

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SILVESTRE LORREDO, DEFENDANT, VICTOR AMADOR AND CIRIACO MORALES, SURETIES AND APPELLANTS.

G.R. No. 26886. March 30, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by Victor Amador and Ciriaco Morales from an order of the Court of First Instance of Tayabas of November 4, 1925, decreeing the forfeiture of the bond executed and subscribed by said appellants for the temporary release of Silvestre Lorredo, who was accused of the crime of illegal possession of firearms.

In support of their appeal, the appellants assign the following alleged errors as committed by the lower court in its order, to wit:

"1. The lower court erred in denying the motion of October 12, 1926, holding it to be, (a) groundless, and (b) out of time, and in not granting the same and relieving the sureties from their obligation to present the accused before the court within the period of ten days after its judgment and his conviction.

"2. The lower court erred in denying the motion of October 27, 1926, considering a judgment against the sureties for the amount of the bond, before the execution of the order of forfeiture thereof as unnecessary, and in not granting it, thus relieving the bondsmen from all liability arising therefrom, and ordering the stay of execution."

It appears from the record that Victor Amador and Ciriaco Morales executed and subscribed a bail bond for the temporary release of Silvestre Lorredo, accused of illegal possession of firearms in a justice of the peace court in Tayabas, reading as follows:

"A complaint having been filed on the 7th day of July, 1924, in the court of the justice of the peace of the municipality of Atimonan, in the Province of Tayabas, charging Silvestre Lorredo, the defendant herein, with the offense of 'illegal possession of firearms' and having been admitted to bail in the sum of three hundred pesos (P300), Philippine currency;

"Now therefore, we Victor Amador and Ciriaco Morales, of the municipality of Atimonan, Province of Tayabas, jointly and severally, hereby undertake that the above defendant Silvestre Lorredo will appear and answer the charge above-mentioned in whatever court it may be tried and will, at all times, hold himself amenable to the orders and process of the court and, if convicted, will appear for judgment and render himself amenable to the execution thereof; or, if he fails to perform any of these conditions, that we will pay the United States the sum of three hundred pesos (P300), Philippine currency.

"In the presence of:

(Sgd.) "C. P. CAMPOMANES

"SISENANDO ALBERTO

(Sgd.) "VICTOR AMADOR

"CIRIACO MORALES

"MUNICIPALITY OF ATIMONAN

"PROVINCE OF TAYABAS

"We, Victor Amador and Ciriaco Morales, the sureties who executed the foregoing bond, having been duly sworn, individually depose and say: That we are residents and land owners in the Philippine Islands; that we are possessed of the sum of three hundred pesos, (P300), Philippine currency, over and above our just debts, obligations, and property exempt from execution.

"F-1875212, February 5, 1924, Atimonan, Tayabas.

(Sgd.) "VICTOR AMADOR

"F-1877252, April 26, 1924, Atimonan, Tayabas.

(Sgd.) "CIRIACO MORALES

"Subscribed and sworn to before me this 7th day of July, 1924, in the municipality of Atimonan, Province of Tayabas, Philippine Islands.

(Sgd.) "VICTOR D. VILLAMIL

"Justice of the Peace of the
Municipality of Atimonan

"Approved:

(Sgd.) "VICTOR D. VILLAMIL

"Justice of the Peace of the
Municipality of Atimonan

"BONDED PROPERTY

"By VICTOR AMADOR:

"A house and lot situated within the residential zone of the town of Atimonan, Tayabas, P. I., valued at P1,000, and assessed in his name under tax No. 24162, which is bounded on the north by the wall of the Roman Catholic Church; on the east by the property of the heirs of the deceased Praxido Urgino; on the south by Mabini Street, and on the west by Lopez Jaena Street.

(Sgd.) "VICTOR AMADOR

By CIRIACO MORALES:

A parcel of coconut land situated in the barrio of Tinandog, of the town of Atimonan, Tayabas, assessed in his name under tax No. 23921, and valued at P630.

(Sgd.) "CIRIACO MORALES"

On November 25, 1924, the Court of First Instance of Tayabas rendered judgment finding Silvestre Lorredo guilty of the crime of illegal possession of a firearm, and sentencing him to pay a fine of P50 with subsidiary imprisonment, in case of insolvency, and the costs of the action.

