

EDUARDO S. SOLANTE, CELEDONIO R. ABELLA, RAYMUNDA V. TUVILLA AND ROSARIO TURIN, PETITIONERS, VS. THE HONORABLE JUSTICES OF THE FIRST DIVISION OF THE SANDIGANBAYAN, RESPONDENT.

G.R. No. 69651. June 18, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

In this petition for certiorari, petitioner bondsmen charge the Sandiganbayan with grave abuse of discretion in finding no merit in their explanation for their failure to produce the body of their principal when required to do so.

Said principal, Benjamin Maunes, was the post-master of Cateel, Davao Oriental, until he was accused of malversation of public funds before the Sandiganbayan [Criminal Case No. 1444]. As Maunes' bondsmen, petitioners undertook jointly and severally to ensure that Maunes would appear in court and answer the charge against him "in whatever Court it may be tried, and will at all times hold himself amenable to the orders and processes of the Court, and if convicted, will appear for judgment and render himself to the execution there-of". Should Maunes fail to perform any of those conditions, they would pay the Republic of the Philippines the amount of P30,000 the payment of which was guaranteed by a first lien constituted on the respective real properties of the petitioners.[1]

On July 21, 1983, the Sandiganbayan convicted Maunes and sentenced him to an indeterminate penalty of 12 years and 1 day of reclusion temporal as minimum, to 18 years, 8 months and 1 day also of reclusion temporal as maximum.

Immediately after the promulgation of the decision, the Sandiganbayan dictated an order in open court allowing Maunes to continue enjoying temporary liberty under his original bond. The bondsmen did not object to that order.

Maunes filed in this Court a petition for review on certiorari seeking a reversal of the Sandiganbayan decision.[2] On October 25, 1983, this Court denied said petition. His motion for reconsideration of the denial resolution was likewise denied. Consequently, the resolution of October 25, 1983 became final and executory on January 30, 1984 and the record of the case was remanded to the Sandiganbayan in a letter of transmittal dated April 9, 1984.

Two weeks later or on April 23, 1984, the Sandiganbayan required the petitioners to produce the body of Maunes on May 21, 1984 for the execution of its judgment. As Maunes failed to appear in court on said date, the Sandiganbayan ordered his arrest and the confiscation of the bond. It gave petitioners, as bondsmen, thirty days within which to produce the body of Maunes and to explain why judgment should not be rendered against them for the amount of their bond for Maunes' failure to appear in court for the execution of the judgment against him.

On July 4, 1984, petitioners submitted their explanation alleging therein that since Maunes did not appeal the

decision [which allegation is belied by the filing of G.R. No. 65095 in this Court], they thought that they were no longer responsible for his whereabouts.

According to the petitioners, it was only on August 6, 1984 when one of them went to the office of the clerk of court of the Sandiganbayan that they learned about Maunes' having appealed to this Court without the Sandiganbayan requiring him to post bail on appeal as mandated by Section 13, Rule 114 of the Rules of Court. They also discovered a written order dated July 21, 1983, the date of promulgation of the Sandiganbayan decision, which states thus:

"In order to give the accused time within which to determine the course action he desires to take on the decision convicting him, he is hereby directed to appear before this Court on August 5, 1983, at 8:30 A.M. However, if prior thereto accused files an appropriate pleading which prevails or has the effect for prevailing [sic] the decision from becoming final, his appearance on said date is deemed dispensed with.

"In the meantime, accused is allowed to continue enjoying temporary liberty based on the original bond.

"So ordered.

"Given in open court this 21[st] day of July, 1983 at Manila, Philippines."[3]

Petitioners also found in the record of Criminal Case No. 1444 an affidavit dated April 27, 1981 which allegedly indicated their conformity to the reinstatement of their bond.

