

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.  
ENGRACIO ARLATINCO, ACCUSED. EUNICIANO RODRIGUEZ AND  
NORBERTO CORPUZ, DEFENDANTS AND APPELLEES.**

*G. R. No. L-3411. May 30, 1951*

Ponente: MONTEMAYOR, J.

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**MONTEMAYOR, J.:**

The Government represented by the Provincial Fiscal of Bulacan is appealing from the order of the Court of First Instance of that province denying his motion to set aside the court's order lifting its previous order confiscating the bond of the bondsmen-appellees as well as the writ of execution of their bonds. The facts of the case are as follows:

In criminal case No. 545 of the Court of First Instance of Bulacan, one Engracio Arlatinco was accused of damage to property thru reckless imprudence, and was arrested. The four appellees filed a bond for his provisional liberty in the amount of P2,000.

On November 14, 1947, the accused failed to appear for his arraignment and the trial court by order of the same date, granted the bondsmen-appellees thirty (30) days within which to produce the person of the defendant and explain why their bond should not be confiscated.

In its order of December 4, 1947, the trial court found the explanation given by the bondsmen-appellees of their failure to produce the person of the accused, unsatisfactory, but it gave them an extension of fifteen days to bring the accused to court, otherwise their bond would be ordered confiscated.

By order of December 29, 1947, the trial court granted the bondsmen-appellees a second extension of ten days to produce the person of the accused in court.

On January 23, 1948, the trial court ordered the confiscation of the bail bond when the accused failed to appear on the date set for the trial of the case.

On February 2, 1948, following the order of confiscation, a writ of execution of the bond on the properties of the bondsmen covered by the bond was issued. But execution was only for P1,000, which is one-half of the amount of the bond.

On February 16, 1948, bondsman David G. Jocson filed a petition for the lifting of the order of confiscation of the bond on the ground that the accused had already voluntarily surrendered himself to the trial court on January 22nd of the same year, supposedly through Jocson's personal efforts and at his expense.

On February 18, 1948, the trial court denied the foregoing motion of Jocson for lack of merit.

On February 23, 1948, bondsmen Jose Peralta, Norberto Corpuz and Euniciano Rodriguez also filed a petition for the lifting of the order of confiscation of January 23, 1948, and the writ of execution of February 2nd.

On February 27th the four bondsmen through counsel reiterated their petition for the setting aside of the order of confiscation and the writ of execution.

On March 1, 1948, acting upon the writ of execution, the Provincial Sheriff of Zambales advertised the properties covered by the bond for sale to be held on March 31, 1948.

On March 9, 1948, upon a plea of guilty entered by the accused, the trial court rendered judgment finding him guilty and sentencing him to pay a fine of P1,200 and to indemnify the offended party in the same amount, with subsidiary imprisonment in case of insolvency and to pay costs.

On March 31, 1948, the Provincial Sheriff of Zambales issued a certificate of sale of the properties covered by the bond sold by him. At said sale bondsman Jocson was the highest bidder for his own parcel and bought it for P291. For the three parcels belonging to bondsmen Corpuz, Pe-ralta and Rodriguez, the Provincial Fiscal as a Government representative, and as the highest bidder, bought them for the Republic of the Philippines at P290 each.

In an order dated April 2, 1948, the trial court granted the motion of the bondsmen-appellees dated February 27, 1948, and set aside the order of confiscation dated January 23, 1948 as well as the writ of execution dated February 2, 1948, and also the order of February 18th denying the petition of bondsman David G. Jocson for the lifting of order of confiscation.

On April 15, 1948, the Provincial Sheriff of Zambales returned to the Clerk of Court of Bulacan the original writ of execution together with a money order in the amount of F141 said to be the balance of the proceeds of the sale of the parcel of bondsman Jocson, after deducting the costs of publication of the notice of the sale.

On April 22, 1948, the Clerk of Court of Bulacan returned the money order in the amount of P141 to the Provincial Sheriff of Zambales because of the order of the trial court dated April 2, 1948, setting aside the order of confiscation as well as the writ of execution.

