

**MABUHAY INSURANCE AND GUARANTY COMPANY, INC.,
PETITIONER, VS. HON. COURT OF APPEALS, HON. JESUS P. MORFE,
ET. AL., RESPONDENTS.**

G.R. No. L-28700. March 30, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal from the decision of the Court of Appeals sustaining on certiorari the questioned orders of the lower Court ordering the confiscation and execution of the bail bond, we reiterate the doctrine that courts upon rendering judgments of conviction in criminal cases have the discretion to postpone, until the last day for the perfection of appeal by the accused, the determination of the question whether or not they should order the accused's detention or execution of the judgment of conviction.

Petitioner, a surety company, originally instituted in 1967, a special civil action for certiorari in the Court of Appeals to annul the questioned orders of the Court of First Instance of Manila, directing the confiscation of the bail bond posted by petitioner for the provisional release of the accused in a criminal case and directing the execution of its order of confiscation of the bond.

The antecedent facts, as narrated by the Court of Appeals in its decision dismissing the petitioner's said action for certiorari follow: "Abdurakman Assih y Jamlaila was charged of and tried before the Court of First Instance of Manila for the crime of illegal possession of firearm and ammunition. The herein petitioner posted a bond for the provisional release of the accused in the sum of P3,000.00, conditioned that 'Abdurakman Assin will appear and answer the charge x x in whatever Court it may be tried, and will, at all times hold himself amenable to the orders and processes of the Court, and if convicted will appear for judgment and render himself to the execution thereof x x x.'

"During the trial, petitioner presented or caused to be pre-sented the body and person of the accused before the trial Court. On November 2, 1966, said court rendered its judgment finding accused Abdurakman Assih guilty as charged, and sentenced him to an indeterminate penalty ranging from a minimum of ONE (1) year and ONE (1) day to TWO (2) years imprisonment. The accused voluntarily presented himself before the Court for the reading of the sentence on December 5, 1966. After the sentence was read, the accused, in his own behalf, prayed in open court that he be allowed 15 days within which to decide whether or not to appeal from the judgment. Said prayer was granted in the Order dated December 5, 1966, as was accused's motion to be allowed out on bail 'in the meantime under his original bond.' At the same time, the court fixed a new bond for his provisional liberty in case of appeal. The lower court further ordered that the bondsman of the accused be notified to produce the person of the accused on December 20, 1966 at 9:00 A. M., either to serve his sentence or to perfect an appeal, as the case may be. It is not disputed that copy of this order was served on and received by petitioner Mabuhay Insurance & Guaranty Co., Inc.

"On December 20, 1966, the last day for perfecting his appeal, Abdurakman Assih merely filed his notice of appeal with the trial court without himself appearing in person. For this failure to appear in person on the date

set by the order of December 5, 1966, the respondent Judge, on January 17, 1967, issued an order declaring Abdurakman Assih a fugitive from justice; deferred action on his notice of appeal until he shall have re-submitted himself to effect-ive order of the Court by voluntary surrender and purged himself of the taint of being a fugitive from justice; declared the bond of the accused forfeited; and gave the petitioner bondsman 30 days within which to show cause, if any, why judgment should not be issued against its bond.

"The petitioner took no steps to produce the person of the accused Abdurakman Assih in court within the period set by the said court in its order dated January 17, 1967, nor did the petitioner show cause why judgment should not be rendered against the bond. Hence, on March 3, 1967, the court issued an order directing immediate execution of the judgment rendered against said bond which order was received by the petitioner on March 9, 1967.

"Instead of taking an appeal, the petitioner filed a Motion for Reconsideration of the Order dated March 3, 1967, praying that the writ of execution be set aside, only on May 11, 1967, or more than 60 days after notice of said order. In an Order dated May 12, 1967, the respondent judge denied the motion for lack of merit. . . . "

". . there is no evidence on record showing that the accused Abdurakman Assih has voluntarily surrendered or has been surren-dered by the petitioner to the court a quo. Up to this moment, it is not known by this Court whether he is in the custody of the pro-per authorities or not."[1]

We find no merit in the present appeal seeking reversal of the Court of Appeals' decision dismissing petitioner's action, by a four-to-one vote.

1. Petitioner's contention based on the dissenting appellate justice's opinion that after the sentence of conviction is read to the accused, the accused should be deemed placed under the custody of the trial court to serve the sentence and his bail bond is deemed automatically cancelled, finds no support in law nor in our juris-prudence.

The office of bail in criminal cases is "to secure the due attendance of the party accused to answer the indictment and to submit to trial and judgment of the court thereon." [2] The accused has fifteen days from promulgation or reading of the judgment of conviction by the Court of First Instance within which to take an appeal to the higher courts under Rule 122, Section 6 of the Rules of Court. The trial court's duty to place the accused under custody and detention for service of his sentence and consequent cancella-tion of his bail bond does not arise until after the judgment becomes final upon the lapse of the fifteen-day period for perfecting an appeal (Rule 120, Secs. 7 and 8).

The trial court therefore properly acted within its jurisdic-tion in giving the accused the benefit of the fifteen-day period within which to decide whether or not to appeal the judgment of conviction after the same was read on December 5, 1966 and to order that petitioner as bondsman of the accused be notified to produce the person of the accused on the fifteenth day, i.e. Dec-ember 20, 1966, either to serve his sentence or to perfect an appeal as the case may be.