Contending that said affidavit was fictitious, petitioners mailed to the Sandiganbayan a "comprehensive explanation" why they should not be compelled to produce Maunes in court. They stated therein that when Maunes appeared in court for the promulgation of the judgment and he signed a copy of the decision, he "was already surrendered to, and in complete custody of, the court". They argued that Section 4 of Rule 114 was not observed because instead of requiring Maunes to apply for approval of a bail bond after his conviction, he was immediately released. They further contended that Section 8 of Rule 114 was also overlooked by the court as no hearing was conducted on an application for bond after conviction. They felt aggrieved because their consent to the use of the original bond had not been secured thus depriving them of their chance to hold Maunes and have him committed in jail.[4]

Before said "comprehensive explanation" could be received by the Sandiganbayan, said court issued a resolution dated August 31, 1984 finding petitioners' first explanation to be without merit and ordering judgment against the bond. The court stated therein that:

"It is obvious that the obligation of the bondsmen continued up/ to the time when the Court required them to produce the body of the accused for the execution judgment. Their excuse that they did surrender the accused on July 21, 1983 when he appeared for the promulgation of judgment, is without merit. They did not specifically inform the Court that they were surrendering the body of the accused and they no longer wanted to accept the obligation as bondsmen after the promulgation of the judgment of conviction because had they done so, the Court would have immediately committed the accused to preventive detention during the pendency of any appeal that he may have taken."[5]

Thereafter, on September 20, 1984, the Sandiganbayan issued a resolution noting petitioners' "comprehensive explanation" with the observation that "the same will not change the previous order of August 30, 1984" considering this Court's pronouncement in *Mabuhay Insurance Co., Inc. vs. Court of Appeals*, 32 SCRA 245.[6]

Petitioners moved for a reconsideration of the two resolutions on their explanation contending that the Sandiganbayan failed to deal with their allegation that their signatures in the affidavit which appeared to have been executed before notary public Pedro T. Sanico sometime after April 9, 1981 [sic], were forged.[7]

Petitioners' motion for reconsideration was set for hearing on November 29, 1984 but they moved for its postponement alleging as grounds therefore that: [a] notary public Pedro T. Sanico, whom they would like to confront during the hearing, was not notified of said hearing because of his new address, and [b] except for Celedonio R. Abella, all the bonds-men were septuagenarians and their travel to Manila would not only tax their failing health but it would also drain their financial resources especially considering the fact that they were saving money to satisfy the judgment against their bond should their explanation fail to satisfy the court. They prayed that their testimonies and that of Pedro T. Sanico concerning the questioned affidavit, be taken before any qualified officer preferably before the then Regional Trial Court in Baganga, Davao Oriental in the form of deposition and discovery under Rule 24 of the Rules of Court.

On December 3, 1984, the Sandiganbayan denied both petitioners' motion for reconsideration and motion for postponement. The court said:

"There is a puissant reason why We can not impart legitimacy upon the bondsmen's contention that their signatures appearing on the 'Manifestation of Conformity' were falsified. After said manifestation was filed in Court, several notices of trial have been received by the bondsmen. And at least in two instances, they have filed their explanations, as directed by the Court, to why judgment should not be rendered against their bonds failure of the accused to appear at the scheduled trial and promulgation of judgment [pp. 143-150; 445, Record]. The bondsmen never complained about the cancellation of their bail bonds and the forgery of their signatures written on the 'Manifestation of Conformity'. Those occasions would have been the most auspicious for them to call the attention of the Court that they are no longer responsible for the failure of the accused to appear before the Court. If they did so and was found true, no notices of trial and orders requiring them to explain would have been issued to them. But the bondsmen mentioned nothing and kept silent about the alleged forgery and continued to receive notices and to respond to the Court's orders. They can not now question the validity of their signatures on the 'Manifestation of Conformity'.

"The 'Manifestation of Conformity' is contained in a public document, acknowledged by the bondsmen before a notary public. The bondsmen have not introduced that quantum of proof which will justify Us in disregarding the contents of a public document. The biased and interested declarations of two of the parties to such a document who repudiate their signatures thereon, can not overcome the evidentiary force of what is recited in the document. Accordingly, We find and hold that the signatures of the bondsmen found on the 'Manifestation of Conformity' dated April 27, 1981 are genuine, and consequently, they are liable under the terms and conditions thereof.

