

**PLARIDEL SURETY &#038; INSURANCE CO., INC., PETITIONER VS.  
HON. AGUSTIN P. MONTESA, JUDGE OF THE COURT OF FIRST  
INSTANCE OP NUEVA ECIJA AND THE SHERIFF OF NUEVA ECIJA,  
RESPONDENTS.**

*G. R. No. 10153. April 30, 1957*

Ponente: REYES, A., J.

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**REYES, A., J.:**

This is a petition for certiorari with preliminary injunction.

Petitioner was surety on a bond for the provisional release of the accused Mariano V. Alfaro in a criminal case pending trial in the Court of First Instance of Nueva Ecija. For failure of the accused to appear for arraignment on August 31, 1955, the bond was on that day ordered forfeited and the surety given thirty days from the receipt of the order within which to produce the body of the accused and show cause why judgment should not be rendered against the bond. The thirty days having expired without the surety having complied with the order, the court under date of November 12, 1955 handed down another order worded as follows:

"The order of the Court dated August 31, 1955 having become final and executory, judgment is hereby rendered against tile bond of the defendant."

On November 19, 1955, the surety petitioned the court to reconsider this last order, alleging that it could not be held liable for the non-appearance of the accused on the day set for the arraignment because according to the registry of deaths of the municipality of Gapan, that said accused had already died before that date, aiid that it did not bother to file any explanation about his non-appearance for arraignment because, subsequent to the order of forfeiture, the criminal case was ordered dismissed. The court denied the petition on the grounds that the order of forfeiture dated August 31, 1955 had already become final, although in the interest of justice it reduced the amount forefeited from P15,000 to P1,000. A second motion for reconsideration having been likewise denied, the surety, instead of appealing, filed the present petition for certiorari, alleging that the last order denying reconsideration of the forfeiture was rendered in excess of jurisdiction and with grave abuse of discretion.

Answering the petition, the Solicitor General contends that the death of the accused before the day set for arraignment did not excuse the surety from complying with the order to show cause why the bond should not be forfeited, and that as the said order had already become final the court was without power to set it aside except to mitigate the surety's liability.

We note at the outset that while the name of the accused is Mariano V. Alfaro, that appearing in the registry of deaths as having died on October 8, 1950 is Mariano Alfaro, without any middle initial. This discrepancy in name raises a doubt as to whether the accused and the deceased are one and the same person. However, neither the lower court nor the Solicitor General has raised any question in that regard, and, anyway, the question is not material to the view we take of the case.

In our opinion, the petition for certiorari with preliminary injunction cannot be granted. The surety could have appealed from the judgment of forfeiture and the subsequent orders denying reconsideration. But instead of doing so, it sought to prevent their enforcement by asking for their annulment through a writ of certiorari. In the case of *Luzon Surety Co. vs. Montemayor* (63 Phil., 134), this Court, in denying a petition for the issuance of such writ with a view to setting aside an order for the execution of a part of the amount of a bail bond, said:

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The remedy which, the petitioner should have pursued is by appeal from the judgment of forfeiture ("U.S. vs. *Lorredo*, 50 Phil., 209). Certiorari will not lie where there is adequate remedy by appeal (sec. 514, Act No. 190). This holds true even in cases where the petitioner has lost the remedy of appeal through his negligence, (*Government of the United States vs. Judge of First Instance of Pampanga and Manila Railroad Co.*, 50 Phil., 975)".

The above pronouncement being applicable to the instant case, the petition for certiorari must be as it is hereby . denied with costs.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Conception, Endencia, and Felix, JJ., concur.

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