

LUZON SURETY CO., INC., PETITIONER, VS. MARCELIANO MONTEMAYOR, JUDGE OF FIRST INSTANCE OF MANILA, RESPONDENT.

G. R. No. 45132. July 14, 1936

Ponente: LAUREL, J.

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LAUREL, J.:

This is a petition for the issuance of a writ of certiorari filed by the Luzon Surety Co., Inc., with a view to setting aside an order of the Court of First Instance of Manila dated January 11, 1936 for the execution of one-fifth the amount of the bond filed by said petitioner for the provisional release of the accused in criminal case No. 51460 entitled "The People of the Philippine Islands vs. Anastacia Barabasa."

It appears that the petitioner herein was notified by the Court of First Instance of Manila to produce the accused in the aforesaid criminal case before the court on December 19, 1935 for arraignment. The accused did not appear on the aforementioned date and on the same day an order was issued by Manuel V. Moran, Judge of the Court of First Instance of Manila, requiring the immediate arrest of the accused and the confiscation of the bond filed by the petitioner for her provisional release, but granting said petitioner thirty days to explain why said bond should not be executed. On December 20, 1935 the petitioner offered to produce the body of the accused before the court and at the same time filed a written motion for the reconsideration of the order of confiscation, which motion was, however, denied on the same date by the presiding judge for not having been presented in accordance with the Revised Rules of Court. On December 27, 1935, His Honor, Judge Moran, rendered a decision convicting the accused of the crime charged and sentencing her to three months' imprisonment and to pay the costs. Said case is now on appeal before this court, notice of appeal having been filed by the accused on December 31, 1935.

On January 4, 1936, herein petitioner filed another motion for reconsideration of the orders of December 19 and 20, 1935. On January 11, 1936 Judge Moran denied the last mentioned motion for reconsideration and rendered judgment against the petitioner for one-fifth of the amount of the bond, or for the sum of P100. No appeal was interposed by the petitioner against said order. On January 20, 1936 a writ of execution was issued by the same judge for the satisfaction of one-fifth of the aforesaid bond. On February 17, 1936 the petitioner filed another motion for reconsideration of the orders aforementioned. The respondent judge, Marceliano Montemayor, having been assigned to succeed Judge Moran in the Fourth Branch of the Court of First Instance of Manila, denied the petitioner's motion on February 29, 1936. Another motion for reconsideration was filed by the petitioner on March 13, 1936. The respondent judge again denied the motion by an order dated March 14, 1936, at the same time advising the petitioner that no further motions for reconsideration would be entertained by the court.

The petitioner now comes to this court and as grounds for the issuance of the writ prayed for, contends (a) that the court below abused its discretion in ordering the confiscation of one-fifth of the amount of the bond filed by said petitioner, and (b) that said court erred in not requiring said petitioner to pay only such expenses as might have been actually incurred by the government, such as expenses for issuing subpoenas and notifications.

The petition is based principally on the fact that the petitioner is alleged to have surrendered the body of the accused on December 20, 1935, the day following that set for the arraignment. No evidence was presented, however, to demonstrate that the accused really appeared in court on December 20, 1935. Be that as it may, the obligation of the petitioner as set forth in its undertaking as well as under the law (section 67, General Orders, No. 58) was to produce the body of the accused when called for by the court (*U. S. vs. Bonoan*, 22 Phil., 1). Upon the failure of the petitioner to produce the body of the accused on December 19, 1935, therefore, it was already in default.

Section 76 of General Orders, No. 58 provides:

"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, the promoter fiscal shall at once proceed by action against the bail upon their undertaking."

It is evident from the foregoing that for the exoneration of the bondsman or bondsmen, two essential requisites must be followed to wit: (1) they must produce the body of their principal, or give the reason for its non-production; and (2) they must explain satisfactorily why the bond was not performed—why the accused did not appear before the court when first required to do so (*U. S. vs. Sunico and Ng Chiong*, 40 Phil., 826, 831). It will thus be seen that while the surrender or the appearance of the accused is a prerequisite to relief from, or remission of, a forfeiture of bail, the sureties cannot exonerate themselves simply by a surrender of him after a forfeiture, and hence, they are not as a matter of right, released from their obligations under a forfeited recognizance by the mere surrender of their principal or by his voluntary appearance after forfeiture (6 *Corpus Juris*, 1053).

The petition does not set forth what explanation the petitioner made before the court below for the recall of the forfeiture. Nevertheless, examining the record of the criminal case No. 51460 of the Court of First Instance of Manila (now G. R. No. 44933 of this court) we find that the reason assigned for the non-appearance of the accused was the fact that she had to go to the town of Angeles, Pampanga, on December 17, 1935 to attend the funeral of her sister who died there the preceding night. No better explanation is adduced, however, as to why she had to stay there until December 19, 1935, except that she had to attend the "celebration" of the third night of the death of her sister. It also appears of record that the petitioner was notified of the date of the arraignment as early as December 13, 1935. Under these facts the lower court did not abuse its discretion in decreeing the forfeiture of the bond of the petitioner. The forfeiture to its full amount or in a lesser amount of bail bond upon which there has been a default, rests to a large degree in the discretion of the court and depends on the circumstances of each particular case (*People vs. Reyes*, 48 Phil., 139). It should be observed that the court below had already reduced the liability of the petitioner to one-fifth of its original undertaking.

Upon the other hand, the remedy which the petitioner should have pursued is by appeal from the judgment of forfeiture (*U. S. vs. Lorredo*, 50 Phil., 209). Certiorari will not lie where there is adequate remedy by appeal (section 514, Act No. 190). This holds true even in cases where the petitioner has lost the remedy of appeal through his negligence. (*Government of the United States vs. Judge of First Instance of Pampanga and Manila Railroad Co.*, 50 Phil., 975.)

The petition is hereby denied with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Recto, JJ., concur.

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