

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE VS. SY BENG GUAT, DEFENDANT. MANILA SURETY & FIDELITY CO., INC., BONDSMAN AND APPELLANT.

G.R. Nos. 11997 and 12042. April 29, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Sy Beng Guat was charged with estafa in two cases before the Court of First Instance of Rizal. He posted a bail bond in the sum of P4,000.00 subscribed by the Manila Surety & Fidelity Co., Inc. for his provisional liberty. On the date set for the continuation of the trial, the bondsman moved for postponement on the ground that it was still trying to locate the accused who, according to its information, was confined in jail in connection with two other cases pending in Quezon City. The court denied the motion and ordered the forfeiture of the bond giving the bondsman 30 days within which to produce the accused and show cause why judgment should not be rendered against it for the amount of the bond. The bondsman filed a motion for an extension of 30 days within which to comply with the court's order, which was granted. A second motion for extension of 30 days was filed by the bondsman, and again the same was granted. The bondsman having failed to produce the accused within the period extended, the court granted it another period of grace to expire on October 20, 1955.

After the surety company failed to produce the accused even after the several postponements given to it, the trial court on November 24, 1955 rendered judgment against it on the bond and ordered that a writ of execution be issued for the satisfaction of the judgment. On November 25, 1955, the bondsman learned that the accused was confined in the New Bilibid Prisons at Muntinlupa serving the sentence imposed upon him in two criminal cases by the Court of First Instance of Manila, for which reason it could not produce him in court as required, and so on December 8, 1955 it filed a motion to lift the order of confiscation praying that it be relieved from its liability under the bond. As this motion was denied, the bondsman took the present appeal.

The law governing the forfeiture of bail is Section 15, Rule 110, of the Rules of Court, which provides:

"SEC. 15. Forfeiture of bail.—When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why defendant did not appear before the court when first required so to do. Failing in these two requisites a judgment shall be rendered against the bondsmen."

It would appear that when a case is set for trial the duty of the bondsman is to see to it that the accused appears on the date of trial. If he fails to do so, he should be given 30 days within which to produce the accused and to show cause why judgment should not be rendered against him for the amount of the bond, and within said period, the bondsman is required to do two things. (1) to produce the body of the accused or give reasons for his non-production; and (2) to explain satisfactorily why the accused failed to appear when first required to do so.

Failure to do either may subject the bondsman to liability.

It thus clearly appears that the mere production or appearance of the accused within the period set by the court after his failure to appear when first required for trial would not suffice to exonerate the bondsman from liability, nor entitle him to release as a matter of right, but it is still necessary that he give satisfactory reasons why he failed to appear when first required to do so. In the instant case, the bondsman not only was not able to produce the body of the accused despite the several extensions granted to it, but failed to explain satisfactorily why it was not able to produce him during the trial set on July 19, 1955. It, therefore, failed to comply with the law.

In its motion to lift the order of confiscation, the bondsman stated: "From reliable information the herein movant was informed that the accused Sy Beng Guat has already been confined at the Bureau of Prisons (Muntinglupa) serving sentence in connection with Criminal Cases Nos. 10900 and 11037 of the Court of First Instance of Manila, as evidenced by a certificate of the Bureau of Prisons." It was there stated that he was committed to said penitentiary only on November 30, 1955. If it is true, as certified by the Director of Prisons, that the accused was involved in two other criminal cases pending in the Court of First Instance of Manila and, as it is to be presumed, he was at all times available to that court during the prosecution and trial of said two cases, we see no plausible reason for the bondsman not to know his whereabouts and not to produce him for the trial in the instant cases considering the several extensions granted by the court to locate and produce him. The fact that the accused was dealt with in due course in the two cases above-mentioned so much so that he was eventually confined in prison, confirms our view that the bondsman has failed to do its duty to keep a continuous surveillance over him which accounted for its failure to produce him when required by the court.

In a recent case decided by this Court, we said: "It is obvious from the above-quoted section that if after notice to produce the defendant is served upon the sureties the defendant fails to appear at the time required by the court, the bail bond shall be declared forfeited, and the forfeiture can only be discharge if, within thirty days, the defendant appears when required to do so. The personal appearance of the defendant is therefore not sufficient; it is still necessary that it be accompanied by a satisfactory explanation of his failure to appear. Mere explanation is not also enough. It is of prime importance that it be satisfactory in order that the surety may be discharged from liability. And it is well settled that the question whether the explanation given is or is not sufficient is a matter that lies within the discretion of the court" (*People vs. Felix*, G. R. No. L-10094, May 14, 1957; *Italics ours*). Here the explanation given is not satisfactory; neither can it entitle the bondsman to a mitigation of its liability.

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, and Endencia, JJ., concur.

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