

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
OTIAK OMAL (ACCUSED). LUZON SURETY COMPANY, INC., SURETY
AND APPELLEE.**

G.R. No. 14457. June 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

On December 30, 1954 Otiak Omal was charged with robbery in band in the Justice of the Peace Court of Datu Piang, Cotabato (Criminal Case 2175). The preliminary investigation having been waived, the case was elevated to the Court of First Instance of Cotabato where the bail bond fixed for Omal's provisional liberty was reduced from P24,000 to P10,000. Upon the filing by appellee Luzon Surety Company, Inc. of the bail bond in this amount and its approval by the court, Omal was released.

On August 10, 1956 Omal was arrested anew because he was charged with rape in Criminal Case No. 2627 of the same court. On August 23 of the same year he was placed "under the custody of the governor * * * pending a proposal of amicable settlement, the case being private" according to an entry appearing on page 71 of the Provincial Jail Blotter.

On December 12, 1956 Datu Udtog, the Governor of the province, ordered one of his men named Candado and the Chief of Police of Cotabato to bring Omal home because he was reported causing trouble in a certain place. Omal was last seen walking towards the Governor's place with the latter's emissaries, and thereafter he disappeared. It was only on December 20, 1957 that appellee filed an ex-parte motion for the withdrawal of the bail bond mentioned heretofore and it further prayed that it be relieved of responsibility in connection, therewith, alleging, as ground, therefor, that it had exerted efforts to find Omal but was unable to locate and apprehend him; that considering the gravity of the charges Omal was facing, appellee had "reasons to believe that (our) efforts to find him will eventually prove fruitless; that had the Provincial Warden and Provincial Governor performed their duties well in connection with the custody of Omal, appellee would not have any difficulty in surrendering him to the court".

The State opposed the motion on the ground that appellee did not ask for the cancellation of the bond when Omal was rearrested in connection with the charge for rape filed against him, but did so only after he had disappeared on December 12, 1956. It was, therefor, argued that appellee had chosen to continue with its liability under the bond and should be held accountable for the accused who escaped after his rearrest.

After appellee had presented evidence in support of its motion, the lower court issued the appealed order cancelling the bail bond. Hence this appeal by the State.

In *People vs. De la Cruz*, 93 Phil., 487; 49 Off. Gaz., [8] 3389, we held, among other things, that the surety's right, duties and liabilities after the prisoner is, for another offense, arrested and then escapes and/or absconds, must be controlled by statutory provisions other than those of section 16, Rule 110, Rules of Court, or by the General principles of contract. In consonance with this principle it was held in *U.S. vs. Bunuan*, 22 Phil., 1: *U. S. vs.*

Sunico, 40 Phil., 826, 832, that bail will be exonerated where the performance of its condition is rendered impossible by act of God, the act of the obligee, or the act of law.

In ordering the cancellation of the bail bond in question the lower court apparently was of the opinion that appellees' inability to produce the person of Omal was due to the negligence or irregular conduct of the Provincial Warden and of the Provincial Governor of Cotabato, which facilitated the escape of the prisoner. While this may be true, we do not believe it is sufficient to justify the cancellation of the bail bond.

It is well settled that a surety is the jailer of the accused and is responsible for the latter's custody. Therefore, it is not merely his right but his obligation to keep the accused at all times under his surveillance, considering that his authority emanating from his character as surety is no more nor less than the Government's authority to hold the accused under preventive imprisonment (*People vs. Tuising*, 61 Phil., 404). The surety being in legal contemplation the jailer of the accused, appellee in this case should not have allowed the irregular conduct of the Warden and the Provincial Governor to go on for a considerable time until it ended in the escape of the prisoner. It is, therefore, equally chargeable with negligence in this connection.

Even when a surety's performance of the bond is rendered impossible by the act of God, or of the obligee, or of the law, it is the surety's duty to inform the court of the happening of the event so that it may take action or decree the discharge of the surety. In the present case the surety took no such steps when Omal was rearrested, nor did it ask for the cancellation of the bail bond until after Omal's escape or disappearance. In a case quite similar to the present we held:

"The only question to be determined is whether, while the accused was out on bail, was picked up by the constabulary authorities in the province for questioning in connection with subversive activities, and thereafter escaped from their custody, will excuse the surety, the Rizal Surety & Insurance Company, from the non-performance of its obligation under the bond.

