

**GREGORIA VDA. DE PAMAN, ROMEO PAMAN, ELISBERTO PAMAN,
AND CESARIA PAMAN, PETITIONERS, VS. HON. ALBERTO V. SENERIS,
AS JUDGE OF CFI, BRANCH II, ZAMBOANGA CITY, WESTERN
MINDANAO L...**

G.R. No. L-37632. July 30, 1982

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for mandamus to order the District Judge of the Court of First Instance of Zamboanga City, 16th Judicial District, Branch II, to perform his allegedly ministerial duty to execute the judgment in Criminal Case No. 2953 entitled "People of the Philippines, plaintiff, versus Teodoro de los Santos, accused," for Homicide Thru Reckless Imprudence In Violation of Section 52 of Act 3992, As Amended, in order to enforce the subsidiary liability of employer respondent Western Mindanao Lumber Company pursuant to Article 103 of the Revised Penal Code.

The facts of the case are simple and uncontradicted.

On May 24, 1961, accused-respondent Teodoro de los Santos was charged by the City Attorney of Zamboanga City in the following information:

"The undersigned City Attorney accuses TEODORO DE LOS SANTOS, with HOMICIDE THRU RECKLESS IMPRUDENCE IN VIOLATION OF SEC. 52 of ACT 3992 AS AMENDED, committed as follows:

"That on or about December 21, 1956, in the City of Zamboanga, Philippines, and within the jurisdiction of this Court, the above-mentioned accused, driver of a cargo truck with plate No. T-15341, owned and operated by the Western Mindanao Lumber Co., and without due precaution, considering the width, grades, curvature, visibility and other conditions of the road, did then and there wilfully, unlawfully and feloniously, thru his recklessness and lack of foresight while driving said cargo truck cause one Victoriano Paman to fall therefrom who was riding the said truck and as a consequence, the latter sustained injuries on his person which caused his death.

CONTRARY TO LAW."

Upon arraignment on June 26, 1972, accused-respondent Teodoro de los Santos entered a plea of guilty. In view of said plea the respondent Judge, Alberto Seneris, rendered a Decision fencing said respondent to suffer an imprisonment of two (2) months and one (1) day of arresto mayor and to indemnify the heirs of the late Victoriano Paman, namely, the petitioner Gregoria Vda. de Paman and her three children, in the amount of P12,000.00, the dispositive portion of the Decision reading as follows:

"WHEREFORE, the Court finds the accused, Teodoro de los Santos, by his own admission, GUILTY beyond reasonable doubt of the crime of Simple Imprudence resulting in Homicide as defined and penalized under the

provisions of the Revised Penal Code, and appreciating in his favor the two mitigating circumstances above-mentioned not offset by any aggravating circumstance, hereby SENTENCES him to an imprisonment of TWO (2) MONTHS and ONE (1) DAY of arresto mayor, to indemnify the heirs of the late Victoriano Paman, namely: Gregoria Guevara Vda. de Paman and her three children, in the amount of Twelve Thousand Pesos (P12,000.00), with subsidiary imprisonment in case of insolvency but which however, shall not be more than one (1/3) third of the principal penalty, and to pay the costs of the proceedings.

SO ORDERED."[1]

On the same day, accused-respondent Teodoro de los Santos commenced his service of sentence. On August 4, 1972, petitioner Gregoria Vda. de Paman, widow of the victim, filed the first motion for execution of the judgment to enforce the civil liability of the P12,000.00 of the accused-respondent. This was followed on August 28, 1972 by the filing of petitioner of an ex parte motion for execution of judgment against the accused. In both instances, Western Mindanao Lumber Company was duly notified.

On August 31, 1972, respondent Judge issued an order granting the said motion for execution. However, on September 4, 1972, the Sheriff's Return of Service showed that the accused-respondent Teodoro de los Santos had no property registered in his name.