The accused was notified of said judgment, and at the instance of his attorney Mr. Godofredo Reyes, who offered to go surety for him, he was given the period of ten days within which to comply with the judgment imposed upon

him.

On the same date, November 25, 1924, the aforesaid sureties Victor Amador and Ciriaco Morales presented the following motion in the lower court:

"The undersigned sureties appear before this court and respectfully state that they hereby withdraw the bond that they have filed for the temporary release of the herein accused, then and there, deliver ing the body of the said accused to be taken into custody by the proper authorities.

"This petition, is based on the ground that the accused being in another town and having no fixed residence, it is very difficult for the undersigned to comply with their duties as sureties, fearing that the said accused, for some reason or other, may not appear before the Honorable Court upon being summoned to do so, thus leading to the forfeiture of the bond which they have filed, besides the fact that the same has been causing them a great deal of trouble and annoyance.

"For the foregoing reasons, the undersigned. pray that the bond filed by them be withdrawn, relieving them of all liability in connection therewith.

"Lucena, Tayabas, November 25, 1924.

"Respectfully,

(Sgd.) "VICTOR AMADOR

"Surety

(Sgd.) "CIRIACO MORALES

"Surety"

It does not appear that said petition was acted upon by the court.

The period of ten days granted to the accused within which to pay the fine of P50 imposed upon him by the judgment of November 25, 1924, having expired, without the same having been satisfied on December 11, 1924, the provincial fiscal of Tayabas filed a motion wherein he prayed for the execution of the aforesaid judgment.

On December 12, 1924, the court granted said motion and a writ of execution was issued on the same day.

On January 3, 1925, the deputy provincial sheriff of Tayabas returned said writ of execution with the statement that the accused Silvestre Lorredo had absented himself from the locality where he resided without any trace of his whereabouts, and that he had no property subject to Execution.

On January 14, 1925, the provincial fiscal of Tayabas filed a motion in the lower court wherein he prayed that a warrant of arrest be issued against the defendant Silvestre Lorredo in order to serve the subsidiary imprisonment.

On January 15, 1925, the court granted said motion and immediately issued the proper warrant of arrest.

The accused not having been apprehended, the Provincial Fiscal of Tayabas asked in open court on May 16, 1925, that the sureties Victor Amador and Ciriaco Morales be summoned to appear and produce the body of Silvestre Lorredo before the court on Saturday, July 16, 1925, at 8 o'clock in the morning, without prejudice to complying with the order of arrest issued at the expense of the sureties. The court then and there granted said motion, and on May 21, the proper summons requiring them to appear was issued.

On June 6, 1925, the sureties Victor Amador and Ciriaco Morales appeared before the court and stated that, according to their understanding, the bond filed by them had already been cancelled by virtue of the offer made by Mr. Godofredo Reyes, attorney for the accused, to act as surety for the latter, as shown by the minutes entered to

that effect. The provincial fiscal who was present at the hearing asked for the forfeiture of the bond filed by them for the temporary release of the accused because it does not appear that the same had been cancelled. The court, not finding the explanation given by the sureties satisfactory, granted the motion of the fiscal and ordered the forfeiture of the bond filed by said sureties, Victor Amador and Ciriaco Morales, for the temporary release of the accused Silvestre Lorredo, granting them thirty days for the appearance of the latter, and to explain why he failed to appear to comply with the judgment, and ordering that, if they failed to do so, that the fiscal shall proceed against the said sureties upon the obligation contracted by them, without prejudice to the warrant of arrest, already issued.

On June 23, 1925, Victor Amador, one of the sureties and appellants, asked for the issuance of a new warrant of arrest, and the same was granted by the court on July 2, 1925, immediately issuing the warrant of arrest prayed for.

On September 2, 1925, the clerk of the Court of First Instance of Tayabas received the body of Silvestre Lorredo from the provincial commander of Lucena, Tayabas, he having been captured by the Constabulary. On the same date, the defendant Silvestre Lorredo appeared before the court, which, not finding the explanation given by him for his non-appearance satisfactory, and, upon the petition of the provincial fiscal, confirmed the order of forfeiture of the bond subscribed and filed by the aforesaid sureties Victor Amador and Ciracio Morales; and the defendant Silvestre Lorredo having paid the fine imposed upon him, the court ordered the withdrawal of the warrant of arrest issued against him.

