

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
RODOLFO ENRIQUEZ, ET AL., ACCUSED. GLOBE ASSURANCE CO.,
INC., BONDSMAN AND APPELLANT.**

G.R. No. 13006. February 29, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from an order of the Court of First Instance of Manila, Hon. Froilan Bayona, presiding, declaring that the full amount of a bond of P10,000 executed by the appellant Globe Assurance Company, Inc., for the temporary release of accused Horacio Tan be forfeited and that execution against said bond issue at once. The incidents giving rise to the above order are as follows:

Horacio Tan was found guilty of estafa by judgment of the Court of Appeals, jointly with two other accused and sentenced to suffer an indeterminate penalty of from 2 years, 11 months, and 10 days of prision correccional to 6 years, 8 months and 20 days of prision mayor. The judgment having been forwarded to the court below for execution. Horacio Tan, through counsel, presented a motion dated December 7, 1955, praying that the promulgation of the sentence scheduled for December 9, 1955, at 8:30 a.m., be postponed for at least two weeks and that in the meanwhile, Horacio Tan be allowed his provisional liberty upon the filing of a bond which the court may fix. This motion was granted and on December 9, 1955, Judge Bayona postponed the reading of the sentence to December 27, 1955. In consequence the court recalled the commitment issued on December 6, 1955 and fixed the bond for the provisional liberty of the accused at P10,000. The order is dated December 14, 1955.

On December 21, 1955, prior to the date previously set forth for promulgation of the sentence, counsel for Tan prayed for another postponement of the promulgation of the sentence until January 16, 1956. His motion was granted by Judge Bayona with the conformity of the fiscal on December 24, 1955. On January 12, 1956, again counsel for Horacio Tan filed an urgent motion to postpone the reading of the sentence to February 16, 1956. To this motion appellant Globe Assurance Co., Inc. gave its conformity. The fiscal also presented no objection. On January 16, the judge entered an order for the immediate arrest of Tan and the confiscation of his bond for the reason that he failed to appear notwithstanding the fact that he was duly notified of the reading of the sentence. On that same day, counsel for the appellant Globe Assurance Co., Inc. asked the court to issue an alias warrant for the arrest of Horacio Tan for use by the officers of the company in arresting the latter. This motion was also granted on January 17. On January 18, counsel for Tan presented a motion for the reconsideration of the order of confiscation and arrest of the accused on the ground that the failure of the accused to appear on January 16 was due to the fact that the motion for postponement which counsel filed on January 13, 1956, had been granted by the court. On January 19, the clerk of court asked the chief of police of Manila for the return of the warrant for the arrest of Horacio Tan on the ground that the order of arrest was set aside by an order of the court dated January 19, 1956. The record, does not show that the motion for postponement of the reading of the sentence filed on January 12, 1956 had been granted and we do not find from the record what is the basis of the clerk of court's request for the return of the warrant of arrest. On January 25, the judge issued the alias warrant for the arrest of

the accused as prayed for by the Globe Assurance Co., Inc. On January 26, the judge ordered the Globe Assurance Co., Inc. to explain why its bond of P10,000 should not be confiscated. On February 27, counsel for the Globe Assurance Co., Inc. moved the court for an extension of time to produce the body of the accused, alleging that from the time the company received the order for the presentation of the body of the accused, it has been unable to make the arrest, so another period of 30 days was prayed for. Judge Bayona in an order dated March 8, extended the period for the production of the accused for 15 days. It does not appear that from that time on the body of Horacio Tan was produced by his bondsman, so on July 19, 1956, the judge entered an order declaring that as the bondsman of Horacio Tan had failed to produce the latter's body, it must show cause why the bond posted should not be forfeited. Judgment was expressly entered against the bond. On July 24, 1956, a writ of execution was issued to the sheriff of Manila, commanding him to collect the amount of the bond of P10,000. On December 4, 1956, counsel for the Globe Assurance Co., Inc. prayed the court that the judgment be reduced to 5% of the bond on the ground that the movant assurance company had been the victim of deceit and trickery. On December 4, 1956, the court acting upon the said bond granted the motion and ordered the Globe Assurance Co., Inc. to pay only P500.00 on its bond provided the same is immediately paid. This order is dated December 14, 1956. On January 8, 1957, the city treasurer of Manila wrote the sheriff of Manila informing him that a check in the amount of P1,536.28 drawn by the Globe Assurance Co., Inc. was not honored by the drawee bank for the reason that its account had been garnished. In view of this report and the sheriff's return explaining that the check for P500.00 ordered paid by the court was not honored by the drawee bank, the court on January 22, 1957 ordered the forfeiture of the whole amount of the bond of P10,000.

On January 21, the city treasurer of Manila wrote to the sheriff that the check of the Globe Assurance Co., Inc. in the amount of P1,536.28 which had not been honored by the drawee bank, had been redeemed by the Globe Assurance Co., Inc. under EBC Check BC-7264 on January 16, 1957. An affidavit was presented by the president of the Globe Assurance Co., Inc. explaining that when it issued its check in the amount of P1,536.28 for criminal cases Nos. 11476 (the case at bar) and 12227, the company had no knowledge that its funds had been garnished.

After the above proceedings, counsel of the Globe Assurance Co., Inc. filed a motion for reconsideration, dated January 23, 1957, alleging that the bondsman had no knowledge that its funds had been garnished and that upon knowing such garnishment and the failure of the sheriff to collect the amount covered by its previous check, it issued another covering the amount. The court denied this motion. A second motion for reconsideration was also denied by the court on June 13, 1957 and thereupon, the Globe Assurance Co., Inc. appealed from said order of confiscation of the bond of P10,000 and the refusal of the court to reconsider its order to reduce the amount of the bond.

