

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. SANTOS CABANERO Y MARIVELES, ACCUSED, CONSOLACION INSURANCE & SURETY CO., INC., BONDSMEN-APPELLANT.

G.R. No. L-22081. January 17, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal from an order of partial confiscation of a bail bond filed by appellant Consolacion Insurance & Surety Co., Inc. (hereinafter referred to as the bondsman) for the provisional liberty of accused Santos Cabanero y Mariveles, who had earlier been charged with the crime of theft before the Court of First Instance of Manila.

The facts are not disputed. For failure of the accused to appear before the court a quo on the date of the trial (July 20, 1963), it issued an order which reads as follows:

"When this case was called for trial this morning, the accused failed to appear notwithstanding due notice to the bonding company.

"WHEREFORE, the Court hereby orders the confiscation of the bond filed for the provisional liberty of the accused and the Consolacion Insurance & Surety Co., Inc. is hereby given thirty (30) days from notice hereof within which to produce the person of the accused and show cause why judgment should not be rendered against said bond."

Before the expiration of the 30-day period allowed in the order the bondsman moved for and was granted an extension of time within which to comply with its undertaking. Within the extended period, more specifically, on September 4, 1963, the bondsman moved that the previous order of confiscation be lifted, explaining that after receiving the same it exerted efforts to locate the accused, only to discover later that he was already confined in the provincial jail of Meal. Finding the motion not to be well-founded, the court a quo denied the same.

On September 13, 1963 appellant filed and moved for reconsideration and on the same date the court a quo issued an order which reads as follows:

"In view of the explanation of bondsmen, forfeiture is hereby reduced to 20% of the band and judgment is hereby rendered for said amount."

Failing to have this last order reconsidered, the bondsman interposed the present appeal.

Appellant submits that the trial court erred: (1) in rendering judgment for 20% of the bail bond before the termination of the period granted for the production of the accused; (2) in finding the appellant negligent; and (3) rendering such judgment inspite of the fact that the accused was under the custody and power of the Government.

The first assigned error is untenable. Under the rules (section 15, rule 114), when the appearance of a defendant is required by the Court, his surety 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 bondsman is given 30 days within which to

produce the defendant and to show cause why judgment should not be rendered against for the amount of the bond. Within the said period of 30 days, the bondsman (a) must produce the body of the defendant or give the reasons for his non-production; and (b) must explain satisfactorily why the defendant did not appear before the court, when first required to do so.

"If upon the expiration thereof neither of the requisites is complied with, judgment against the bondsman shall be rendered as a matter of course. This however does not mean that if the principal is produced before the period expires and the explanation is submitted for his non-appearance when required the court will have to wait until the expiration of such period before it may render judgment on the bond. There is no point at all in deferring judgment since the matter is already submitted to the court on the only question of whether or not the explanation is satisfactory and whether Or not the bondsman should be held liable." (People vs. del Carmen, et al. L-22 82, October 30, 1967)

With respect to the second assigned error, the fact is that on the date of the trial the accused did not appear, and neither was appellant bondsman then aware as to his whereabouts. It was only after more than 30 days from the date of the trial when the bondsman informed the court a quo that the accused was actually confined in the provincial jail of Rizal in Pasig. Bearing in mind that in bail matters the surety is considered as the jailer of the principal, it clearly devolves upon the bondsman to keep careful track of his movements. The apparent lack of information by the bondsman here of the whereabouts of the accused at a time when the latter's presence in court was urgently required indicates a certain degree of negligence in the performance of a bondsman's fundamental undertaking.

With reference to the third assigned error, even Assuming that in the present case the accused was all along in the custody of the government, the fact remains that the bondsman committed a breach of its obligation when it failed to provide the court a quo with a timely explanation for the accused's non-appearance when it was first required. True, we have had occasions in the past to take a more liberal attitude towards bondsmen (see People vs. Puyal, 98 Phil. 415). But "that liberality cannot go to the extent of totally exonerating a bondsman who fails to produce the accused when required, thereby causing a delay in the trial and disposition of the criminal case; it would be placing defaulting bondsman on the same level is a non-defaulting one" (People vs. Familiar, L-17124, June 30, 1966).

At any rate, under the circumstances of this case the most that the bondsman is entitled to is a reduction of the amount to be forfeited. Since appellant was adjudged liable for only 20% of the actual amount of the bond we see no reason, to disturb the order appealed from. The same is therefore affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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