

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
PEDRO GONZALES, ALTO SURETY & INSURANCE CO., INC.,
BONDSMAN AND APPELLANT.***G. R. No. 12056. January 24, 1959*

Ponente: BAUTISTA ANGELO, J.

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On October 15, 1956 the Alto Surety & Insurance Co., Inc. posted a bail bond in the amount of P2,000 for the provisional release of the accused in Criminal Case No. 4470 pending in the Court of First Instance of Nueva Ecija subject to the condition that the company will be liable should the accused fail to appear when required by the court. On November 27, 1956, the date of hearing of the case, the accused failed to appear notwithstanding due notice given to his bondsman, whereupon the court ordered the confiscation of the bond and gave the bondsman a period of thirty days within which to produce the accused and show cause why judgment should not be rendered on said bond. On December 7, 1956, the bondsman filed a motion to lift the order of confiscation and at the same time explaining that the accused failed to appear on the date of trial because his mother was very ill and was brought to the San Lazaro Hospital for treatment. In the meantime, the court, upon motion of special counsel Ferrer, ordered the dismissal of the case against the accused. This notwithstanding, the court denied the motion to lift the order of confiscation in an order entered on December 13, 1956, but reduced the liability of the bondsman to 20% of the original bond. Its motion for reconsideration having been denied, the bondsman took the present appeal.

In denying the motion to lift the order of confiscation of the bond, the trial court made the following comment: "* * * considering that on the date set for the trial of this case the said company failed to make such manifestation showing that they did not even know where the accused was and that they did not exert diligent efforts to contact him, x x x the Court finds the said motion not well founded and so hereby denies the same." And the manifestation above referred to is to the effect that the defendant failed to appear on the date set for trial of the case because his mother was very ill and was brought to the San Lazaro Hospital. It is now contended that the trial court abused its discretion in not considering the above explanation satisfactory it appearing that the bondsman was able to produce the accused within the 30-day period set for his production and was able to give a satisfactory explanation of its failure to produce him on the date of the trial.

This contention is without merit. Granting that the bondsman notified the accused long before the hearing on November 27, 1956 requiring him to appear on said date, that notice alone is not a sufficient compliance with its commitment under the bond for under Section 17, Rule 110, a bondsman is in duty bound to produce the person of the accused when his appearance is required by the court, which shows that mere notification is not sufficient but the bondsman must make every effort to see that he actually makes his appearance. Because of such inaction, the trial court considered the bondsman negligent in the performance of its duty as the rule requires. We are not disposed to disturb this finding for in cases of this nature the determination of the sufficiency of the explanation given is a matter that lies within the discretion of the court.[1]

Another claim of the bondsman for its failure to produce the accused on time is that it is not required for it to know all the whereabouts of its principal so that it may be ever ready to produce him when required by the court for, "To require the sureties to know each and every actuation of the accused all the time is to carry the obligation of the bail too far and indicates lack of appreciation of the actual conditions under which defendants in criminal cases are bailed out." This claim is untenable for, as this Court has aptly said: "When the obligation of bail is assumed, 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 other rights and means which the government possesses to make their control of him effective" (U. S. vs. Addison and Gomez, 27 Phil., 562).

Considering, however, that the bondsman was able to produce the accused within the period set by the trial court, this can be considered enough justification to mitigate its liability and in our opinion the reduction made by the trial court of the amount of the bond to 20% is reasonable.

Wherefore, the order appealed from is hereby affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

[1.] People vs. B.eyes, 48 Phil., 139; People vs. Alamada, 89 Phil., 1.

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