

PHILIPPINE PHOENIX SURETY AND INSURANCE INC., PETITIONER, VS. SANDIGANBAYAN [THIRD DIVISION], RESPONDENT.

G.R. Nos. 64157-58. April 29, 1987

Ponente: FERNAN, J.

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FERNAN, J.:

The issue in this special civil action for certiorari is whether or not the Sandiganbayan acted with grave abuse of discretion in denying petitioner Philippine Phoenix Surety and Insurance, Inc.'s motion for the cancellation of the bail bonds issued to accused Remberto F. Castro.

On October 16, 1979, Remberto F. Castro and Winston Dulay were detained at the PC-INP jail in Camp Crame by virtue of an Arrest, Search and Seizure Order [ASSO 4735] for alleged economic sabotage.

On March 3, 1980, two informations for estafa against Castro were separately filed in Branch 20 and 21 of the Court of First Instance of Rizal in Pasig [Criminal Cases Nos. 34721 and 34722]. On the same day, two informations for falsification of public documents were separately filed against him in the Court of First Instance of Rizal in Pasay City.

On April 1, 1980, Phoenix Surety issued personal bail bonds for Castro [AAF 01077, 01078, 01079 and 01080].[1] Castro paid P9,832.00 for premiums.

On June 4, 1980, Castro escaped from the custody of his military escorts while enroute to attend trial before Branch 20 of the Court of First Instance of Rizal in Pasig. He has reportedly left the country since then. Winston Dulay, on the other hand, is still at large.

In June 1980, Phoenix Surety filed an urgent motion for cancellation of bail bond before the Court of First Instance of Rizal, Branch 20 and 21 in Pasig, on the ground that the bonds posted for Castro were useless because the military authorities did not recognize them as legal basis for Castro's release. Judge Gregorio G. Pineda of Branch 21 denied the motion, it appearing that Castro was no longer in military custody as he had escaped.[2]

Judge Celso L. Magsino of Branch 20, however, granted Phoenix Surety's motion and relieved the latter of any responsibility on the personal bail bond, JCR [2] Bond No. 0619, AAF 01065[3] for the provisional liberty of Castro.[4]

In due time, the records of the four criminal cases against Castro and Dulay were endorsed to the Office of the Tanodbayan by the Ministry of Justice. The Tanodbayan consolidated the cases and filed before the Sandiganbayan two amended informations charging Castro with two separate complex crimes of estafa through falsification of public documents [Criminal Cases Nos. 5556-5557].

It appears that the Sandiganbayan directed Phoenix Surety to produce Castro and Dulay before the court. Despite an extension of the deadline for complying with the court order, Phoenix Surety was unable to do so. As a result, on April 23, 1982, the Sandiganbayan apparently declared the forfeiture of Dulay's bond and required the

petitioner surety to show cause why a judgment should not be rendered against it for the amount of the bond.[5] That prompted Phoenix Surety to file several motions with the Sandiganbayan seeking the reconsideration of its order dated April 23, 1982 insofar as accused Dulay was concerned, the cancellation of the bond issued in favor of Castro, and the suspension of the resolution on the prosecution's motion for judgment on the bond.

The Sandiganbayan, in its challenged resolution of December 27, 1982, denied the motion for reconsideration in connection with Dulay and refused the cancellation of Castro's bond as well as the suspension of the resolution on the motion for judgment on the bond. Accordingly, it granted the prosecution's motion for judgment on the bonds of Castro and Dulay for their full amount in view of Phoenix Surety's failure to procure their presence before the court within the required period. Upon denial of its motion for reconsideration on April 29, 1983, Phoenix Surety filed the present petition praying that the resolutions of December 27, 1982 and April 29, 1983 be set aside and that the bail bonds in favor of Castro be discharged.

The petition is devoid of merit.

Bail is defined by the Rules as the security required and given for the release of a person who has been placed under legal custody, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.[6]

The purpose of the bail is to relieve an accused from imprisonment until his conviction and yet secure his appearance at the trial.[7]

To release on bail an arrested person "is to deliver him in contemplation of law, yet not commonly in real fact, to others who become entitled to his custody and responsible for his appearance when and where agreed".[8] Upon assumption of the obligation of bail, the sureties become in law the jailers of their principal.[9]

The conditions of the bail are: [1] If before conviction, that the defendant shall answer the complaint or information in the court in which it is filed or to which it may be transferred for trial; [2] after conviction, that he will surrender himself in execution of the judgment that the appellate court may render; and [3] that in case the cause is remanded for new trial, he will appear in the court to which it may be remanded and submit himself to the orders and processes thereof. For failure to perform any of these conditions, the bond given in security thereof may be forfeited.[10]

