

**BELFAST SURETY AND INSURANCE COMPANY, INC., THRU ITS
VICE-PRESIDENT AND GENERAL MANAGER MAURO T. ALLARDE,
PETITIONERS, VS. THE PEOPLE OF THE PHILIPPINES, AND THE HON.
PEDRO N. L...**

G.R. No. L-47309. January 30, 1982

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for certiorari and prohibition, with a prayer for the issuance of a writ of preliminary injunction premised upon the following facts:

Sometime on April 7, 1975, an information was filed with the Circuit Criminal Court of San Fernando, Pampanga, charging the accused Allan Pangilinan, Angelito Pangilinan, Reynaldo Tiotuico, and Lauriano Tiamzon with the crime of murder, docketed therein as Criminal Case No. CCC- V-1142.

All the accused posted their bail bonds for their provisional liberty. The petitioner Belfast Surety and Insurance Co., Inc., executed the bail bond for the accused Allan Pangilinan in the sum of P20,000.00.

When arraigned, all the accused entered a plea of not guilty; thereafter, trial proceeded. At the trial held on April 29, 1976, the accused Allan Pangilinan failed to appear,[1] despite the fact that he was notified of said trial thru the petitioner.[2] Thereupon, the respondent Judge issued an order[3] dated April 29, 1976, the dispositive portion of which reads as follows:

"WHEREFORE, the Court hereby orders the arrest of the accused, x x x Allan Pangilinan, for his (their) failure to appear this afternoon, as well as the forfeiture of the bond posted for him (them) by his (their) Surety, the Belfast Surety and Insurance Company, Inc. Said Surety is hereby directed to produce the person of the said accused and show cause why no judgment should be rendered against it in the amount of its bond, within a period of thirty (30) days from receipt of this Order.

"Considering that the bond of the accused stipulates that the trial will proceed notwithstanding his (their) absence, if such absence is not justified, the Court hereby orders that the trial of this case proceed as scheduled in the absence of the accused, x x x Allan Pangilinan."

a copy of which was received by the petitioner on May 6, 1976.[4]

Again, at the trial held on May 10, 1976, the accused Allan Pangilinan failed to appear, and again, the respondent Judge issued an order[5] dated May 10, 1976, the dispositive portion of which reads as follows:

"WHEREFORE, on motion of the District State Prosecutor, the Court hereby orders the arrest of x x x Allan, surnamed Pangilinan and the forfeiture of his (their) bond for his (their) failure to appear for trial this morning. x x x, the Belfast Surety and Insurance Co., Inc. is hereby ordered to produce the person of the said accused, Allan Pangilinan x x x and to show cause why no judgment in the amount of its bond should be rendered against it for its failure to produce the said accused to appear this morning, within 30 days from its receipt of

this order.

X X X X X X X X

"SO ORDERED."

The said order was received by the petitioner on May 17, 1976.[6]

After the prosecution had rested its case on May 13, 1976, the accused instead of presenting their evidence moved that they be allowed to file a motion to dismiss (demurrer to evidence), and there being no opposition on the part of the prosecution, the respondent Judge granted the same. The accused filed their demurrer to evidence on May 18, 1976.[7]

Acting upon the said "Demurrer to Evidence," the respondent Judge issued, on May 31, 1976, an order,[8] the dispositive portion of which reads as follows:

"WHEREFORE, the Court finding the 'Demurrer to Evidence' dated May 17, 1976, filed by the accused legally tenable, hereby grants the relief prayed for therein and, accordingly orders the ACQUITTAL of all the said accused of the charge in the above-entitled case with costs de oficio, and the cancellation of the bail bond posted for the accused, Angelito Pangilinan, Lauriano Tiamzon and Reynaldo Tiotuico only.

"SO ORDERED."

which was promulgated on the same day.

