

JOSE J. ROTEA, PLAINTIFF AND APPELLANT, VS. FORTUNATO F. HALILI, DEFENDANT AND APPELLEE.*G.R. No. 12030. September 30, 1960*

Ponente: BAUTISTA ANGELO, J.

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On August 17, 1952, while Angel Bascon was driving a bus belonging to Fortunato F. Halili along the national road of Makati, Rizal, it collided with a Rosado bus as a result of which Jose Rotea, a passenger of the Halili bus, was injured. As a consequence, a criminal complaint for serious physical injuries thru reckless imprudence was filed in the Justice of the Peace Court of Makati against Bascon, and the offended party having reserved his right to file a separate civil action, after trial, Bascon was found guilty of the lesser crime of serious physical injuries thru simple imprudence and sentenced to a penalty of 3 months and 10 days of arresto mayor.

Within the reglementary period Bascon appealed to the Court of First Instance of Rizal. After trial, said court found him also guilty of the crime charged sentencing him to 4 months and 1 day imprisonment. In addition, the court ordered him to indemnify the offended party in the amount of P513.00, with subsidiary imprisonment in case of insolvency, to pay P3,000.00 as liquidated damages, P10,000.00 by way of exemplary or corrective damages, and the costs. From this decision Bascon took steps to appeal to the Court of Appeals, but he later withdrew his appeal and served the sentence imposed upon him.

The decision having become final, a writ of execution was issued upon Rotea's request to enforce the civil liability awarded in his favor, but the writ was returned unsatisfied because Bascon was insolvent. Rotea made several demands upon Halili to make good his subsidiary liability, he being the employer of Bascon, and having ignored said demands, Rotea filed on March 19, 1955 against Halili the present action in the Court of First Instance of Manila praying that Halili be declared subsidiarily liable for the indemnity awarded in his favor. In the criminal case consisting in the sum of P13,513.00 as liquidated and exemplary damages, and that he be awarded P2,000.00 as attorney's fees and the costs. After trial, the court found for plaintiff ordering defendant to pay an indemnity in the amount of P3,513.00, with legal interest thereon from the filing of the complaint until its payment, to pay P500.00 as attorney's fees, and the costs. The court denied plaintiff's claim for P10,000.00 as exemplary damages. Plaintiff appealed directly to this Court assigning several errors.

After stating that this action was brought to enforce the indemnity fixed in the criminal case taken against appellee's driver based upon the subsidiary liability of appellee under Articles 102 and 103 of the Revised Penal Code, which indemnity amounts to P13,513.00, including the sum of P10,000.00 as exemplary damages, appellant contends that the trial court erred in modifying said indemnity by reducing it to P3,513.00 as actual and liquidated damages, eliminating therefrom the sum of P10,000.00 as exemplary damages. He contends that the trial court cannot make such diminution for that would be tantamount to an amendment or modification of the decision rendered in the criminal case insofar as the indemnity is concerned which has long become final and executory. Appellant avers that in the absence of collusion between the offended party and the accused "in the criminal case, or unless it is claimed that the court had no jurisdiction to act on the matter, the employer is liable

for the whole amount of indemnity awarded to the offended party in a subsequent civil action filed to enforce it.

We have no quarrel with the contention that when a civil action is based upon the subsidiary liability of an employer under Articles 102 and 103 of the Revised Penal Code resulting from the indemnity awarded to the offended party in a criminal action 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. For, as this Court has aptly said: "To allow an employer to dispute the civil liability fixed in the criminal case would be to amend, nullify or defeat a final judgment rendered by a competent court" (*Miranda vs. Malate Garage and Taxicab, Inc.*, 99 Phil., 670; 52 Off. Gaz. [11] 5145). But the situation differs when the court in the criminal case has acted without or in excess of its jurisdiction, in which case the decision should be ignored because being null and void it never existed in contemplation of law. This is the situation herein obtained. The decision rendered in the criminal case insofar as the indemnity is concerned is null and void for having been rendered without or in excess of the jurisdiction of the court of first instance, and this is so because the offended party has made an express reservation of his right to institute a separate civil action to recover the indemnity and the amount awarded is far beyond the jurisdiction of the justice of the peace court where the case originated. The trial court, therefore, was justified in ignoring the decision in the criminal case and in rendering judgment according to its discretion based upon the evidence on hand.

On the other hand, the trial court was justified in not requiring appellee to pay exemplary damages there being no evidence whatever that he had any participation in the wrongful act committed by his employee. The rule is that exemplary damages are imposed primarily upon the wrongdoer as a deterrent in the commission of similar acts in the future. Such punitive damages cannot be applied to his master or employer except only to the extent of his participation or ratification of the act because they are penal in character. Moreover, in this jurisdiction, exemplary damages may only be imposed when the crime is committed with one or more aggravating circumstances (Article 2230, new Civil Code), and here the crime being only qualified by negligence is not accompanied by any aggravating circumstance.

"According to the rule adopted by many courts, a principal or master can be held liable for exemplary or punitive damages based upon the wrongful act of his agent or servant only where he participated in the doing of such wrongful act or has previously authorized or subsequently ratified it with full knowledge of the facts. Reasons given for this rule are that since such damages are penal in character, the motive authorizing their infliction will not be imputed by presumption to the principal when the act is committed by an agent or servant, and that since they are awarded not by way of compensation, but as a punishment to the offender and as a warning to others, they can only be awarded against one who has participated in the offense, and the principal therefore cannot be held liable for them merely by reason of wanton, oppressive, or malicious intent on the part of the agent." (15 Am. Jur., 780).

With regard to the claim that the trial court erred in awarding to appellant only the amount of P500.00 as attorney's fees and not the amount of P2,000.00 as claimed by him considering that appellee paid no heed to his repeated overtures for payment thus forcing him to institute the present action, suffice it to say that this is a matter addressed to the discretion of the trial court. Considering that the principal amount involved is small and appellee's liability is merely subsidiary, we find no abuse of discretion committed by the trial court. Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Bengzon, Padilla, Labrador, Reyes, J. B. L., Gutierrez David, Paredes, and Dizon, JJ., concur.

Paras, C. J., Concepcion and Barrera, JJ., concur in the result.

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