

NIDA Q. BASOY, PETITIONER, VS. DAX GONZAGA XENOS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 34, PANABO CITY, CRESCENCIO K. RAMILLANO, WEENA BUS LINES (WEENA EXPRESS) AND BERN...

Ponente: PEREZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/974570e97ffd/>

PEREZ, J.:

Nida Q. Basoy, a mother whose daughter was killed in a vehicular accident, petitions this Court under Rule 65 of the Rules of Court to set aside and annul the February 6, 2012[1] and April 13, 2012[2] Orders of the public respondent Judge Dax Gonzaga Xenos, in his capacity as presiding Judge of the Regional Trial Court, Branch 34, Panabo City (court a quo) which denied petitioner's motion to impose subsidiary liability on private respondents Weena Bus Lines and/or Bernardo Valdevieso.[3]

The Facts:

At around 5:30 in the morning of September 16, 1998, a passenger bus owned and operated by Weena Express, Inc. bearing plate No. MVG-321 driven by private respondent Cresencio K. Ramillano (Ramillano) and a passenger motorcycle registered in the name of Patrona Arellano driven by Abner Florentino figured in a vehicular mishap along the National Highway, Barangay Aplaya, Digos City, Davao del Sur leaving four (4) persons dead and three (3) other injured. One of the casualties in the vehicular accident is Mary Ann Basoy, the daughter of herein petitioner.

Criminal Case No. 12724-98 was thereafter filed with the Municipal Trial Court (MTC), Digos City, Davao del Sur charging the driver of the bus (Ramillano) with reckless imprudence resulting in multiple homicide, serious physical injuries and damage to property. Petitioner was one of the private complainants in the criminal case.

While the criminal case was pending, petitioner filed a separate claim for damages against the driver of the passenger bus (Ramillano) before the Regional Trial Court (RTC), Branch 34 Panabo City, Davao del Norte on 22 October 1998 docketed as Civil Case No. 98-59 entitled "Nila Basoy v. Cresencio Ramillano". Ramillano's employer Weena Express Inc. or Bernardo Valdevieso were not impleaded as a defendant in that action.

After trial in Civil Case No. 98-59, or on October 20, 1999, the respondent Judge issued a Decision in favor of petitioner, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Cresencio Ramillano, ordering and directing the defendant to pay the plaintiff as follows:

1. Funeral expenses of Php100,000.00;
2. Moral damages in the amount of Php150,000.00;
3. Exemplary damages in the sum of Php100,000.00;
4. Compensatory damages of Php1,000,000.00;
5. Litigation expenses of Php10,000.00; and

6. Appearance fees of Php2,000.00 per appearance.

Costs against the defendant.

SO ORDERED.[4]

Private respondent Ramillano appealed the above RTC Decision before Us. However, on January 17, 2008, the former Twenty Second Division of this Court affirmed in toto the October 20, 1999 Decision of the RTC, Branch 34, Panabo City.[5]

Almost 10 years after Civil Case No. 98-59 was decided, or on July 28, 2009, the MTC, Digos City, Davao del Sur issued a Decision in Criminal Case No. 12274-98 finding Ramillano criminally liable for the crime charged and sentencing the latter to an indeterminate prison term of four (4) months and one (1) day of arresto mayor, to four (4) years and two (2) months of prision correccional as maximum. An award for damages was made to some of the victims but not to the heirs of Mary Ann Basoy for the following reason:

As regards the claims (sic) Mrs. Patrona Arellano (the owner of the ill-fated motorcycle) and the heirs of Mary Ann Basoy (one of the fatalities), no award is given to them in this case considering that their claims had been the subject of separate civil action.[6]

On July 9, 2011, a writ of execution was issued by the RTC, Branch 34, Panabo City to enforce its October 20, 1999 Decision against Ramillano. However, per sheriff's return of writ dated September 21, 2011, the latter reported to the court that the driver (Ramillano) had no means to pay the judgment obligation.[7]

