

THE PEOPLE OF THE PHILIPPINE ISLANDS, PETITIONER AND APPELLANT, VS. EUGENIO UY TUISING, DEFENDANT. LUZON SURETY COMPANY, INC., RESPONDENT AND APPELLEE.*G.R. Nos. 42118-42120. April 25, 1935*

Ponente: DIAZ, J.

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The question raised by the appeal of "The People of the Philippine Islands" from the order of the Court of First Instance of Cebu, dated April 25, 1934, which was entered in criminal cases Nos. 13029, 13259 and 14107 of the said court (G. R. Nos. 42118, 42119 and 42120), is whether or not the said order should be reversed and the appellee Luzon Surety Company, Inc., compelled, as surety of Eugenio Uy Tuising who was the accused in the said three cases, to comply with the conditions of the bail-bonds filed by it in favor of the said accused, by satisfying the value thereof, notwithstanding the reason, which the said Court of First Instance took into consideration, that said Eugenio Uy Tuising died in Irichong, Amoy, China, on January 27, 1932.

The proven facts, that have a bearing on the question under consideration, are as follows: That the accused Eugenio Uy Tuising, having appealed to this court from the sentences imposed upon him by the Court of First Instance of Cebu in the three cases above cited, was required to file a bail-bond for his provisional release, pending the decision of his appeal; that the herein appellee undertook to bail the said accused by filing to that effect the appeal bonds attached to the said cases Nos. 13029, 13259 and 14107 (G. R. Nos. 36134, 36135 and 36569) ; that while these cases were pending in this court, Eugenio Uy Tuising, the therein accused-appellant, withdrew his appeal, for which reason his three appeals were dismissed and the three cases were remanded to the court a quo on January 5, 1932; that on the 12th of the same month and year, the clerk of the Court of First Instance of Cebu, by order of the presiding judge, sent to the herein appellee the corresponding notice requiring it to produce the person of Eugenio Uy Tuising so that the latter would be informed of the sentences rendered against him in the said three cases; that notwithstanding the fact that the said appellee had received the notice in question three days later, that is on January 15, 1932, it failed to produce and never produced said Eugenio Uy Tuising, either at that time or subsequently thereafter; that in view of the said appellee's failure, the provincial fiscal of Cebu, on January 22, 1932, filed in the lower court his motion, of the said date, praying for the confiscation of the bonds filed by the said appellee in favor of the accused, but strange enough, a thing which cannot but justify the presumption that the said fiscal acted with negligence or leniency, he did not want the said motion to be acted upon by the said court until February 27, 1932, on which date the court issued its order providing for the confiscation prayed for and the surrender in due time of the person of Eugenio Uy Tuising, within the period of thirty days which, upon petition of the appellee, was later extended to May 3, 1932; that at the expiration of the said extended period, the appellee filed a motion praying that it be relieved from the obligation to produce the person of Eugenio Uy Tuising and that the order of February 27, 1932, be vacated, on the ground that the said accused had died in Inchong, Amoy, China,, on January 27, 1932; and that the appellee's motion in question was granted by the lower court which declared, after having received evidence relative thereto, that in

fact said Eugenio Uy Tuising died in Inchong, Amoy, China, on the date above stated.

Strictly speaking, there is no exact similarity between the question under consideration and the one raised in the case of United States vs. Sunico and Ng Chiong (40 Phil., 826), cited by the Solicitor-General in his brief, for the order of confiscation of the bail-bonds filed in the cases under consideration was issued one month after the alleged death in China of Eugenio Uy Tuising, while that entered for the same purpose in the said case of United States vs. Sunico and Ng Chiong was issued long prior to the death of the therein accused.

However, if it is true that the lower court did not order the confiscation of the bonds filed by the appellee in the three cases under consideration until February 27, 1932, that is, thirty days after Eugenio Uy Tuising had died in China, according to the evidence of the said appellee, it is also true that the said court demanded the immediate production or surrender of the person of the said accused, by means of the notice dated January 12, 1932, which the clerk sent to the appellee and which was received by it on the 15th of the same month and year, notwithstanding which, the said appellee not only did not produce the accused but it did not even give any excuse for its failure to do so.

It should be borne in mind that the conditions imposed upon the appellee in the bonds filed by it in favor of Eugenio Uy Tuising were: that the latter "will surrender himself in the execution of such judgment as the appellate court may render, or that, in case the cause is remanded for a new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes of the court, and will at all times hold himself amenable to the orders and processes of the Court of First Instance of Manila and the Supreme Court of the Philippine Islands; or, if he fails to perform any of these conditions, that we will pay to the People of the Philippine Islands the sum of P.....only." If the appearance or surrender to the court of the person of the accused Eugenio Uy Tuising, on the date the same was required, was impossible, it was because he had left this jurisdiction, by taking a boat for China, with the acquiescence and consent of the appellee.

By the mere fact that a person binds himself as surety for the accused, he takes charge of, and absolutely becomes responsible for the latter's custody, and under such circumstances it is incumbent upon him, or rather, it is his inevitable obligation, not merely a right, to keep the accused at all times under his surveillance, inasmuch as the authority emanating from his character as surety is no more nor less than the Government's authority to hold the said accused under preventive imprisonment. In allowing the accused Eugenio Uy Tuising to leave the jurisdiction of the Philippines, the appellee necessarily ran the risk of violating, and in fact it clearly violated the terms of its bailbonds because it failed to produce the said accused when on January 15, 1932, it was required to do so. Undoubtedly the result of the obligation assumed by the appellee to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines because, otherwise, said orders and processes would be nugatory; and inasmuch as the jurisdiction of the court from which they issued does not extend beyond that of the Philippines, they would have no binding force outside of said jurisdiction.

This court believes it unnecessary to discuss the question whether or not Eugenio Uy Tuising actually died in China on January 27, 1932, because, even granting that he is dead, as the appellee tried to prove, his death cannot at all events alter the effects of this decision. When the alleged death of the said accused took place, the conditions of the bailbonds filed in his favor by the appellee had already been violated inasmuch as from January 15, 1932, the date on which the appellee received the notice requiring it to produce and surrender to the court the person of Eugenio Uy Tuising, to the 27th of the same month and year, on which the death of the said accused is said to have taken place, more than sufficient time had elapsed to give the appellee opportunity to comply with the requirement, had it so desired.

For the foregoing reasons, this court is of the opinion that the only possible conclusion is that the appellant's appeal from the order of the lower court is very well taken and that the order in question should therefore be reversed.

Wherefore, the appealed order is hereby reversed in toto. and it is hereby ordered that the lower court issued the corresponding writ for the confiscation of the bonds filed by the said appellee in the three cases above stated, in accordance with the law and procedure followed in this jurisdiction, with the costs against the appellee. So ordered.

Malcolm, Abad Santos, Hull, Vickers, Butte, and Goddard, JJ., concur.

Order reversed.

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