

VICENTE BANDOY AND VICENTA SALAMANCA, PLAINTIFFS AND APPELLANTS, VS. THE JUDGE OF FIRST INSTANCE OF LA LAGUNA AND THE SHERIFF OF THE SAME PROVINCE, DEFENDANTS AND APPELLEES.

G.R. No. 5200. December 17, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 9th day of September, 1907, Felix de Lagrimas was sentenced in the Court of First Instance of the Province of La Laguna for the crime of allanamiento de morada to be imprisoned for a period of two months and one day and to pay a fine of P260 and the costs. From this sentence of the lower court the defendant appealed to the Supreme Court.

At the time of his appeal to the Supreme Court, to secure his liberty during the pendency of the appeal the following bond was executed and delivered by the defendant, Lagrimas, and the plaintiffs, Bandoy and Salamanca:

"Whereas in the above-entitled cause judgment was rendered on the 9th of September, 1907, whereby this Court of First Instance sentenced the accused, Felix de Lagrimas, to the penalty of two months and one day of arresto and to pay a fine of 1,300 pesetas or P260, and the costs of the proceedings;

"Whereas the said accused, Felix de Lagrimas, has appealed from said judgment to the Supreme Court and prays that liberty be given him on bail during the pendency of his appeal;

"Whereas the said bail was fixed in the sum of P1,000 Philippine currency:

"Therefore, we, Vicenta Salamanca and Vicente Bandoy, both being of age, landowners, and residents of the municipality of Santa Cruz, La Laguna, Philippine Islands, hereby engage that the accused, Felix de Lagrimas, will pay any fine that the court upon appeals may impose upon him, or, will deliver himself up in order to undergo the penalty that may be ordered by the said court, or, in the event of a new trial, that he will appear before the tribunal called upon to try him, and will submit to such orders and process as the court may prescribe; and that in case of a conviction he will appear to hear sentence and surrender himself for the execution thereof; and in case of failure to comply with any of the foregoing obligations, we engage to pay the Government of the United States the sum of P1,000 Philippine currency.

"Santa Cruz, La Laguna, 14th of September, 1907.

"(Signed) Vicenta Salamanca.—(Signed) Vicente Bandoy.— hereby consent that Doña Vicenta Salamanca, my wife, execute the foregoing bond."

On the 15th day of August, 1908, the Supreme Court affirmed the decision of the lower court (U. S. vs. Lagrimas, 11 Phil. Rep., 641) and returned the cause to the lower court for the execution of said sentence. Later (the exact date not appearing of record) the defendant (Lagrimas) surrendered himself to the custody of the court for the

purpose of serving said sentence. Said penalty of imprisonment was duly served by said Lagrimas, as appears by his affidavit (see bill of exceptions, p. 9). It also appears of record that the defendant (Lagrimas) offered to suffer subsidiary imprisonment for the purpose of liquidating said fine of P260. This offer of the defendant was not accepted by the authorities and at the expiration of the period of imprisonment, Lagrimas was released from prison.

Later the fiscal of the Province of La Laguna presented the following motion:

"The undersigned fiscal hereby declares—

"That the accused in the above-entitled cause has undergone the corporal penalty imposed by this court and affirmed by the honorable Supreme Court.

"That upon the accused Felix de Lagrimas having been required to pay the fine to the payment of which he was also sentenced, he stated that he was insolvent.

"In view of the foregoing and in conformity with the provisions of section 65 of General Orders, No. 58, and with the terms of the bond given by the accused, which appears at folios 18 and 19 of the record, I pray the court to issue an order of execution against the bondsmen Vicenta Salamanca and Vicente Bandoy for the purpose of recovering from them the sum of two hundred and sixty pesos (P260) Philippine currency, the amount of the fine imposed upon the accused, and in addition thereto the costs of the proceedings in both instances."

Upon a full consideration of said motion the judge of the Court of First Instance rendered the following decree:

"In conformity with the request of the fiscal in the foregoing motion, the clerk of the court is hereby directed to issue an order of execution against the bondsmen Vicenta Salamanca and Vicente Bandoy requiring them to pay the sum of two hundred and sixty pesos (P260) Philippine currency, the amount of the fine imposed upon the accused Felix de Lagrimas."

The plaintiffs in the present action being informed of the foregoing decree, presented the following petition:

"I. That we have been informed that on the 23d of November, 1908, this court directed the clerk to issue an execution against us to enforce the payment of the sum of P260, the amount of the fine imposed upon Felix de Lagrimas, for whom we are bondsmen, plus the costs of both instances.

"II. That we believe that said order was given in view of the fact that after Felix de Lagrimas had served the sentence imposed upon him in the said cause, he had no money with which to pay the fine and costs ordered in the judgment.

"III. That the crime for which the said Felix de Lagrimas was sentenced is a crime that is punished by the Penal Code now in force.

"IV. That according to article 50 of the said code, in connection with article 49 of the same, when the person sentenced has no property to satisfy the pecuniary liabilities, 'he shall be subject to a personal subsidiary liability at the rate of one day for every twelve and a half pesetas,' under the rules provided by said article 50, so that by the action of the law the fine and costs may be, and should be, exchanged for the corresponding subsidiary imprisonment, and the liability therefor rests exclusively with the culprit.

"V. That section 76 of General Orders, No. 58, the only one throughout the same dealing with cases where a bond for the temporary release of an accused person in a criminal case should be executed, and is the law in force on this matter, does not enumerate among the said cases the failure to pay the fine and costs.

