

**THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND
APPELLEE, VS. MAGDALENA REYES Y DE LA CRUZ, DEFENDANT.
PEDRO SAN JUAN, BONDSMAN AND APPELLANT.**

G.R. No. 23833. October 10, 1925

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal interposed by Pedro San Juan, one of the bondsmen of the accused Magdalena Reyes y de la Cruz, from an order of the Court of First Instance of Manila, declaring a bail bond in the amount of P800 forfeited, and from a judgment upon the bond for its full amount.

The facts are not in dispute. They are: Magdalena Reyes y de la Cruz was convicted in the municipal court of Manila of a violation of section 733 of the Revised Ordinances of Manila, and again on appeal to the Court of First Instance of Manila, and was sentenced to suffer four months' imprisonment. She thereupon appealed to this court, giving bail in the amount of P800. The appellant herein, Pedro San Juan, and one Epifanio Garcia signed as sureties.

The Supreme Court affirmed the judgment of the Court of First Instance^[1] and the case was returned to the court of origin for execution of the sentence. In the meantime, one of the sureties, Epifanio Garcia, had died. The other surety, Pedro San Juan, was however duly notified to bring the person of the accused into court on September 12, 1924. The accused not having appeared, the Court of First Instance, on the same day, ordered her arrest and the confiscation of the bail bond.

On motion of the herein appellant, the court, on October 7, 1924, granted him an extension of thirty days for the production of the person of the accused. On November 12, another extension of thirty days was likewise granted. When this extension expired, the trial judge granted still another extension of thirty days. On the expiration of this period, the fiscal of the City of Manila moved that the sureties on the bail bond be ordered to appear and show cause why judgment should not be rendered against them upon the bond. In accordance with this motion, the court, on January 28, 1925, cited the sureties to appear and show cause on January 31 of the same year, at 8 o'clock in the morning. Notwithstanding the fact that the appellant had been duly notified, he failed to appear in court and, on February 5, 1925, a judgment was entered against the bondsmen, ordering them to pay jointly and severally the sum of P800. Upon this judgment, a writ of execution was issued on the 9th of the same month.

In a motion dated February 3, 1925, but received in the Court of First Instance two days later, the appellant asked that the order of confiscation of the bail bond of January 28, 1925, be revoked on the ground that on January 28, 1925, he had delivered the person of the accused to the deputy sheriff of the court and that she was then transferred to Bilibid Prison to serve her sentence. On February 16, 1925, the attorneys for the appellant in a motion for reconsideration presented the same facts and, in substantiation thereof, the certificate of the chief clerk and executive inspector of Bilibid Prison, showing that Magdalena Reyes y de la Cruz had been received in Bilibid Prison for confinement on January 29, 1925. These motions were denied by the court. Thereafter, the

present appeal was taken.

The law applicable to the case is found in sections 75 and 76 of the Code of Criminal Procedure. It is there provided that 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. Applied to the facts before us, the trial judge acted in conformity with the law when he ordered the confiscation of the bond on September 12, 1924. The law continuing, provides that if at any time within thirty days after the declaration of forfeiture, 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. Applied to the facts before us, the court again acted in conformity with the law by giving the bondsmen thirty days and more to explain their neglect or failure. When the bondsmen did not appear in response to the order, the court most properly rendered judgment against them.

The record, however, discloses that on the same day that the court issued its order to show cause, the accused was turned over to the deputy sheriff and was the day following placed in Bilibid Prison. Had the bondsman presented the accused to the court at the time set for the hearing and explained his failure previously to produce her, undoubtedly the court would have been much more lenient. This mistake should nevertheless not be held too strongly against the bondsman. The law, it will be recalled, provides for a discharge of the forfeiture upon such terms as may be considered just. In other words, whether a bail bond upon which there is a default should be declared forfeited to its full amount or in a lesser amount, rests largely in the discretion of the court and depends on the circumstances of each particular case.

The purpose of the recognizance has here been accomplished although tardily. The accused has been placed in Bilibid Prison to serve her sentence. The bondsman, as appears in our records, has been held on two other bonds under somewhat the same circumstances.

In the case of *People vs. Gao Kim, Jose Zaguirre*, bondsman-appellant, No. 21672,[1] Mr. Justice Johns, delivering the opinion for the second division of this court, among other things said:

"It will be noted that the defendant, Gao Kim, paid her fine and costs on October 26, 1923, The legal effect of this was to satisfy the judgment of the court in the criminal action. It will also be noted that the court did extend the time until October 20, 1923, and that Gao Kim was arrested and paid her fine six days after the last extension. It is true that the bondsmen did not produce the body of the principal, and that there was a technical default on the bond. It is also true that during the extension granted by the court the bondsmen made an honest and bona fide effort to locate their principal and bring her into court. But owing to the fact that she went from Manila to Cebu and from Cebu to Iloilo, she could not be located within the time specified by the order of the court. It is also true that she was not surrendered by her bondsmen, but was arrested by the officers of the law, and that on the day of the arrest, she paid the fine and costs in full. Under such a state of facts, after the fine and costs were paid in full, it would be unjust and inequitable to require the bondsmen to pay the amount of the bond. In particular, where the principal was arrested and the fine was paid six days after the extension which was granted by the court had expired, and no formal judgment had been entered on the bond. Upon the facts shown, and in the interest of justice, the trial court should have vacated its order, declaring the forfeiture of the bond. * * *".

In volume 6, *Corpus Juris*, under the subject "Bail," at page 1053, are found the following applicable principles:

"In most jurisdictions, although the surrender or the appearance of accused is a prerequisite to relief from, or remission of, a forfeiture of bail, the sureties cannot exonerate themselves by a surrender of him after a

forfeiture, and hence they are not, as a matter of right, released from their obligations under a forfeited recognizance by the mere surrender of their principal after forfeiture or by his voluntary appearance; but the matter is wholly within the discretion of the court, to be refused or granted in full or in part, according to the merits of the particular case, unless it is provided by statute that such acts shall operate as a remission of the forfeiture or shall entitle the sureties to relief therefrom. The compulsory appearance of the principal by operation of the law will not be sufficient to nullify a judgment of forfeiture. It is generally held, however, that, where accused appears and shows a reasonable excuse for the default, and that it was not willful, the forfeiture should be set aside; and that the appearance or the surrender of accused after forfeiture, followed by his trial and acquittal or conviction, operates as a discharge from liability and entitles the sureties to relief from, or a remission of, the forfeiture. * * *

Everything considered, a majority of the court are of the opinion that the ends of justice will be better served if the bond be declared forfeited only in one-half of its amount. To the extent indicated, the order and judgment appealed from are modified. With the costs of both instances against the appellant, it is so ordered.

Avanceña, C. J., Street, Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

[1]R. G. Nos. 22113, 22114 and 22121, promulgated August 14, 1924, not reported.

[1] Promulgated March 19, 1924, not reported.

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