

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
LEE DIET, ACCUSED AND RIZAL SURETY AND INSURANCE
COMPANY, BONDSMAN AND APPELLEE.**

G.R. No. L-5256. November 27, 1953

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On May 25, 1951, Lee Diet was charged before the Justice of the Peace Court of Cotabato, Cotabato, with the crime of uttering false U. S. gold coins in connivance with some counterfeiters. On the same date, the Justice of the Peace issued a warrant for his arrest and fixed the bail bond for his provisional liberty at P12,000. Thereupon, the bond was put up by the Rizal Surety & Insurance Company and the accused was released.

The Justice of the Peace set the preliminary investigation of the case for June 14, 1951. On this date the accused failed to appear. Counsel for the surety however appeared and informed the court that the whereabouts of the accused was not known due to the fact that he escaped three days before while under the custody of the Philippine constabulary. It appears that the accused while out on bail was re-arrested on June 8, 1951, by some agents of the constabulary for questioning regarding his alleged subversive activities, but during his detention he escaped. For his failure to appear, the Justice of the Peace declared the bond forfeited and required the surety to produce the body of the accused within 30 days from notice and to show cause why judgment should not be rendered against it for the amount of the bond. Two days later, however, the justice of the peace reconsidered his order and remanded the case to the Court of First Instance of Cotabato.

On July 2, 1951, the Provincial Fiscal filed the corresponding information against the accused. The arraignment and trial of the accused were set for August 2, 1951, but on said date the accused again failed to appear, whereupon the Provincial Fiscal moved for the confiscation of the bond posted by him for his provisional liberty. Counsel for the surety objected giving as reason for the non-appearance of the accused the same reason given by him before the Justice of the Peace Court of Cotabato. The court denied the motion holding in substance that the reason given by counsel for the surety for the non-appearance of the accused was satisfactory and had the effect of relieving it from its liability under the bond. Hence this appeal.

The only question to be determined is whether, while the accused was out on bail, was picked up by the constabulary authorities in the province for questioning in connection with subversive activities, and thereafter escaped from their custody, will excuse the surety, the Rizal Surety & Insurance Company, from the non-performance of its obligation under the bond.

It is a well-settled doctrine that a surety is the jailer of the accused. "He takes charge of, and absolutely becomes responsible for the latter's custody, and under such circumstance, it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance inasmuch as the authority emanating from his character as surety is no more nor less than the Government's authority to hold the said accused under preventive imprisonment." (People vs. Tuising, 61 Phil, 404.)

When the surety in this case put up the bond for the provisional liberty of the accused it became his jailer and as such was at all times charged with the duty to keep him under its surveillance. This duty continues until the bond is cancelled, or the surety is discharged. The procedure for the discharge of a surety is clear in the Rules of Court. Thus, it is there provided that the bail bond shall be cancelled and the sureties discharged of liability (a) where the sureties so request upon surrender of the defendant to the court; (b) where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or is convicted and surrendered to serve the sentence; and (d) where the defendant dies during the pendency of the action. (Section 16, Rule 110.)

It is true that a surety may also be discharged from the non-performance of the bond when its performance "is rendered impossible by the act of God, the act of the obligee, or the act of the law" (U. S. vs. Sunico, 40 Phil., 826-832), but even in these cases there still remains the duty of the surety to inform the court of the happening of the event so that it may take appropriate action and decree the discharge of the surety (section 16, Rule 110). Here no such step was taken by the surety when the accused was re-arrested by the constabulary authorities. The surety kept silent since it did not take any of the steps pointed out by law if it wanted to be relieved from its liability under the bond. It only gave notice to the court of that fact when the court ordered the appearance of the accused either for arraignment or for trial. It was only then that it informed the court that the accused was re-arrested and that while he was detained, he made good his escape. Since at that time his bond was still valid and binding, and notwithstanding the re-arrest of the accused the surety kept silent, it must be presumed that the surety chose to continue with its liability under the bond and should be held accountable for what may later happen to the accused. It has been held that "The subsequent arrest of the principal on another charge, or in other proceedings, while he is out on bail does not operate ipso facto as a discharge of his bail * * *. Thus if, while in custody on another charge, he escapes, or is again discharged on bail, and is a free man when called upon his recognizance to appear, his bail are bound to produce him." (6 C. J., p. 1026.)

This case should be distinguished from the recent case of *People vs. Mamerto de la Cruz*, 93 Phil., 487, wherein this Court said: "It has been seen that if the sureties did not bring the person of the accused to court, which they were powerless to do due to causes brought about by the Government itself, they did the next best thing by informing the court of the prisoner's arrest and confinement in another province and impliedly asking that they be discharged. On its part, the court, by keeping quiet, and, indeed, issuing notices of the hearings direct to the prisoner through the sheriff of Camarines Norte and ignoring the sureties, impliedly acquiesced in the latter's request and appeared to have regarded the accused surrendered." No such step was taken by the surety in this particular case for it failed even to inform the court of the apprehension made of the accused by the constabulary authorities.

Wherefore, the order appealed from is reversed without pronouncement as to costs.

Paras, C. J., Pablo, Bengzon, Padilla and Labrador, JJ., concur.

Tuason, Reyes, and Jugo, JJ., concur in the result.

Montemayor, J., concurring: I concur in this opinion penned by Mr. Justice Bautista because it is in accordance with and follows the view maintained in my dissenting opinion in the case of *People vs. Mamerto de la Cruz*, 93 Phil., 487, despite an attempt to distinguish the present Diet case from the Cruz case.

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