On October 27, 1925, the sureties filed a motion wherein they prayed that the orders of May 16, June 10, and September 2, 1925, be declared null and void, and that they be relieved of all liability in connection with the bond subscribed and executed by them, on the ground that when they appeared with the accused at the trial of the case on September 25, 1924, they presented and delivered the body of said accused, and asked for the cancellation of the bond, the court having received the body of the accused, turning him over to the custody of the sheriff, and cancelling the bond filed and subscribed by them, according to the minutes entered by the clerk on November 25, 1925.

The motions presented by the provincial fiscal, and the sureties, respectively having been heard, the Court of First Instance of Tayabas denied that of the sureties and granted that of the fiscal, ordering the execution of the order of forfeiture entered on June 6, 1925, of the bond filed by them in favor of the accused.

On October 12, 1926, the sureties filed a motion for reconsideration of the order issued on November 4, 1925, for the reason alleged in their former motion, and for the additional reason that the court, when it informed the accused of the judgment, granted him a period of ten days within which to comply therewith under the guaranty of his attorney Mr. Godofredo Reyes.

After hearing the provincial fiscal, who objected to said motion, the court denied the motion for consideration.

On October 27, 1926, the sureties filed a motion asking for the suspension of the sale at public auction of their property, on the ground that there was no judgment against them whereby they were held liable under said bond. The court denied said motion by an order of October 30, 1926.

On November 5, 1926 the aforesaid sureties excepted to the orders of October 25 and 30, 1926, and gave notice of their intention to appeal therefrom to this court for their revision. On the same date the Court of First Instance of Tayabas admitted said appeal and ordered that the record be brought to this court.

As to the first assignment of error, it will be seen that the only thing which appears in the record is the minutes of the hearing entered by the clerk of the Court of First Instance of Tayabas, wherein it appears, among other things,

that at 9:30 a. m., of November 25, 1924, the following proceedings took place: "The accused accompanied by his attorney was notified of the foregoing judgment, and at the instance of his attorney Mr. Reyes who offered a guaranty that the accused would comply with the judgment rendered against him." After the said minutes, there appears attached to the record the motion of November 25, 1924, subscribed by the sureties, wherein they state that they are delivering the body of the accused and asking that they be relieved of all liability in connection with the bond filed by them for the temporary release of said accused.

Section 75 of General Orders No. 58 prescribes the different forms and the time for the surrender of the body of the accused and for the discharge of the bond. The order of discharge will be entered by the court once the surrender of the person of the accused is proven, and notification thereof is made to the prosecuting attorney.

In the present case it does not appear that the fiscal had been notified of the petition for the discharge of the bond, nor had the court issued an order of discharge. The mere presentation or presence of an accused in an open court is not sufficient in itself. The attention of the court must be called to his presence and the intention to surrender the body of the accused must be clearly and definitely stated and understood by the court (6 C. J., page 243, paragraph 313). A surety who desires to produce and surrender the body of the accused in open court is not relieved from further liability upon his bond until the court accepts said surrender, and the only evidence of such act is the record of the court. (*Du Lawrence vs. State*, 31 Oh. Cir., 418.)

Moreover, one of the conditions of the bond subscribed by the appellants is that if the accused is convicted, he will render himself amenable to the judgment as well as to the execution thereof. After notification of the judgment, the accused had fifteen days within which to perfect his appeal, and it is only after the expiration of the said fifteen days, without the accused having made use of his right, that the said judgment becomes final. (Sec. 47, General Orders No. 58.) Neither the fact, then, that the court granted the accused ten days within which to comply with the judgment, nor the fact that his attorney guaranteed said compliance, relieves his sureties from their liability in case of non-compliance with said judgment, because, as we have already seen, in order to be relieved from the obligation contracted by them by virtue of their bond, a judicial order relieving them of their liability is necessary.