Thereafter, on June 29, 1976, or twenty-nine (29) days after the promulgation of the order of acquittal, the respondent Judge rendered a judgment,[9] reading as follows:

"On April 29, 1976, the Court issued an Order for the arrest of the accused Allan (or Arnold) Pangilinan and the forfeiture of his bond for his failure to appear for trial on the said date, and for his surety, the Belfast Surety and Insurance Company, Inc. to produce the person of the accused and to show cause why no judgment in the amount of its bond should be rendered against it, within thirty (39) days from its receipt of the said Order. The said Surety received a copy of the said Order of April 29, 1976, on May 6, 1976. Up to now, it has neither surrendered the person of the said accused to the Court, nor given any reason for its failure to produce him before the Court; it has likewise given no satisfactory explanation why the accused did not appear before the Court on April 29, 1976.

"WHEREFORE, the Court hereby renders judgment against the surety, Belfast Surety and Insurance Co., Inc. condemning the said surety to pay the Republic of the Philippines the sum of P20,000.00 in Philippine Currency, which represents the bond it posted for the said accused Allan (or Arnold) Pangilinan on April 24, 1975 in the above-entitled case.

"SO ORDERED."

a copy of which was received by the petitioner on July 7, 1976.[10]

On July 20, 1976, the petitioner moved to reconsider;[11] however, the same was denied by the respondent judge in his order dated August 3, 1976,[12] a copy of which was received by the petitioner on August 7, 1976.[13]

On March 3, 1977, the respondent judge issued an order[14] directing the issuance of a writ of execution, and on the same date a writ of execution[15] was issued by the Clerk of Court.

On June 17, 1977, the petitioner filed a motion to recall and/or set aside the judgment dated June 29, 1976[16] on the ground of want of jurisdiction on the part of the court to render the same. The said motion, however, was denied by the respondent judge in his order dated June 20, 1977,[17] a copy of which was received by the

petitioner on July 2, 1977.[18]

On July 22, 1977, the petitioner filed a motion for reconsideration;[19] but the same was denied by respondent judge in his order dated September 8, 1977,[20] a copy of which was received by the petitioner on September 15, 1977.[21]

Hence, on November 17, 1977, the petitioner interposed the present petition for CERTIORARI, to annul and set aside the judgment dated June 29, 1976 as well as the orders dated March 3, 1977, June 30, 1977 and September 8, 1977 as having been rendered and issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, and PROHIBITION to inhibit and enjoin the respondent judge from further issuing orders, writs and/or processes to enforce the questioned judgment and orders.

As prayed for by the petitioner, this Court issued on November 28, 1977, a temporary restraining order, enjoining the respondent judge from enforcing and/or carrying out the judgment dated June 29, 1976 and the order dated March 3, 1977, as well as all other subsequent orders issued pursuant to said judgment, given in Criminal Case No. CCC-V-1142, entitled "People of the Philippines, plaintiff vs. Allan Pangilinan, accused," of the Circuit Criminal Court, Fifth Judicial District of San Fernando, Pampanga, and required the respondents herein to comment on the petition.

The respondent judge and the Solicitor General, as counsel for the respondent People of the Philippines, filed their respective comment[22] on the petition, on January 5, 1978 and February 17, 1978. On October 9, 1978, the Court resolved to consider respondents' comments as answers to the petition and the case submitted for decision.

The issue to be resolved in the present case is whether or not the respondent judge acted without or in excess of his jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in rendering the judgment of June 29, 1976, and in issuing all the subsequent orders in Criminal Case No. CCC-V-1142.

Section 15, Rule 114 of the Revised Rules of Court, provides as follows:

"Section 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 (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 the 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."

