

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
CRESCENCIO VERGEL Y APOLINARIO, ACCUSED. MANILA SURETY
& FIDELITY COMPANY, INC., AS BONDSMAN, DEFENDANT AND
APPELLANT.**

G. R. No. 10617. August 29, 1958

Ponente: PADILLA, J.

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PADILLA, J.:

Crescencio Vergel y Apolinario was charged with, found guilty of, and sentenced for, robbery by the Court of First Instance of Rizal (crim. case No. 2529—P). He appealed and the Manila Surety & Fidelity Co., Inc. filed a bond in the isum of P8,000 for his provisional release. The judgment of conviction having been affirmed by the Court of Appeals and having become final, the trial court notified the defendant to appear before it and served notice upon the surety to produce in court the body of the defendant on 30 May 1955, at 8:00 o'clock in the morning, for execution of the judgment. On the day set by the Court, the surety filed a motion praying that as the defendant was working as laborer in Surigao, it be granted thirty days from that day within which to produce the body of the defendant. The Court granted the motion and transferred the execution of the judgment to 29 June 1955. On 25 June 1955 the surety filed a second motion for postponement of the execution of the judgment on the ground that the defendant who was either in Davao City or Zamboanga City could not yet be apprehended. The Court again granted the motion and reset the execution of the judgment on 29 July 1955 at 8:00 o'clock in the morning. On 27 July 1955 the surety filed a third motion for postponement on the ground that the defendant could not yet be apprehended. The Court granted the motion only until 6 August 1955 at 8:30 o'clock in the morning. As the defendant failed to appear on the last mentioned date, the Court ordered his arrest, declared the bond forfeited, directed the surety to produce his body within thirty days from notice and to show cause why judgment should not be rendered against it on the bond. On 10 September 1955 the surety prayed for a period of thirty days from that date within which to produce the body of the defendant. The Court denied the prayer. On 16 September 1955 the Court rendered judgment against the surety on its bond. The surety prayed for a period of sixty days from 12 October 1955 within which to produce the body of the defendant. The Court denied the motion. On 8 December 1955 the surety filed a motion praying that as the defendant had already been apprehended and surrendered to the police department of Pasay City on 6 December 1955, the order of forfeiture of the bond be reconsidered and set aside and that it be relieved of its liability on the bond. On 16 December 1955 a similar motion was filed by Miguel R. Cornejo as guarantor. On 16 January 1956 the Court entered an order reconsidering its previous judgment and relieving the surety of 50% of its liability.

The surety has appealed contending that it should be relieved completely of liability on its undertaking since the defendant had already been surrendered to the police authorities.

The record shows that the Court was very lenient to the surety by granting thrice its motions for extension of time within which to produce the body of the defendant and for postponement of execution of the judgment. And when the Court finally declared the bond forfeited and ordered the surety to produce the body of the defendant within

thirty days from notice and to show cause why judgment should not be rendered against it on the bond, the surety failed to comply with the order of the Court and to give a satisfactory explanation for its failure to produce the body of the defendant within the time granted by the Court. For that reason it rendered judgment against it on the full amount of the bond. However, when the defendant was finally apprehended and surrendered to the police authorities after more than six months from the first time (30 May 1955) that the judgment was set for execution, the Court reduced its liability to 50% of the amount of the bond. Such reduction lies within the discretion of the Court.[1] To exonerate the surety from its liability on the bond, after the terms thereof had been breached by its failure to produce the body of the defendant on the day set by the Court and to give satisfactory explanation for such failure, would encourage sureties to take lightly their undertakings.[2]

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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