Upon discovery that accused-respondent is insolvent, petitioner filed on September 19, 1972, a "Motion for Execution on Subsidiary Liability of Employer Western Mindanao Lumber Company under Article 103 of the Revised Penal Code." Petitioner contended therein that the subsidiary liability of the employer Western Mindanao Lumber Company in the event the accused is insolvent, is executory in nature and there is no need for a separate action or a further civil case to be filed in the enforcement of the decision aforementioned. On October 11, 1972, petitioner filed a "Supplemental Motion for Execution for Subsidiary Liability of Employer Under Art. 103 of the Penal Code." Petitioner, thru counsel, cited therein the case of *Fernando vs. Franco*, 37 SCRA 311, where this Court held that:

"It may be stated further that since it was not only in the latter part of October, 1962 that the decision against the driver attained finality and became executory, had plaintiffs relied on suing out a writ of execution against the employer, it could have had until October 1967 at the latest to take such step."

Petitioner concluded that the tenor of the aforesaid decision implies that the subsidiary liability of the employer may be enforced in the same proceeding.

On September 8, 1973, respondent Judge issued an order denying the motion for issuance of writ of execution against the employer of Teodoro de los Santos. He opined that the alleged employer not having been notified that its driver was facing a criminal charge, a separate civil action must be filed. Hence, this Petition for mandamus.

This case finds parallelism in a case involving the same respondent Judge, i.e., *Lucia S. Pajarito vs. Hon. Alberto V. Seneris, et al.*, 87 SCRA 275, where the only issue involved is whether or not the subsidiary liability established in Article 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.

As in the aforementioned case, the apparent drawback in the enforcement of the subsidiary liability in the same criminal proceedings is the lack of due process to the alleged employer.

Net being a party to the case, he is not heard as to whether he is indeed the employer. Besides, even if the employer-employee relationship is not disputed, still, in order that an employer may be subsidiarily liable for the employee's civil liability in the criminal action, it should be shown (1) that the employer, etc. is engaged in any kind of industry, (2) that the employee committed the offense in the discharge of his duties, and (3) that he is

insolvent.[2]

Against the foregoing considerations, Section 1, Rule 111 of the Rules of Court provides, however, that "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately." 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 the twins. It means that the civil action may be tried and prosecuted, with all the ancillary processes provided by law.[3] Said provision will be rendered meaningless if the subsidiary civil liability is not allowed to be enforced in the same proceeding.

To remedy the situation and thereby afford due process to the alleged employer, this Court directed the court a quo in *Pajarito vs. Señeris* (supra) to hear and decide in the same proceeding the subsidiary liability of the alleged owner and operator of the passenger bus. It was explained therein that the proceeding for the enforcement of the subsidiary 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. 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.

Moreover, it has been invariably held that a judgment of conviction sentencing a defendant employer 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 not only with regard to the civil liability, but also with regard to its amount.[4] This being the case, this Court stated in *Rotea vs. Halili*, 109 Phil. 495 that 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. A separate and independent action is, therefore, unnecessary and would only unduly prolong the agony of the heirs of the victim.

WHEREFORE, the order dated September 8, 1973 of respondent Judge is hereby SET ASIDE. The Court a quo is hereby directed to conduct further proceedings in the same case on whether the requisite facts to impose subsidiary civil liability on the alleged employer of Teodoro de los Santos are present. Costs against private respondents.

SO ORDERED.

Aquino, Concepcion Jr., Abad Santos, De Castro and Escolin, JJ., concur.

Barredo (Chairman): I concur. Even the information does not allege sufficient facts to make Western Mindanao Lumber Co. subsidiarily liable.

[1] Rollo, pp. 22-23.

[2] *Joaquin vs. Aniceto*, L-18719, October 31, 1964.

[3] *Ramcar, Inc. vs. De Leon*, 78 Phil. 449.

[4] *Martinez vs. Barredo*, 81 Phil. 1; *Miranda vs. Malate Garage and Taxicab, Inc.*, Phil 7 670; *Manalo and Salvador vs. Robles Transportation Company, Inc.*, 99 Phil. 729.

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