

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS. KANTONG TO, ACCUSED, LUZON SURETY CO., INC., BONDSMAN AND APPELLEE.*G.R. No. L-6962. April 25, 1956*

Ponente: ENDENCIA, J.

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On January 19, 1952, Kantong Ali was charged with illegal possession of firearms in the justice of the peace court of Dulawan, Cotabato, and a warrant of arrest was issued against him. Once arrested, on February 5, 1952, the Luzon Surety Co., Inc., filed for his provisional release, a bond in the amount of P2,000, which was approved by said justice of the peace court. Thereafter, the case was forwarded to the Court of First Instance of Cotabato where on February 21, 1952 the corresponding information was filed. The case was set for arraignment on July 29, 1952 'but was postponed to September 15, 1952 and' again to October 6, 1952 upon motion of counsel for the accused.

On October 6, 1952, the accused failed to appear for arraignment; hence, upon petition of the Provincial Fiscal, the court ordered the confiscation of the bond, giving the Luzon Surety Co., Inc. 30 days within which to produce the body of the accused and to explain why judgment should not be rendered against it. The Luzon Surety Co., Inc. was duly notified of this order but, instead of producing the body of the accused and explaining why no judgment should be rendered for the amount of the bond, it filed on November 24, 1952, an ex-parte motion for the immediate issuance of the order of arrest of the accused on the ground that "the said accused could not be contacted by the representatives of the undersigned at his usual place of residence everytime service of notification was attempted and, according to reliable information received by the undersigned, said accused has been concealing himself trying to evade service of subpoena, thus making sufficient ground, to believe that he has a deliberate intent to jump this bail." On the same date, this motion was granted by the court. Since then, Luzon Surety Co., Inc. did nothing to arrest the accused or to procure said arrest by virtue of the warrant of arrest on January 26, 1953, the Provincial Fiscal of Cotabato filed a motion for final judgment on the bond for the reason that the 30-day period granted in the order of the Court of October 6, 1952 has long elapsed without the accused having been produced or an explanation given therefor. The court took no immediate action on this motion, but on March 11, 1953, ordered that said motion be held in abeyance until March 30, 1953 because the record, fails to show that the order of arrest has been returned to the court duly served, stating therein that if on that day the body, of the accused would not be produced before the court, judgment on the bond shall be rendered.

On March 27, 1953, the Luzon Surety Co., Inc. filed a motion praying for an additional time to produce the body of the accused for the reason that "lately definite information has been received by the undersigned to the effect that the accused Kantong Ali can be found in Domalen, Zamboanga del Sur, where he is presently residing and, to carry out the order of arrest, the undersigned has dispatched Giapal Amba, counterbondsman of the said accused, to get, him and bring him here to Cotabato; that the undersigned, in view of the above circumstances, 1 has high hopes that the immediate arrest of the accused can be effected within 30 days from now, as he has also made a written request to the Philippine Constabulary, Zamboanga del Sur, to help execute the order of arrest." And on

March SO, 195S, the Luzon Surety Co., Inc. filed an urgent motion for cancellation of the bond for the reason that the accused had died on the last week of January, 1953 at Buburaj', municipality of Dimataling, Zamboanga del Sur, as shown by the affidavits of Cadil Salik, Chief of Police, and Hadji Magunto Kablo, a Moro 1 priest, which were made part of the motion. The Provincial Fiscal opposed this motion contending that the death of the accused on the last week of January, 195S, or several months after the bond was declared forfeited, is not sufficient excuse for his failure to appear on October 6, 1952, the day set by the court for his arraignment and neither does it constitute sufficient cause to exonerate the Luzon Surety Co., Inc. from its obligation on the bond. Notwithstanding this opposition, the lower court in its order dated April 22, 1.953 cancelled the bond in question and relieved the Luzon Surety Co., Inc. from any liability therefrom. Hence, the present appeal on the ground that the trial court erred: (1) in holding that the death of the accused exonerated the appellee from its obligation under the bail filed by it; (2) in declaring the appellee relieved of its obligation and in ordering the cancellations of the bond; and (3) in not ordering judgment on the bond.

It is contended by the appellant that under the provisions of section 16, Rule 110 of the Rules of Court, the Luzon Surety Co., Inc. should have produced the body of the accused within 30 days or give satisfactory explanation for its non-production and that failure to comply with this requirement justifies a judgment on the bond. The Luzon Surety Co., Inc. failed to comply with this requisite of the law, hence, the lower court erred in completely exonerating said Luzon Surety Co., Inc. and cancelling entirely the bond in question. If at all, the appellant contends, the Luzon Surety Co., Inc. may be entitled only to a partial discharge.

Appellee contends, in turn, that it having been given time up to March 30, 1958, within which to produce the body of the accused Kantong Ali and that within the said period it failed to surrender the accused because of his death, the disputed order of the court is well justified and the appellee was therefore exonerated properly from whatever liability it incurred from the non-appearance of the accused on October 6, 1952 when the case was called for arraignment. Appellee further contends that the courts are supplied with ample discretion to extend the period of time within which the body of an accused should be produced in court.

After a careful examination of the conflicting theories of the parties, we find appellant's contention well taken. We find the appellee negligent in the performance of its duty as bondsmen of the accused from October 6, 1952, the date of the confiscation of the bond, up to January 20, 1953 when the Fiscal asked for judgment thereon, for, during that period of 106 days the appellee did nothing to produce the body of the accused or to explain why they could not produce it before the court. And while it is true that on November 4, 1952 the appellee secured from the court a warrant for the arrest of the accused, it did nothing to make effective such warrant and neither did it try to offer any explanation why the body of the accused cannot be produced in court. Under the aforementioned Section 15 of Rule 110, within 30 days from October 6, 1952, appellee should have produced the body of their principal or should have given the reason for its non-production and should have explained satisfactorily why the defendant did not appear before the court when first required to do so. The record fails to show that the appellee complied with the provisions of law mentioned above, consequently, it cannot be justifiably exonerated from its obligations under the bond in question. At most, the appellee is entitled to a partial exoneration in view of the fact that the accused died the last week of January, 1953. Obviously, the death of the accused, which occurred long after the expiration of the period of 30 days when the appellee should have produced the body of the accused, cannot constitute sufficient cause for a full discharge of its responsibility arising from a violation of the terms and conditions of the bond.

Wherefore, the order appealed from is hereby reversed and judgment rendered on the bond in the amount of P1,000. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes

J. B. L., JJ., concur.

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