

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
MAMERTO ABNER ET AL., DEFENDANTS. ROBERTO SOLER AND
DOMINGO ABELLA, BONDSMEN AND APPELLANTS.**

G.R. No. L-2508. October 27, 1950

Ponente: PARAS, J.

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PARAS, J.:

In a complaint signed by Lt. Fernando G. Regino, P. A., with the heading "In the Justice of the Peace Court of Tinambac, Camarines Sur," Mamerto Abner was charged, with others, with robbery in band with rape committed in the municipality of Tinambac, province of Camarines Sur. Upon motion of the assistant provincial fiscal of September 6, 1946, alleging that the justice of the peace of Tinambac was absent and the municipal mayor refused to receive the complaint, the Court of First Instance of Camarines Sur directed the justice of the peace of Naga, the capital, to conduct the necessary preliminary investigation. Mamerto Abner was thereafter admitted to bail and the herein appellants, Roberto Soler and Domingo Abella, executed the necessary bail bond for P15,000 dated October 4, 1946, and approved by the justice of the peace of Naga on the same date. Notwithstanding notice, the accused Abner and his bondsmen failed to appear at the preliminary investigation set for March 26, 1947. On April 2, 1947, Abner, through counsel, filed a petition waiving the right to a preliminary investigation. By order of April 5, 1947, the justice of the peace of Naga forwarded the case in respect to Abner to the Court of First Instance of Camarines Sur. On May 8, 1947, the provincial fiscal filed the corresponding information in the Court of First Instance of Camarines Sur. The trial originally set for November 25, 1947, was postponed to January 16, 1948, but upon motion of appellants, the trial was set for March 2, 1948. On February 28, 1948, the appellants filed a motion for another extension of thirty days within which to produce the body of Abner, which was granted, and the trial was again postponed to March 29, 1948. On this date, Abner and the appellants failed to appear. The provincial fiscal accordingly filed a petition for the confiscation of the bail bond executed by the herein appellants, and the same was granted by the Court of First Instance of Camarines Sur in its order of March 31, 1948. From this order the bondsmen have appealed.

Appellants contend that the Court of First Instance did not acquire jurisdiction, because no complaint was filed in the justice of the peace court of Tinambac, and reliance is placed on the allegation of the fiscal, in his motion of September 6, 1946, that the complaint signed by Lieutenant Regino was not so filed in view of the absence of the justice of the peace and the refusal of the municipal mayor of Tinambac to receive said complaint. It appears, however, that the bond executed by the appellants on October 4, 1946, contained the following recital: "A complaint having been filed on September 17, 1946 in the justice of the Peace Court of Tinambac, Camarines Sur * * *." This admission, which is subsequent to the motion of the fiscal of September 6, 1946, is inconsistent with appellants' contention. Moreover, the proceedings had before the justice of the peace of Naga and the Court of First Instance of Camarines Sur, in relation to the measures taken by the appellants prior to the confiscation of their bond, carry the implication that the complaint was duly filed. The presumption that official duty was performed has not been destroyed. Although the justice of the peace has jurisdiction to conduct preliminary

investigations only of offenses committed within his municipality, the justice of the peace of the provincial capital, when, as in the case at bar, directed by the Court of First Instance, may conduct such preliminary investigation of any offense committed anywhere within his province. (Sec. 2, Rule 108, Rules of Court.)

It appears that the bond in question was not signed by the accused Abner as principal; and it is contended by the appellants that it is accordingly void. Section 1, Rule 110, of the Rules of Court, provides that "bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance." Under this there are two methods of taking bail: (1) by bail bond and (2) by recognizance. A bail bond is an obligation given by the accused with one or more sureties, with the condition to be void upon the performance by the accused of such sets as he may legally be required to perform. A recognizance is an obligation of record, entered into before some court or magistrate duly authorized to take it, with the condition to do some particular act, the most usual condition in criminal cases being the appearance of the accused for trial. (Moran, Comments on the Rules of Court, 2nd Ed., Vol. II, page 592.) In *U.S. vs. Sunico et al.*, 48 Phil. 826, 834, this Court, citing *Lamphire vs. State*, 73 N. H., 462; 62 Atl., 786; 6 Am. & Eng. Ann. Cas., 615, defined a recognizance as "a contract between the sureties and the State for the production of the principal at the required time." The bail bond executed by the appellants, though so denominated, is essentially a recognizance, an "obligation" contracted with the State by the appellants, not requiring as an indispensable condition for its validity, the signature of the accused. In addition, under the circumstances of this case, the appellants are estopped from assailing the effectiveness of their bail contract. If, as contended by appellants, it would be difficult, without the accused Abner having signed as principal, for them to obtain indemnity from or to have power and control over him, they are solely to blame. Neither is there merit in the argument that the obligation of appellants under the bond is merely to pay P15,000 in case the accused should fail to pay that amount, because the latter, who has not signed it, is of course not bound thereby.

Appellants allege that the Government had launched a campaign for the capture of Abner, dead or alive, as a result of which he is forced to remain in hiding. Thus the appellants are allegedly unable to produce him in court, due to an act of the Government. In the order of the trial court denying appellants' motion for reconsideration, however, it is recited that "if the government launched the campaign against Abner and his followers in Tinambac and Partido during the months of July up to December, 1947, it was because Mamerto Abner and his gang have turned out brigands who threatened to disturb the peace and tranquility of the people in that part of the province of Camarines Sur." Hence the alleged search for Abner was motivated by his own voluntary act and cannot, therefore, be invoked by appellants, (*U.S. vs. Sunico*, supra.)

The appealed order is affirmed -with costs against the appellants. So ordered.

Moran, C.J., Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

FERIA, J., concurring:

I concur in the decision with the following modification in connection with the necessity of defendant's signature in his bail bond.

A bail bond in criminal cases is an obligation subscribed, not by the accused, but by two or more sureties for the release of the defendant who is in the custody of the law, conditioned upon that the latter will appear before any court in which his appearance may be required. It is not different from recognizance, and for that reason Rule 110 of the Rules of Court uses the word bail bond and recognizance interchangeably. That the law does not require that the bail be subscribed or signed by the accused is shown by the provisions of Sec. 9 which require that in ease

there are only two sureties, each must be worth the amount specified in the undertaking above all just debts etc."; by Sec. 15 which provides that, when the appearance of the defendant is required by the court, his sureties, and not the accused, shall be notified to produce him or a given date in compliance with their obligation stipulated in the bail bond. And if the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce the accused, and to show cause why a judgment shall not be rendered against them for the amount of their bond; and "failing in these two requisites, a judgment shall be rendered against the bondsmen" (not against the accused); by Sec. 17 which provides that "for the purpose of surrendering the defendant, the bailors may arrest him, or on a written authority endorsed on a certified copy of the undertaking may cause him to be arrested"; and specially by the form of bail bond found in General Order No. 58, which has not been modified or repealed by the Rules of Court. (Bandoy vs. Judge of First Instance of Laguna, 14 Phil., 620, 625.)

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