

EVELYN YONAHA, PETITIONER, VS. HON. COURT OF APPEALS AND HEIRS OF HECTOR CAÑETE, RESPONDENTS.

G.R. No. 112346. March 29, 1996

Ponente: VITUG, J.

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VITUG, J.:

From the decision of the Court of Appeals dismissing for lack of merit the petition for certiorari, with prayer for preliminary injunction, filed by Evelyn Yonaha against an order, dated 29 May 1992, of the Regional Trial Court[1] which had granted private respondents' motion for the issuance of a writ of subsidiary execution, the instant appeal was taken.

In Criminal Case No. 01 106-L, Elmer Ouano was charged with the crime of "Reckless Imprudence Resulting In Homicide" in an information which averred -

"That on April 14, 1990, at or about 11:45 A.M., in Basak, Lapulapu City, Philippines, within the jurisdiction of this Honorable Court, the aforementioned accused, while driving a Toyota Tamaraw sporting Plate No. GCX-237 duly registered in the name of Raul Cabahug and owned by EK SEA Products, did then and there unlawfully and feloniously maneuver and operate it in a negligent and reckless manner, without taking the necessary precaution to avoid injuries to person and damage to property, as a result thereof the motor vehicle he was then driving bumped and hit Hector Cañete, which caused the latter's instantaneous death, due to the multiple severe traumatic injuries at different parts of his body."[2]

When arraigned, the accused pleaded "guilty" and, on 09 March 1992, the trial court pronounced its judgment "

"Finding therefore the accused guilty beyond reasonable doubt of the offense charged against him and taking into account the mitigating circumstances of voluntary surrender and plea of guilty which the prosecuting fiscal readily accepted, the Court hereby sentences the accused to suffer and undergo an imprisonment of 1 year and 1 day to 1 year and 8 months and to pay the heirs of the victim the sum of P50,000.00 for the death of the victim; P30,000.00 for actual damages incurred in connection with the burial and the nightly prayer of the deceased victim and P10,000.00 as attorney's fees."[3]

On 27 April 1992, a writ of execution was issued for the satisfaction of the monetary award. In his Return of Service, dated 07 May 1992, the MTCC Deputy City Sheriff stated that he had served the writ on accused Elmer Ouano but that the latter had manifested his inability to pay the money obligation.

Forthwith, private respondents presented a "motion for subsidiary execution" with neither a notice of hearing nor notice to petitioner. Acting on the motion, nevertheless, the trial court issued an order, dated 29 May 1992, directing the issuance of a writ of subsidiary execution. The sheriff went to petitioner's residence to enforce the writ, and it was then, allegedly for the first time, that petitioner was informed of Ouano's conviction. Petitioner filed a motion to stay and to recall the subsidiary writ of execution principally anchored on the lack of prior notice to her and on the fact that the employer's liability had yet to be established. Private respondents opposed the motion.

On 24 August 1992, the trial court denied petitioner's motion. On 23 September 1992, petitioner's plea for reconsideration of the denial was likewise rejected.

Petitioner promptly elevated the matter to the Court of Appeals (CA-GR SP No. 29116) for review. The appellate court initially restrained the implementation of the assailed orders and issued a writ of preliminary injunction upon the filing of a P10,000.00 bond. Ultimately, however, the appellate court, in its decision of 28 September 1993, dismissed the petition for lack of merit and thereby lifted the writ of preliminary injunction. The Court of Appeals ratiocinated:

"We are not unmindful of the ruling in the aforecited case of Lucia Pajarito vs. Seneris, supra. - that enforcement of the secondary or subsidiary liability of employer may be done by motion in the same criminal case, a recourse which presupposes a hearing. But even assuming that issuance of writ of subsidiary execution requires notice and hearing, we believe a hearing in the present case would be sheer rigmarole, an unnecessary formality, because, as employer, petitioner became subsidiarily liable upon the conviction of her accused driver, Elmer Ouano, and proof of the latter's insolvency. And if she had any defense to free herself from such subsidiary liability, she could have ventilated and substantiated the same in connection with her (petitioner's) motion to stay and recall the writ of subsidiary execution in question. But from her said motion, it can be gleaned that except for the protestation of violation of due process, and absence of notice to her of the motion for issuance of a writ of subsidiary execution, petitioner intimated no defense which could absolve her of subsidiary liability under the premises. Then, too, after the denial of her motion to stay and recall subject writ, petitioner moved for reconsideration but in her motion for reconsideration, she averred no exculpatory facts which could save her from subsidiary liability, as employer of the convicted Elmer Ouano." [4]

In the instant appeal, petitioner additionally reminds the Court that Ouano's conviction was not the result of a finding of proof beyond reasonable doubt but from his spontaneous plea of guilt.

We find merit in the petition.

The statutory basis for an employer's subsidiary liability is found in Article 103 of the Revised Penal Code.[5] This Court has since sanctioned the enforcement of this subsidiary liability in the same criminal proceedings in which the employee is adjudged guilty,[6] on the thesis that it really is a part of, and merely an incident in, the execution process of the judgment. But, execution against the employer must not issue as just a matter of course, and it behooves the court, as a measure of due process to the employer, to determine and resolve a priori, in a hearing set for the purpose, the legal applicability and propriety of the employer's liability. The requirement is mandatory even when it appears prima facie that execution against the convicted employee cannot be satisfied. The court must convince itself that the convicted employee is in truth in the employ of the employer; that the latter is engaged in an industry of some kind; that the employee has committed the crime to which civil liability attaches while in the performance of his duties as such; and that execution against the employee is unsuccessful by reason of insolvency.[7]

The assumption that, since petitioner in this case did not aver any exculpatory facts in her "motion to stay and recall," as well as in her motion for reconsideration, which could save her from liability, a hearing would be a futile and a sheer rigmarole is unacceptable. The employer must be given his full day in court.

To repeat, the subsidiary liability of an employer under Article 103 of the Revised Penal Code requires (a) the existence of an employer-employee relationship; (b) that the employer is engaged in some kind of industry; (c) that the employee is adjudged guilty of the wrongful act and found to have committed the offense in the discharge of his duties (not necessarily any offense he commits "while" in the discharge of such duties); and (d) that said employee is insolvent. The judgment of conviction of the employee, of course, concludes the employer[8] and the subsidiary liability may be enforced in the same criminal case, but to afford the employer due process, the court should hear and decide that liability on the basis of the conditions required therefor by law.[9]

WHEREFORE, finding the order, dated 29 May 1992, as well as the order of 24 August 1992 to have been improvidently issued, said orders are hereby SET ASIDE. Petitioner shall be given the right to a hearing on the motion for the issuance of a writ of subsidiary execution filed by private respondents, and the case is REMANDED to the trial court for further proceedings conformably with our foregoing opinion. No costs.

Padilla, Bellosillo, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] RTC, 7th Judicial Region, Branch 27, Lapu-Lapu City, Hon. Teodoro K. Risos, Presiding.

[2] Rollo, pp. 22-23

[3] Rollo, pp. 29-30.

[4] Rollo, p. 27.

[5] 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.

[6] Pajarito vs. Seneris, 87 SCRA 275.

[7] Ozoa vs. Vda. de Madula, 156 SCRA 779.

[8] See Ozoa vs. Vda. de Madula, *ibid.*

[9] See Vda. De Paman vs. Señeris, 115 SCRA 709.

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