Consequently, on November 3, 2011, petitioner filed in Civil Case No. 98-59 a motion to enforce subsidiary liability on the employer of Ramillano, the Weena Bus Lines and/or Bernardo Valdevieso claiming that Ramillano has been convicted in Criminal Case No. 12724-98 and the bus company or its owner is subsidiarily liable as employer, stating that -

2. The civil aspect of this case in the form of complaint for damages arising out of the incident was the above-entitled case Civil Case No. 98-59 where the accused was made to pay damages.[8]

On February 6, 2012, the respondent Judge issued the first assailed Order denying petitioner's motion for lack of merit. According to public respondent the subsidiary liability of the employer for the felonious act committed by their employee in the discharge of his duties can be enforced only in the criminal case where the latter is convicted for the criminal offense. He added that while the law allowed the offended party to separately prosecute the civil action arising from the offense charged it does not mean that subsidiary liability arising from the criminal case can be enforced in the separate civil action.[9]

In her motion for reconsideration,[10] petitioner avers that the ex delicto civil liability of Ramillano may be enforced (a) in the criminal action or (b) may be proven by way of a separate civil action, as in this case. Petitioner argues that the subsidiary liability of Ramillano's employer can be adjudged in the Civil Case No. 98-59 since no award of civil liability was made in the criminal case in favor of the heirs of Mary Ann Basoy.

On April 13, 2012, the public respondent issued the second assailed Order denying petitioner's motion for reconsideration, giving as reasons:

... Plaintiff has confused the cause of action pleaded herein as based in culpa criminal when in reality it is predicated on culpa aquiliana. As mother of the victim, plaintiff has two options to recover damages arising from the death of her daughter of the vehicular accident: firstly, to institute a criminal case against defendant-driver pursuing in the same case her right to recover damages; and secondly, to file a separate civil action to recover the said damages.

In the first instance, the criminal case can generally be instituted only against the defendant-driver. However, once the latter is convicted and found civilly liable to the plaintiff, such liability may be imposed against his employer if he is insolvent. The basis for this is the subsidiary liability of the employer for the acts of his employees provided for under Articles 102 & 103 of the Revised Penal Code.

On the other hand, if plaintiff prefers to enforce the civil liability separately as what she did by filing the instant case, she can proceed against the employers of defendant-driver by impleading them as party defendants since their liability under Article 2180 of the Civil Code is direct, and not merely subsidiary, but subject however to the defense on their part that they exercised due diligence in the selection and supervision of their employee.[11]

Petitioner disagreed. Hence, this petition for certiorari.

Issues:

Petitioner assigns these errors:

- The respondent Judge erred and committed grave abuse of discretion in refusing to enforce the subsidiary liability of the employer under Article 103 of the Revised Penal Code in Civil Case No. 98-59; and
- The respondent Judge erred and committed grave abuse of discretion when it ruled that the complaint in Civil Case No. 98-59 arises from Culpa Aquiliana when it is clearly a civil complaint arising from Culpa Criminal.[12]

Petitioner insists that the award of damages in her favor in Civil Case No. 98-59 is one to enforce the civil liability arising from the crime (ex delicto). She argues that since private respondent Ramillano had been convicted in Criminal Case No. 12274-98 and was assessed civil liability in Civil Case No. 98-59, it would now be a ministerial course for respondent Judge to enforce the subsidiarily liability of the employer under Article 103 of the Revised Penal Code in view of Ramillano's insolvency by executing the judgment in Civil Case No. 98-59 against the latter's employer.

Private respondent Weena Bus Lines on the other hand maintains that petitioner cannot enforce their subsidiary liability as employer in the Civil Case No. 98-59 because they were not impleaded as party-defendant in the said case. They maintain that the subsidiary liability of the employer under Article 103 of the Revised Penal Code can only be enforced in the criminal case and not in the civil case.

