; and for the cause of efficient administration of justice, it is hereby ordered that judgment be rendered against the principal and of all the bondsmen for the amount of the bail bond in sum of P2,000.00 and in default of the same, let all the real properties, as described and bounded in the bail bond undertaking, of the bondsmen, be confiscated in favor of the government." [3] When it became final and executory, the Provincial Fiscal of Cagayan, respondent Narciso Aquino, filed a motion dated October 11, 1965 for the issuance of a writ of execution against the real properties of

the bondsmen. The municipal court judge, respondent Crispin G. Ariola, granted said motion. The third respondent, Deputy Sheriff Nemesio Oñate, after posting the notice of sale and after proper publication, sold such property at public auction on August 21, 1967 to the Government of the Republic of the Philippines, as the highest bidder.

What transpired next is set forth in the brief of respondents-appellees thus: "On August 18, 1967, the petitioners filed a petition for certiorari in the court a quo assailing the judgment of the municipal court dated October 27, 1964 in Criminal Case No. 1060 forfeiting their bonds in favor of the government. They also impugned the validity of the motion for execution filed by provincial fiscal Narciso A. Aquino, the writ of execution issued by judge Crispin G. Ariola and the sale of the properties at public auction by deputy sheriff Nemesio T. Oñate. They further prayed for the issuance of a writ of preliminary injunction to restrain said respondents from executing and causing the sale at public auction of their properties \* \* \*. On August 19, 1967, the petitioners also filed an ex-parte motion for the issuance of a writ of preliminary injunction against deputy sheriff Nemesio Oñate to restrain him from selling at public auction their properties under the bail bond \* \* \*. The order of said court issued on August 21, 1967 enjoining deputy sheriff Nemesio Oñate not to proceed with the sale at public auction \* \* \* was returned unserved on that date for lack of material time \* \* \*, because the properties had already been sold at public auction as scheduled to the highest bidder, the Government of the Republic of the Philippines \* \* \*. The petitioners in this case claim that former judge Ernesto Furugganan of the municipal court had already dismissed Criminal Case No. 1060 against Honorato Lania on June 27, 1962, when he granted in open court the motion to quash filed by assistant provincial fiscal Gabriel O. Valle, Jr. How-ever, there is no order of dismissal found in the records of said case." [4] After respondents filed their answers, the petition was set for hearing on October 27, 1967, but was only heard on December 11, 1967. The decision, as noted at the outset, was a denial of such petition. Hence the appeal to us.

It was not a wise step. They were mistaken in having the matter looked over by us, with the facts as found by the lower court arguing against their pretension that there was such a dismissal of a criminal case. If it were so, it would have freed them as bondsmen from the liability assumed. The lower court did not so find. As set forth in the decision now on appeal: "The allegation of the petitioners that Criminal Case No. 1060 of Buguey Municipal Court was dismissed by Judge Ernesto P. Furugganan in open court on June 27, 1962 is not supported by the record of the case. As rightly alleged by the First Assistant Provincial Fiscal and Judge Ariola in their answers, nowhere in the record of the case could be found that dismissal. The same is not also found in the criminal docket of the Municipal Court of Buguey, Cagayan. Such a very important proceeding which gave a final determination to a case must at least appear in some form of writing. The Court cannot presume the existence of so vital a document as an order of dismissal without concrete evidence." [5] How can petitioners expect a reversal then? The only question before us is one of law, namely, whether the decision of the lower court has support in the appropriate rule of court as authoritatively expounded. Necessarily then, the dismissal by the lower court of this petition for certiorari must be sustained.

1. The specific provision of the Rules of Court is quite explicit. It reads thus: "When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty (30) days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen." [6] This is one of those cases where hardly any room is left for interpretation. All that a judicial body can do is to apply it as worded. [7] That is what the lower court did. What is

more, authoritative doctrines from *United States v. Carmen*,<sup>[8]</sup> a 1909 decision, the present provision being a restatement of Section 76 of the former Code of Criminal Procedure,<sup>[9]</sup> to *People v. Franklin*,<sup>[10]</sup> decided in 1971, have been notable for their consistency.<sup>[11]</sup>