"It is a well-settled doctrine that a surety is the jailer of the accused. 'He takes charge of, and absolutely becomes responsible for, the latter's custody, and under such circumstance, it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance inasmuch as the authority emanating from his character as surety is no more nor less than the Government's authority to hold the said accused under preventive imprisonment.'" (*People vs. Tuising*, 61 Phil. 404).

"When the surety in this case put up the bond for the provisional liberty of the accused it became his jailer and as such was at all times charged with the duty to keep him under its surveillance. This duty continues until the bond is cancelled, or the surety is discharged. The procedure for the discharge of a surety is clear in the Rules of Court. Thus, it is there provided that the bail bond shall be cancelled and the sureties discharged of liability (a) where the sureties so request upon surrender of the defendant to the court; (b) where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; (c) where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or is convicted and surrendered to serve the sentence; and (d) where the defendant dies during the pendency of the action. (Section 16, Rule 110)

"It is true that a surety may also be discharged from the non-performance of the bond when its performance is rendered impossible by the act of God, the act of the obligee, or the act of the law (*U.S. vs. Sunico*, 40 Phil. 826-832), but even in these cases there still remains the duty of the surety to inform the court of the happening of the event so that it may take appropriate action and decree the discharge of the surety (Sec. 16, Rule 110). Here no such step was taken by the surety when the accused was re-arrested by the constabulary authorities. The surety kept silent since it did not take any of the steps pointed out by law if it wanted to be relieved from its liability under the bond. It only gave notice to the court of that fact when the court ordered the appearance of the accused either for arraignment or for trial. It was only then that it informed the court that the accused was re-arrested and that while he was detained, he made good his escape. Since at that time his bond was still

valid and binding, and notwithstanding the re-arrest of the accused the surety kept silent, it must be presumed that the surety chose to continue with its liability under the bond and should be held accountable for what may later happen to the accused. It has been held that "The subsequent arrest of the principal on another charge, or in other proceedings, while he is out on bail does not operate ipso facto as a discharge of his bail * * *. Thus, if, while in custody on another charge, he escape, or is again discharged on bail, and is a free man when called upon his recognizance to appear, his, bail are bound to produce him. (6 C. J. p. 1026.)

"This case should be distinguished from the recent case of people vs. Mamerto de la Cruz, 93 Phil., 487., 49; Off. Gaz., 3389, wherein this Court said: 'It has been seen that if the sureties did not bring the person of the accused to court, which they were powerless to do due to causes brought about by the Government itself, they did the next best thing by informing the court of the prisoner's arrest and confinement in another province and impliedly asking that they be discharged. On its part, the court, by keeping quiet, and indeed, issuing notices of the hearings direct to the prisoner through the Sheriff of Camarines Norte and ignoring the surety, impliedly acquiesced in the latter's request and appeared to have regarded the accused surrendered. No such step was taken by the surety in this particular case for it failed to inform the court of the apprehension made of the accused by the constabulary authorities.'" (People vs. Lee Diet, 94 Phil., 31).

Moreover, there is no sufficient evidence in the record to show that appellee had exerted all possible efforts in the premises to arrest or cause the arrest of Omal. That it was not impossible to rearrest him is, in fact, shown by the circumstance that on November 28, 1958 , he surrendered to the Provincial Government of Cotabato and was forthwith committed to and confined at the provincial jail of said province (see appellee's petition for the dismissal of this appeal, dated February 2, 1959). While the petition just referred to was denied by this Court, the denial should be understood as without prejudice to appellee filing with the lower court, after the remanding of this case below, a motion for the cancellation of its bail bond if at that time Omal is still in custody of the proper authorities.

Wherefore, the order appealed from is hereby reversed, with costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, De Leon, and Natividad, JJ., concur.

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