THOMAS BUYAYAO AND BONGAYAN BUYAYAO, ASSISTED BY HER HUSBAND DAPLANG, PLAINTIFFS AND APPELLEES, VS. ITOGON MINING COMPANY, INC., DEFENDANT AND APPELLANT

G.R. No. L-8277. April 28, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

In a nutshell the most important question presented to us on this appeal is, Does a parole granted a person convicted of homicide, on condition that he pays one-fifth of his monthly salary to the heirs of the deceased, which condition he complies with, bar or suspend the right of the said heirs to an action to enforce the subsidiary liability against the employer of the convict?

In a judgment rendered by the Court of First Instance of Baguio in Criminal Case No. 766 affirmed by the Court of Appeals in C. A.-G. R. No. 10361-R, Alejandro Bentres was convicted of homicide committed on the person of Dagtayan Dalasdas and ordered to pay an indemnity of P4,000 to the heirs of the deceased. Execution having been issued against Bentres for the amount of said indemnity, the sheriff made a return containing the following statements: "'the accused has no property, either real or personal which may be levied upon" and that "Notice of Garnishment was served upon said mining company (Itogon Mining Company, where the accused is now employed as policeman) on January 28, 1954 over the salary of the accused, but inspite of the lapse of time, said mining company did not answer our notice of garnishment." So plaintiffs, heirs of the deceased Dalasdas, presented this action against the Itogon Mining Company, Inc, employer of Bentres at the time and on the occasion of the homicide, upon the latter's subsidiary liability in view of the finding in the judgment of the Court of Appeals that Bentres "undoubtedly acted in the performance of a duty or in the lawful exercise of a right of office" (because he as policeman shot the deceased when trying to stop and arrest the latter whom he caught stealing ores from the mines of Itogon Mining Company, Inc.) The above facts appear in the Stipulation of Facts. It also appears therefrom that Alejandro Bentres was released on parole under Act No. 4103, as amended by Act No. 4225, on the condition, among others, "that he shall give one-fifth of his earnings during the period of his parole to the payment of the indemnity to which he had been sentenced." The Court of First Instance held,

> "* * *„ it will be seen that plaintiffs have fully complied with all of the requisites of the law and their claim should be satisfied. But defendant has set up the defense of the conditions on the parole and claims that the effect is a suspension of the sentence, including' the portion of civil indemnity, and thence no subsidiary liability. The Court is of the opinion that this defense is not tenable. By final judgment, the accused policeman incurred an obligation of P4,000 in favor of plaintiffs, which was immediately demandable."
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> "* * *., The Parole Board was aware of the law. It knew that it could not touch this phase of the civil indemnity—neither reduce it nor change the absolute terms of its payment. The Parole Board was likewise aware, conclusively so, that the salary of the accused policeman was exempt from garnishment—and impose this condition merely as part of the process of rehabilitation to inculcate in the accused policeman a sense of responsibility of his obligations. To hold otherwise would result, in the final analysis, in the anomalous

> situation of having a novation made of a contract—the payment of the civil indemnity—without the consent of the creditor. A situation that our laws do not permit. From these premises, and holding that the civil indemnity of P4,006 is still entirely and immediately due from the accused policeman, there can be no other conclusion than that in view of his admitted insolvency, defendant is subsidarily liable." (pp. 51-52, Record on Appeal).

It is argued on this appeal that as Bentres, the convict' under parole, has made payments in accordance with the condition oi the parole, the right of the heirs of the deceased to enforce payment of the indemnity against the Itogon Mining Company, Inc., the party subsidiarily responsible, does not accrue or is suspended. We find no merit in this contention. In addition to the reasons given in the decision appealed from, we may add that the Parole Act contains no provision modifying the liability of the party subsidiarily liable for the crime committed by the paroled convict, or suspending such liability upon the grant of parole. We might venture to anticipate that a modification of such liability or the conditions for the enforcement thereof, without opportunity on the part of the offended party or his heirs to be heard, would be deprivation of property without due process of law. The proceedings leading to the grant of parole are entirely administrative and ex-parte. Only the State and. the convict are parties thereto. They refer only to the service of the sentence. Neither the provisions of the law, nor the proceedings thereunder, nor the purpose and intent thereof purport to affect in any wise the rights of the offended party. How can the rights of others be affected thereby.

It is also argued that the return of the sheriff is not conclusive evidence of the insolvency of Bentres, the convict. It is at least prima fade, and if it is claimed that he had other properties which could be levied upon, that fact should have been alleged in defense to the action. No such allegation exists in the answer. The stipulation of facts contains no such fact either. The argument must, therefore, be overruled.

It is lastly contended that Bentres has so far paid P314.36, this evidently in compliance with the condition of the parole. Our ruling above that the Parole Act does not, and proceedings thereunder cannot, affect the right of the offended party to the subsidiary liability concludes this argument. If payments have been received by the offended party or his heirs, such payments may be deducted from the amount of the judgment on the subsidiary liability; but they may not in any manner suspend or bar the action for enforcement of said liability.

The judgment is hereby affirmed, with costs. So ordered.

Paras, C. J., Padilla, Montemayor, Reyes, A., Jugo, Bautista Angela, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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