

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
DOMINADOR SEGARINO Y BORGA AND CREGORIO DE GUZMAN Y
GABRIEL, ACCUSED, LIBERTY INSURANCE CORPORATION,
BONDSMAN AND APPE...**

G. R. No. L-20138. November 27, 1964

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

The case of "People vs. Dominador Segarino et al.," No. 58507, for theft, was called for trial in the Court of First Instance of Manila on August 2, 1961. Accused Gregorio de Guzman did not appear and a member of his family presented a motion for postponement alleging that said accused was sick. Seeing that the medical certificate attached thereto was not under oath, the court declared that the motion was "sham" and ordered the immediate issuance of a new warrant of arrest as well as the confiscation of his bail bond posted by Liberty Insurance Corporation in the amount of P2,000.00. A policeman was sent to arrest the accused but he reported that the latter was not at his residence.

On August 9, 1961 Liberty Insurance Corporation received copy of the confiscation order. On September 6, 1961 it filed a motion for extension of the thirty-day period to produce the accused, due to expire on September 9, 1961. The motion stated among other things that the accused was "already under the custody and pending transfer to the City Jail," and that a certificate of confinement had been requested from the City Jail authorities but the same was not yet issued. Movant prayed for another thirty days from September 9, 1961 to produce "the certificate of confinement and/or the body of the accused."

On September 12, 1961 the court, stating that "there is no proof of capture and detention of [the] accused," denied the motion and ordered execution against the bond. On September 15, 1961 the bonding company filed a "motion to lift order of confiscation of bond, for the surrender of the accused and the cancellation of his bond." A certificate from the police department that the accused was confined in the City Jail was attached to the motion.

On September 19, 1961 the court handed down an order stating: "Surrender accepted; tout cancellation of bond denied".

On September 21, 1961, the bonding company filed a motion for reconsideration of the above-stated order, together with a petition to lift the order of execution. Movant stated that it had notified the accused of the trial set for August 2, 1961 ten days in advance; that the accused failed to appear because he was "sick, could hardly move, much less hear, inasmuch as both his ears were swollen and obnoxious substances flowed from his ears"; that movant found difficulty in locating him since he had moved to another address; and that he was apprehended on September 4, 1961 and subsequently turned over to the City Jail but the certificate of confinement was not issued before the period to produce him expired on September 9, 1961.

On September 25, 1961 the court denied the motion for consideration and the petition to lift the execution order.

Among other things, the court observed that to secure the attendance of the accused at the trial the bonding company simply notified him thereof; that this was not sufficient to comply with the undertaking of a bondsman; and " the alleged sickness of the accused was unbelievable because the medical certificate presented was not under oath and the accused could not be found in his house.

The bonding company appealed to the Court of Appeals from the order of execution, but the appeal was certified to this Court as involving only questions of law. Appellant contends that Section 15, Rule 110 (now Rule 114) of the Rules of Court was complied with and that forfeiture of the bond should have been lifted. This Section 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 first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen."

On the first requisite, appellant asserts that the non-production of the accused within the thirty-day period was explained in its motion of September 6, 1961 stating that he had already been apprehended but the City Jail had not yet issued the certificate of confinement. As noted by the court a quo, the detention and capture of the accused within the thirty-day period was merely asserted but not duly established. Furthermore, appellant could have produced the body of the principal within said thirty-day period required by the Rules if indeed he was already under custody.

The second requisite is for the bondsman to "explain satisfactorily why the defendant did not appear before the court when first required so to do." According to appellant it had notified the accused of the trial. The bondsman's undertaking is not simply to remind the accused of the trial, but to produce him bodily in court when so required, for its authority as surety "is no more nor less than the Government's authority to hold the said accused under preventive imprisonment." (People vs. Uy Tusing, 61 Phil., 404, 408.)

As to the alleged sickness of the accused, this explanation was rejected by the lower court because, first, the medical certificate was not verified, and, secondly, whereas it was stated therein that the accused was "sick, could hardly move, much less hear... as... his ears were swollen and obnoxious substances flowed from his ears," the fact is that when the policeman went to arrest him he could not be found in his house. The question of whether the explanation is satisfactory generally lies within the discretion of the court (People vs. Alamada, 89 Phil., 1), and We find no reason to differ from the lower court's foregoing conclusion.

In its brief, the bonding company prays for an alter native relief by way of reduction of its liability to 10% of the amount of the bond. In People vs. Puyat, 98 Phil., 415; 52 Off. Gaz., 6886, We stated that after the surety has presented the person of the accused to the court, albeit tardily, partial remission of its liability may be granted. The extent of such remission, however, is determined upon the circumstances of each case (People vs. Reyes, 48 Phil., 139). In People vs. Alamada, supra, where the explanation for the non-appearance of the accused was found satisfactory by the lower court as well as this Court, ft reduction to 10%, of the amount of the bond was granted; But in People vs. Reyes, supra, where the accused's non- appearance was not explained, the liability of the surety was remitted to one-half. And in People vs. Puyat, supra, where no satisfactory explanation for the accused's non-appearance was given, the liability was reduced from P10,000.00 to P3,000.00 with a statement that the bond of P10,000.00 was out of proportion to the sentence of 5 years, Months and 11 days of prision correctional. Since the to proper bond therein would be about P6,000.00, the reduction was in effect approximately one-half of the

liability.

Viewing the particular facts of the case at bar, this Court deems it just that appellant's liability under the bond be reduced to one-half of its amount. To this effect, therefore, the order appealed from is modified.

Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Makalintal, Regala and Zaldivar, JJ. concur.

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