

**LUCIA S. PAJARITO, PETITIONER, VS. HON. ALBERTO V. SEÑERIS,
PRESIDING JUDGE OF BRANCH II, COURT OF FIRST INSTANCE, CITY
OF ZAMBOANGA; JOSELITO AIZON, AND FELIPE AIZON,
RESPONDENTS.**

G.R. No. L-44627. December 14, 1978

Ponente: ANTONIO, J.

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ANTONIO, J.:

Original special civil action for certiorari.

Private respondent Joselito Aizon was charged before the Court of First Instance of Zamboanga City, Branch II (respondent Judge Alberto V. Señeris, presiding), with Double Homicide Through Reckless Imprudence or a violation of Section 48 of Republic Act No. 4136. The pertinent portion of the Information reads as follows:

"That on or about May 9, 1975, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the driver of an Isuzu Passenger Bus bearing Plate No. SB-511 owned and operated by FELIPE AIZON, operating on the public road, and without taking the necessary precautions, considering the width, traffic, visibility, grades, crossing, curvatures, and other conditions of the road, so as to avoid accident to persons or damage to properties, did then and there, through reckless and fast driving, caused the said Isuzu Passenger Bus to turn turtle, as a result of which, the persons of MYRNA PAJARITO DE SAN LUIS and MUSA BARING, both passengers on board the said Isuzu passenger bus sustained injuries on their persons which caused their death." (Italics supplied.)

Upon arraignment, said respondents entered a plea of guilty. In view of said plea, the court rendered judgment convicting him of the offense charged and sentencing him "to indemnify the heirs of the late Myrna Pajarito de San Luis the amount of P12,000.00 * * *."

After the judgment had become final and executory, a Writ of Execution was issued against Joselito Aizon for the indemnity of P12,000.00, but the same was returned unsatisfied because of his insolvency. Whereupon, petitioner Lucia S. Pajarito, mother of the late Myrna Pajarito de San Luis, filed with the court a quo a motion for the issuance of Subsidiary Writ of Execution and served a copy thereof to private respondent Felipe Aizon, employer of Joselito Aizon as alleged in the Information. Felipe Aizon opposed the motion on the grounds, to wit: (1) that he is not the employer of Joselito Aizon, the vehicle in question having been sold already to Isaac Aizon, father of Joselito, but that the deed of transfer has not been executed because the full price has not yet been paid; and (2) that in case of insolvency, Joselito has to suffer subsidiary imprisonment to satisfy the judgment insofar as the indemnity is concerned.

The court denied petitioner's motion for Subsidiary Writ of Execution on the ground that Felipe Aizon, alleged employer of Joselito, was not a party in the aforesaid criminal case. Said the court:

"It is therefore, the well considered opinion of this Court that a separate civil action must be filed by movant Lucia S. Pajarito against Felipe Aizon in order to enforce the subsidiary liability of the latter under Article 103 of the Revised Penal Code, as amended."

Petitioner moved for reconsideration of the foregoing ruling, but the same was denied. Hence, this petition.

Petitioner contends that the enforcement of the subsidiary liability under Article 103 of the Revised Penal Code may be filed under the same criminal case, under which the subsidiary liability was granted; that respondent Felipe Aizon, alleged employer of Joselito Aizon, was given his day in court, as he was furnished a copy of the motion for issuance of the Subsidiary Writ of Execution, to which he filed his opposition; and that, although not made a party in the criminal case, the employer, Felipe Aizon, should have taken active participation in the defense of his employee, Joselito Aizon.

On the other hand, respondents, in their Comment to the petition which We consider their Answer, maintain that to enforce the subsidiary liability under Article 103 of the Revised Penal Code, as amended, a separate civil action must be filed against the employer because under our present judicial system, before one could be held subsidiarily liable, he should be made a party defendant to the action, which in this case is not legally feasible because respondent Felipe Aizon was not accused together with Joselito Aizon in Criminal Case No. 512 (1313) for Double Homicide Through Reckless Imprudence.

Obviously, the question to be considered here is whether the subsidiary civil liability established in Articles 102 and 103 of the Revised Penal Code may be enforced in the same criminal case where the award was made, or in a separate civil action.

Under Article 100 of the Revised Penal Code, a person criminally liable for a felony is also civilly liable. As a consequence, the institution of the criminal action carries with it the institution of the civil action arising therefrom, except when there is a separate civil action or reservation of the latter on the part of the complainant. As explained in *Ramcar, Incorporated v. De Leon*:^[1] "When no civil action is expressly instituted, according to subsection (a) of section 1 of Rule 107, it shall be impliedly jointly 'instituted with the criminal action.' That means as if two actions are joined in one as twins, each one complete with the same completeness as any of the two normal persons composing a twin. It means that the civil action may be tried and prosecuted, with all the ancillary processes provided by law."

