

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. QUE PING,
DEFENDANT. BERNARDO MARQUEZ AND BERNARDO DAGALA
(SURETIES), APPELLANTS.**

G.R. No. 14508. August 25, 1919

Ponente: MALCOLM, J.

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MALCOLM, J.:

The sureties on the bail bond of a Chinaman named Que Ping seek by this appeal to have the order of the trial court, holding them liable under their undertaking, reversed, and thus to be discharged from their obligation.

The Chinaman Que Ping was charged in the Court of First Instance of Manila with having committed the crime of homicide, was duly arraigned and tried, and was convicted. The accused appealed from this decision to the Supreme Court. In order to secure his release from imprisonment during the pendency of the appeal, he filed a bail bond in the sum of P10,000, with Bernado Marquez and Bernardo Dagala as sureties. The Supreme Court affirmed the judgment of the trial court, except with respect to the term of imprisonment[1]. In due course, the records of the case were returned to the court of origin in order that the decision might be read to the accused. For this purpose, the Court of First Instance of Manila ordered the sureties to produce the body of Que Ping before the court on March 5, 1917, with an admonition that if they failed to do so the bail would be forfeited. The accused did not appear on the date fixed, whereupon, the judge promulgated a second order directing the sureties to show cause why the bail bond should not be forfeited within thirty days thereafter. On the petition of the sureties, this period was later extended to sixty days.

On April 23, 1917, that is, subsequent to the thirty-day period fixed by law, but within the extension of thirty days granted to the sureties, they filed a motion praying to be relieved from their obligation to produce the body of their principal Que Ping on the ground that the latter had died in San Pablo, Laguna. Upon objection by the city fiscal, a trial was held. The court rendered judgment declaring that the death of the accused had not been satisfactorily proved and ordering that the bail executed by the two sureties be forfeited. It is from this judgment that the sureties appeal, making two assignments of error.

The first assignment states that the court erred in not admitting and giving credit to Exhibits A and B, as proofs of the death of Que Ping. Exhibit A is a certificate by the municipal secretary of San Pablo, Laguna, transcribing a portion of book No. 6, entitled "Registry of Births, Marriages and Deaths," containing an inscription that one Que Ping, 41 years of age, had died of gastritis on April 7, 1917. Exhibit B is a copy of general form No. 84, Bureau of Health No. 6, certificate of death, given by the president of the municipal board of health of San Pablo, Laguna, and also certifying that one Que Ping had died of gastritis on April 7, 1917. These two exhibits being in the nature of entries in public records, made in the performance of their duty by public officers of the Philippine Islands, are prima facie evidence of the facts therein stated. (Code of Civil Procedure, sections 280, 315.) Such documents, however, are not conclusive evidence. Their probative value may either be substantiated or nullified by other competent evidence.

Admitting, therefore, that appellants' contention that these documents should have been admitted by the court, is correct, but not admitting that they should be taken as indisputable proof of the death of the accused Que Ping, we come to the second assignment of error which is, that the court erred in not considering the death of Que Ping as having been proved, and consequently in not cancelling the bail executed by the appellants to secure the temporary release of the accused.

The law pertaining to the subject of discharge of sureties on a bail bond is clear. It is settled 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. Within the first category, is the case of a principal who dies before the day of performance. (Taylor vs. Taintor [1872], 16 Wall., 366.) But the death of the principal in such an undertaking, after judgment has been obtained thereon because of the nonappearance of the accused, does not release the sureties from their obligation. (U. S. vs. Babasa [1911], 19 Phil., 198.) All this is in accord with Philippine statutory law which in section 76 of the Code of Criminal Procedure provides:

"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 discharged, the fiscal shall at once proceed by action against the bail upon their undertaking."

Some doubt might exist as to the authority of a court to extend the thirty-day period fixed, by law. But admitting that a court, as in this instance, has such discretion, the question then becomes one of whether or not the sureties have satisfactorily proved the death of their principal Que Ping. In what does their evidence consist? There is, first, Exhibit A above mentioned, signed by the municipal secretary who, however, admits that he did not see the body of the deceased Que Ping.