That such a rule calls for application is most evident, considering that the lower court, on the very day of the appealed decision on February 20, 1968, could take note of the fact that from October 27, 1964, the date of the order for the confiscation of the bail bond, up to March 6, 1967, when the order of execution of the bond was issued, there was no surrender of the person of the accused. If it were otherwise, then leniency or mitigation of liability would have been appropriate. As noted by Justice Malcolm in *People v. Reyes*:<sup>[12]</sup> "The record, however, dis-closes that on the same day that the court issued its order to show cause, the accused was turned over to the deputy sheriff and was the day following placed in Bilibid Prison. Had the bondsmen presented the accused to the court at the time set for the hearing and explained his failure previously to produce her, undoubtedly the court would have been much more lenient. This mistake should nevertheless not be held too strongly against the bondsman. The law, it will be recalled, provides for a discharge of the forfeiture upon such terms as may be considered just. In other words, whether a bail bond upon which there is a default should be declared forfeited to its full amount or in a lesser amount, rests largely in the discretion of the court and depends on the circumstances of each particular case."<sup>[13]</sup> In the above-cited *People v. Franklin*,<sup>[14]</sup> Justice Dizon rejected a contention that a bondsman should be released from liability as his failure to produce and surrender the accused was due to the negligence of the Government itself in issuing a passport to her, thereby enabling her to leave the country. As was pointed out by him: "That the accused in this case was able to secure a Philippine passport which enabled her to go to the United States was, in fact, due to the surety company's fault because it was its duty to do everything and take all steps necessary to prevent that departure. This could have been accomplished by seasonably inform-ing the Department of Foreign Affairs and other agencies of the government of the fact that the accused for whose provisional liberty it had posted a bail bond was facing a criminal charge in a particular court of the country. Had the surety company done this, there can be no doubt that no Philippine passport would have been issued to Natividad Franklin."<sup>[15]</sup> It only remains to be added that, as Justice Laurel pointed out in *Luzon Surety Co. v. Montemayor*,<sup>[16]</sup> there may be instances where not even the production of the body of the principal would suffice, there being the added requirement of a satisfactory explanation of the failure to appear when first required to do so. Thus: "It will thus be seen that while the surrender or the appearance of the accused is a prerequisite to relief from, or remission of, a forfeiture of bail, the sureties cannot exonerate themselves simply by a surrender of him after a forfeiture, and hence, they are not as a matter of right, released from their obligations under a forfeited recognizance by the mere surrender of their principal or by his voluntary appearance after forfeiture \* \* \*."<sup>[17]</sup>

It is thus clear that the contention of appellants imputing error to the lower court for sustaining the forfeiture of the bond in question is devoid of merit. The highly-strained interpretation given by petitioners in the four pages devoted to such an alleged error can hardly avail to blunt the force of the above unbroken line of decisions.

2. The exhaustive brief submitted by the then Solicitor General, now Associate Justice, Felix Makasiar, and former Assistant Solicitor General Antonio G. Ibarra, likewise stressed another ground that leads to the same conclusion. The petition for certiorari, as therein noted, was filed after two years, counted from the denial of the last motion for reconsideration. As made mention of therein: "The failure of the petitioners to file an appeal within the reglementary period provided for by law is either intentional or a gross negligence on their part and certiorari cannot be a substitute for that appeal. Moreover, once a judgment becomes final the winning party should not be deprived of the fruits of the verdict by some clever scheme or device not sanctioned by law. In the instant case, the judgment of the lower Court forfeiting the bail bond of the petitioners became final and executory on January 6, 1965. To grant this petition for certiorari, therefore, would set at naught the final verdict rendered by the

Municipal Court of Buguey which to all appearances is in accordance with law." [18] Reference was then made to the leading case of *Lee Kim Tho v. Go Siu Kao*, [19] where it was stressed: "Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that once a judgment has become final, the winning party be not, through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them." [20]

WHEREFORE, the lower court decision of February 20, 1968 is affirmed. Costs against petitioners.

Makalintal, Acting. C.J., Zaldivar, Ruiz Castro, Teehankee, Antonio, and Esguerra, JJ., concur.

Barredo, J., concurs in a separate opinion.

Makasiar, J., on official leave.

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[1] The bondsmen are petitioners, now appellants Gimeno V. Vallangca, Maria Tomaneng, Blas Villasin, Dolores Ayonayon, Flaviana Renon, Petra Gorospe, and Pedro Torrida.

[2] Criminal Case No. 1060 of the Municipal Court of Buguey, Cagayan.

[3] Order of October 27, 1964, Brief for Respondents-Appellees, 2-3.

[4] *Ibid*, 3-5.

[5] Decision, Annex A to Brief for the Petitioners-Appellants, 24.

[6] Section 15, Rule 114, Rules of Court.

