

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. TOMAS SUNICO AND NG CHIONG, DEFENDANTS AND APPELLEES.*G.R. No. 13638. February 24, 1920*

Ponente: JOHNSON, J.

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It appears from the record that on the 9th day of August, 1915, one Lao Yong was sentenced by the Court of First Instance for the city of Manila to be imprisoned for a period of two years and to pay a fine of P300, for illegal importation of opium. Said sentence, upon appeal, was affirmed by this Court on October 14, 1916, (R. G. No. 11416).[1] The cause having remanded to the Court of First Instance, in order that the sentence might be executed, the appellees herein as sureties of the said Lao Yong were notified to produce his body before the court on November 14, 1916, with the admonition that, should they fail to do so, their bond would be forfeited.

The said sureties fail to produce the body of their principal on the date mentioned (November 14, 1916), whereupon the court entered an order declaring forfeited the bail bond executed by them and gave them 30 days within which to produce their principal before the court and to show cause why execution should not issue against them for the amount of their bond.

On December 14, 1916, the said sureties petitioned the court "that all action on their bond be suspended for at least three months" upon the ground that "they are informed and believed that the accused, Lao Yong has been unable to return to the Philippine Islands to undergo sentence for the reason that he is detained in jail at Calcutta, in India for an offense against the customs laws of that country." Said motion was granted by the lower court, and the sureties were given an extension of three months within which to produce the body of their principal.

On March 15, 1917, the said sureties again asked the court for a further extension of six months within which to comply with the original order of the court of November 14, 1916, on the ground that they had not yet secured information from India as to the detention there of the accused. The court granted them a further extension of three months.

On July 5, 1917, the sureties again asked for an extension of sixty days upon the ground that their principal was sick in Macao (China) and was unable to return to the Philippine Islands. The court granted them forty days, with the condition that if at the expiration of said period the accused was not produced before the court, the bond would be forfeited.

Shortly before the expiration of the period last above granted, to wit, on August 16, 1917, the sureties informed the court that they had received a cablegram to the effect that the accused Lao Yong died in Macao on August 13, 1917, and asked for "a delay of 30 days within which to verify the above report." Said motion was granted by the court.

Finally, on November 7, 1917, the fiscal of the city of Manila presented a motion asking the court to issue an order for the execution of the bond in question. Accompanying said motion was an argument to the effect that:

"The fact that the principal (Loa Yong) was sick in Macao on June 16, 1917, and died in the same place on August 12, 1917, several months after the forfeiture of the bond, is not a satisfactory excuse for his failure to appear on the date required by the Court, and does not, in the opinion of the undersigned, relieve the bondsmen from their responsibility on the bond."

On November 12, 1917, the attorney for the sureties filed in court a memorandum, answering the above argument and attempting to show that the death of the principal, Lao Yong, after the forfeiture of the bond and before judgment thereon, was a sufficient excuse to exonerate the bondsmen.

The lower court sustained the contention of the sureties and, on December 26, 1917, issued an order revoking its order of November 14, 1917, and absolved the said sureties from all obligation and liability under their bond. From that order the Government appealed to this court.

It will be noted that the question as to whether the principal, Lao Yong had really died or not was not presented in the lower court. It would seem that both parties assumed that he had died. And the lower court, in the order herein appealed from, found as a fact that the said Lao Yong died in Macao on August 12, 1917, evidently basing such finding from the two documents attached to the record, which appear to be affidavits in Portuguese, of which there is no translation, and which do not appear to have been properly introduced in evidence. However unfounded and erroneous that finding may be, as contended by the Attorney-General in his brief, we do not feel called upon to consider it in view of the fact that this cause was evidently submitted to the lower court upon the hypothesis that the principal, Lao Yong, died on the 12th day of August, 1917, nearly nine months after the bond was declared forfeited for his failure to appear before the court and serve the sentence imposed upon him. Furthermore, under the facts and circumstances of this case, as far as the liability of the sureties is concerned, we consider it immaterial whether their principal died or not. The question is, Did the sureties and appellees in this case show cause sufficient to justify their exoneration?

We fail to find in the record a copy of the bond executed by the appellees; but, in the absence thereof, we presume that it was executed in accordance with the provision of the law and that its terms are substantially those provided for section 67 of General Orders No. 58. Under said section the sureties jointly and severally undertake that the principal will appear and answer the charge against him "in whatever court it may be tried, and will at all times hold himself amenable to the orders and process of the court, and if convicted will appear for judgment, and render himself to the execution thereof; and if he fails to perform any of these conditions," that the sureties will pay to the United States the amount of the bond. The amount of the bond in this case, according to the Attorney-General, was P3,500.

The law governing the forfeiture of bail bonds in this jurisdiction is found in section 76 of General Orders No. 58, which provides as follows:

"If without sufficient cause the defendant neglects to appear for arraignment, trial or judgment, or neglects to appear on any other occasion when his presence may be required in court or fails to surrender himself in execution of the judgment, the court must direct the fact of his neglect or failure to be entered in the records of the cause, and declare the undertaking or deposit, as the case may be, to be forfeited. But if at any time within thirty days thereafter the defendant or his counsel appears and satisfactorily explains the neglect or failure, the court may direct the forfeiture to be discharged upon such terms as it may consider just. If the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking."