Pursuant to Article 103, in relation to Article 102, of the Revised Penal Code, an employer may be subsidiarily liable for the employee's civil liability in a criminal action when: (1) the employer is engaged in any kind of industry; (2) the employee committed the offense in the discharge of his duties; and (3) he is insolvent and has not satisfied his civil liability.^[2] The subsidiary civil liability of the employer, however, arises only after conviction of the employee in the criminal case. In *Martinez v. Barredo*,^[3] this Court ruled that a judgment of conviction sentencing a defendant employee to pay an indemnity, in the absence of any collusion between the defendant and the offended party, is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability.

"* * * The stigma of a criminal conviction surpasses in effect and implications mere civil liability. Common sense dictates that a finding of guilt in a criminal case in which proof beyond reasonable doubt is necessary, should not be nullified in a subsequent civil action requiring only preponderance of evidence to support a judgment, unless those who support the contrary rule should also hold that an absolution in a civil case will operate to automatically set aside the verdict against the defendant in the criminal case. It is anomalous, to say the least, to suppose that the driver, excelling 'Dr. Jekyll and Mr. Hyde', could be guilty of reckless negligence

in so far as his obligation to pay indemnity is concerned, and at the same time could be free from any blame when said indemnity is sought to be collected from his employer, although the right to the indemnity arose from and was based on one and the same act of the driver.

"The employer cannot be said to have been deprived of his day in court, because the situation before us is not one wherein the employer is sued for a primary liability under article 1903 of the Civil Code, but one in which enforcement is sought of a subsidiary civil liability incident to and dependent upon his driver's criminal negligence which is a proper issue to be tried and decided only in a criminal action. In other words, the employer becomes ipso facto subsidiarily liable upon his driver's conviction and upon proof of the latter's insolvency, in the same way that acquittal wipes out not only the employee's primary civil liability but also his employer's subsidiary liability for such criminal negligence. (Almeida et al. vs. Abaroa, 8 Phil., 178, affirmed in 218 U.S. 476, 54 Law ed., 1116; Wise & Co. vs. Larion, 45 Phil. 314, 320; Francisco vs. Onrubia, 46 Phil., 327; Province of Ilocos Sur vs. Tolentino, G. R. No. 34186, 56 Phil. 829; Moran, Comments on the Rules of Court, Vol. II, p. 403)

"It is high time that the employer exercised the greatest care in selecting his employees, taking real and deep interest in their welfare; intervening in any criminal action brought against them by reason of or as a result of the performance of their duties, if only in the way of giving them the benefit of counsel; and consequently doing away with the practice of leaving them to their fates. If these be done, the American rule requiring notice on the part of the employer shall have been satisfied." (At pp. 3-4)

In *Miranda v. Malate Garage & Taxicab, Inc.*,^[4] this Court further amplified the rule that the decision convicting the employee is binding and conclusive upon the employer, "not only with regard to (the latter's) civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee. That is why the law says that his liability is subsidiary (Article 103, Revised Penal Code). To allow an employer to dispute the civil liability fixed in the criminal case would be to amend, nullify, or defeat a final judgment rendered by a competent court." And this Court, in *Miranda*, further explained that the employer is in substance and in effect a party to the criminal case, considering the subsidiary liability imposed upon him by law.

"It is true that an employer, strictly speaking, is not a party to the criminal case instituted against his employee, but in substance and in effect he is considering the subsidiary liability imposed upon him by law. It is his concern, as well as of his employee, to see to it that his interest be protected in the criminal case by taking virtual participation in the defense of his employee. He cannot leave him to his own fate because his failure is also his. And if because of his indifference or inaction the employee is convicted and damages are awarded against him, he cannot later be heard to complain, if brought to court for the enforcement of his subsidiary liability, that he was not given his day in court." (At p. 675. *Italics supplied.*)

The conclusiveness upon the employer of the judgment of conviction sentencing the employee to pay civil indemnity, for the enforcement of the employer's subsidiary civil liability under Article 103 was again reiterated in *Manalo and Salvador v. Robles transportation Company, Inc.*,^[5] where the Court ruled that the sheriff's return submitted in evidence in the action against the employer, Robles Transportation Company, Inc., showing that the two writs of execution were not satisfied because of the insolvency of the driver, is a prima facie evidence of the employee's insolvency. Similarly, this Court ruled that the defendant's insolvency may be proven by the certificate of the Director of Prisons that the employee is serving subsidiary imprisonment;^[6] or by the certificate of the sheriff that the employee has not satisfied his pecuniary liability and that no properties have been found registered

in his name.[7]

