

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
FLORENTINO TOLENTINO, ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 11036. May 23, 1958*

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

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Florentino Tolentino was, together with three other persons, accused in the Court of First Instance of Isabela with the crime of murder (Criminal Case No. 759), and to secure his provisional release, a bail bond in the amount of P25,000 was, on March 16, 1950, posted in his favor by Agustin Bersamin, Marcelina Cabrero, Nicolas F. Garcia, Donato Tolentino, Eduardo Salvador, Damaso Tolentino, Presentacion Baldonado, Mariano Tolentino, Marcos Soliven, Feliciano Baldonado and Francisco Legaspi.

On July 13, 1950, the criminal case was called for trial and because the accused Florentino Tolentino failed to appear, the lower court issued an order giving his bondsmen five days to explain why their bond should not be confiscated, and postponing the trial to August 21, 1950. On June 12, 1951, the court ordered the confiscation of Tolentino's bail bond, giving the bondsmen thirty days within which to produce the body of the accused, otherwise judgment would be rendered for the execution of the bond. A year later, the provincial fiscal moved for the execution of the bond and on December 24, 1952, the lower court ordered its execution.

On February 16, 1953, counsel for Tolentino's bondsmen filed a motion for the reconsideration of the order to execute the bond on the ground that Tolentino had died on October 27, 1952 in an armed encounter between a patrol of the Philippine Army and some Huks in the vicinity of Sta. Lucia, Magalang, Pampanga, but the court denied the motion for the reason that, death of the accused after judgment against the bail bond had become final does not release the sureties. Whereupon, on September 15, 1953, the provincial fiscal asked for the issuance of a writ of execution against the bondsmen, and pursuant thereto, the court issued a writ of execution on October 2, 1953 in accordance with which the sheriff advertised for sale at public auction the properties given by the bondsmen as security.

Before the execution sale could take place, however, several incidents occurred in the case, namely: (a) the heirs of bondsman Mariano Tolentino, who had died during the pendency of the case, filed a petition in court for the exclusion of the properties of the deceased included in the notice of sale on the ground that notices of the orders of confiscation and execution of the bail bond could not have been validly served upon the deceased Mariano Tolentino because he had died before said orders were issued by the court; (2) bondsman Francisco Legaspi moved for the exclusion of his residential house from the lot given by him as security for the bond, alleging that said house was never given by him as security; and (3) one Nicolasa Garcia moved to exclude lots 4179 and 595 of the Santiago Cadastre from the execution sale on the ground that they belonged to her and not to bondsman Nicolas Garcia. In view of the pendency of these motions, the court postponed the auction sale indefinitely until said motions would have been studied and resolved.

On December 19, 1953, the accused Florentino Tolentino was apprehended in the province of Cagayan and

immediately brought before the court a quo by his bondsmen, who all prayed for the lifting of the orders of confiscation and execution of their bail bond, but the motion was denied by the court. The court had, in the meantime, released from the order of execution the two lots claimed by Nicolasa Garcia which it found to belong to this claimant and not to bondsman Nicolas Garcia.

On October 6, 1955, the bondsmen filed another motion to reconsider the orders of forfeiture and execution of their bond, giving as reason for their inability to produce the accused on the dates ordered by the court the fact that he went into hiding because of a certain threat against his life. Again the court denied the motion for reconsideration; but in the same order, it released from the notice of execution sale the house which bondsman Francisco Legaspi claims should be excluded therein, having found that said house was constructed only after the bail bond was posted and consequently, could not have been given by Legaspi as security therefor; and with respect to the motion of the heirs of bondsman Mariano Tolentino, the court found that Tolentino had already died before the issuance of its orders of forfeiture and execution of the bail bond so that he could not have been validly notified thereof, and so set aside the order of execution with respect to the properties belonging to the estate of Mariano Tolentino. The other bondsmen sought reconsideration of this last order, which the court denied. Wherefore, four of the bondsmen, namely, Marcelina Cabrero, Agustin Bersamin, Donato Tolentino, and Feiciano Baldonado appealed to this Court.

Appellants assign two errors allegedly committed by the trial court, to wit:

- The lower court erred in not remitting the forfeiture of the bailbond upon application of the bondsmen on the ground that they have captured the accused and presented him before the court.
- The lower court erred in not releasing the bailbond of all the bondsmen when it released two of the bondsmen from the obligation under the bailbond.