From what has been said it follows that the mere filing of a motion stating the surrender of the person of the accused and asking for their release from liability upon the obligation contracted by virtue of a bond for temporary release, where it does not appear that the attention of the court had been called to said surrender and that the latter had so understood it, and without an express order accepting said surrender and relieving the sureties from all liability, does not relieve them from the same, notwithstanding the fact that the court granted the accused the period of ten days within which to comply with the judgment under a verbal guaranty of his attorney.

As to the second assignment of error, the fact that the order of the court of September 22, 1925, confirming that of September 6, 1925, wherein the bond of the sureties was declared forfeited, did not declare in clear and precise language that the latter were liable for the amount of said obligation for non-compliance with its conditions, does not annul the order of November 4, 1925, ordering the execution of the order of forfeiture of said bond, inasmuch as the declaration of the court to the effect that the sureties had not satisfactorily explained the non-appearance of the accused within the thirty days granted them for that purpose, and the order of execution of the judgment of forfeiture of the bond, which had already been entered, are equivalent to a declaration of liability and were a substantial compliance of the mandate of the law.

In view of the uncertainty as to the period within which an appeal from an order directing the execution of the order of forfeiture of a bail bond may be perfected, after the entry of said order of forfeiture and the expiration of the thirty days granted to the sureties within which to present the body of the accused and to show cause why the

judgment of forfeiture of said bond should not be executed, without having done either one or the other, or, in case they did so, the explanation given not having been satisfactory, appeals taken out of the time required for perfecting an appeal in criminal, as well as in civil, cases have been brought to this court.

Section 76 of General Orders No. 58 provides that, if within the thirty days granted the sureties for the appearance of the accused, they do not present the body of the latter, nor give a satisfactory explanation for such non-appearance, the prosecuting attorney shall immediately proceed against the sureties upon the obligation contracted by them.

The American doctrines on the subject are not uniform,—there are some, and which constitute the majority, holding that the proceeding for the execution of an order of forfeiture of a bail bond is civil in nature, and there are others holding that the same is of a criminal character, and that the appeal must be perfected in accordance with the law of criminal procedure relating to the subject. (6 C. J., 1057, 1075.)

In the case of *United States vs. Carmen* (13 Phil., 455), this court laid down the following rule:

"The practice adopted by the Courts of First Instance, in actions against sureties on criminal bonds, is substantially as follows:

"1. If the defendant does not appear after final sentence for the purpose of receiving the penalty imposed by the court, the court shall make a record of this fact;

"2. The court shall declare the bond forfeited;

"3. The court shall then notify the said bondsmen and give them thirty days within which to present the body of the defendant;

"4. If the bondsmen do not present the body of the defendant within thirty days, at the expiration of that time the court shall give them notice to show cause why a judgment should not be rendered against them for the amount of the bond; and

"5. If no sufficient reason appears or is given by the bondsmen for not presenting the body of the defendant within the time specified above, the court may then render a judgment against the said bondsmen for the amount represented by said bond, upon which judgment an execution should be issued at once against said bondsmen. In other words, in order to enforce the bond, the prosecuting attorney should not bring a new action, nor institute an ordinary action; he should only take the necessary steps for the execution of the prior judgment of forfeiture and require the bondsmen to pay the amount of the bond or attach a portion of their property the proceeds of which on sale should be enough to satisfy the liability of the bondsmen."

In view of the doctrine laid down by this court in the above cited case, it is not absolutely necessary to institute a separate and independent action for the execution of the order of forfeiture of a bail bond, which had been previously entered, and that a simple motion to that effect presented by the prosecuting attorney in the same criminal case is sufficient, we are of the opinion, and so hold, that the proceedings required by General Orders No. 58 must be followed in these cases, and that the appeal must be perfected within the unextendible fifteen days following the date upon which the sureties received notification of the order directing the execution of the judgment of forfeiture of the bond previously entered.

In view of the fact that the accused has already complied with the judgment by paying the fine imposed upon him, and following the doctrine laid down in the case of *People vs. Reyes* (48 Phil., 139), we believe that the forfeiture of half of the bond filed and execution of said judgment of forfeiture will satisfy the public interest.

For the foregoing, the order appealed from is hereby modified and one-half of the bond filed is hereby declared forfeited, with costs against the appellants. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

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