

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ELMO CELESTE, ACCUSED. RIZAL SURETY & INSURANCE COMPANY, INC., BONDSMAN-APPELLANT.

G.R. No. L-25806. April 29, 1977

Ponente: MUÑOZ PALMA, J.

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MUÑOZ PALMA, J.:

The crux of this appeal lies in the question, viz: for purposes of discharge of a bondsman from his liability under a bail bond, is it sufficient that he produces the accused before the court for the promulgation of the judgment without need of his filing a motion or verbally moving for discharge and without the court expressly relieving the bondsman from further liability on his bond?

Appellant Rizal Surety & Insurance Co. answers the query in the affirmative and avers that the court a quo erred in holding the contrary and declaring it liable under its bail bond of Twelve Thousand Pesos (P12,000.00) filed in Criminal Case No. 4066 of the Court of First Instance of Misamis Oriental.

The antecedent facts follow:

On January 17, 1963, Elmo D. Celeste was charged with frustrated murder in an Information filed with the Municipal Court of Cagayan de Oro City. A warrant for his arrest was issued and a bail bond for his provisional release was fixed at P12,000.00. The accused filed the required bond of P12,000.00 with the Rizal Surety & Insurance Company as his bondsman, the bail bond having been approved on February 14, 1963. The accused waived his right to a preliminary investigation and the record of the case was forwarded to the Court of First Instance of Misamis Oriental for trial on the merits.[1]

After the trial was completed, the case was set for promulgation of judgment and on January 31, 1964, the decision was read to the accused in open court whereby he was found guilty and sentenced accordingly for the crime of frustrated homicide.[2]

On February 7, 1964, the accused, through counsel, filed a notice of appeal, hence, on the same date the trial court issued an order fixing the bail bond on appeal at P12,000.00.[3] Because of the failure of the accused to file the required bail bond, the court ordered the arrest of the accused.[4]

In the meantime the record of the case had been forwarded to the Court of Appeals. On April 21, 1965, the Appellate Court dismissed the appeal of accused Celeste for failure to file the appellant's brief within the reglementary period.[5]

The case was then remanded to the trial court which set the promulgation of the Resolution of the Court of Appeals sending notice thereof to the Rizal Surety as bondsman of the accused. For non-appearance of the accused, the Presiding Judge, Hon. Benjamin K. Gorospe, issued in open court on September 15, 1965, an order for the arrest of the defendant and the confiscation of his bail bond.[6]

Appellant herein in a motion dated October 21, 1965, moved for 30 days extension of time to produce the accused in court and this was granted.[7]

Subsequently, another motion dated November 5, 1965, was filed praying that the order of confiscation be lifted and that the bail bond be cancelled and the bondsman released under said bond, alleging inter alia that conscious of its undertaking under the bond, movant-appellant notified and caused the appearance of the accused in court for the reading of the sentence, that the record shows that the judgment was promulgated in the presence of the accused and consequently, the bonding company was relieved of its obligation, having faithfully complied with its undertaking, to wit:

"NOW THEREFORE, the RIZAL SURETY & INSURANCE COMPANY, of Manila, hereby undertakes that the above-named ELMO D. CELESTE, will appear and answer the charge above-mentioned in whatever court it may be tried, and will at all times hold himself/herself amenable to the order and processes of the court, and if convicted, will appear for judgment and render himself/herself to the execution thereof; x x x "[8]

Appellant's foregoing motion was denied for lack of merit in an order dated November 13, 1965.[9]

A second motion dated November 26, 1965, was filed praying for another 30-day extension to produce the accused which was granted by the court counted from November 27, 1965 with warning however of no further extension.[10]

In a motion dated December 24, 1965, appellant moved for a reconsideration of the November 13, 1965 order which denied its motion to lift order of forfeiture, praying, in the alternative, for another extension of 30 days within which to produce the accused counted from December 27, 1965. The motion for reconsideration was denied in an order dated January 5, 1966, although the surety was given another extension of 30 days from December 27, 1965 to surrender the accused.[11]

Hence, this appeal from the Orders of September 15, 1965, November 13, 1965, and January 5, 1966.