On June 4, 1948, the Provincial Fiscal of Bulacan filed a motion to set aside the order dated April 2, 1948, which set aside the order of confiscation and writ of execution.

On June 23, 1948, the trial court denied the motion of June 4, 1948, of the Provincial Fiscal.

On July 1, 1948, the Provincial Fiscal filed his notice of appeal from the order of the trial court dated June 23, 1948, denying his motion of June 4, 1948.

The appeal was first taken to the Court of Appeals, but by resolution of said Tribunal, the case was sent up to us on the ground that the only question involved in the appeal is one of law.

The principal question raised in the present appeal is the right or authority of the trial court to set aside its order of confiscation as well as the writ of execution. It will be remembered that the order of confiscation was issued on January 23, 1948, and that the writ of execution was issued on February 2nd. Both had evidently become final. It is true that on February 16th bondsman Jocson filed a petition for the lifting of the order of confiscation, but at least as regards said order, it had already become final on February 16th, this to say nothing of the fact that said motion of Jocson was denied on February 18th. Besides, and what is more important, the properties covered by the bond had already been sold on March 31, 1948, when on April 2nd of the same year the trial court attempted to set aside the order of confiscation as well as the writ of execution. This could not be legally done. It is true that in the present case, the accused, principal in the bail bond, finally surrendered himself to the court on January 22, 1948, and that generally, in such cases where the purpose of the recognizance has been accomplished by placing the accused under custody, courts act with leniency and using their discretion, they may relieve the bondsmen of

part of their liability. However, where the bond has already been executed and the properties covered by it sold, it is too late to set aside the confiscation.

In the case of *U. S. vs. Painaga*, 27 Phil. 22, the facts of which are similar to those of the present case and where the bail bond was confiscated after the bondsmen had failed to produce the person of the accused in court after they had been given an opportunity to do the same, but subsequently, the trial court upon the arrest of the accused therein tried to set aside the sale on execution of the bond, this court said:

"A judgment debtor cannot come into the court and request nor can the court order without some valid reason, that the sale be set aside. In the case at bar, the court undertook to set the sale aside presumably because the principal had been arrested by the authorities \* \* \* but his arrest \* \* \* did not satisfy the condition of the bond. If we look at the equities of the case, it will be seen that the court had already dealt leniently with the sureties \* \* \*. Clemency to the sureties must end somewhere if a bail bond is not to lose its solemnity and become an object of derision. The arrest of the principal two days subsequent to the sale was no reason for setting the sale aside.

This same rule of the lack of judicial authority to set aside the confiscation of a bail bond after it has been executed, obtains in Anglo-American law:

"There would, however, appear to be some limit to the time within which such an application will be entertained, and although this limit has not been definitely fixed it has been indicated that after the execution has been had under the judgment, or at least the money recovered has been paid to the state or Federal Treasurer the court no longer will exercise its authority to remit the penalty. However the mere fact that the defendant appears after default will not of itself relieve the sureties from liability (6 A. J., 119)."

It is clear that at the time the trial court issued its order of April 2, 1948, setting aside the order of confiscation and the writ of execution, it had already lost control over them and consequently, said order of April 2, 1948, is void and of no effect, rendered as it was in excess of jurisdiction.

Appellees, however, contend in their motion to dismiss the appeal filed with the Court of Appeals when the case was still with that court that the fiscal's appeal has been filed out of time because said Fiscal was notified of the order of April 2, 1948, on the same day but he filed his motion to set it aside only on June 4, 1948, and that consequently, said order of April 2, 1948, had become final. This contention that the appeal was filed out of time is correct. Consequently, We have no jurisdiction to decide the appeal except to dismiss it, this, despite our conviction that the trial court has erred and exceeded its jurisdiction. If, this were a case of certiorari, it might be different.

In view of the foregoing, this appeal is hereby dismissed. No costs. So ordered.

Feria, Pablo, Bengzon, Tuason and Jugo, JJ., concur. Paras, C. J., concurs in the result.

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