

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. UY ENG HUI ET AL., DEFENDANTS. MARIANO GRANADOS AND FRANCISCO SEVILLA, BONDSMEN AND APPELLANTS.

G. R.No. 26324. February 23, 1927

Ponente: STREET, J.

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STREET, J.:

This is an appeal from an order of the Court of First Instance of the City of Manila, entered in the criminal case of People vs. Uy Eng Hui et al., refusing to set aside the forfeiture of a bond declared against the appellants, Mariano Granados and Francisco Sevilla, as bondsmen of the accused Uy Eng Hui.

It appears that in the case mentioned Uy Eng Hui, Ang Ka, and Ong Malic were prosecuted for a violation of the Opium Law and that the two appellants, Granados and Sevilla, became bondsmen for Uy Eng Hui in the amount of P500, conditioned (among other things) for his appearance at the time set for the trial of said cause. Uy Eng Hui then went away to China, with the result that when the case was called for trial on December 9, 1925, he failed to put in an appearance. The case, therefore, proceeded to trial against his two co-accused, Ang Ka and Ong Malic, who were acquitted for insufficiency of the proof. Meanwhile, for non-appearance of Uy Eng Hui, the court, on December 28, 1925, entered an order declaring the bond forfeited and ordering his immediate arrest. On January 2, 1926, the bondsmen were notified of the forfeiture of the bond; and on February 8, the court ordered execution to issue. Sufficient property of the bondsmen not having been found to satisfy the writ of execution, a writ of garnishment was issued a little later to attach a sum of money on deposit in one of the banks to the credit of the bondsmen. On March 25, Uy Eng Hui arrived in Manila from China and was on that day delivered by the bondsmen to the sheriff. At the same time the sureties filed a petition asking the court to set aside the forfeiture of the bond and to release their funds in bank from the garnishment. This petition was duly set for hearing in April and was finally denied by the court on July 12, 1926. Meanwhile, the fiscal, in view of the failure of the prosecution against Ang Ka and Ong Malic for lack of sufficient proof, requested the court to dismiss the complaint against Uy Eng Hui. The court acceded to this motion and the case was dismissed on April 22, 1926.

The proceedings taken for the forfeiture and the enforcement of the bond for non-appearance of the principal were in proper form, under the authority of the United States vs. Painaga (27 Phil., 18); and we are of the opinion that no error was committed by the lower court in maintaining the forfeiture and ordering the execution of the judgment to be proceeded with. The circumstance that the principal in the bond was in the end captured by the bondsmen and surrendered to the court and the further fact that the case against him was subsequently dismissed at the suggestion of the fiscal did not, either singly or together, cure the breach of the bond that had already resulted from the non-appearance of the principal on the day set for the trial. The law allows the bondsmen of an accused person who has thus defaulted thirty days within which satisfactorily to explain his neglect. This contemplates a showing that, at the time the default occurred, the principal was prevented by some sufficient cause not imputable to his own negligence from complying with his duty. In the case before us the principal had

voluntarily absented himself from the jurisdiction of the court and the default was in law wholly inexcusable.

It is suggested that, under section 75 of the Code of Criminal Procedure, the bondsmen should be exonerated because they finally surrendered the defendant to the court. But the section referred to contemplates a surrender of the principal before the forfeiture is declared. In the case before us the bond had been declared forfeited before the principal was brought into court.

It appears from the record that on February 2, 1926, or before the expiration of thirty days from notification of the forfeiture, one of the bondsmen filed a petition requesting the court to grant an extension of thirty days for the surrender of the accused. This motion was not granted. On the contrary, it appears to have been denied, judging from a typewritten note bearing the name of the trial judge at the foot of the petition; and even if it was not formally denied, it was by implication overruled by the order of February 8 providing for the execution of the bond.

Appellants' attorney seems to be under the impression that the order of forfeiture of the bond, of December 28, 1925, was insufficient for the reason that the bondsmen were not in terms called upon to appear and show cause why execution should not be had. The law contains no requirement in the sense suggested. On the contrary, in section 76 of the Code of Criminal Procedure, it is made obligatory on the court to declare the undertaking forfeited; and if the bondsmen wish to be relieved from the effects of this forfeiture, it is incumbent upon them, within the period of thirty days, to show cause why the forfeiture should be discharged. This they have not done.

We note that in the appealed order the judge of the court below expressed the opinion that the order of forfeiture of December 28, 1925, had become final at the expiration of thirty days from the date of notification of that order to the bondsmen, and he supposed that for this reason the court had completely lost jurisdiction over the matter, except for the purpose of giving effect to the forfeiture. This pronouncement possibly does not reflect with entire precision the nature of the legal problem presented to the court, since it was evident lack of merit in the appellants' position rather than lack of jurisdiction in the court that made the denial of the appellants' motion necessary.

The order appealed from is, in our opinion, in conformity with law, and the same will be affirmed. So ordered, with costs jointly and severally against the appellants.

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

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