It is clear from the foregoing that if a bail bond is declared forfeited for failure of the accused to appear when required by the court, the forfeiture may be discharged if, within thirty days, the accused or his counsel appears before the court and satisfactorily explains why he neglected or failed to appear when first required so to do. The practice is, that when the appearance of an accused is required by the court, his sureties are notified to produce

him before the court on a given date. If the accused fails to appear as required, the bond is declared forfeited and the bondsmen are given 30 days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of 30 days the bondsmen are required to do two things in order that they may be exonerated: (1) they must produce the body of their principal, or give the reason for its non-production; and (2) they must explain satisfactorily why the bond was not performed—why the accused did not appear before the court when first required so to do. Failing in these two requisites, the sureties cannot be exonerated and a judgment must be rendered against them for the amount of their bond.

In order that the sureties may be exonerated, what will constitute a satisfactory explanation for the non-performance of the bond? "It is the settled law of this class of cases that the bail will be exonerated where the performance of the condition is rendered impossible by the act of God, the act of the obligee, or the act of the law. Where the principal dies before the day of performance, the case is within the first category. Where the court before which the principal is bound to appear is abolished without qualification, the case is within the second. If the principal is arrested in the State where the obligation is given and sent out of the State by the governor, upon the requisition of the governor of another State, it is within the third." (Taylor vs. Taintor, 83 U. S., 366, 369, cited with approval in U. S. vs. Que Ping, 40 Phil., 17.)

Taking the foregoing as the gauge of what may be considered an explanation sufficient to justify the exoneration of a bail, can the appellees herein rightly claim to have rendered such an explanation? What explanation did they offer for the nonperformance of their bond? At first they informed the court that they could not produce their principal because, as they had been informed, he was being detained by the authorities in India for an offense against the customs laws of that country; then, nearly seven months later, they told the court that they had received information that their principal was sick at Macao and could not return to the Philippine Islands; then, forty days thereafter, they informed the court that they had received news that their man had died; and lastly, they told the court that they had been assured of his death, and for this reason asked that they be relieved from all obligation and liability under their bond.

Under no consideration whatever can such an "explanation" be considered satisfactory and sufficient to justify the exoneration of the appellees in this case. To release them upon such an "explanation" would be to treat the solemn obligation of a bail bond as mere farce and a mockery. None of the successive excuses given—the alleged arrest and detention of the principal in India, his alleged sickness in Macao, and his alleged subsequent death—was a reason at all why the appellees did not produce their said principal before the court on November 14, 1916. They should not have allowed him to escape to foreign countries and get beyond the jurisdiction of the court. "It was against that they guaranteed the government; to prevent that they became responsible." (State vs. McAllister, 54 N. H., 156, 158.) To this end they had plenary power and control over his person. "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in persons or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose." (Taylor vs. Taintor, 83 U. S., 366, 371; see also U. S. vs. Van Fossen, 28 Fed. Cas., 357, 358.)

The lower court exonerated the appellees as sureties in this case, following the decision in some of the States of the Union, which hold that the death of the principal in a recognizance after forfeiture thereof but before judgment thereon may be pleaded by the sureties in discharge of such recognizance. Nearly all of the cases cited and relied upon by the lower court have also been cited and commented upon by this Court in the case of U. S. vs. Babasa

(19 Phil., 198.) In that case Babasa et. al., as sureties, asked that they be exonerated on the ground that their principal had been killed by the Constabulary subsequent to the judgment against them on their bond. This court, construing section 76 of General Orders No. 58, held that said section was conclusive against their contention.

The court further said: "We do not forget those decisions in which it has been held that the death of the principal in any recognizance, after forfeiture thereof, but before judgment thereon, may be pleaded by the sureties in discharge of such recognizance. (State vs. Traphagen, 45 N. J. L., 134; Woolfolk vs. The State, 10 Ind., 532; Mather vs. The People, 12 111., 9; Mix vs. The People, 26 111., 481; People vs. Watkins, 19 111., 117). These decisions, however, were, generally speaking, based upon the wording of particular statutes. Under the form of the statute which we are construing (sec. 76, General Orders No. 58), and in view of the mischief which it seeks to prevent, we are of the opinion that the judgment of the court below should be affirmed." (U. S. vs. Babasa, 19 Phil., 198, 202.)