The forfeiture of the bond rests upon the sound discretion of the court. Also dependent upon the court's discretion is the question of discharge of the surety. As a general principle, aside from the instances enumerated in section 16 of Rule 114, the surety, upon application filed with the court, may also be relieved from the non-appearance of the bond where its performance is rendered impossible by the act of God, the act of the obligee [the Government] or the act of the law. The exoneration under the second category is predicated upon the principle that the Government, as the obligee in the bond, cannot by its own acts prevent the fulfillment of the conditions of the bond by the sureties and at the same time demand its forfeiture.[11]

There is no question that in the present case petitioner Phoenix Surety failed to produce the body of Remberto F. Castro before the Sandiganbayan within the required period. However, Phoenix Surety opted to wash its hands off the matter by insisting that the bail bonds it posted for Castro were null and void since Castro was under military detention [by virtue of an ASSO issued by the Minister of National Defense] at the time of his escape. It argued that considering that the bail bonds were intended primarily to obtain the provisional liberty of the accused and this was rendered impossible by the ASSO, then it would be more in accord with justice and fairness for the Sandiganbayan to absolve the surety from further liability on the bonds.

While the argument may be valid, we cannot fully subscribe to it for the precise reason that Phoenix Surety is in

estoppel. As correctly observed by the Solicitor General, Phoenix Surety issued the personal bail bonds of Castro on April 1, 1980 when the latter had already been under detention for three [3] months. Without question, Phoenix Surety had knowledge of Castro's detention by the military when it issued the bail bonds. As a matter of fact, Phoenix Surety attached as Annex "F" to the present petition the letter [dated May 29, 1980] of Castro's counsel requesting petitioner surety to seek the cancellation of said bonds. Said letter reads in part:

"It is unfortunate however that despite the said bail bonds, the representations and assurances of your agent [a certain Alice] to my client that he would thereafter enjoy his provisional liberty turned to be false and untrue.

"To the present, my client has not been released from military custody [Camp Crame] for the reason that the bail bonds issued by your company are not recognized as legal basis for his release. Your agent [Alice] knew from the beginning that my client is under detention at Camp Crame by virtue of an ASSO x x x"[12]

So, at the outset, Phoenix Surety had offered for a valuable consideration, to assume the responsibility under the bond despite knowledge of Castro's military detention by reason of an ASSO. It must be presumed that Phoenix Surety knew fully well that the existence of the ASSO precluded provisional release by bail or by any other means.

Under such circumstances and considering that when the surety posts a bond for the temporary liberty of an accused, it becomes its jailer and as such is at all times charged with the duty to keep him under its surveillance, which duty continues until the bond is cancelled, or the surety is discharged.[13] Phoenix Surety is likewise deemed to have assumed the responsibility for Castro's escape and subsequent flight to another country. It was incumbent upon the surety to prohibit the accused from leaving the jurisdiction of the Philippines and placing himself beyond the reach of its orders and processes.

In conclusion, the principle of estoppel strongly militates against the stand taken by Phoenix Surety. Although the courts are usually liberal in accepting the explanations of the surety regarding the cancellation of the bond, such liberality must not be to the extent of totally exonerating a surety from an undertaking it has freely and voluntarily assumed with full awareness of all its attendant risks.

WHEREFORE, finding no cogent reason to set aside the resolutions of the Sandiganbyan dated December 27, 1982 and April 29, 1983, the Court RESOLVED to DISMISS the instant petition for lack of merit.

SO ORDERED.

Gutierrez, Jr., Paras, Padilla, Bidin, and Cortes, JJ., concur.

[1] p. 19, Rollo.

[2] Annex C of Petition, p. 14, Rollo.

[3] Said bail bond does not tally with the ones posted for Castro on April 1, 1980, p. 19, Rollo.

[4] Annex B of Petition, p. 13, Rollo.

[5] No copy of Order dated April 23, 1982 is attached to the records.

[6] Rule 114, section 1.

[7] *Almeda v. Villaluz*, L-31665, August 6, 1975, 66 SCRA 38.

[8] *Bishop Criminal Procedure*, 2nd Ed., p.150, cited in 4 *Moran*, *Comments on the Rules of Court*, 1980 Ed., p.

150.

[9] US v. Sunico, 40 Phil. 826.

[10] Rule 114, section 2; People v. Celeste, No. L-25806, April 29, 1977, 76 SCRA 601.

[11] US vs. Bonoan, 22 Phil. 1; US vs. Que Ping, 40 Phil. 17.

[12] Annex F of the Petition, p. 19, Rollo.

[13] People vs. Lee Diet, 94 Phil. 31.

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