Appellant in its assignment of errors poses the following questions:

- "1. Whether or not it has fully complied with its undertaking under the bond;
2. Whether or not it has been relieved of its liability; and
3. Whether or not its bail bond would still answer for the presence of the accused before the Court for the promulgation of the judgment of conviction rendered by the Court of Appeals." (pp. 6-7, Appellant's brief)

1. Appellant submits that its liability under the bail bond extended "only up to the promulgation of the judgment of conviction" and inasmuch as it had produced the accused in court during the promulgation, it is now relieved from its obligation under the bond; that to hold otherwise would be to extend the liability of the surety beyond that stipulated in the bail bond and to impose an additional obligation to the bondsman, contrary to Article 1231 of the Civil Code which provides that obligations are extinguished, among others, by payment or performance.[12]

Appellant's assertion is unfounded. The very terms of the bail bond provide that the surety undertakes that the accused will at all times hold himself amenable to the order and processes of the court and if convicted will appear for judgment and render himself to the execution thereof.

Here, the criminal proceeding in the trial court consisted mainly of three stages: the trial, the promulgation of judgment, and the execution of the sentence. The surety's liability covered all the three stages - appearance of the accused at the trial, appearance during the promulgation of judgment, and service by the accused of the sentence imposed upon him. This undertaking of the surety is derived from Section 2, Rule 114 of the Rules of Court

which sets forth the conditions of bail in criminal cases, viz:

"SEC. 2. Condition of the bail. - The condition of the bail is that the defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial, and after conviction, if the case is appealed to the Court of First Instance upon application supported by an undertaking or bail, that he will surrender himself in execution of such judgment as the appellate court may render, or that, in case the cause is to be tried anew or remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof."

2. To effect the discharge of appellant surety from its undertaking, it was not enough that it produced the person of the accused at the time of promulgation of the decision. Section 16, Rule 114 sets forth a procedure for discharge of sureties which was not followed by herein appellant.

In the early case of *People vs. Lorredo*, 1927, the Court, speaking through Justice Antonio Villa-Real, explicitly ruled that the mere presentation or presence of an accused in an open court is not sufficient in itself to cause the discharge of a bond, for the attention of the court must be called to his presence and the intention to surrender the body of the accused must be clearly and definitely stated and understood by the Court, and that a surety who desires to produce and surrender the body of the accused is not relieved from further liability upon his bond until the court accepts said surrender.[13]

The ruling in *Lorredo* was reiterated in *People vs. Valle*, defendant, *Alto Surety & Insurance Co.*, bondsman-appellant, through then Justice, later Chief Justice, Roberto Concepcion where the Court stated inter alia that the appellant surety's liability continued until after the accused had been surrendered and the court had ordered the cancellation of its bond.[14]

Again in *Mabuhay Insurance & Guaranty, Inc. vs. Court of Appeals, et al.*, the Court, this time through Justice Claudio Teehankee, adhering to the pronouncements made in *Lorredo* and following Sec. 16, Rule 114 of the Rules of Court, held that a bondsman who wishes to be relieved from its undertaking should petition the court for his discharge as a surety, and inasmuch as petitioner *Mabuhay* did not avail itself of Sec. 16, Rule 114 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, its liability under the bond continued to exist.[15]

The circumstances present in the instant case are not of course exactly the same as those in *Valle* and *Mabuhay*, nonetheless, the principles enunciated therein given above are equally applicable to now appellant *Rizal Surety* who as stated earlier did not petition the trial court that it be discharged from its bond upon the appearance of the accused *Celeste* during the promulgation of the court's decision for which reason there was no order of the court cancelling said bond.

3. It is the contention of appellant *Rizal Surety* that when the accused *Celeste* filed on February 7, 1964, that is, seven days after the promulgation of judgment, a notice of appeal, it was relieved from its undertaking considering that the trial court ordered the accused to file a new bond on appeal for P12,000.00, and that consequently there is no legal basis for holding appellant liable for the non-appearance of the accused at the promulgation of the decision of the Court of Appeals.

