

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE GO, ACCUSED. ALTO SURETY AND INSURANCE CO., INC.,
BONDSMAN AND APPELLANT. THE PEOPLE OF THE PHILIPPINES,
PLAINTIF...**

G.R. Nos. L-11368-69. October 30, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Jose Go was charged with attempted homicide in criminal Case No. 4359 and frustrated homicide in criminal case No. 4360 of the Court of First Instance of Rizal, Quezon City Branch. To secure the defendant's provisional release from custody, the Alto Surety & Insurance Co., Inc. filed a bail bond in the amount of P4,000 in the first and P5,000 in the second case. On the day set for trial of the two cases (14 May 1956) the defendant failed to appear despite previous notice. Upon motion of the Fiscal, the Court entered an order forfeiting the two bonds; granting the surety company thirty days within which to produce the person of the defendant in Court and to explain why judgment should not be rendered against it on the bonds; and ordering the arrest of the defendant. On 22 May the surety company received a copy of the foregoing order. On 24 May the surety company moved to have the order set aside, on the ground that on 14 May 1956, the date set for the trial of the defendant, the brother of the latter went to Court to inform it that his brother was confined in the National Mental Hospital since 10 May 1956, and for that reason he failed to appear in Court on that date, but that the defendant's brother arrived a few minutes after the cases had been called and the order forfeiting the bonds entered. Attached to the motion is a certificate issued by the Chief, National Mental Hospital, attesting to the fact that Jose Go was confined in the hospital since 10 May 1956. On 4 June the Court denied the motion. On 14 June the surety company received a copy of the order denying its motion. On 12 July the surety company filed a motion for reconsideration of the orders of 14 May and 4 June. On 14 July the Court denied the motion for reconsideration of the two orders just mentioned and ordered the forfeiture in favor of the Government of the two bonds, on the ground that it had failed to produce the person of the defendant within thirty days from receipt of notice and to give satisfactory explanation of the defendant's failure to appear on the day of the trial.

On 18 July the surety company moved for the issuance of a warrant for the arrest of the defendant. On 19 July the surety company received a copy of the order dated 14 July. On 6 August it filed a motion dated 3 August praying that the order of 14 July be reconsidered and the forfeiture of the bonds set aside. On 21 August the Court denied the motion. On 25 August the surety company received a copy of the order denying its motion for reconsideration. On 28 August the surety company filed a notice appealing from the orders of 14 May, 4 June, 14 July and 21 August 1956.

On 4 February 1957, after the appellant had filed its brief in this Court, the appellee moved for the dismissal of the appeal on the ground that the appellant's notice of appeal and brief were filed out of time.

The appellant objected to the motion. The appellee replied to the objection.

On the motion to dismiss the appeal this Court resolved to defer action until the case be considered on the merits.

The appellee claims that the appellant's appeal should have been perfected within 15 days from receipt of notice of judgment, as provided for in section 6, Rule 118, and its brief should have been filed within 30 days from receipt of notice that the record of appeal was received by the appellate court pursuant to section 3, Rule 120; whereas the appellant contends that its appeal was perfected on time within 30 days from receipt of notice of judgment as provided for in section 3, Rule 41, and its brief was filed within 45 days from receipt of five copies of its printed record on appeal pursuant to section 12, Rule 48, and the notice sent to it by the Clerk of this Court.

From 19 July, the date the appellant received a copy of the order forfeiting in favor of the Government the two bonds it had filed for the provisional release of the defendant, to 6 August, the date it filed its motion for reconsideration of the order of forfeiture, a period of 18 days elapsed. From 25 August, the date the appellant received a copy of the order denying its motion for reconsideration to 28 August, the date it filed its notice of appeal, 3 days elapsed. The appeal was perfected 21 days after receipt of a copy of the order of forfeiture. The appellee claims that the notice of appeal was filed on 30 and not 28 August, and that the appeal was perfected 23 days after receipt of a copy of the order of forfeiture.

In *People vs. Lorredo*, 50 Phil., 209, this Court said:

In view of the uncertainty as to the period within which an appeal from an order directing the execution of the order of forfeiture of a bail bond may be perfected, after the entry of said order of forfeiture and the expiration of the thirty days granted to the sureties within which to present the body of the accused and to show cause why the judgment of forfeiture of said bond should not be executed. without having done either one or the other, or in case they did so, the explanation given not having been satisfactory, appeals taken out of the time required for perfecting an appeal in criminal, as well as in civil, cases have been brought to this court.

* * * * *

The American doctrines on the subject are not uniform.—there are some, and which constituted the majority, holding that the proceeding for the execution of an order of forfeiture of a bail bond is civil in nature, and there are others holding that the same is of a criminal character, and that the appeal must be perfected in accordance with the law of criminal procedure relating to the Subject. (6 C. J., 1057, 1075.)

* * * * *

In view of the doctrines laid down by this court in the above cited case (*United States vs. Carmen*, 13 Phil., 455), it is not absolutely necessary to institute a separate and independent action for the execution of the order of forfeiture of a bail bond, which had been previously entered, and that a simple motion to that effect presented by the prosecuting attorney in the same criminal case is sufficient, we are of the opinion, and so hold, that the proceedings required by General Orders No. 58 must be followed in these cases, and that the appeal must be perfected within the unextendible fifteen days following the date upon which the sureties received notification of the order directing the execution of the judgment of forfeiture of the bond previously entered, (pp. 219-221.)

The appeal by the surety company having been taken beyond the 15-day period prescribed by the Rules of Court,[1] the appellate court acquired no jurisdiction to review the order of forfeiture of the bonds appealed from.[2]

The fact that the Clerk of this Court served notice upon the appellant surety company that its brief must be printed and filed with the Court within 45 days from receipt of notice does not and cannot confer appellate jurisdiction upon this Court.

The appeal by the surety company is dismissed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

[1] Section 6, Rule 118.

[2] As to the right of the offended party or complainant to appeal from the judgment of convict on prejudicial to him and the period within which the appeal must be taken or perfected by him, see *People vs. Ursua*, 60 Phil., 252; *People vs. Rodriguez*, 97 Phil., 349; 51 Off. Gaz., 4015; *People vs. Coloma*, G.E. No. L-12697, 29 April 1959.

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