In the case at bar, the records show that the accused Allan Pangilinan failed to appear at the hearing held on April 29, 1976, despite due notice to the surety, the herein petitioner. Hence, on the same date, the respondent judge issued an order, ordering the arrest of the accused and declaring the forfeiture of the bond posted for him by the petitioner. In the same order, the respondent judge also required the petitioner to produce the body of the accused and to show cause why no judgment should be rendered against it for the amount of the bond, within thirty (30) days from receipt of the said order. The order of the respondent Judge of April 29, 1976, was received by the petitioner on May 6, 1976. It had, therefore, thirty (30) days from the said date, or up to June 5, 1976, within which to comply with the said order. However, on May 31, 1976, that is, five days before the expiration of the 30-day period, the respondent Judge issued and promulgated an order acquitting all the accused in the presence of their counsel, and ordered the cancellation of their bonds, except that of the accused Allan Pangilinan. Considering that the order of acquittal was promulgated five (5) days before the expiration of the 30-day period, We believe that the petitioner was relieved of its duty to produce the body of the accused Allan Pangilinan, and to show cause why no judgment should be rendered against it for the amount of the bond.[23] It would have been

different if the order of acquittal was promulgated after the 30-day period, because by then, the liability of the petitioner would have become fixed and the order of forfeiture final. It is true that in *People vs. Uy Eng Hui*, 49 Phil. 954, this Court held that the fact that a criminal prosecution is finally dismissed on the motion of the fiscal does not relieve the bondsmen of the accused from the effects of a previous forfeiture of the bond consequent upon non-appearance of the accused at the time originally set for hearing. However, the ruling in the said case is inapplicable here because in that case the dismissal took place long after the 30-day period had elapsed.

Besides, in the implementation of Section 15, Rule 114 of the Revised Rules of Court, the courts generally adopt a liberal attitude towards the bondsmen and accept, if satisfactory, the explanation for the non-production of the person of the accused, because "the ultimate desire of the State is not the monetary reparation of the bondsman's default, but the enforcement and execution of the sentence, such as the imprisonment of the accused or the payment by him of the fine imposed. The surrender of the accused so that he can serve his sentence is its ultimate goal or object. The provision for the confiscation of the bond, upon failure within a reasonable time to produce the person of the accused for the execution of his sentence, is not based upon a desire to gain from such failure; it is to compel the bondsman to enhance its efforts to have the person of the accused for the execution of his sentence.[24] Since the judgment in the case at bar is for acquittal, the reason for the confiscation of the bond, upon failure of the bondsman to produce within a reasonable time the person of the accused, for the execution of the sentence, does not exist. Under the facts obtaining in the case before Us, it would seem that respondent Judge acted harshly against the petitioner. In his Comments on the Rules of Court, the late Chief Justice Manuel V. Moran observes that "(i)t is a general practice followed by all courts in the Philippines to cancel *motu proprio* the bond when a judgment of acquittal is rendered. And even if no such cancellation is ordered, the bond is *ipso facto* cancelled and all obligations arising therefrom are extinguished." [25]

Besides, a judgment of acquittal is final immediately after promulgation.[26] The respondent Judge's order of acquittal, therefore, became final immediately after its promulgation on May 31, 1976. After the said date, the respondent Judge had no more jurisdiction over the case and over the person of the accused Allan Pangilinan. Since the respondent Judge's judgment on the bond was rendered on June 29, 1976, 29 days after the order of acquittal became final, the same is null and void for lack of jurisdiction.

The respondents, however, argue that although the presence of the accused Allan Pangilinan was not necessary during the promulgation of the order of acquittal, nevertheless, he should have at least been given a copy of the order, and since none was given to him, no judgment was validly entered as against him, citing the case of *People vs. So*, 101 Phil. 1257 and *Cea, et al. vs. Cinco, et al.*, 96 Phil. 131. The contention of respondents cannot be sustained. The ruling in the cited cases are not controlling to the case at bar. The issue in the case of *People vs. So*, is whether or not the decision, which was read to the defendant therein on November 12, 1954, is null and void because the Judge who penned the decision had vacated his post on June 19, 1954, in view of the abolition of his position as Judge-at-large under Rep. Act No. 1186. This Court held that: "In criminal cases the judgment is required to be promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who rendered it (Rule 116, Sec. 6) and although it may be read by the clerk 'when the judge is absent or outside the province,' it is implied that it may be read, provided he is still the judge therein. x x x as the judgment was promulgated after the judge who penned it had ceased to be a judge, it was not legally binding. x x x." In the case of *Cea, et al. vs. Cinco, et al.*, this Court held that where the judgment is one of acquittal, "reading in the presence of the defendant" may be substituted by giving a copy of the decision to him, and such act - delivery of copy - amounted to promulgation. There is nothing however in the decision which invalidates the promulgation of a judgment of acquittal where the defendant is not furnished a copy of the decision. On the contrary, Section 6, Rule 120 of the Revised Rules of Court does not require that a copy of the judgment be served on the parties.[27]