2. Under the very terms of the bail bond posted by peti-tioner whereby it undertook that the accused will "appear and ans-wer the charge . . and will at all times hold himself amenable to the orders and processes of the court, and if convicted will appear for judgment and render himself to the execution thereof.... ", it was clearly the duty of petitioner as bondsman to produce the per-son of the accused on December 20, 1966, in accordance with the trial court's order of December 5, 1966 when the judgment of con-viction was promulgated and notice of which was duly served upon and received by petitioner. In other words, petitioner's responsi-bility under its bail bond subsisted for as long as the case was under the jurisdiction and control of the trial court and said jurisdiction would only be lost upon surrender of the accused for execution of the judgment of conviction or upon due perfection of an appeal from the judgment. Petitioner's bail bond necessarily subsisted and was effective up to December 20, 1966, which was the last day of the fifteen-day period for the perfection of an appeal by the

accused. If the accused presented his notice of appeal, the trial Court then would order his being taken into custody in the absence of a new bail bond on appeal duly allowed and approved by it. It cannot be contended, therefore, that the trial Court's action requiring petitioner as bondsman to produce the person of the accused on the fifteenth day from promulgation of sentence for the perfection of his appeal or for service of sentence with the lapse of the period for appeal amounted to an extension of the terms of the bail bond without the knowledge or consent of petitioner-bondsman and was beyond the jurisdiction of the trial court.

3. The question herein presented has heretofore been re-solved by the Court in the same manner as here, and no valid reason has been presented by petitioner for revision or modification of our previous rulings. In *People vs. Valle*,^[3] the Court, speaking through the Chief Justice, thus dismissed similar contentions of the therein bondsman-appellant:

"The first assignment of error^[4] has nothing to do with the propriety or validity of the order of confiscation of the bond. Moreover, since the defendant was entitled to appeal, the lower court had the discretion to postpone, until the last day for the perfection of such appeal, the determination of the question whether it should or should not order defendant's detention or the execution of the decision of conviction.

"With respect to the other alleged errors^[5] assigned by appellant, it should be noted that its liability, under the bond, continued until after the accused had been surrendered and the court had ordered the cancellation of said bond. Thus, in *People vs. Lorredo* (50 Phil. 218) it was held:

'Moreover, one of the conditions of the bond subscribed by the appellants is that if the accused is convicted, he will render himself amenable to the judgment as well as to the execution thereof. After notification of the judgment, the accused had fifteen days within which to perfect his appeal, and it is only after the expiration of the said fifteen days, without the accused having made use of his right, that the said judgment becomes final. (Sec. 47, General Orders No. 58). Neither the fact, then, that the court granted the accused ten days within which to comply with the judgment, nor the fact that his attorney guaranteed said compliance, relieves his sureties from their liability in case of non-compliance with said judgment, because, as we have already seen, in order to be relieved from the obligation contracted by them by virtue of their bond, a judicial order relieving them of their liability is necessary.'"

4. A bondsman who wishes to be relieved from his undertaking as such should petition the Court for his discharge as a surety in accordance with the provisions of Rule 114, section 16 of the Rules of Court.

"Sec. 16. Discharge of sureties. -- Upon application filed with the court and after due notice to the fiscal, the bail bond shall be cancelled and the sureties, discharged from liability (a) where the sureties so request upon surrender of the defendant to the court; (b) where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or is convicted and surrendered to serve the sentence; and (d) where the defendant dies during the pendency of the action."

Petitioner did not avail itself of the above-quoted provision and ask for its discharge as a surety nor did it manifest to the trial Court at the promulgation of sentence its wish to be relieved of its responsibility for the custody of the accused. Under the above-quoted Rule, petitioner could very well have asked the trial court to relieve it as the jailer and custodian of the accused by surrendering the person of the accused to the said court and asking for the cancellation of its bail bond.

5. Finally, it should be noted that petitioner filed a motion for reconsideration of the trial Court's order of March 3, 1967 for execution of the judgment against the bond only on May 11, 1967 or more than 60 days from its receipt on March 9, 1967 of said order, which motion for reconsideration was in due course denied by the trial court.

Petitioner having failed to file a timely appeal from the Court's order could no longer avail of the remedy of the special civil action for certiorari in lieu of its lost right of appeal, since no errors of jurisdiction were committed by the trial court.[6]

ACCORDINGLY, the appealed judgment of the Court of Appeals is affirmed and the petition is dismissed. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Barredo, and Villamor, JJ., concur.

[1] The Court of Appeals' references to the annexes of the petition filed with it are omitted.

[2] Words & Phrases, Perm. Ed., 62-63; Vide, Rule 114, secs. 1 and 2.

[3] L-18044, April 30, 1963 (7 SCRA 1025).

[4] The error assigned was that the lower Court erred in postponing or in not immediately executing its judgment of conviction after the promulgation or reading thereof on September 14, 1959.

[5] The allegations were that the lower Court erred in releasing the accused after promulgation of its sentence of conviction without the bondsman's knowledge or consent and in ordering the confiscation of the bail bond after the bondsman had produced the accused on the date of the promulgation of the sentence, September 14, 1959, and in the morning of the 15th day September 29, 1959. The therein accused however failed to come back in the afternoon, as undertaken her with the court's consent, to file her notice of appeal and appeal bond.

[6] Fernando vs. Vasquez, L-26417, Jan. 30, 1967.

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