

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NATIVIDAD FRANKLIN, ACCUSED. ASIAN SURETY & INSURANCE COMPANY, INC., BONDSMAN-APPELLANT.*G.R. No. L-21507. June 07, 1971*

Ponente: DIZON, J.

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Appeal taken by the Asian Surety & Insurance Company, Inc. from the decision of the Court of First Instance of Pampanga dated April 17, 1963, forfeiting the bail bond posted by it for the provisional release of Natividad Franklin, the accused in Criminal Case No. 4300 of said court, as well as from the latter's orders denying the surety company's motion for a reduction of bail, and its motion for reconsideration thereof.

It appears that an information filed with the Justice of the Peace Court of Angeles, Pampanga, docketed as Criminal Case No. 5536, Natividad Franklin was charged with estafa. Upon a bail bond posted by the Asian Surety & Insurance Company, Inc. in the amount of P2,000.00, she was released from custody.

After the preliminary investigation of the case, the Justice of the Peace Court elevated it to the Court of First Instance of Pampanga where the Provincial Fiscal filed the corresponding information against the accused. The Court of First Instance then set her arraignment on July 14, 1962, on which date she failed to appear, but the court postponed the arraignment to July 28 of the same year upon motion of counsel for the surety company. The accused failed to appear again, for which reason the court ordered her arrest and required the surety company to show cause why the bail bond posted by it should not be forfeited.

On September 25, 1962, the court granted the surety company a period of thirty days within which to produce and surrender the accused, with the warning that upon its failure to do so the bail bond posted by it would be forfeited. On October 25, 1962 the surety company filed a motion praying for an extension of thirty days within which to produce the body of the accused and to show cause why its bail bond should not be forfeited. As notwithstanding the extension granted the surety company failed to produce the accused again, the court had no other alternative but to render the judgment of forfeiture.

Subsequently, the surety company filed a motion for a reduction of bail alleging that the reason for its inability to produce and surrender the accused to the court was the fact that the Philippine Government had allowed her to leave the country and proceed to the United States on February 27, 1962. The reason thus given not being to the satisfaction of the court, the motion for reduction of bail was denied. The surety company's motion for reconsideration was also denied by the lower court on May 27, 1963, although it stated in its order that it would consider the matter of reducing the bail bond "upon production of the accused." The surety company never complied with this condition.

Appellant now contends that the lower court should have released it from all liability under the bail bond posted by it because its failure to produce and surrender the accused was due to the negligence of the Philippine Government itself in issuing a passport to said accused, thereby enabling her to leave the country. In support of

this contention the provisions of Article 1266 of the New Civil Code are invoked.

Appellant's contention is untenable. The above-mentioned legal provision does not apply to its case, because the same speaks of the relation between a debtor and a creditor, which does not exist in the case of a surety upon a bail bond, on the one hand, and the State, on the other.

In *U.S. vs. Bonoan, et al.*, 22 Phil. p. 1, We held that:

"The rights and liabilities of sureties on a recognizance or bail bond are, in many respects, different from those of sureties on ordinary bonds or commercial contracts. The former can discharge themselves from liability by surrendering their principal; the latter, as a general rule, can only be released by payment of the debt or performance of the act stipulated."

In the more recent case of *Uy Tuising*, 61 Phil. 404, We also held that:

"By the mere fact that a person binds himself as surety for the accused, he takes charge of, and absolutely becomes responsible for the latter's custody, and under such circumstances it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance, inasmuch as the authority emanating from his character as surety is no more nor less than the Government's authority to hold the said accused under preventive imprisonment. In allowing the accused Eugenio Uy Tuising to leave the jurisdiction of the Philippines, the appellee necessarily ran the risk of violating and in fact it clearly violated the terms of its bail-bonds because it failed to produce the said accused when on January 15, 1932, it was required to do so. Undoubtedly, the result of the obligation assumed by the appellee to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines because, otherwise, said orders and processes would be nugatory; and inasmuch as the jurisdiction of the court from which they issued does not extend beyond that of the Philippines, they would have no binding force outside of said jurisdiction."

It is clear, therefore, that in the eyes of the law a surety becomes the legal custodian and jailer of the accused, thereby assuming the obligation to keep the latter at all times under his surveillance, and to produce and surrender him to the court upon the latter's demand.

That the accused in this case was able to secure a Philippine passport which enabled her to go to the United States was, in fact, due to the surety company's fault because it was its duty to do everything and take all steps necessary to prevent that departure. This could have been accomplished by seasonably informing the Department of Foreign Affairs and other agencies of the government of the fact that the accused for whose provisional liberty it had posted a bail bond was facing a criminal charge in a particular court of the country. Had the surety company done this, there can be no doubt that no Philippine passport would have been issued to Natividad Franklin.

UPON ALL THE FOREGOING, the decision appealed from is affirmed in all its parts with costs.

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

Ruiz Castro, J., took no part.

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