While appeal is the proper remedy from a judgment of forfeiture,[28] nevertheless, certiorari is available despite the existence of the remedy of appeal where the judgment or order complained of was either issued in excess of or without jurisdiction.[29] Besides, appeal under the circumstances of the present case is not an adequate remedy since the trial court had already issued a writ of execution. Hence, the rule that certiorari does not lie when there is an appeal is relaxed where, as in the present case, the trial court had already ordered the issuance of a writ of execution.[30]

WHEREFORE, the writs prayed for are granted and the judgment of the respondent Judge in Criminal Case No. CCC-V-1142, dated June 29, 1976, and the subsequent Orders dated March 3, 1977, June 30, 1977 and September 8, 1977, are hereby annulled and set aside. The restraining order heretofore issued is hereby made permanent.

Without costs.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, Ericta, and Escolin, JJ., concur. Aquino, J., see dissenting opinion.

[1] pp. 4-5, rollo.

[2] p. 14, rollo.

[3] Annex "C", p. 14.

[4] p. 5, rollo.

[5] Annex "D", p. 16, rollo.

[6] p. 5, rollo.

[7] p. 21, rollo.

[8] Annex "E", p. 18, rollo.

[9] Annex "A", p. 12, rollo.

[10] Annex "A", Comment of respondent judge, p. 76.

[11] Annex "B", Comment of respondent judge, p. 77.

[12] Annex "C", Comment of respondent judge, p. 79.

[13] Annex "A" (4), Comment of respondent judge, p. 76.

[14] Annex "B", Petition, p. 13.

[15] Annex "D", Comment of respondent judge, p. 80.

[16] Annex "F", Petition, p. 39.

[17] Annex "E", Comment of respondent judge, p. 81.

[18] Annex "A", Comment of respondent judge, p. 76.

[19] Annex "F", Comment of respondent judge, p. 87.

[20] Annex "G", Comment of respondent judge, p. 98.

[21] Annex "A", Comment of respondent judge, p. 76.

[22] pp. 66, 122, rollo.

[23] Cf. *People vs. Panis, et al.*, 100 Phil. 44.

[24] *People vs. Sanchez*, L-34222, Jan. 24, 1974, 55 SCRA 276, citing *People vs. Puyal*, 98 Phil. 415, 418.

[25] 4 Moran, *Comments on the Rules of Court*, 1970 ed., p. 176.

[26] *People vs. Yelo*, 83 Phil. 618; *Cea, et al. vs. Cinco, et al.*, 96 Phil. 131.

[27] 4 Moran, *Comments on the Rules of Court*, 1970 ed., p. 340.

[28] *People vs. Lorredo*, 50 Phil. 209.

[29] *Jose vs. Zulueta*, L-16598, May 31, 1961, 2 SCRA 574; *Aguilar vs. Tan*, January 30, 1970, 31 SCRA 205.

[30] *Omico Mining & Industrial Corp. vs. Vallejos*, L-38974, March 25, 1975, 63 SCRA 285; *Vda. de Saludes v. Pajarillo and Bautista*, 78 Phil. 754.

DISSENTING OPINION

AQUINO, J.:

I dissent. The 1976 judgment against the bond had long become final and executory when the petition or certiorari and prohibition in the case was filed. The trial court had jurisdiction to render judgment against the bond because the acquittal judgment in favor of Allan Pangilinan had never been promulgated precisely because he never appeared in court.

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