

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
ISAGANI FAMILIAR Y CARLOS BONIFACIO SORIANO Y PAÑGAN,
ACCUSED. RURAL INSURANCE & SURETY CO., INC., BONDSMAN
AND APPELLANT.**

G. R. No. L-17124. June 30, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from an order of partial confiscation of a ball bond filed by appellant Rural Insurance & Surety Company for the accused in Criminal Case No. 43970, entitled People vs. Isagani Familiar y Carlos and Bonifacio Soriano. Originally taken to the Court of Appeals, the case was certified to the Supreme Court as involving no questions of fact.

It is uncontested that on October 24, 1958 the court of origin issued an order in the following terms:

"It appearing that Bonifacio Soriano y Pañgan, has been duly notified of the date of the hearing of this case scheduled for today and notwithstanding said notice, he has not appeared, and it appearing further that the Rural Insurance and Surety Co., Inc., was likewise notified of the date of the hearing, let a warrant for the arrest of Bonifacio Soriano y Pañgan be issued. The bond filed by Rural Insurance and Surety Co., Inc., is hereby declared confiscated. Said Company is given thirty (30) days within which to produce the body of the accused Bonifacio Soriano y Pañgan and show cause why a judgment on the bond should not be rendered.

Let this case be scheduled for hearing on November 7, 1958.

SO ORDERED."

Within the thirty-day period set by the order, more specifically on November 18, the appellant bonding company submitted a petition for the lifting of the order of confiscation, explaining that upon receipt of the preceding order it had exerted efforts to locate the accused Soriano, had arrested him and turned him over to the Manila Police Department. The lifting asked was denied for lack of merit.

Upon motion for reconsideration of the appellant Surety Company, the court below issued, on January 15, 1959, the following order (Record on Appeal, pp. 16-17), which is the subject of the present appeal, reducing the forfeiture from P6,000 to P1,000:

"ORDER

This is a motion for reconsideration of the order of this Court dated October 24, 1958 declaring the bond filed by the Rural Insurance & Surety Co., Inc. in the sum of P6,000.00, for the provisional release of the accused Bonifacio Soriano y Pañgan confiscated. After the accused has been arrested the surety company attempted in vain to prove that it has complied with the conditions of the bond it filed for said accused.

The Court, after hearing the testimony of the accused, found that he was not to blame for his failure to appear

on the date of the hearing of this case. Consequently, it granted the motion of the accused to be released on bail provided that he file a new bond in the sum of P6,000.00. Counsel for the surety Company agreed to refund to the accused all the premiums he paid to said surety company, in consideration of which the court was willing to reconsider the order of confiscation dated October 24, 1958.

Subsequently, the accused reported to the court that the surety company did not comply with its promise, which was a condition precedent to the willingness of the court to lift order of confiscation.

WHEREFORE, judgment on the bond is hereby rendered against the Rural Insurance & Surety Co., Inc., and considering that the accused has been already arrested, said surety company is ordered to pay the Republic of the Philippines the reduced amount of P1,000.00.

SO ORDERED."

Not satisfied with the reduction, appellant elevated the case to the Court of Appeals, and the latter referred it to this Court.

Four alleged errors are urged by appellant as having been committed by the trial court:

- "1. That the lower court erred in making a condition precedent, the lifting of the order of confiscation of the bond of the movant, the return of premiums to the accused.
2. That the lower court erred in denying the motion of the movant dated November 18, 1958 inasmuch as the production of the accused was before the lapse of the 30 days period required, and with the adequate explanations as to why movant was unable to produce the accused on the date of trial.
3. That the lower court erred in allowing the accused to bail upon securing another bail bond.
4. That the lower court erred in granting only partial exoneration of the appellant and not total exoneration, appellant herein having complied with all the requirement of law."

We find the appeal to be without merit.

The first error assigned ignores completely the fact that, as recited in the appealed order, the appellant Company's representative agreed to refund to the accused all the premiums paid; and in consideration thereof, the court entertained the motion to reconsider the original order of confiscation dated October 24. Nowhere is it pleaded that the commitment was not made or that it was unauthorized; hence the appellant may not refuse to comply, since the court reduced the confiscated amount in consideration, at least in part, of the promise, and it is nowhere shown that the engagement was in any way illegal or void.

The appellant contends in its second error that, under Section 16(a) of Rule 110 (Section 16(a), Rule 114, of the Revised Rules of Court), it was ministerial for the trial court to cancel the bond and discharge the sureties where the latter so request upon surrender of the accused. Again appellant errs, since the provision evidently contemplates a surrender by the bondsman before any default occurs, and before any order of confiscation is Issued, unlike in the case at bar.

The third error assigned questions the credence given by the court to the explanation of the accused that he was not notified by the surety of the date of trial. No reason is given why this belief was misplaced other than appellant's unsworn explanation to the contrary.

It is plainly within the trial court's discretion to select whom to believe, and we are not afforded grounds to find that the court's action was erroneous. As pointed out in the Solicitor General's brief, the very agreement of the surety to reimburse the premiums to the accused is a concession of the truthfulness of the version given by the latter.

Finally, appellant pleads for a liberal attitude toward bondsmen, invoking *people vs. Calderon*, L-9497, July 31, 1956, and *People vs. Puyal*, 98 Phil. 415. That liberality, however, can not go to the extent of totally exonerating a bondsman who fails to produce the accused when required, thereby causing a delay in the trial and disposition of the criminal case; it would be placing a defaulting bondsman on the same level as a non-defaulting one. Even allowing that in the present case the surety surrendered the accused within 30 days, the fact remains that Its obligations were first breached, and the most that it is entitled to was a reduction of the amount to be forfeited. The court a quo did reduce it to one sixth (1/6) of the original amount undertaken, and we see no reason for us to interfere.

The case of *People vs. Calderon* (ante) is not applicable, since there the accused had moved for a continuance, alleging illness of his wife, and when the court denied postponement, the bondsmen produced the accused the very next day. Upon the other hand, in *People vs. Puyal*, the forfeiture was merely reduced to one-third of the original amount; in appellant's case it was limited to 1/6.

The order appealed from is affirmed, with costs against appellant Rural Insurance & Surety Company.

Concepcion, C. J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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