"As regards the bondsmen's motion for postponement, of the hearing of the motion for reconsideration, We find that the same is a mere dilatory expedient to delay execution of judgment on the bail bonds, considering that the sole ground invoked in the motion for reconsideration is frivolous."[8]

Hence, the bondsmen filed the instant petition for certiorari alleging that the Sandiganbayan exceeded its jurisdiction and abused its discretion in: [a] issuing the order of July 21, 1983 without serving them notice, and [b] denying their motions for reconsideration and for the postponement of the hearing of November 29, 1984.

We find that this petition for certiorari was filed for no other purpose than to delay the forfeiture of the bail bond. Considering that one of the petitioners, Eduardo S. Solante is a lawyer who himself prepared and filed the instant petition, it is not illogical to presume that they know the extent of their liability under the bond and the procedure under which they could obtain a discharge therefrom. Nonetheless, if only to enlighten them, We shall discuss the merits of this case notwithstanding our conviction that it should have been dismissed outright.

Petitioners contend that "their consent was never asked for using their original bond".[9] They bewail the fact that they were not notified of the order of July 21, 1983 which allowed temporary liberty to Maunes after his conviction on the basis of his original bond. Yet, they fail to dispute the fact that said order was merely a written

reiteration of an oral order given in open court to which they did not register any objection.

Petitioners should be reminded that it is not the duty of the court to ask bondsmen whether they desire to continue their liability under the bond after the principal has been convicted. This is clearly enunciated in Section 16, Rule 114 of the Rules of Court which reads:

"SEC. 16. Discharge of sureties. - Upon application filed with the court and after due notice to the fiscal, the bail bond shall be cancelled and the sureties discharged from liability [a] where the sureties so request upon surrender of the defendant to the court; [b] where the defendant is re-arrested or ordered into custody on the same charge or for the same offense; [c] where the defendant is discharged by the court at any stage of the proceedings, or acquitted, or is convicted and surrendered to serve the sentence; and [d] where the defendant dies during the pendency of the action." [Underscoring supplied].

It is therefore not enough that bondsmen produce the person of the accused at the time of the promulgation of the decision.[10] It is also incumbent upon them to petition the court for their discharge as sureties.[11] Until after the accused has been sur-rendered and the court has ordered the cancellation of the bond, the bondsmen's liability continues.[12]

Petitioners should not put the blame on the Sandiganbayan for their own failure to observe the procedure for their discharge as bondsmen. The San-diganbayan could not have required the filing of a bail on appeal simply because of petitioners' own neglect in filing an application or petition for the cancellation of their bond. Bondsmen are not sup-posed to be passive in discharging their responsi-bilities as such. They owe it to themselves to exercise a modicum of initiative especially with regard to their liabilities under the bond.

Petitioners' effort to delay the forfeiture of the bond is manifest in their motion for postponement of the hearing on their motion for recon-sideration. They cited as a reason therein the fact that they were saving money in the event that the court would not be satisfied with their explana-tion. Unwittingly, that allegation betrayed a knowledge on their part that theirs was a losing pro-position and their bond would eventually be forfeited.

We are satisfied with the Sandiganbayan's explanation why petitioners' assertion on the fic-titious character of their affidavit of April 27, 1981 should not be given merit. We see no plausible reason to deal further on said matter.

WHEREFORE, the petition for certiorari is hereby dismissed. Costs against the petitioners.

SO ORDERED.

Teehankee, C.J., Yap, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Rollo, p. 83

[2] G.R. No. 65095, Maunes vs. Sandiganbayan and People of the Philippines.

[3] Rollo, p. 4

[4] Rollo, p. 18

[5] Rollo, pp. 14-15

[6] Rollo, p. 20

[7] Rollo, p. 21

[8] Rollo, p. 27

[9] Memorandum, p. 1; Rollo, p. 97

[10] People vs. Celeste, L-25806, April 29, 1977, 76 SCRA 601, 605

[11] Mabuhay Insurance & Guaranty, Inc. vs. Court of Appeals, L-28700, March 30, 1970, 32 SCRA 245, 251-252

[12] People vs. Valle, L-18044, April 30, 1963, 7 SCRA 1025, 1027

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