

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PROCOPIO CADERAO, ACCUSED, ASSOCIATED INSURANCE &
SURETY CO., INC., DEFENDANT AND APPELLANT.**

G. R. No. L-15699. April 22, 1963

Ponente: REGALA, J.

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REGALA, J.:

After his conviction for estafa by the Court of First Instance of Surigao in Criminal Case No. 1317, Procopio O. Caderao was, upon application admitted to bail. To secure performance of the conditions of the bond, the Associate Insurance Surety Co., Inc. filed a personal bail bond in the amount of P2,000.00.

On November 9, 1956, the said court issued the following order:

"The Assistant Provincial Fiscal, in his amended motion dated September 28, 1956, the consideration of which was finally set for November 3, 1956, together with the manifestation dated October 6, 1956 and petition for extension dated October 18, 1956, of the counsels of the accused, asks that an order of arrest be issued for the apprehension of said accused and of confiscation of his appeal bond it appearing that until now said accused has not complied with his promise to surrender himself voluntarily to the prison authorities at the New Bilibid Prisons at Muntinlupa, Rizal, while said accused in his said manifestation and petition for further extension, prays that he be allowed further time to prepare himself and wind tip his personal and family affairs and that in his efforts to settle, as he did in fact already settled, his civil liabilities to the complainant Filemon Bullo, his surrender to the prison authorities to serve his term has been delayed.

"The Court, after due consideration of the grounds stated in the said amended motion of the fiscal, as well as the reasons alleged by the accused in his said manifestation and petition for extension, believes that the further extension asked by the accused may be granted in order to avoid further expense on the part of the government and at the same time, on human considerations, in order not to cause sufferings and hardships on the other members of the family of the accused, as well as to those to whom the accused is trying to settle his pending civil obligations, with the understanding that no farther extension will be granted and that, if upon the expiration of the period herein granted said accused will still fail to voluntarily surrender himself to the prison authorities at said New Bilibid Prisons, no further ceremony will be allowed but that this Court, will immediately order his arrest and the confiscation of his bond.

"Wherefore, based on all the foregoing considerations, the said amended motion of the fiscal is denied in the meantime and said accused is hereby given the last and final extension up to the end of December, 1956, within which to proceed and voluntarily surrender himself to the prison authorities of the New Bilibid Prison Muntinlupa, Rizal, with the understanding that no further, extension will be granted and that upon notice that said accused fails to comply within the period herein granted, his immediate arrest and confiscation of his bond will be ordered without further notice to said accused and to his bondsmen who are hereby ordered to bring the person, of said accused to said prison authorities not later than December 31, 1956. The Clerk of this Court is instructed to notify the parties and their counsels, as well as the Director of Prisons of this order."

Procopio Caderao failed to surrender himself on or before December 31, 1956. The Surety company also failed to

produce him as required by the court. But on January 4, 1957, it effected the arrest of the accused and on the same day surrendered him to the Bureau of Prisons. Three days later, the said company, alleging that it had already complied with its obligation, submitted a motion for cancellation of its bond and for discharge from liability as surety. The assistant provincial fiscal opposed the motion. On June 22, 1957, the motion was denied and judgment was rendered on the bond for the amount of P500.00.

Reconsideration of the judgment having, been also denied, the surety company took the present appeal to the Court of Appeals insisting that it had already complied with its obligation as surety and, consequently, should be relieved of liability on its bond. The Appeals Court forwarded the case to us after finding that there is no issue of fact involved.

At the outset, it should be stated that the pleadings filed by the parties and the orders issued, if any, during the period between February 27, 1954, when the bail bond was filed, and November 9, 1956, when the order above quoted was issued, are not included in the record on appeal. It is readily apparent, however, from the said order, which speaks of the last and final extension up to the end of December 31, 1956, that there were other orders issued prior thereto granting the accused extensions of time within which to surrender himself to the prison authorities.

A word about these extensions. We think that, under the circumstances obtaining in this case, the trial court was quite lenient in extending the provisional liberty of the accused on bail for more than two years and eight months. For it appears that they were requested by the accused for no other reason than to prepare himself and wind up his personal and family affairs before serving sentence. The right to bail after conviction is not absolute, and while the person convicted may, upon application be bailed at the discretion of the court, that discretion—particularly with respect to extending the bail—should be exercised, not with laxity, but with caution and only for strong reasons with the end in view of upholding the majesty of the laws and the administration of justice (See 8 C. J. S. pp. 69-70).

