

**THE PEOPLE OF THE PHILIPPINE ISLANDS,. PLAINTIFF AND
APPELLANT, VS. AGUSTIN CHAN LIN WAT, ET AL., DEFENDANTS,
JOAQUIN YUSECO, BONDSMAN AND APPELLEE.**

G. R. No. 54814. December 05, 1931

Ponente: OSTRAND, J.

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OSTRAND, J.:

This is an appeal from an order of the Court of First Instance of Rizal denying a motion presented by the Fiscal of said province for the issuance of a new writ of execution against Joaquin C. Yuseco, being one of the bondsmen for the provisional liberty of one Chan Lin Tam alias Manuel Zalazar, accused in the above entitled case.

It appears that on October 20, 1925, the above named Chan Lin Tam alias Manuel Zalazar was accused, together with other persons, in the Court of First Instance of Rizal, of the crime of murder, and upon his arrest he was required to put up a bail in the sum of P15,000 for his provisional liberty; that on December 11, 1925, Jose G. Paraiso, Mariano Y. Granados, and Joaquin C. Yuseco, jointly and severally, subscribed the bond in favor of the said accused in the form prescribed by law; that on June 12, 1926, for the non-appearance of the accused Chan Lin Tam alias Manuel Zalazar, the court below ordered his arrest and the forfeiture of the bond for his provisional liberty; and that on September 17, 1926, a writ of execution against the property of the bondsmen was issued.

It developed that no property of the bondsmen could be located; that another writ of execution was issued by the court for the sum of P6,500 on the property of Joaquin C. Yuseco and that by virtue thereof the property of Yuseco was executed and a certificate of sale was issued by the deputy sheriff of Nueva Ecija in favor of the Government, but upon investigation conducted by the office of the Director of Lands, the land executed and sold to the government was of the public domain and, as such, it was occupied by several public-land applicants under the Public Land Act. Thereupon the Deputy Provincial Fiscal of Rizal presented a motion to the Court of First Instance praying that a new writ of execution be issued against the property of bondsman Joaquin C. Yuseco. The motion was denied by the court below in its order of September 2, 1930. From this order the Provincial Fiscal appealed to this Court and assigned the following as error:

"El Juzgado a quo incurrio en error al dictar su auto de fecha 20 de noviembre de 1930 desestimando la mocion del ministerio fiscal en la que se pide una nueva orden de ejecucion contra los bienes del apelado fiados Joaquin C. Yuseco."

The assignment of error above quoted is well taken, and for the purposes of this appeal, we repeat our ruling in the case of *U. S. vs. Carmen*, 13 Phil., 455, to the effect that 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." The *Bleibel* case, 34 Jur. Fi., 244, is not in point.

The order appealed from is reversed and the issuance of a new writ of execution against the property of Joaquin

C. Yuseco is hereby ordered, without costs.

Ten days after the promulgation of this decision final judgment will be entered, and five days thereafter the record will be remanded to the court below.

It is so ordered.

Avanceña, C. J., Johnson, Villamor, and Villa-Real, JJ., concur.

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