Anent the first assignment of error, we see no merit in appellants' claim that they are entitled to full exoneration or discharged under their bail bond because they had been able to surrender the accused Florentino Tolentino to the court below. Although it may be true that the capture and surrender of the accused was brought about by the efforts of the bondsmen to comply with their undertaking and that by his surrender, the purpose of the bond had been accomplished, appellants, however, can not claim full discharge because the arrest of the accused was effected only after the order of confiscation and forfeiture of the bond had already become final. The rule is that where the period given to the bondsmen to produce the accused had elapsed and the accused had not been brought before the court, the sureties can not be completely discharged (*People vs. Calabon*, 53 Phil., 945; *People vs. Alamada*, 97 Phil, 1).

Pursuant to the uniform ruling of this Court, however, that where, even after judgment against the bond had become final and executory, the purpose thereof has been accomplished by the capture and surrender of the accused, the liability of the sureties may, in the discretion of the court, be reduced or mitigated (*People vs. Reyes*, 48 Phil., 139; *People vs. Calabon*, supra; *People vs. Puyal*, [1] L-8091, February 17, 1956; *People vs. Calderon*, L-9497, July 31, 1956; *People vs. Daising*, [2] L-6713, April 29, 1957; *People vs. Tan*, [3] L-6239, April 30, 1957), appellants are entitled to a reduction of their liability under their bond, especially since they are not compensated sureties or sureties for profit, but have put up the bail bond of the accused Florentino Tolentino only upon considerations of friendship and generosity, so that an even more liberal and lenient treatment should be accorded them. Wherefore, it is the judgment of this Court that the liability of the bondsmen of the accused Florentino Tolentino be reduced to the amount of P10,000.

With respect to appellants' second assignment of error, we can not agree with their proposition that because the court a quo had released the properties of the deceased bondsman Mariano Tolentino from the order of execution

sale and reduced the liability of bondsman Francisco Legaspi to P100, the entire undertaking of all the bondsmen under the bail bond has been novated or released.

With respect to the properties of the deceased Mariano Tolentino, the order of the court merely lifted the execution as to the same, but did not relieve the estate of said deceased from the obligations he had undertaken by virtue of the bond. The only purpose of "the court's order was to afford the heirs of Tolentino a hearing and an opportunity to establish whatever defenses they might have against the order of forfeiture; but there is nothing to show that the court intended to effect a discharge of Tolentino or his estate. Hence, the latter remains bound under the original recognizance. The appellants, in turn, have no cause for complaint against the action of the court, since the solidary obligation assumed by them renders each one of them liable for the entirety of the obligation, which the government, as creditor, may elect to collect from any number of the solidary bondsmen. Of course, those who pay may in turn demand from their co-obligors the corresponding proportional share, by way of contribution (New Civil Code, Articles 1216 and 1217).

"ART. 1216. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, as long as the debt has not been fully collected."

"ART. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim from his co-debtors only the share which corresponds to each, with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such, share shall be borne by all his co-debtors, in proportion to the debt of each."

Regarding the action of the court in reducing the liability of bondsman Francisco Legaspi to P100, such action plainly constitutes a true remission of the rest of the share of said Legaspi in the bond; wherefore, the release accrues pro tanto to the benefit of the other solidary obligors (8 Manresa, 214-215). But it does not operate to discharge the entire obligation, as contended by appellants, in the absence of any intent to do so. It must be recalled that solidary guaranties, like that of appellants, are subject to the rules of solidary obligations (Art. 2047, New Civil Code).

The share of each of the eleven bondsmen, in the forfeiture of P10,000, is P909.09. The court below having lowered Legaspi's share to P100 only, the liability of the others should be reduced to ten thousand minus P809.09 or P9,190.91, without prejudice to their right to collect P909.09 from the estate of the late Mariano Tolentino, by way of contribution.

Wherefore, the orders of forfeiture and execution of the bail bond in question are affirmed, except that its amount is hereby reduced to P10,000, which the bondsmen shall, as among themselves, share in the manner indicated herein. No costs in this instance.

So ordered.

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

[1]98 Phil., 415.

[2]101 Phil., 228.

[3]101 Phil., 324.

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