

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PACIFICO PECZON, ET AL., ACCUSED. PEDRO REBADULLA, ET AL.,
BONDSMEN AND APPELLANTS.**

G.R. No. L-15584. October 27, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On November 13, 1956, a complaint for robbery in band was filed against five persons before the Justice of the Peace Court of Japapad, Samar. Having been allowed to enjoy provisional liberty, 19 persons put up the requisite bail bond in their behalf in the total amount of P40,000.00. And because of the constant failure of the accused to appear on the various dates set for the preliminary investigation of the case, the justice of the peace court considered their failure as a waiver thereof and elevated the case to the Court of First Instance of Oras, Samar, for its subsequent prosecution.

After the formal charge was filed by the fiscal, the case was set for trial on August 22, 1958. Of the 19 bondsmen only 8 received notice of the hearing even if two of them informed their counsel Pablo G. Rebadulla of the date of trial to be held at Oras, Samar. Believing, however, that the appearance of the accused was only required for the preliminary investigation of the case, Atty. Rebadulla advised them that their presence was not necessary it being sufficient that their waiver, as they manifested to him, be made of record. But upon learning later that the scheduled hearing was for trial on the merits, Atty. Rebadulla wired the clerk of court entering his appearance and asking for its postponement to the first week of November, 1958. Counsel also sent by registered mail a written motion for postponement wherein he justified his request by stating that as he has just been engaged and has not had sufficient time to study the case the intervening period was too short for him to prepare the defense of the accused more so considering that the trial would be held at Oras, Samar. This motion having been denied and the accused having failed to appear at the trial, the court directed their arrest and the confiscation of their bond, giving the bondsmen 30 days within which to produce the persons of said accused and to explain why their bond should not be forfeited.

On October 6, 1958, counsel Rebadulla filed an urgent motion to lift the order of confiscation alleging that if the bondsmen were not able to present the accused at the trial it was because of the advice he gave them not to appear due to his mistaken belief that the same was only for preliminary investigation which the accused can waive and that if the bondsmen failed to surrender them within the 30-day period given them it was because the accused had already been arrested and lodged in jail by virtue of a previous order of the Court. Finding this explanation unsatisfactory coupled by the fact that the motion was not supported by any affidavit, the court denied the motion. Counsel filed a motion for reconsideration attaching this time the requisite affidavits in justification of his request for the lifting of the confiscation of the bond, but far from acceding to it, the court rendered judgment ordering the bondsmen to pay to the Government the amounts specified in their respective bonds, which judgment was made immediately executory. Hence the bondsmen interposed the present appeal.

The main error assigned by appellants is that the lower court abused its discretion in not finding satisfactory the explanation or reasons given by them for their failure to produce the accused either at the trial or within the 30-day period they were required to do so thus ordering the confiscation of their respective bonds.

We find merit in this appeal. Section 15, Rule 110, of the Rules of Court provides:

"Sec. 15. Forfeiture of bail.—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 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 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 required to do so. Failing in these two requisites, a judgment shall be rendered against the bondsmen." (Italics supplied)

As the record shows that 11 of the 19 bondsmen were not given notice of the date of hearing, it is evident that in the light of the foregoing provisions of our rules they cannot be held liable for their failure to produce the persons of the accused as required by the court and hence their bonds cannot be forfeited on that ground.

Neither are we prepared to affirm the ruling of the lower court relative to the confiscation of the bonds of the 19 bondsmen, including those who were notified of the trial, even if they failed to produce the body of their principals at the trial or within the 30-day period given them to do so, for the simple reason that upon receipt of the order of the court ordering the confiscation of their bonds and requiring them to show cause why judgment should not be rendered against them for their failure to comply with their commitment, they submitted within a reasonable period a written explanation of the reasons for their failure not only to produce said principals on the date of the hearing but also during the period given them to do so as a justification for their exoneration.

Thus, in their motion to lift the order of confiscation submitted on October 6, 1958, they explained that their failure to present the accused on the date of trial was due to the erroneous advice given them by their counsel who told them that their presence was not necessary because of his mistaken belief that it referred merely to a preliminary investigation, and that their further failure to produce their principals within the 30-day period was due to the fact that they had already been arrested and lodged in jail in view of a previous order of the court. These reasons remain undisputed, for as a matter of fact the trial of said accused took place immediately thereafter which eventually resulted in their exoneration. Considering that the hearing was apparently being held for the first time and upon being informed of the mistake committed by their counsel they immediately informed the court of the reasons why they failed to comply with the order of the court relative to the appearance of their principals, we are inclined to consider the reasons thus given as sufficient justification that may warrant the setting aside of the order of confiscation issued by the trial court. In other words, the steps taken by appellants with regard to their failure to comply with their commitment under their bonds constitute a substantial compliance with the requirements of our rules on the matter.

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

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Paredes, and De Leon, JJ., concur.

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