Aside from the statutory provisions (sec. 76, General Orders No. 58) which preclude the contention of the sureties in this case, there are also various decisions which militate against their pretension. In the case of Lamphire vs. State (73 N. H., 462; 62 Atl., 786; 6 Am. & Eng. Ann. Cas., 615) the bond signed by Lamphire for the release of one McIntyre was declared forfeited because McIntyre, without the knowledge of his sureties, enlisted in the U. S. Navy making it impossible for the sureties to produce him in accordance with the terms of their bond. Lamphire then petitioned to be released from the conditions of the bond. The Supreme Court of New Hampshire had statutory authority to release the bondsmen where the sureties "without their fault are prevented from surrounding their principal," but that court decided that the bond of Lamphire should be forfeited upon the ground that:

"The principal was not impressed as a seaman or drafted by the government, but voluntarily enlisted. If by such voluntary act he has been enabled to depart from the state so that the sureties cannot reach him, his absence is due to his voluntary act, and not, as far as appears, to any act of the government of the United States, his absence is purely voluntary and affords the sureties no justification or excuse. It was against that that they guaranteed the government; to prevent that they became responsible. (State vs. McAllister, 54 N. H., 156, 158.) * * * The recognizance was a contract between the sureties and the state for the production of the principal at the required time."

In the following cases it has been held that serious sickness, insanity, or absence from the State, of the principal, on the date fixed for his appearance in court was not a sufficient cause to excuse his sureties for the non-performance of the conditions of their bond (Bonner vs. Com., 27 Ky. L. Rep., 652; Markham vs. State, 33 Tex. Crim. Rep., 91; State vs. Edwards, 4 Hump., 266; Piercy vs. People, 10 111. App., 219; Adler vs. State, 35 Ark., 517; 37 Am. Rep., 48; Com. vs. Hart, 17 Pa. Co. Ct., 148.)

The following cases hold that the death of the principal after default and forfeiture of his recognizance does not exonerate his sureties: U. S. vs. Van Fossen (28 Fed. Cas., 357); The State of Iowa vs. Scott (20 Iowa, 63).

Our conclusion is, that the sureties and appellees herein had not shown cause sufficient to justify their exoneration. Therefore, the order of the lower court discharging the said sureties and appellees is hereby revoked, and it is hereby ordered and decreed that a judgment be rendered against them, jointly and severally, and in favor of the appellant for the sum of P3,500, the amount of their bond, with costs. So ordered.

Arellano, C. J., Torres, Araullo, and Avanceña, JJ., concur.

[1] See U. S. vs. Wayne Shoup, 36 Phil., 56.

DISSENTING

STREET, J.:

Certainly, no question can reasonably be made as to the power of a Court of First Instance to prorogue the time within which the bondsmen of a person who has been admitted to bail may be allowed, under section 76 of General Orders No. 58, to explain their neglect or failure to produce the principal named in the bond. For this reason the forfeiture of the bond with which we are here concerned never became absolute. On the contrary the court below kept the matter open until the day when the bondsmen appeared and showed that the principal named in the bond was dead. Is it not evident that if the sureties had produced in court and had surrendered their principal upon the very last day that the court acted in this matter, that is, on December 26, 1917, it would have been within the power of the court to relieve the bondsmen from all responsibility on their bond? Therefore, when it was made to appear that the principal had died on August 12, 1917, and it being evident that the bondsmen had been unable to produce him before his death because he had absconded from the Islands, the action of the trial judge, in refusing to make the forfeiture of the bond absolute and in relieving them from liability, was both just and proper.

The obligation of the bondsmen to produce their principal in court was terminated by his death, which occurred while the period allowed by the trial court for the bondsmen to show cause was yet running. It is to be admitted that if the court of first instance had, in the exercise of its discretion, refused to extend the time within which the bondsmen might show cause for their failure to produce their principal, or if they had failed to ask for the extension of time, the liability of the bondsmen would have become fixed, and the judgment declaring the bond forfeited would have been final.

In *U. S. vs. Babasa* (19 Phil. Rep., 198), a bond was declared forfeited on October 15 and an execution was issued against the bondsmen by direction of the court on January the 27th following. It was afterwards made to appear that the principal had been killed on December 20, intervening between these two dates, at which time the order of forfeiture had doubtless already become final, as there was nothing in the report of that case to show that the court of origin had extended the period of 30 days within which the bondsmen were entitled to show cause. All of the American authorities recognize the rule that the death of the principal prior to the date of the forfeiture of the bond releases the bondsmen; and we do not question that a death occurring after forfeiture has become final does not discharge the bondsmen.

In *State vs. Scott* (20 Iowa, 64), cited in the opinion, the death of the principal occurred two years after the bond had been forfeited in a criminal action. It was held in a civil action upon the bond that the death in this case was no defense. The adjudication of forfeiture in the criminal case must of course be accepted as conclusive where a separate civil action is instituted.

DISSENTING

MALCOLM, J.:

In my opinion, the judgment of the trial court should not be disturbed. One fact, and one fact only, need be recalled, namely, that the death of the principal is admitted to have taken place prior to the expiration of the extension of time granted by the trial court to the sureties, in which they were to produce the body of the principal. The sole question, not discussed in the main decision or in the dissenting opinion of Mr. Justice Street, then is.

Whether a court has authority to extend the thirty-day period fixed by section 36 of the Code of Criminal

Procedure. I think a court possesses such inherent discretion for reasons which delve deep into the foundation principles of equity and justice. This concession once made, and the Attorney-General does not argue against it, and the death of the principal before the day of performance, i. e., the ultimate date fixed by the court—acts to discharge the sureties on the bail bond.

Order reversed.

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