Going now into the merits of the case, We find untenable the appellant surety company's contention that since the accused was granted by the order of November 9, 1956 an extension until December 31, 1956 within which to surrender himself, it was not under obligation to effect his arrest on or before that date. It is to be noted that the dispositive portion of said order, which required the surrender of the accused until the end of year 1956, was addressed not only to the accused but also to the surety. It decreed in no uncertain terms that the bondsmen are ordered to bring the person of said accused to said prison authorities not later than December 31, 1956." Since the accused, despite several extensions of time, failed to appear or surrender himself on or before the date required, and appellant surety was not able to produce or surrender him until January 4, 1957, it can not be validly claimed that said appellant has complied with its obligation so as to be exonerated completely from liability under the bond. It is the bonding company's responsibility to produce the accused whenever, required, and its failure to do so indisputably constitutes a breach of the guaranty (*People vs. Gantang Kasim and Luzon Surety Co.*, 108 Phil., 171).

Of course, as held in the case of *People vs. Tan* (101 Phil., 324), cited by the appellant, the failure of a surety to produce the principal at a date set by the court does not constitute a complete and irrevocable breach of the bond. And neither is the order of forfeiture nor even the judgment then rendered against the surety to pay the amount of the bond, final and irrevocable. They, are merely provisional in character; subject to the contingency that the surety may finally secure the arrest of the principal and the production of his person as required. This does not mean, however, that the mere production or appearance of the accused after his failure to appear when first required suffices to exonerate the surety from liability, nor entitles it to release as a matter of right. It is still necessary that it gives satisfactory reasons why the accused failed to appear when first required to do so (Sec. 15,

Rule 110; *People vs. Sy Beng Guat and Manila Surety Co., Inc.*, 105 Phil., 574.).

In its motion for cancellation of the bond and discharge as surety, as well as during the hearing thereof, the surety, by way of explaining its failure to produce the accused on the date set, argued that even if it wanted to it was powerless to effect his arrest in view of the extension granted him within which to surrender. The argument was not given serious consideration by the trial court, and we think, correctly, for the responsibility assumed by the bail may be terminated by it at any time, and to effect this end, it may arrest the principal at pleasure and surrender him into the hands of the law. Thus, section 16 of Rule 110 provides that, 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 where said sureties so request upon surrender of the defendant to the court. For purposes of surrendering the defendant, the bailor has the right to arrest him, and that right is incidental to the engagement, the issuing of process not being necessary to its exercise (*U.S. vs. Addison*, 27 Phil., 563; *Moran's Comments on the Rules of Court*, 1957 ed., Vol. 2, p. 724). This is so because upon the assumption of the obligation to bail, the sureties become in law the jailers of their principal. Their custody of him is the continuance of the original imprisonment, and though they cannot actually confine him, they are subrogated to all the rights and means which the government possesses to make their control of him effective. (*U.S. vs. Addison*, supra; *U.S. vs. Bonoan*, 22 Phil., 1; *People vs. Tuising*, 61 Phil., 404; *People vs. Gonzales*, 105 Phil., 47; *People vs. Otiak Omal Luzon Surety Co., Inc.*, G.R. No. L-14457, June 30, 1961). As already stated, the several extensions granted to the accused within which to surrender and commence the service of his sentence, were not quite reasonable. The surety, therefore, even before the granting of the last extension, could have very well surrendered him to the court and thereafter request that it be discharged from liability.

Again, appellant claims that it did not arrest the accused on or before December 31, 1956 because the court did not act on its motion for the issuance of a warrant of arrest. If the court did not resolve, or pass upon said motion, it was because it did not need any warrant of arrest to apprehend the accused for whom it bound itself as surety (Section 17, Rule 110.).

With the above observations, we fail to see any valid reason to interfere with the discretion of the lower court in holding the appellant surety liable on its bond.

The Solicitor-General, alleging in his brief that the accused had willfully jumped his bail, recommends that the amount of P500 confiscated on the bond be increased to at least P1,000, or one half of its entire amount. There is, however, no clear showing that the accused did willfully jump bail. At any rate, the determination of the sufficiency of the explanation given by a surety for its failure to produce the person of the accused when his appearance is required by the court and the reduction of its liability are matters within the discretion of the court. Furthermore, courts are generally liberal in dealing with bondsmen in criminal cases in mitigating their liability on the bonds already confiscated when the accused is presented or produced without considerable delay (See *People vs. Daisin*, 101 Phil., 228). In the circumstances, there is no sufficient justification to amend the partial remission of appellant's liability as found by the court below.

Wherefore, judgment of the lower court is hereby affirmed, with costs against the appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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