Considering that the judgment of conviction, sentencing a defendant employee to pay an indemnity under Articles 102 and 103 of the Revised Penal Code, is conclusive upon the employer not only with regard to the latter's civil liability but also with regard to its amount, this Court stated in *Rotea*,[8] that in the action to enforce the employer's subsidiary liability, the court has no other function than to render decision based upon the indemnity awarded in the criminal case and has no power to amend or modify it even if in its opinion an error has been committed in the decision.

In view of the foregoing principles, and considering that Felipe Aizon does not deny that he was the registered operator of the bus but only claims now that he sold the bus to the father of the accused, it would serve no important purpose to require petitioner to file a separate and independent action against the employer for the enforcement of the latter's subsidiary civil liability. Under the circumstances, it would not only prolong the litigation but would require the heirs of the deceased victim to incur unnecessary expenses. At any rate, the proceeding for the enforcement of the subsidiary civil liability may be considered as part of the proceeding for the execution of the judgment. A case in which an execution has been issued is regarded as still pending so that all proceedings on the execution are proceedings in the suit.[9] There is no question that the court which rendered the judgment has a general supervisory control over its process of execution, and this power carries with it the right to determine every question of fact and law which may be involved in the execution.

The validity of the claim of Felipe Aizon that he is no longer the owner and operator of the ill-fated bus as he sold it already to Isaac Aizon, father of the accused Joselito Aizon, is a matter that could be litigated and resolved in the same criminal case. In support of his opposition to the motion of the complainant, served upon him, for the purpose of the enforcement of his subsidiary liability, Felipe Aizon may adduce all the evidence necessary for that purpose. Indeed, the enforcement of the employer's subsidiary civil liability may be conveniently litigated within the same proceeding because the execution of the judgment is a logical and integral part of the case itself. This would certainly facilitate the application of justice to the rival claims of the contending parties. "The purpose of procedure", observed this Court in *Manila Railroad Co. v. Attorney General*,[10] "is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of the contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice." In proceedings to apply justice, it is the duty of the courts "to assist the parties in obtaining just, speedy, and inexpensive determination" of their rival claims. Thus, the Rules require that they should be liberally construed "to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding." [11]

WHEREFORE, the Orders of respondent Court in Criminal Case No. 512 (1313) dated July 27, 1976 and August 14, 1976 are hereby set aside. The Court a quo is directed to hear and decide in the same proceeding the subsidiary liability of the alleged owner and operator of the passenger bus. Costs against private respondents.

Fernando, (Chairman), Aquino, Concepcion, Jr., and Santos, JJ., concur.

Barredo, J., concurs in a separate opinion.

[1] L-1329, May 15, 1947, 78 Phil. 449.

[2] *Joaquin v. Aniceto*, L-18719, October 31, 1964, 12 SCRA 308.

[3] G.R. No. 49308, May 13, 1948, 81 Phil. 1.

[4] L-8943, July 31, 1956, 99 Phil. 670.

[5] L-8171, August 6, 1956, 99 Phil. 729.

[6] Nagrampa v. Mulvaney McMillan & Co., Inc., L-8326, October 24, 1955, 97 Phil. 724.

[7] Martinez v. Barredo, supra.

[8] Rotea v. Halili, L-12030, September 30, 1960, 109 Phil. 495.

[9] 30 Am. Jur. 2d. 446.

[10] G.R. No. 6287, December 1, 1911, 20 Phil. 523, 530.

[11] Section 2, Rule 1, Revised Rules of Court.

CONCURRING OPINION

BARREDO, J.:

I concur, but to make matter clearer, I must add that the only issues open at the hearing to be held by the court a quo are: (1) whether or not Felipe Aizon was the owner of the vehicle driven by the convicted accused, Joselito Aizon, or, whether or not he was the employer of said accused at the time of the commission of the offense on May 9, 1975, and (2) whether or not said Joselito Aizon is insolvent . As stated in the main opinion, the judgment in the criminal case is conclusive upon the employer not only with regard to his civil liability but also with regard to its amount which is that found in the judgment of conviction. In other words, what is to be decided by the trial court is not strictly speaking the subsidiary liability of the employer, Felipe Aizon, for the judgment in the criminal case is deemed to include that liability, but only the two issues related to it that I have mentioned.

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