

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. A. A. ADDISON AND PASTOR M. GOMEZ, DEFENDANTS AND APPELLEES.

G.R. No. 9635. August 26, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Ilocos Sur in favor of the defendants in an action on a bond given in a criminal action to procure the liberty of the accused pending trial.

On the 10th of June, 1912, the prosecuting attorney of the Province of Ilocos Sur presented a complaint in the justice's court of Vigan, accusing Walter Schultz of the crime of malversation of public funds in violation of the provisions of Act No. 1740. To procure the liberty of the accused pending trial, A. A. Addison and Pastor M. Gomez became his sureties upon a bail bond, the important parts of which are the following:

"Whereas a complaint has been filed on the 10th of June, 1912, in the court of the justice of the peace of Vigan, Ilocos Sur, P. I., charging Walter Schultz with the offense of 'malversation of public funds by a public official,' and he having been admitted to bail in the sum of two thousand pesos (P2,000) Philippine currency:

"Now, therefore, we, Pastor Gomez, of Calle Sacristia No. 954, and A. A. Addison, of Calle Globo de Oro, No. 70, jointly and severally, hereby undertake that the above-named Walter Schultz 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 we will pay to the United States the sum of two thousand pesos (P2,000) Philippine currency."

The accused having renounced his right to a preliminary investigation before the justice of the peace, the case, being one over which the latter had no jurisdiction, was sent to the Court of First Instance for further proceedings. On the 7th of October, 1912, the Court of First Instance received a petition signed by A. A. Addison and Pastor M. Gomez, in which, after alleging that they desired to deliver the accused into the custody of the law and to relieve themselves from the obligation imposed by the bond, they prayed that said court issue an order of arrest against said accused for the purpose of his apprehension. The ground upon which they based this application was that the accused had absented himself from the city of Manila, where he had been for some time, and that the bondsmen were unable to ascertain his whereabouts, although they had made diligent search. On the 8th of October the court denied the petition. On the 22d of November the bondsmen again applied to the court for the issuance of an order of arrest against the accused, basing their application upon the same ground as before. In this application they alleged that the accused could not be found, although the Information Division of the Bureau of Constabulary had made diligent search for him. On the 30th of November the court again denied the application.

"At a session of the Court of First Instance of Ilocos Sur held on the 30th of November, 1912, the trial of the case was set for the 26th of December of the same year. At the opening of the court on said 30th of November the bondsmen applied to the court for a reconsideration of its previous orders denying the application of the bondsmen to be relieved from their responsibility and for an order of arrest against the accused, and again

prayed that the court issue such order of arrest, alleging as a ground therefor that the peace authorities did not believe that they were authorized to arrest the accused without such order. They further prayed that on the issuance of said order of arrest the bond which they had signed be canceled and that they be relieved from all responsibility thereunder.

On the 10th of December the court, acting on the petition of the bondsmen above referred to, ordered the clerk to issue to said bondsmen a certified copy of the bail bond, with an order authorizing said bondsmen to arrest their principal or require his arrest by any policeman or peace officer, but refused to relieve the bondsmen from their obligation under the bond. This order was mailed to the bondsmen on the same day that it was issued.

On the 31st of March, 1913, the prosecuting attorney of Ilocos Sur moved the court that the said bondsmen be ordered to present the body of the accused to the court on the 10th day of April, 1913, for trial, with the admonition that if they failed or neglected to do so, the bond would be declared forfeited. This order was served on the sureties on the 7th of April. The accused was not served with a copy for the reason that he could not be found within the Philippine Islands.

The cause was called for trial on the 10th of April, 1913, and the body of the accused not having been presented, the judge declared the bond forfeited. The order of forfeiture gave the sureties thirty days within which to present the body of the accused and admonished them that if they did not do so within that time or show cause satisfactory to the court why they did not, judgment would be rendered and entered against them for the amount of the obligation.

On the 5th of May, 1913, the bondsmen filed their answer, alleging that they did not appear in Vigan before the Court of First Instance on the 10th of April, as ordered, for the reason that they did not have time to reach that place from Manila after they received notice of the order, and that the reason why they were unable to deliver the body of the accused was that the court had refused to issue the order of arrest which they had three times prayed for, and praying that upon the allegations made they be relieved of responsibility.

On the 28th of July, 1913, the prosecuting attorney of Ilocos Sur moved the court that judgment be entered against Pastor M. Gomez and A. A. Addison, sureties for Walter Schultz, for the sum of \$2,000, and that the judgment be executed at once. This motion was notified to the bondsmen and their counsel and hearing of the same was set for the 3d of September at 8 o'clock in the morning. On the 19th of August G. E. Campbell, attorney for the bondsmen and for the accused, asked for a postponement of the hearing of the motion until the 3d of November. The hearing was finally set for the 26th of December. The bondsmen or the accused not having appeared at the time set, the 26th of December, the court found in their favor, absolving them from all responsibility under the bond.

It is against that judgment that this appeal is taken.

We are of the opinion that the judgment must be reversed.

