

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
YU GUIOC LAM (ALIAS YU KIM LAM), DEFENDANT. THE VISAYAN
SURETY AND INSURANCE CORPORATION, SURETY AND APPELLANT.**

G.R. No. 44518. November 23, 1938

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-44518/>

VILLA-REAL, J.:

This is an appeal taken by the Visayan Surety and Insurance Corporation from the order of the Court of First Instance of Manila, denying the motion filed by said surety corporation that it be relieved of the bail bond filed by it for the provisional release of the accused Yu Guioc Lam (alias Yu Kim Lam), for having delivered the person of said accused to said court on July 10, 1935.

In support of its appeal, the appellant assigns the following alleged errors as committed by the court a quo in its judgment in question, to wit:

"1. The lower court, by reason of and after the arrest and delivery unto it of body of the accused by the appellant herein erred in releasing the accused without first exacting of him a new and distinct bond for his temporary liberty pending trial.

"2. The lower court erred in not finding that the arrest and delivery of the body of the accused unto it released the bail bond of the surety-appellant herein.

"3. The lower court erred in not finding that the issuance of an order for the arrest of the accused and the latter's custody thereunder, was an act of the state operating as a discharge of the surety-appellant's bond.

"4. The lower court erred in interpreting the appellant's petition dated July 10, 1935, praying for the cancellation of its bond to be conditioned upon the filing and approval of a new bond then announced by the accused."

The only facts which this court may consider in order to decide the questions of law raised by the appellant in its brief, are those stated in the appealed order, which are as follows:

"An examination of the record shows that for failure of the accused in question to appear on the 19th of June of this year, the date set for the trial of the case, the court ordered the arrest of said accused and the confiscation of his bond. Notice of this order was duly served upon the surety company which, on the 10th of July of the current year, produced the person of said accused before the court, and in the motion of even date praying that the order of confiscation be lifted, it is alleged by the surety company that, as the above-named accused offered to file another bond through a local surety company, the bond filed by the Visayan Surety & Insurance Corporation should be cancelled. The court found the explanations given by the accused relative to his nonappearance to be satisfactory, for which reason the order of confiscation issued on June 19th was set aside, but the bond of the Visayan Surety was not declared cancelled because the new bond, which the accused had offered to file, had not yet been approved. The case was again set for trial on the 29th of July of this year and the accused failed to appear, for which reason the court ordered his arrest and the confiscation of the bond filed

by the Visayan Surety."

The first question to be decided in the present appeal is that raised in the first assignment of alleged error, which consists in whether or not the lower court erred in releasing the accused after the appellant had turned over his person to said court, without first requiring said accused to file a new and distinct bond for his provisional release pending the trial.

In the case of *People vs. Lorredo* (50 Phil., 209, 217, 213), this court stated as follows:

"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, section 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.)

* * * * *

"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." (See also *Luzon Surety Co. vs. Montemayor*, 34 Off. Gaz., 2148.)

According to the above-quoted decision, in order that a surety, who has filed a bond for the provisional release of an accused in a criminal case, may be relieved from liability by surrendering the person of the accused, it is necessary that the fiscal be notified of such surrender and of the petition for release from the liability contracted by him by virtue of said bond. The mere presentation or presence of the accused in court is not sufficient. It is necessary to call the attention of the court to said presence and to said desire of the sureties to surrender his person, and the court must understand clearly and definitely such intention of said sureties to surrender him. Not until the court has accepted the surrender of the person of the accused and issued the order of release, is the surety relieved from liability.

In the case under consideration, all that the surety, Visayan Surety and Insurance Corporation, had done, according to the appealed judgment, was present the person of the accused to the court on July 10, 1935, and ask

for its release as surety and for the lifting of the order of confiscation of the bond filed by it. It did not notify the fiscal of said surrender or of the petition for its release from the liability contracted by it by virtue of the bond. Neither has it called the attention of the court to the presence of the accused in court and to its desire to surrender the person bailed by it. Inasmuch as the surety company's petition to be relieved from the liability contracted by it upon its bond was not approved by the Court of First Instance of Manila, and the bond not having been cancelled, the same continued to be in force, and when the trial of the case was for the Second time set for July 29, 1935, and said surety failed to make the accused appear in court, it violated the conditions of its bond for the second time.

For the foregoing considerations, this court is of the opinion and so holds, that the mere presentation of the person of an accused before the court by the surety thereof which asks for the cancellation of the bond filed by it for the provisional release of said accused, without notice to the fiscal and without the court having accepted the person of the accused or cancelled the bond in question, is not sufficient to relieve the surety from the liability contracted by it by virtue of its bond.

Wherefore, and not finding any error in the order appealed from, the same is affirmed in toto, with costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.