On its appeal to us, counsel for the appellant argues that the Court below erred in granting bail to Horacio Tan after the accused was ordered to be committed to serve his sentence and that it further erred in granting postponement of the hearing of the sentence after it had already committed the accused to serve his sentence. It is true that a copy of the order of commitment dated December 6, 1955, is attached to a motion before us, and said order of commitment contains the following notation: "Detained at City Jail." From this document it appears that when the appeal to the Court of Appeals was prosecuted, the accused Horacio Tan was in jail. It also appears therefrom that this order of commitment was received in the office of the municipal jail on December 8, 1955. But on December 7, 1955, counsel for Horacio Tan presented a motion to postpone reading of the sentence to the accused and on December 9, Judge Bayona postponed the reading of the sentence to December 27, 1955, at 8:30 a.m. And when the judge postponed the reading of the sentence to December 27, 1955 in its order of December 9, 1955, on December 14, 1955, he expressly set aside and considered the commitment issued on December 6, 1955.

From the above circumstances we declared that although an order of commitment had been issued, this

commitment was not actually put into effect, not only because the court allowed a postponement of the reading of the sentence, but also because the court expressly recalled said order of commitment in its order of December 14, 1955. It does not follow from the mere fact that Horacio Tan was already in jail when the judgment of the Court of Appeals was received in the city jail on December 8, 1955, confirming that of the Court of First Instance, the accused Horacio Tan could be considered as committed or placed in jail by virtue of the decision of the Court of Appeals. The fact of his custody as a mere appellant pending appeal continued, and the mere fact of the receipt of the decision of the Court of Appeals cannot be considered as changing his detention, a mere detention prior to judgment, into service of the judgment. Aside from this fact, that the receipt in jail the Court of Appeals decision did not ipso facto change his character as a detention prisoner into one of prisoner serving his sentence, the judge below took the stand that a reading of the sentence of the Court of Appeals to the accused was still a necessary step previous to his actual commitment by virtue of said judgment of the Court of Appeals. The contention of counsel for the Globe Assurance Co., Inc. that appellant Horacio Tan was already committed in jail and in virtue of the execution of the judgment of the Court of Appeals is, therefore, unfounded.

But another objection to the argument of counsel for the appellant is the fact that the appellant assurance company undertook by its bond to guarantee the return or the delivery of the person of the accused in execution of the judgment. The bond filed by it rests, on the assumption that Horacio Tan was not a prisoner serving sentence, and that he was merely to be released before the judgment is read to him in order to give him opportunity to settle his personal affairs. By filing said bond the appellant is now estopped from attacking the release of Horacio Tan as invalid. The Government would never have released Horacio Tan if appellant assurance company did not present its bond. The assurance company profitted by the issuance of the bond by the receipt of the premium paid. It can not now go back and assail the validity of the bond which it had furnished for a premium, on the ground that the release of the prisoner was unauthorized under the provisions of law.

The next argument presented on this appeal is that the lower court erred in rescinding its order of December 14, 1956 after the same had been complied with by the bondsman and had become final and irrevocable. We find no merit in this argument. The judge ordered the release of Horacio Tan on the bond of P500.00 "provided that the same is immediately paid" (Dec. 14, 1956), but the bondsman did not comply with the condition that the P500.00 be immediately paid because the check it issued was returned to the sheriff (because the drawee bank stated that the bondsman's account was garnished). Admitting that the check of the bondsman was paid on December 14, 1956, immediately after the said order, the said check could not be converted into cash and the amount of P500.00 was not actually paid until January 16, 1957. The payment made on January 16, 1957 is not an immediate payment as required by the order of December 14, 1956. The judge was, therefore, fully justified in ordering the confiscation of the bond of P10,000 offered by the bondsman-appellant, it having failed to comply with the requirement that the amount of P500.00 be immediately paid.

Our decision in *People vs. Hernandez, et al.*, 106 Phil., 84 penned by Mr. Justice Cesar Bengzon, is to be distinguished from the case at bar.

In that case we held that immediate payment does not necessarily require payment on the same day, but payment within a reasonable time or without intentional delay which may include two days or seven days according to circumstances, may be interpreted as immediate payment. In the case at bar, however, payment was supposed to be made immediately on December 34, 1956. Payment was actually received more than a month later, that is, on January 16, 1957. The case at bar, therefore, differs from said previous case, because the payment made through a bank was not honored and actual collection was made only after a month. Under the circumstances, it cannot be considered as an immediate payment and the court was within its legal rights when it ordered the confiscation of the bond for failure of the bondsman to comply with the condition imposed by it in its order of December 14,

1956.

We are cognizant of the fact that the appellant made good the payment of P500.00 in a short time, although not immediately, and we consider that the imposition of the confiscation of the total amount of the bond of P10,000 will be inequitable. We would be lenient to a bonding company if it were not for our experience that most of them have been remiss or tardy in the compliance with their obligations to the courts. We believe that a reduction of the amount to be paid on the bonds from P10,000 to P3,000 should be made as a warning to bonding companies not to accept or to execute bonds unless they have funds with which to meet the obligations thereof.

The order appealed from is hereby modified and the appellant is hereby ordered to pay the sum of P3,000 on its bond. Without costs.

Paras, C. J., Bengzon, Concepcion, Reyes, J. B. L., Endencia, Barrera, and Gutierrez David, JJ., concur.

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