There is the evidence of the clerk in the office of the municipal secretary who declares that it was he who issued the certificate of death at the instance of a Chinaman named Que Siong, who was unknown to him personally, and that he did so upon the presentation of the cedula of Que Ping, but without seeing the corpse of the alleged deceased. There is the testimony of a sanitary inspector of San Pablo, somewhat in contradiction to other evidence, who affirmed that the persons who prepared the certificate of death were the president of, the municipal board, of health and himself, but who, likewise, admitted that it was done without seeing the corpse of the deceased. In addition, there is certain hearsay evidence of little or no value. In direct opposition of this evidence is that of the porter of the cemetery who swore that on April 8, 1917, the alleged date of the burial of Que Ping, there was no burial in the cemetery. It is also noteworthy that the Chinaman Que Siong who secured the burial certificate was not introduced as a witness.

We have left for separate mention the connection of Dr. Jaojoco, president of the municipal board, of health of San Pablo, Laguna, with the case. He, in the certificate of death, certifies that Que Ping had been ill four months, that he was a permanent resident of the municipality (although the list of foreigners in the municipality, kept by the chief of police, shows no Chinaman by the name of Que Ping as residing in the municipality), that Que Ping died of gastritis on April 7, 1917, at 8 p. m., "and, that I have examined the body and find no indication of violence or crime." Yet the doctor admitted frankly that he had not even seen the body of the deceased. His testimony which might prove of some interest to officials of the Philippine Health Service, we insert verbatim: "Q. Give your name, age, occupation, and residence.— A. Justiniano Jaojoco, 57 years of age, married, surgeon, president of the municipal board of health of San Pablo, Lag-una. "Q. Were you holding the office of president of the

municipal board of health of San Pablo, Laguna, on the 7th of April, 1917?—A. Yes, sir.

"Q. I call your attention to this document marked Exhibit B, the original of which is filed with the municipal secretary of San Pablo, and tell me if you had examined or seen some corpse in connection with this certificate.—A. No, sir.

"Q. You have not examined any corpse?—A. On that day, no; nor on the day following.

"Q. As president of the municipal board of health, do you sign the certificates of death in the municipality of San Pablo?—A. That depends; if I visited the deceased, yes; if another resident physician, no. Whoever attended the sick person signs the certificate, and, if no physician attended him, the president signs it.

"Q. Who places or writes this part of the document, the name of the sickness of which the sick person died? Who signs, who fills this blank?—A. The physician who attended him if he received medical assistance. If I attended him, I sign; and, if I did not attend him, the phrase "Presidente de Sanidad" is written, either by myself, or by my secretary.

"Q. Where were you on the 7th of April, the day referred to in this document?—A. This document does not refer to the 7th of April, but to the day following, the 8th.

"Q. Where were you on the 7th of April, the day referred to in this document?—A. I was in San Pablo, Easter Day; on the 8th, in Binang, Laguna. The 8th, according to this document, was the day of the annotation, of the issuance of the certificate by the clerk, secretary of that municipality.

"Q. You were on that day in Biñang?—A. Yes, sir.

"Q. When you are absent, who is in charge of issuing these certificates?—A. The certificate is presented to the sanitary inspector if there was no medical assistance, but if there was, the physician who attended him.

"Q. When this document was presented to be filled, to you as president of the municipal board of health, if you did not attend the sick person and he died, you necessarily had to see the corpse or how it was?—A. That is my duty, because that is what is ordered, but many times it happens that there is not sufficient time to see all the corpses.

"Q. Only reference to the person is contained in the certificates of death issued by the municipal secretary?—A. That frequently happens, because there is nobody assigned to fill these certificates on Sundays and holidays. This is one of the serious defects of the health service."

We can reach no other conclusion than that the death of Que Ping, the principal, has not been proved by his sureties on the bail bond. It would need no great stretch of the imagination to conceive how the death of a criminal might be simulated, in order both to save the convict from serving his sentence and to afford a means for the sureties on a bond to avoid the forfeiture of a considerable amount of money to the Government. The trial court was right in not cancelling the bail bond, as requested by the sureties.

Judgment is affirmed, with the costs against the appellants. So ordered.

Arellano, C.J., Torres, Johnson, Araullo, Street, and Moir, JJ., concur.

Judgment affirmed.

[1] R. G. No. 12215, decided January 30, 1917, not published.

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