At first blush there appears to be some merit to appellant's plea, but again We cannot dissociate the situation from the *Lorredo* Decision to which We are bound to adhere based as it is on existing law and authoritative jurisprudence.

The sureties in the *Lorredo* case were even in a more pathetic situation, We may say, than *Rizal Surety*. There the accused was pre-sented by the sureties in open court for the promulgation of the judgment and upon the decision

being read which imposed a fine of Fifty Pesos (P50.00) on the accused, the latter's counsel offered a guaranty that the accused would comply with the judgment within the period of ten days. Forthwith, the sureties filed a motion stating that they were surrendering the body of the accused and asking that they be relieved of all liability in connection with their bond. The record of the case did not show that their motion was acted upon by the court. The 10-day period expired without the accused paying the fine as promised. On motion of the fiscal the trial court ordered the execution of the judgment, directed the sureties to produce the body of the accused and at the same time issued warrants of arrest. The sureties then explained to the court that they were relieved from their undertaking with the acceptance by the court of the guaranty of the lawyer that the accused would comply with the judgment. This explanation was not found satisfactory and an order of forfeiture of the bonds was issued. On appeal, this Court, as earlier indicated, sustained the liability of the sureties, and We quote further from the decision as follows:

"From what has been said it follows that the mere filing of a motion stating the surrender of the person of the accused and asking for their release from liability upon the obligation contracted by virtue of a bond for temporary release, where it does not appear that the attention of the court had been called to said surrender and that the latter had so understood it, and without an express order accepting said surrender and relieving the sureties from all liability, does not relieve them from the same, notwithstanding the fact that the court granted the accused the period of ten days within which to comply with the judgment under a verbal guaranty of his attorney." (supra, p. 218)

Thus, in Lorredo the accused promised to comply with the judgment in ten days, while in this case of Rizal Surety, the accused filed a notice of appeal on the seventh day; in Lorredo the accused failed to comply within the promised period, in Rizal Surety the accused failed to file a bond on appeal and his appeal was eventually dismissed; in Lorredo, the sureties filed a motion to be discharged, in Rizal Surety no such motion was ever filed by the sureties; in Lorredo, the accused eventually appeared and paid his fine, while in Rizal Surety, the accused remains at large; in both, there was no court order cancelling the bonds.

Under these circumstances, We cannot but hold Rizal Surety liable under its bond which through its own inaction it allowed to remain uncanceled by the trial court. The legal question posed at the opening of this Decision calls therefore for a negative answer as correctly asserted by the Solicitor General.[16]

To restate, for a surety to be discharged it is necessary that he petitions the court for relief from liability and that the court grants the petition and cancels the bond.

PREMISES CONSIDERED, We find this appeal without merit and We hereby affirm the appealed order of Hon. Benjamin K. Gorospe dated September 15, 1965, and all subsequent orders relative thereto with double costs against appellant.

So Ordered.

Teehankee, (Chairman), Makasiar, Antonio*, and Martin, JJ., concur.

[1] pp. 2-32, Crim. Case Rec.

[2] pp. 94-103, *ibid*.

[3] pp. 104-105, *ibid*.

[4] p. 106-a, *ibid*.

[5] pp. 108-109, *ibid*.

[6] pp. 1-2, Record on Appeal

[7] pp. 124-125, Crim. Case Rec.

[8] See pp. 5-11, Record on Appeal

[9] p. 12, *ibid.*

[10] pp. 13-16, *ibid.*

[11] pp. 16-22, *ibid.*

[12] pp. 8-13, *ibid.*

[13] 50 Phil. 209, 217-218, citing Sec. 75, G. O. No. 58; 6 C.J., p. 243, par. 313, and *Du Lawrence vs. State*, 31 Oh. Cir. 418.

[14] L-18044, April 30, 1963, 7 SCRA 1025, 1027.

[15] L-28700, March 30, 1970, 32 SCRA 245, 251-252.

[16] Representing the People was Solicitor General Antonio P. Barredo now Associate Justice of this Court.

* Justice Felix Q. Antonio was designated to sit in the First Division.

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