

ANITA JAMELO, PLAINTIFF AND APPELLANT, VS. FEDERICO SERFINO, DEFENDANT AND APPELLEE.*G.R. No. L-26730. April 27, 1972*

Ponente: TEEHANKEE, J.

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Appeal on a pure question of law from an order of dismissal of the Court of First Instance of Negros Occidental.

The lower court after noting that the case was on appeal before it from the Bacolod city court's order dated March 30, 1966 dismissing plaintiff's complaint, related in its own dismissal order of August 29, 1966 the factual background of the case thus: "(I)t appears that in the evening of February 1, 1961, while Antonio Regoles was driving the truck of the defendant Federico Serfino, through his negligence and carelessness, said truck collided with another truck parked on the right side of the road near kilometer 5 in the Municipality of Talisay, Negros Occidental. As a consequence of said collision his co-employee Artemio Jamelo suffered injuries and he died. The mother of the late Artemio Jamelo filed in the Court of First Instance Civil Case No. 6198, entitled 'Anita Jamelo vs. Antonio Regoles' for damages on May 15, 1961. On August 26, 1963 the Court of First Instance rendered a decision declaring the defendant Antonio Regoles responsible for the death of Artemio Jamelo, and ordered Antonio Regoles to pay P6,000.00 to the plaintiff Anita Jamelo and to pay an additional sum of P2,000.00 as moral damages. The Court of Appeals affirmed on June 10, 1965, the decision of the Court of First Instance. On October 25, 1965, a writ of execution was issued by the Clerk of Court. On November 17, 1965 the provincial sheriff of Negros Occidental returned unsatisfied the writ of execution, stating that the defendant Antonio Regoles was insolvent. Consequently, the plaintiff Anita Jamelo filed this present action against the defendant Federico Serfino for subsidiary liability as owner of the truck and employer of the driver Antonio Regoles, claiming that said defendant Federico Serfino is subsidiarily liable to pay the amount of P8,000.00 adjudged by the Court of Appeals against the defendant driver Antonio Regoles who was insolvent." [1]

The lower court then recounted that "(T)he defendant filed a motion to dismiss on the ground that the complaint states no cause of action, and if there is any action, same has already prescribed Defendant brought (out) the fact that there was no criminal complaint filed against the driver Antonio Regoles. Plaintiff filed only a civil case No. 6198 in the Court of First Instance of Negros Occidental against the driver Antonio Regoles. The present defendant owner of the truck, Federico Serfino, was not included as one of the party defendants. The plaintiff evidently filed this present complaint under the provisions of Art. 103 in relation with Art. 102 of the Revised Penal Code. Defendant contends that, there being no judgment in a criminal case filed against the driver Antonio Regoles, the defendant in this present case Federico Serfino is not subsidiarily liable." [2]

On the strength of *Martinez vs. Barredo* [3] ruling that the judgment of conviction, in the absence of any collusion between the driver-accused and the offended party, binds civilly the employer as the person subsidiarily liable under Articles 102 and 103 of the Revised Penal Code - such liability not being a primary liability under the provisions on quasi-delict of the Civil Code but "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" - the lower

court found defendant's motion to dismiss to be meritorious.

The lower court held that "subsidiary liability pre-supposes that there was a criminal action. If no criminal action was instituted, the employer's liability would not be predicated on Art. 103, (Revised Penal Code)" and accordingly ordered the dismissal of plaintiff's action, which sought to declare defendant-employer subsidiarily liable to pay the P8,000.00-damages awarded plaintiff in her civil judgment against the insolvent driver.

Plaintiff-appellant formulates her issue of the case thus: "(I)s the conviction of the driver Antonio Regoles of the criminal case filed against him for the death of plaintiff's son, Artemio Jamelo, a condition precedent in order that an action for subsidiary liability based on Arts. 103 and 102 of the Revised Penal Code may lie against the defendant Federico Serfino as owner of the truck and employer of the driver Antonio Regoles?" and submits "that the conviction of the employee of the crime he was charged while in the performance of his duties is not a legal requirement before an action for subsidiary liability against his employer under Art. 103 of the Revised Penal Code could be predicated."

Plaintiff-appellant's position is untenable. There can be no automatic subsidiary liability of defendant-employer under Article 103 of the Revised Penal Code^[4] where his employee has not been previously criminally convicted. What apparently unfortunately happened here is that plaintiff filed an independent civil action for damages solely against the erring driver Antonio Regoles based on his criminal negligence resulting in the death of plaintiff's son and secured the P8,000.00 damage judgment against him alone, which she could not collect, however, due to his insolvency.

Plaintiff does not state what ever happened to the criminal action against him except to contend in her brief that in filing such independent civil action, "she loses her right to intervene in the prosecution of the said criminal case against Antonio Regoles and that its dismissal will not bar the civil action she had already filed against the said Antonio Regoles."^[5] Such Civil judgment is enforceable solely and exclusively against the only defendant therein, the erring driver, Regoles. But this is an entirely different matter from trying now to enforce said civil judgment in this action on the groundless basis of an alleged subsidiary liability against defendant-employer under Article 103 of the Revised Penal Code. The basis is groundless without the prior criminal conviction of the driver-employee which is a condition sine qua non for the subsidiary liability of the employer to come into being under the cited provision of the Revised Penal Code.

It is clear then that there having been no criminal conviction of the employee wherein his civil liability was determined and fixed, no subsidiary liability under Article 103 of the Revised Penal Code can be claimed against defendant-employer.

A direct and separate civil action for damages against defendant-employer for quasi-delict under Article 2180 of the Civil Code, subject however to the defense therein provided of proving due diligence in the choice and supervision of the employee, would have lain against defendant, if timely filed. Even if the Court were to hold that the action filed below by plaintiff-appellant could be considered such a separate and direct action for damages on the basis of quasi-delict - against plaintiff's own disclaimer and insistence that she wants to enforce the non-existent subsidiary liability of defendant-employer - the Court is constrained to sustain the dismissal order of the lower court, since such an action is now clearly barred by prescription as duly invoked by defendant-appellee in his dismissal motion.

Actions based upon quasi-delicts prescribe after four years from the commission of the fault or negligent deed.^[6] Since the accident causing the death of plaintiff's son occurred on February 1, 1961, the filing of the complaint below only on March 10, 1966 was already barred by the lapse of more than a year beyond the four-year prescription period.

ACCORDINGLY, the order appealed from is hereby affirmed, without pronouncement as to costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Castro, Fernando, Barredo, and Antonio, JJ., concur.

Makasias, J., took no part.

Concepcion, C.J., on official leave.

[1] Emphasis supplied.

[2] Idem.

[3] 85 Phil. 1 (1948); See also *Manalo vs. Robles Trans. Co.*, 99 Phil. 729 (1956); *Connel Bros. Co. vs. Aduna*, 91 Phil. 79 (1952); *Miranda vs. Malate Garage & Taxicab, Inc.*, 99 Phil. 670 (1956); *Orsal vs. Alisbo*, 106 Phil. 655 (1959).

[4] "ART. 103. Subsidiary civil liability of other persons.— The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties." (Revised Penal Code)

[5] Rollo, p. 32, emphasis supplied.

[6] Article 1146, par. 2, Civil Code in relation to Article 2176, Civil Code.

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