

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MELCHOR BABASA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3026. March 26, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

On the 8th day of July, 1902, the provincial fiscal of the Province of Batangas presented an information against Pedro Alvarez (alias Araro), charging him with robbery in armed band, with murder. In the information it was alleged that the said accused on said date entered the municipality of Liang in the said Province of Batangas at the head of a band of robbers, consisting of more than thirty persons, and attacked houses, entering and robbing the same of the property which they contained, using force, violence and intimidation to that end. Among the property so taken were three horses, two carabaos, some jewelry and money to the value of 1,000 pesos. It was also charged, in addition to the robberies above-mentioned, that the accused, assisted by his band, treacherously killed Timoteo Zarzoso, the president of said pueblo.

On the 27th day of September of the same year, while the trial was in progress, the accused, in view of the non-appearance of certain of his witnesses, whom he required for his defense, and the postponement which their absence would require, made an application to be admitted to bail, alleging, among other things, that to remain in jail was prejudicial to his health. Upon said motion the court, upon hearing the attorneys for the applicant, and with the consent of the Attorney-General, admitted the accused to bail in the sum of 10,000 dollars gold, the sureties upon which bail were Melchor Babasa and Apolonio Belmonte.

The trial of the cause was adjourned to the 15th of October following. On said day the accused did not appear, and, notwithstanding the search made by the sureties on his bond as well as by the Constabulary, nothing was seen or heard of the accused until the 20th day of December, 1904, when Colonel Baker of the Constabulary telegraphed the governor of Cavite that the accused had been killed in an encounter with the Constabulary.

On the said 15th day of October, on the nonappearance of the accused, the court ordered the bond forfeited and instructed the provincial fiscal to proceed immediately against the sureties for the collection thereof. On the 27th day of January, 1904, the court, on motion of the fiscal, issued an execution against the property of the said bondsmen for the purpose of realizing the sum specified in the bond. An appeal was taken by the said sureties from the order referred to, which appeal was later dismissed by the Supreme Court and the cause ordered returned to the Court of First Instance for such proceedings as were by law provided. On the 2d day of August, 1905, Melchor Babasa appeared by his attorney and presented to the court a petition praying that the bond be declared void. That motion was denied by the court after a hearing. The applicant sought to appeal from said order. The court refused to permit such appeal and an action was begun for a writ of mandamus compelling the court to allow it. The Supreme Court decided in favor of the sureties and ordered the court below to allow the appeal[1] That appeal is the one now before us.

On the 29th day of September, 1906, said Melchor Babasa died and his wife was thereafter appointed

administratrix of his estate. Upon motion of the attorney for the administratrix she was substituted by an order of this court as party defendant in place of said Melchor Babasa deceased.

The appellants, as their only contention on this appeal, allege that the court below should have declared the bond void. This is the only question before us.

The appellants in this case base their appeal upon two grounds: First, that in view of the provisions of section 5 of the Act of July 1, 1902, and section 63 of the Code of Criminal Procedure, the trial court had no power, authority, or jurisdiction to admit the accused Alvarez to bail, inasmuch as he was charged with a capital offense; that the admission to bail having been without jurisdiction, the bond was void. Second, that inasmuch as it was clearly proved that the accused had been killed prior to judgment on the bond, the sureties were discharged.

Paragraph 4 of section 5 of the Act of July 1, 1902, reads as follows:

"That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses."

Section 63 of the Code of Criminal Procedure reads as follows:

"All prisoners shall be bailable before conviction, except those charged with the commission of capital offenses when proof of guilt is evident or the presumption of guilt is strong."

From these provisions it is clear that even capital offenses are bailable in the discretion of the court before conviction. As a result, the objection of the appellants that the trial court had no power or jurisdiction to admit to bail in the case at bar, must be overruled. Under the facts presented in this case the trial court may have exercised bad judgment in admitting to bail; but he had jurisdiction in the premises. That is the important thing here.

As to the second contention of the appellants, that the sureties were discharged by the death of the principal, the wording of section 76 of the Code of Criminal Procedure should be noted. It reads as follows:

"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 so discharged, the1 pro- motor fiscal shall at once proceed by action against the bail upon their undertaking."

We believe that the wording of this section, interpreted and construed under the conditions existing in these Islands, is conclusive against the appellants in this case. We do not forget those decisions in which it has been held that the death of the principal in any recognizance, after forfeiture thereof, but before judgment rendered thereon, may be pleaded by the sureties in discharge of such recognizance. (State vs. Traphagen, 45 N. J. L., 134; Woolfolk vs. The State, 10 Ind., 532; Mather vs. The People, 12 Ill., 9; Mix vs. The People, 26 Ill., 481; People vs. Watkins, 19 Ill., 117.) These decisions, however, were, generally speaking, based upon the wording of particular statutes. Under the form of the statute which we are construing, and in view of the mischief which it seeks to prevent, we are of the opinion that the judgment of the court below should be affirmed. We would offer no objection, however, if the Legislature should see fit by special enactment, or otherwise, to relieve the sureties of their obligation, in view of the fact that the accused whose appearance they assured was killed shortly after judgment was obtained upon the bond.

The judgment appealed from is affirmed, with costs.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

[1] Babasa vs., Linebarger, 12 Phil. Rep., 766.

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