

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. WONG PUN ET AL., DEFENDANTS. FIDELITY AND SURETY CO. OF THE PHILIPPINE ISLANDS, SURETY AND APPELLANT.

G.R. No. 24661. February 15, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

The appellant is surety on two appeal bonds, the first of which reads as follows:

"Bond No. One

"Whereas on the 21st day of October, 1918, Wong Ping Tin, Yee Hong Tung, Yiong Liam, So Chan, Yee Hing, Cheng Kee, Yin Yap, Wong Sam, and Yu Fong, were duly convicted in the Municipal Court of the City of Manila of the offense of gambling, they having been admitted to bail in the sum of five hundred forty pesos (P540), Philippine currency, pending appeal to the Court of First Instance of Manila;

"Now therefore, the Fidelity and Surety Co. of the Philippine Islands, hereby undertakes that the aforesaid Wong Ping Tin et al. will appear and answer the charge above-mentioned in whatever court they may be tried, and will at all times hold themselves amenable to the order and process of the court; that they will pay such fines as the appellate court may direct, or will surrender themselves in execution of such judgment as the appellate court may render, or that, in case the cause is remanded for a new trial, they will appear in the court to which they may be remanded and submit themselves to the orders and process thereof; or if they fail to perform any of these conditions that they will pay to the Government of the Philippine Islands the sum of five hundred forty pesos (P540), Philippine currency.

"But the surety does not undertake that the accused will later surrender themselves in execution of a judgment if, at the time sentenced, the court should grant them an extension of time; nor does it consent to any such extension."

Bond No. 2, executed at the same time, is for P640, and, in all other respects, is identical with bond No. 1.

On January 24, 1920, the defendants mentioned in bond No. 2 were tried and convicted in the Court of First Instance of Manila. Two days later, they personally appeared for judgment, and each of them was sentenced in open court to pay a fine of P100.

March 11, 1920, the defendants mentioned in the first bond appeared for trial in the Court of First Instance, and withdrew their plea of not guilty and entered a plea of guilty, and each of them was sentenced to pay a fine of P100 and costs.

In bond No. 1, the defendants asked for and obtained an extension of ten days in which to pay their respective fines. The record does not disclose any order granting an extension of time to the defendants in bond No. 2 in

which to pay their fines, but it does show that after being sentenced, the defendants were released, and that after such release, they were not again taken into custody by the sheriff.

May 15, 1923, an order of arrest of the defendants was issued, but the defendant Yu Fong only was arrested, the others could not be found.

June 29, 1925, the appellant was directed to produce in court the bodies of Yin Yap, Ang Yee Tai, Wong Pun, Yee Long Tung, Hong Sam, Lee Pin, Yam Gan, and Ong Kan, and was further notified that, if it neglected to appear in court on July 10, 1925, the bail bonds will be declared forfeited. The appellant appeared in court and contended that it was no longer liable under its obligation to produce the bodies of the defendants, and on July 1, 1925, filed a motion to have the bonds cancelled, and to be relieved from any liability.

July 26, 1925, the court denied the appellant's motion on the ground that the third and last clause contained in each bond of the appellant was a substantial alteration of the bail bond prescribed by law, and for such reason that those provisions were null and void, and that the bonds remained in full force and effect, and rendered judgment on the bonds.

From this decision, the surety company appeals, and assigns the following errors:

"I. The lower court erred in not giving validity to the third and last clause contained in each bond of the appellant.

"II. The lower court erred in not taking into consideration the circumstances of the case, particularly the unreasonable length of time allowed to pass by the fiscal before taking any action against the bonds of the appellant.

"III. The lower court erred in ignoring the fact that the bonds of the appellant had been accepted by the government and approved by the court which had jurisdictions over the defendants, with the clause in question.

"IV. The lower court erred in confiscating the bonds of the appellant."

JOHNS, J.:

It will be noted that the bonds in question were executed in October, 1918, and that they were given on appeal from a judgment of conviction in the municipal court of the City of Manila to the Court of First Instance of Manila. It will be further noted that no appeal was taken to this court from the judgment rendered by the Court of First Instance, and that the body of the bond itself follows the exact wording of the form prescribed in section 67 of General Orders No. 58.

The real question involved is the legal force and effect of the language used in the last paragraph of the bonds. It is very apparent that the purpose and intent of this provision was to avoid delay in the administration of justice, and to insure a speedy execution of the sentence. The court had the legal right to refuse, accept or approve the bonds in question, and, as a condition of the release of the defendants, could have required them to give a bond in substantial compliance with the provisions of section 67, and without the paragraph in question. That was not done. The bonds now in question were taken, accepted and approved in their existing form, and on the strength of them, the defendants were released from custody. There is nothing in the bonds which is against any law or that is immoral or against public policy. As a matter of fact, the provision in question conforms to, and is in harmony with, the spirit and intent of the code. That is to say, after a man is convicted of a crime and is sentenced in open court, and does not appeal, the law contemplates a speedy execution of the sentence, and in the orderly administration of justice, the defendant should be forthwith remanded to the sheriff for the execution of the sentence.

After the court granted the stay of execution of ten days to the defendants in which to pay their respective fines, nothing more was ever done until the issuance of the order for their arrest on May 15, 1923, at which time only one of the defendants could be found. This was more than three years after the defendants were sentenced in open court. Strange as it may seem, nothing further was done until about July 1, 1925, at which time the appellant was notified to produce the bodies of the defendants in court, which was nearly seven years after the bonds were executed.

Stating it mildly, some person has been guilty of gross negligence and inexcusable carelessness in the discharge of official duty, and the record is a very sad reflection upon the administration of justice. The court officials having accepted the bonds in their present form, and released the defendants, and such provisions being valid, the Government is now estopped to deny the terms, and the provisions of the bonds having been grossly violated, they are null and void, and the surety company is released from all liability.

What is said in this opinion should be confined and limited to cases in which no appeal is taken from the lower court to this court, and to bonds which contain the paragraph in question. Where the defendants are sentenced in the Court of First Instance, and no appeal is taken to this court, there is no excuse for any delay in the execution of the sentence. In such cases, the law contemplates that the sentences should be executed, and it is the duty of officials and of the courts to see that they are enforced.

The judgment of the lower court is reversed, and the defendant is released from all liability, with costs de oficio. So ordered.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.
Malcolm, J., dissents.

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