[7] Cf. *People v. Mapa*, L-22301, Aug. 30, 1967, 20 SCRA 1164; *Pacific Oxygen & Acetylene Co. v. Central Bank*, L-21881, March 1, 1968, 22 SCRA 917; *Dequito v. Lopez*, L-27757, March 28, 1968, 22 SCRA 1352; *Padilla v. City of Pasay*, L-24039, June 29, 1968, 23 SCRA 1349; *Garcia v. Vasquez*, L-26808, March 28, 1969, 27 SCRA 505; *La Perla Cigar and Cigarette Factory v. Capapas*, L-27948 and 28001-11, July 31, 1969, 28 SCRA 1085; *Mobil Oil Phil., Inc. v. Diocares*, L-26371, Sept. 30, 1969, 29 SCRA 656; *Luzon Surety Co., Inc. v. De Garcia*, L-25659, Oct. 31, 1969, 30 SCRA 111; *Vda. de Macabenta v. Davao Stevedore Terminal Co.*, L-27489, April 30, 1970, 32 SCRA 553; *Republic Flour Mills, Inc. v. Commissioner of Customs*, L-28463, May 31, 1971, 39 SCRA 269; *Maritime Co. of the Phil. v. Reparations Commission*, L-29203, July 26, 1971, 40 SCRA 70; *Allied Brokerage Corp. v. Commissioner of Customs*, L-27641, Aug. 31, 1971, 40 SCRA 555; *Gonzaga v. Court of Appeals*, L-27455, June 28, 1973.

[8] 13 Phil. 455.

[9] General Order No. 58 (1900).

[10] L-21507, June 7, 1971, 39 SCRA 363.

[11] Cf. *United States v. Carmen*, 13 Phil. 455 (1909); *Bandoy v. Judge of First Instance*, 14 Phil. 620 (1909); *United States v. Bonoan*, 22 Phil. 1 (1912); *United States v. Painaga*, 27 Phil. 18 (1914); *United States v. Bleibel*, 34 Phil. 227 (1916); *United States v. Sunico*, 40 Phil. 826 (1920); *Mayuga v. Abeto*, 42 Phil. 946 (1921); *People v. Reyes*, 48 Phil. 139 (1925); *People v. Uy Eng Hui*, 49 Phil. 954 (1927); *People v. Lorredo*, 50 Phil. 209 (1927); *People v. Calabon*, 53 Phil. 945 (1928); *Luzon Surety Co. v. Montemayor*, 63 Phil. 134 (1936); *People v. Abner*, 87 Phil. 566 (1950); *People v. Alameda*, 89 Phil. 1 (1951); *People v. Hanasan*, 92 Phil. 717 (1953); *People v. De la Cruz*, 93 Phil. 487 (1953); *People v. Lee Diet*, 94 Phil. 31 (1953); *People v. Kantong Ali*, 98 Phil. 857 (1956); *Alto Surety & Ins. Co. v. Andan*, 100 Phil. 403 (1956); *People v. Sy Beng Guat*, 105 Phil. 574 (1959); *People v.*

Padilla, L-20076, Oct. 30, 1964, 12 SCRA 255; People v. Segarino, L-20138, Nov. 27, 1964, 12 SCRA 395; People v. Del Carmen, L-22082, Oct. 30, 1967, 21 SCRA 592; People v. Franklin, L-21507, June 7, 1971, 39 SCRA 363.

[12] 48 Phil. 139 (1925).

[13] Ibid, 142.

[14] L-21507, June 7, 1971, 39 SCRA 363.

[15] Ibid, 367.

[16] 63 Phil. 134 (1936).

[17] Ibid, 138.

[18] Brief for Respondents-Appellees, 13-14.

[19] 82 Phil. 776, 778.

[20] Ibid, 778.

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CONCURRING  
BARREDO, J.:

I concur.

The only issue raised by petitioners is that the order of confiscation of bail bond they had filed with the court of origin had no legal basis inasmuch as the criminal case against the accused, Honorato Lania, the principal in the bond, had already been dismissed at the time the order of confiscation was made. The trial court having found that no such order of dismissal had ever been issued, it necessarily follows that petitioners' pose is entirely groundless. Their attempt to show that such a dismissal exists is in effect an admission that without it their liability is inevitable. Having failed to prove its existence, no extended elucidation is needed for Us to affirm the appealed decision dismissing their petition for certiorari seeking the annulment of the order of confiscation and the proceedings subsequent thereto. Even a mere passing reference to the governing rule, Section 15 of Rule 114, would suffice to place the correctness of Our decision beyond cavil.

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