"VI. That we, the bondsmen who subscribe this petition, can and will surrender Felix de Lagrimas whenever required so to do, in order to undergo the said subsidiary imprisonment, and he on his part is ready to submit

thereto, as shown by his annexed affidavit.

"VII. That an execution upon our bond, as ordered by the court, is not the proper procedure, even if the bond is to be enforced, inasmuch as we, the bondsmen, are deprived of the right to defend ourselves and to set forth our reasons; it is unconstitutional because such judicial compulsion amounts to a confiscation of property without due process of law, contrary to the provisions of section 5 of the Philippine Bill.

"In view of the foregoing, we pray the court to revoke the aforesaid order.

"Santa Cruz, La Laguna, P. I., December 19, 1908.

"(Signed) Vicente Bandy.—(Signed) Vicenta Salamanca."

Upon a due consideration of the foregoing petition, the lower court rendered the following judgment:

"The writing presented by the bondsmen Vicente Bandy and Vicenta Salamanca on the 19th of December, 1908, involves a petition which, if granted, would result in the amendment of the judgment entered by this court, in view of the fact that no provision is made therein with regard to the insolvency of the accused in the payment of the fine and costs. And considering that the said judgment has been fully affirmed by the honorable Supreme Court, the same should and must be executed in all its parts.

"The petition contained in the said writing of the 19th of December, 1908, is hereby denied, and by virtue thereof the order of execution of the 3d of December, 1908, shall stand."

Against this decree of the lower court the bondsmen, Vicente Bandy and Vicenta Salamanca, duly excepted and appealed to this court. In this court the appellants made the following assignment of error:

"One only—an error of law, to wit: the action of said judge in issuing the order to enforce the bond executed by the appellants."

Section 67 of General Orders, No. 58, gives the form of a bail bond in criminal cases. Said form is as follows:

"SEC. 67. All personal bail bonds must be executed by a written undertaking executed by at least two sufficient sureties (with or without the defendant, as the court * * * may demand) and duly acknowledged, in substantially the following form:

"A complaint (or information) having been filed on the _____ day of _____, 190____, in the court of _____ Province of _____ charging (name of defendant) with the offense of (designating it generally) and he having been admitted to bail in the sum of _____ pesos:

" 'Now, therefore, we, _____ and _____ of _____ jointly and severally, hereby undertake that the above (naming the defendant) 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 to the execution thereof; or if he fails to perform any of these conditions, that he will pay to the United States the sum of _____ pesos (inserting the sum to which the defendant shall be admitted to bail).

(Signed) "' _____

"'

"' _____

"' _____ "'

Upon an examination of the bond required of the defendant to secure his liberty during the pendency of his appeal to the Supreme Court, it will be noted that said bond contained the following provision:

"We hereby engage that the accused, Felix de Lagrimas, will pay any fine that the court of appeals may impose upon him."

This condition of the bond not only required the bondsmen to deliver the body of the defendant (Lagrimas) to the custody of the court to receive whatever sentence the Supreme Court might render, but it also required said bondsmen to pay whatever fine which might be imposed upon the defendant (Lagrimas). The bond provided for by section 67 of General Orders, No. 58, contained no such provision. The obligation of the bond for admission to bail during the trial of a criminal case is that the person admitted to liberty "will appear and answer the charge preferred against him in whatever court the cause may be brought and will, at all times, hold himself amenable to the orders and process of the court." The bondsmen, under the form of bond provided for by law, are only obligated to deliver the body of the person admitted to bail to the custody of the court for the purpose of receiving the orders and processes of the court. The defendant in the present case was entitled to bail as a matter of right, in accordance with the provisions of sections 63 and 64 of General Orders, No. 58 (as amended by sees. 35 and 36 of Act No. 1627 of the law relating to justices of the peace), as well as by the provisions of section 5 of the Act of Congress of July 1, 1902. The only obligation imposed upon the defendant, under the provisions of the law (sec. 67 of General Orders, No. 58) when he is granted his liberty during the pendency of the cause of action against him, is that he will deliver himself to the custody of the court whenever he is called upon so to do, for the purpose of receiving the orders and processes of the court. The obligation imposed upon the bondsmen can not be greater nor of a different character. To permit the imposition of other obligations upon the defendant in criminal actions and upon his bondsmen, for the purpose of securing his liberty under bail, than those provided for by law might result in the imposition of conditions which would absolutely prevent and render it impossible for the defendant to secure his liberty during the trial, notwithstanding the fact that he is entitled to his liberty, as a matter of right. Such a doctrine might result in the imposition of excessive bail, which is prohibited by law. (See Philippine Bill, sec. 5; The Act of Congress of July 1, 1902.) Where the form of the bond for the purpose of admitting a defendant in a criminal case to liberty during the pendency of the action is prescribed by law, such form must be followed in substance. The authorities can not impose a greater obligation than that prescribed by such form. The authorities can not vary its terms, so as to impose upon the defendant and his bondsmen greater obligations. (U. S. vs. Sauer, 73 Fed. Rep., 671.)

The obligation, therefore, imposed upon the bondsmen in the present case, to pay the fine, in addition to the obligation to deliver the body of the defendant to the custody of the court, is void and of no effect. The bondsmen relieved themselves of all obligation when they delivered the body of the defendant to the custody of the court.

Therefore the judgment of the lower court against the appellants herein (Bandoy and Salamanca) is hereby reversed, without any finding as to costs.

Torres, Carson, and Moreland, JJ., concur.

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