The Court's Ruling:

This Court finds no merit in this Petition.

To begin with, it is settled that obligations arise solely from law, contract, quasi-contract, acts or omissions punished by law (crime) and quasi-delict.[13] Corollarily, a single delictual act or omission may give rise to two separate and distinct civil liabilities on the part of the offender, i.e., 1) civil liability ex delicto; and 2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as felony (e.g., culpa contractual or obligations arising from law; the intentional torts; and culpa aquiliana; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action such as that under Article 33 of the Civil Code.[14] Either of these two possible liabilities may be enforced against the offender subject only to the bar against double recovery.

Stated otherwise, victims of criminal negligence or their heirs have a choice between an action to enforce the civil liability arising from culpa criminal under Article 100 of the Revised Penal Code, and an action for quasi-delict (culpa aquiliana) under Articles 2176 to 2194 of the Civil Code or by filing an independent civil action.[15] Once

the choice is made, the injured party can not avail himself of any other remedy because he may not recover damages twice for the same negligent act or omission of the accused. This is the rule against double recovery.[16] If he chooses an action for quasi-delict, he may hold an employer directly liable for the negligent act of the employee subject, however, to the employer's defense of exercise of diligence of a good father of the family.[17] On the other hand, should the injured party choose to prosecute his action under Article 100 of the Penal Code and demand indemnity under Article 104 of the same Code, he can hold the employer subsidiarily liable upon prior conviction of the employee and who turns out to be incapable of satisfying the civil liability imposed on him.[18]

As a rule, the civil liability arising ex delicto is deemed instituted with the criminal action. This is primarily for expediency and economy, particularly in cases involving victims who may not have the resources to pursue a separate civil action and be engaged in two separate trials. Thus, Section 3, Rule 111 of the Rules of Court, which governs the rules on institution of criminal and civil actions, provides:

“SECTION 1. Institution of criminal and civil actions. – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation. x x x

(b) x x x

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this rule governing consolidation of the civil and criminal actions.” (emphasis supplied)

As stated above, when a criminal action is instituted, the civil liability arising from the offense is impliedly instituted with the criminal action, subject to three notable exceptions: first, when the injured party expressly waives the right to recover damages from the accused; second, when the offended party reserves his right to have the civil damages determined in a separate action in order to take full control and direction of the prosecution of his cause; and third, when the injured party actually exercises the right to maintain a private suit against the offender by instituting a civil action prior to the filing of the criminal case. Moreover, to be clear, what is “deemed instituted” with the criminal action is only the action to recover civil liability arising from the crime or ex-delicto. All the other civil actions under Articles 32, 33, 34 and 2176 of the Civil Code are not “deemed instituted,” and may be filed separately and prosecuted independently from the criminal action. However, the offended party is still given the option to file a separate civil action to recover civil liability ex-delicto by reserving such right in the criminal action before the prosecution presents its evidence. Also, the offended party is deemed to make such reservation if he files a separate civil action before filing the criminal action.[19]

The applicable rules when the civil liability arising from the delict is not instituted in the criminal action to prosecute the offense are likewise clear. After the criminal action has been commenced, the separate civil action arising from the crime cannot be instituted until final judgment has been entered in the criminal action. If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage before judgment and will have to await a final judgment in the criminal action. Nevertheless before a final judgment is rendered in the civil action the same may upon motion of the offended party be consolidated with the criminal action.[20]

In the instant case, records show that petitioner chose to file a separate civil action to recover damages before the Regional Trial Court, Branch 34, Panabo City after the criminal action was commenced in the MTC, Digos City, Agusan del Sur.