Section 75 of the Code of Criminal Procedure provides:

"The sureties of the bail bond may surrender the defendant at any time prior to forfeiture, or he may surrender himself and the bail be thus exonerated. An order of exoneration may be made by the court upon proof of surrender and after due notice to the promoter fiscal of the proposed issuance of the order. For the purpose of surrendering the defendant the bail may arrest him, or on written authority indorsed on a certified copy of the undertaking may cause him to be arrested by any police officer or any other person of suitable age and discretion."

As stated by the attorney for the appellees:

"From the wording of this section it is clear that there are two methods that may be pursued by the bail in order to surrender the accused, * * * they may arrest him themselves or they may cause his arrest through certain channels."

In order words, the bail may arrest the principal and deliver him to the proper authorities, or they may cause his arrest to be made by any police officer or other person of suitable age and discretion by indorsing the authority to arrest upon a certified copy of the undertaking and delivering it to such officer or person. These are the only methods, in a general way, by which the sureties may relieve themselves from responsibility relative to the recognizance.

The bondsmen did not do either of these things. Instead of delivering the principal to the court having jurisdiction over him or to the sheriff thereof or his deputy, or of procuring his arrest by a peace officer authorized by indorsement upon a certified copy of the undertaking, they permitted the accused to escape and then sought to induce the court in which the action against the principal was pending to issue an order of arrest that the principal might be apprehended and they absolved. The court to which the application was presented did not consider itself authorized under the showing made to issue the order prayed for. Its position evidently was that the principal was at liberty under a bond which had not been revoked or withdrawn in the manner prescribed by law; and that, until the moment of cancellation or revocation of the bail bond in pursuance of law, the accused was entitled to his liberty. The court, therefore, refused to issue the order of arrest. We do not regard this position as altogether tenable. While the contention of the sureties, in their application for the order of arrest, that they be relieved from obligation when the order was issued, cannot be sustained, the Court of First Instance, under the facts presented, should have lent the sureties, in such manner as the law permits, all the aid that it reasonably could in the apprehension of the principal. While the Code of Criminal Procedure sets out the methods by which the sureties may release themselves from their obligation, it does not say that the court may not assist them to release themselves; and we think that the court in this case should have assisted them in their endeavor to apprehend and deliver the principal and thereby to relieve themselves from responsibility. We have no doubt about the power of the court, with or without the application of the sureties, to order the arrest of a principal if it is shown or appears that he is attempting or planning his escape or is in hiding for the purpose of defeating the ends of justice.

We do not now decide to what court or other official it is necessary for sureties to present their principal in order to be relieved from responsibility under the bond. That question is not before us. The sureties never delivered or attempted to deliver the body of their principal to any court or peace officer. They simply asked the cooperation of certain peace officials for the capture of the principal whose whereabouts was, at the time, admittedly unknown.

When the obligation of bail is assumed, the sureties become in law the jailers of their principal. Their custody of him is the continuance of the original imprisonment, and though they cannot actually confine him, they are subrogated to all the other rights and means which the Government possesses to make their control of him effective. The responsibility assumed by the bail, being purely gratuitous, may be terminated by them at any time, and, to effect this end, they may arrest the principal at pleasure and surrender him into the hands of the law. Even though there were no statute to that effect, the right of the bail to arrest the principal for the purpose of surrendering him is incidental to the engagement, and the issuing of process is not necessary to its exercise. The arrest may be made by the bail, either in person or by agent, in the manner prescribed by statute. They may pursue him; may seize him at any time of the day or night, and may enter his house for that purpose. If resistance be apprehended, they may at all times command the assistance of the peace officers upon complying with the terms of the statute. (Reese vs. U. S., 9 Wall., 13; U. S. vs. Ryder, 110 U. S., 729; State vs. Lingerfelt, 109 N. C., 775; Taylor vs. Taintor, 16 Wall., 366; Bearden vs. State, 89 Ala., 21; Norfolk vs. People, 43 111., 9; Kellogg vs. State, 43 Miss., 57; Hughes vs. State, 28 Tex. App., 499; State vs. Rosseau, 39 Tex., 614; State vs. Cunningham, 10 La. Ann., 393; U. S. vs. Keiver, 56 Fed. Rep., 422; Read vs. Case, 4 Conn., 166; Sternberg vs. State, 42 Ark., 127.)

To the sureties the state gives every facility for the apprehension and surrender of the principal and there is, therefore, very little excuse for their failure to protect themselves. While we do not determine whether or not a peace officer has the right to arrest the principal on the request of the sureties if they do not present a certified copy of the bond properly indorsed, there is no evidence that any peace officer had an opportunity to arrest the principal after having received notice to do so from the sureties, or that the refusal of such an officer, if any, had any influence on the result. Nor do we hold, either, that a court may not issue an order of arrest for the accused upon the representation of the bondsmen upon the proper showing. We simply say that, upon the facts before us, we are not prepared to hold that the Court of First Instance of Ilocos Sur erred in refusing to issue the order of arrest under the showing made—at least no error was made sufficient to relieve the sureties. It does not appear from the record that the action of the court had any effect on the outcome as it is fairly clear that the sureties permitted the principal to escape before any attempt was made to apprehend him.

The judgment absolving the sureties is reversed and the case is remanded to the Court of First Instance of Ilocos Sur, with instructions to enter judgment against the sureties in accordance with this opinion.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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