

ARCADIO M. QUIAMBAO, PLAINTIFF AND APPELLEE, VS. ANICETO MORA, DEFENDANT AND APPELLANT.

G.R. No. L-12690. May 25, 1960

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal from the decision of the Court of First Instance of Rizal finding appellant subsidiarily liable for the insolvency of his driver, a certain Ricardo de Guzman who has been ordered by the court in Criminal Case No. 2429 to pay the amount of P2,000 as a consequence of his having been found guilty of the crime charged therein. Appellant was likewise sentenced to attorney's fees in the amount P500.

The case was submitted on stipulation of facts which reads as follows:

"1. That in Criminal Case No. 2429, entitled People of the Philippines vs. Ricardo de Guzman, of the Court of First Instance of Rizal, a decision was rendered against the accused to pay a fine of P2,000 and to indemnify the offended party Arcadio Quiambao, plaintiff herein the sum of P2,000, with subsidiary imprisonment in case of insolvency, a copy of the decision dated May 19, 1950 is hereto attached as Annex 'A', thereby forming an integral part hereof;

"2. That pursuant to said decision (Annex 'A'), the accused Ricardo de Guzman served subsidiary imprisonment, a copy of the Commitment and Certificate of Discharge from Prison is hereto attached and marked as annex 'B' and 'C' respectively, thereby forming an integral part hereof;

"3. That on January 16, 1956, a writ of execution in connection with the said criminal case against Ricardo de Guzman was issued by the Court of First Instance of Pasig, Rizal, copy of which is hereto attached and marked as Annex 'D' forming an integral part hereof;

"4. On March 10, 1956, a Sheriff's Report in accordance with the said writ of execution was made by the Sheriff of Manila, copy of which is hereto attached and marked as Annex "E" to form an integral part hereof;

"5. That the accused Ricardo de Guzman in said criminal case No. 2429 filed a motion to declare null and void the writ of execution issued on January 16, 1956 (Annex 'D'), copy of which is hereto attached as Annex 'F'; and pursuant to said motion, the Court of First Instance of Rizal declared said writ of execution null and void; copy of said order is hereto attached as Annex 'B';

"6. That the defendant herein Aniceto Mora who is the owner of the 'Aurora Transit' at the time of the incident mentioned in the decision Annex 'A', and who is also the employer of Ricardo de Guzman, at said time, has not paid a single centavo to herein plaintiff Arcadio Quiambao, in accordance with said decision despite demands therefor, and neither have said Arcadio Quiambao received any amount pursuant to said decision.

"7. That the parties hereto agree to file and submit a memorandum simultaneously within a period of ten (10) days from this date."

In the present case, appellant's principal contentions are:

- That the action against appellant has already prescribed because the law provides that an action arising from a quasi-delict must be filed within four years from the commission of the act in this particular case, more than four years have elapsed from the occurrence of the incident;
- That the insolvency of the said driver Ricardo de Guzman has not been proved by competent evidence; that Annex "D", the writ of execution which appellee has presented as proof of the driver's, insolvency is not sufficient evidence because the same has been declared null and void (the said writ having been asked for after more than five years from the date of judgment).

Very clearly appellee's cause of action is based on the judgment of conviction against Ricardo S. de Guzman and the latter's insolvency pursuant to Article 103 of the Revised Penal Code. The said driver's negligence is not the present cause of action. The allegation of such fact of negligence found in paragraph 4 of the complaint is merely a predicate for the determinative facts alleged in paragraphs 5 and 6 of the said complaint. Appellant's contention for prescription is untenable. The present cause of action, arising as it does from a final judgment, may be instituted within ten years from the date of such judgment (*Emilio Manalo, et al. vs. Robles Transportation Co., Inc.*, 99 Phil., 729; 52 Off. Gaz., [13] 5797).

Paragraph 4 of the stipulation of facts as well as Annex "E" thereof is sufficient proof of the insolvency of the said driver. Such is competent and admissible evidence. Appellant never interposed an objection to the admissibility of said Annex "E". Furthermore, the return made by the sheriff pursuant to the writ of execution stated among other things that after a diligent effort, he could not locate any leviable property of said De Guzman and neither could anybody inform him of any such property. It is true that the writ of execution had been declared null and void, it is likewise true that if it is not enforceable against the person principally liable, it cannot, with more reason, be enforced against a person secondarily liable. Nevertheless, we are not in the instant case enforcing said writ of execution against appellant. We merely use it as evidentiary proof of De Guzman's insolvency. Indeed to insist that the insolvency of De Guzman has not been duly established by the return Annex "E" simply because the writ of execution has been declared null and void, when it is presumably obvious that the result of a new writ would be the same—would be to insist on an empty technicality and a useless act—particularly when, as already stated, appellant had interposed no objection to the admissibility of Annex "E". Moreover, if there is any property to be exhausted or levied upon against a guilty employee, the employer who stands to be benefited by this exhaustion should point out to the claimant what and where those properties are, instead of simply folding his arms in indifference.

The decision under consideration having been found in accordance with law, the same is affirmed in all parts and respects, with costs against the appellant. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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