The allegations of petitioner's cause of action in the civil action hardly inform us whether the petitioner was suing to enforce the civil liability arising from Article 100 of the Revised Penal Code or an independent civil action. The pertinent portions of the complaint are herein reproduced, thus:

xxx

3. Plaintiff is the mother of the deceased MARY ANN QUISAY BASOY, as evidenced by Mary Ann Basoy's Birth Certificate, copy of which is herewith attached as "Annex A" forming an integral party of this complaint'

4. Sometime on September 16, 1998, at about 9:45 am, while I was inside my house, at Purok 6, Salvacion Panabo, Davao del Norte, I was informed by MACEDONIO A. MARTIN – the boyfriend of my daughter Mary Ann Quisay Basoy – that my daughter figured in an accident aforesaid happened on September 16, 1998 at about 5:00am;

5. Macedonio and I went to Davao Medical Center – the hospital where my daughter was taken – there and then, we were informed that my daughter was already dead. Mary Ann Quisay Basoy's death certificate is herewith attached as "Annex B", forming an integral part of this complaint;

6. I was made to understand, that my daughter Mary Ann Quisay Basoy died because of a vehicular accident involving a Passenger Bus of Weena Express and driven by herein defendant CRESENCIO K. RAMILLO, a copy of the police report and other evidences relative to the accident is herewith attached as "Annex C, with sube-annexes" and forming an integral part of this complaint;

7. I was able to obtain several witnesses during the said accident and their affidavits is herewith attached as "Annexes D, E, and F" and forming an integral part of the complaint;

8. Plaintiff, by reason of the death of her daughter Mary Ann Quisay Basoy, incurred funeral expenses in the amount of not less than ONE HUNDRED THOUSAND PESOS (P100,000.00).xxx

9. Plaintiff, by reason of the death of her daughter Mary Ann Quisay Basoy, suffered sleepless nights, wounded feelings, mental anxiety, which entitled her to MORAL DAMAGES in the amount of not less than TWO HUNDRED THOUSAND PESOS (P200,000.00);

10. In order to teach defendant a lesson considering the circumstances of the death of Mary Ann Quisay Basoy, he should be SLAPPED EXEMPLARY DAMAGES in the amount of not less than TWO HUNDRED THOUSAND PESOS (P200,000.00);

11. Had Mary Ann Quisay Basoy, been allowed to live and considering her young age and present working status, she should have earned a net amount of ONE MILLION PESOS (P1,000,000.00), had it not been for untimely death caused by the defendant. To which fact, defendant's mother – plaintiff herein – should be entitled to said amount as COMPENSATORY DAMAGES;

12. Plaintiff was compelled to engage the services of counsel for which services plaintiff has agreed to pay the sum of ONE THOUSAND PESOS (P100,000.00) and appearance fee of (P2,000.00) per appearance in whatever stage of the trial.

xxx[21]

A fair reading of petitioner's complaint and the proceedings taken on it shows that she is invoking her right to recover damages against the driver arising from an action for quasi-delict (culpa aquiliana) under Articles 2176 to 2194 or for an independent civil action under Article 33 of the Civil Code, and not for the latter's criminal liability (ex delicto) and not that of the employer to enforce the latter's vicarious liability under Article 2176 of the Civil Code. Notably, Civil Case No. 98-59 was instituted after the criminal action was commenced, which would not be possible under Rule 111, Section 2 of the Rules of Court if that action was to enforce the civil liability arising from the still pending criminal action. Also the employer was not impleaded in the civil case nor

was there a prayer to recover damages against the employer to hold the latter liable for the negligent act of their driver. To stress, petitioner alleged in their complaint the negligence of the driver alone and not the negligent failure of the employers to exercise due diligence in the selection and supervision of their employees.

As the records bear out, the civil action was allowed to proceed independently of the pending criminal action and a civil judgment based on preponderance of evidence was even rendered ahead of judgment in the criminal case. This can be so only if the civil case was filed to enforce civil liability separate and distinct from the civil liability arising from Article 100 of the Revised Penal Code. If it had been otherwise, Civil Case No. 98-59 should have been suspended until final judgment in the criminal case, or consolidated with Criminal Case No. 12724-98 pursuant to Rule 111 of the Rules of Court. That Civil Case was allowed to be separately pursued in the RTC, Branch 34, Panabo City can mean only that the plaintiff in that action was enforcing civil liability not arising *ex delicto*.

We note here that no award of damages was made in Criminal Case No. 12724-98 in favor of petitioner after the MTC, Digos City ruled that petitioner's claim for damages was subject of a separate civil action. This is an unfortunate conclusion by the MTC as it assumes that Civil Case No. 98-59 was filed to enforce civil liability arising from the crime thus preventing the petitioner from seeking damages in the criminal action. On the contrary, the filing of Civil Case No. 98-59 did not prevent petitioner from presenting evidence of damages in the criminal case if she wanted, or from appealing the judgment as far as the award of civil liability arising from the crime was omitted by the MTC if petitioner had proven damages in the course of the criminal trial. The civil liability being enforced in these two actions are separate and distinct from one another, and as long as the offended party does not recover twice for the same injury there is nothing that prevents her from pursuing two separate and independent remedies.

The effect however of an absence of award of civil liability in Criminal Case No. 12724-98 is that there is no civil liability that can be enforced in the criminal case whether against the negligent driver directly or against his employer subsidiarily.

Thus as regards the second issue of whether the employer can be held subsidiarily liable in Criminal Case No. 98-59 to enforce by way of subsidiary liability the award of damages in Civil Case No. 98-59, We rule in the negative.

In order that an employer may be held subsidiarily liable for the employees civil liability in the criminal action, it should be shown (1) that the employer 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. The subsidiary liability of the employer, however, arises only after conviction of the employee in the criminal action where guilt of the negligent employee has been proved beyond reasonable doubt and where an award of civil indemnification made in the criminal action cannot be satisfied by reason of the employee's insolvency.

The MTC Decision convicting private respondent Ramillano clearly indicated that he acted with criminal negligence in the discharge of his duties as driver of Weena Bus Lines, when he was over speeding at an intersection. Such being the case, the subsidiary liability of Weena Bus Lines could have been enforced in Criminal Case No. 12724-98 had an award been made for civil liability under Article 100 in relation to Article 104 of the Revised Penal Code. But that is not the case here.

The judgment in Civil Case No. 98-54 was based on mere preponderance of evidence proving the driver's tortious conduct for which he is directly and personally liable, not on his criminal guilt of who at the time said judgment was rendered has not yet been convicted of the offense. There is no subsidiarily liability in this civil case, even against his employer since the latter's liability is also direct for their own negligent acts as employer.

However, petitioner chose to sue only the bus driver in the civil action on the basis of the latter's own negligent conduct, and the resulting judgment cannot be enforced against a person not a party to that civil action.

WHEREFORE, petition for certiorari is DENIED.

SO ORDERED.

Camello, J., Chairperson, and Inting, JJ., concur.

[1] Rollo, p. 15.

[2] Rollo, p. 20.

[3] Rollo, p. 11.

[4] Rollo, p. 41.

[5] CA-G.R. CV No. 65909 (January 17, 2008).

[6] Rollo, pp. 51-57.

[7] Rollo, p. 58-59.

[8] Rollo, p. 11.

[9] Rollo, p. 15.

[10] Rollo, p. 17.

[11] Rollo, p. 20.

[12] Rollo, pp. 5-6.

[13] Article 1157, Civil Code.

[14] L.G. Foods Corporation, et al., v. Hon. Pagapong-Agraviador, et al., G.R. No. 158995, September 26, 2006.

[15] Ibid.

[16] Rafael Reyes Trucking Corporation v. People, et al., G.R. No. 129029, April 3, 2000.

[17] Article 2180 Civil Code.

[18] *supra*.

[19] Rule 111, Section 1, Rules of Court.

[20] Rule 111, Section 2, Rules of Court.

[21] Rollo, pp 21-22.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.